FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against JOEL C. MONKE,
a Minnesota Attorney,
Registration No. 74445.

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 (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 5, 1979. Respondent currently practices law in Woodbury, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent has the following disciplinary history:

a. On January 24, 1986, respondent was issued an admonition for failing to timely file an appeal on behalf of a client, resulting in the loss of the client's appellate rights in violation of DR 6-101(A)(3), Minnesota Code of Professional Responsibility.

b. On November 1, 1994, respondent was issued an admonition for failing to adequately communicate with a workers' compensation client (including failures to respond to the client's many letters to respondent or to inform the client of a $250

charge for a medical report), and neglect of the client's matter in violation of Rules 1.3 and 1.4, Minnesota Rules of Professional Conduct (MRPC).

FIRST COUNT

Assisting in the Unauthorized Practice of Law, Failure to Supervise, Neglect of and Failure to Communicate with Clients and Sharing Fees with a Non-Lawyer.

Introduction.

1. Michael Martinez was suspended from the practice of law by Supreme Court order dated July 25, 2000.

2. By Supreme Court order dated January 21, 2003, Martinez was indefinitely suspended for an additional period of at least four months for failing to adequately communicate with clients, failing to diligently pursue several client matters, failing to return client files, failing to cooperate with the Director's investigation, and failing to provide evidence of compliance with the Court's July 25, 2000, suspension order.

3. On July 13, 2006, the Supreme Court issued an order extending Martinez's indefinite suspension by at least 18 months for neglecting client matters, failing to adequately communicate with clients, failing to inform clients of his suspension, practicing law while suspended, failing to cooperate with the Director's investigation and failing to return a client's file.

4. Martinez has not been reinstated to the practice of law at any time since July 25, 2000.

5. Respondent became aware of Martinez' suspension shortly after July 2000, and was aware that between July 2000 and July 2006 Martinez had not been reinstated.

6. In or around August 2000, Martinez began referring his client matters to respondent. By at least June 2001, Martinez began working for respondent as a legal assistant and continued in such a capacity until on or about July 28, 2006.

7. In his capacity as respondent's legal assistant, Martinez worked both on the client matters he had referred to respondent at or after the time of his suspension ("Martinez clients"), and client matters on which respondent had been the original attorney ("Monke clients").

Neglect of Client Matters, Failure to Adequately Communicate with Clients, Aiding in the Unauthorized Practice of Law and Failure to Supervise.

8. When Martinez began referring client matters to respondent in or after August 2000, respondent failed to take reasonable steps to protect the clients' interests. Specifically, respondent failed to promptly determine the universe of client matters on which Martinez had been the attorney of record at the time of his suspension and could no longer serve as attorney; initiate contact with the client; determine what, if any, work was required on their matters and undertake that work; and, if appropriate, promptly enter into fee agreements with the clients or otherwise obtain approval to work on their cases.

9. At the time of his July 25, 2000, suspension, Martinez did not inform any of his clients, opposing counsel or tribunals of his suspension in the manner required by Rule 26, RLPR. In fact, it was not until at least April 2001, in the context of the Director's investigation of additional client complaints filed against him, that Martinez first informed any of his clients of his suspension and filed with the Director an affidavit pursuant to Rule 26, RLPR. Even then, however, Martinez failed to notify, and include in his affidavit, several clients entitled to notification of Martinez' suspension.

10. In and after August 2000, respondent failed to inform the clients whose legal matters he was assuming of Martinez' suspension in any systematic or documented way.

11. Respondent also failed to take reasonable steps to supervise Martinez in his capacity as respondent's legal assistant. Specifically, respondent allowed Martinez to maintain a separate office, in which separate office Martinez worked on client

matters and had unsupervised contact with clients. Martinez continued to employ his own secretary, who worked for Martinez in Martinez' office, for a period of at least six months following his suspension. In addition, respondent failed to monitor or effectively review Martinez' professional activities and failed to require Martinez to account for his time or activities. Respondent's failure to properly supervise Martinez continued despite respondent's awareness of the requirements for supervising a suspended attorney.

12. In fact, in and after August 2000, respondent only became involved in a Martinez client matter if the client affirmatively contacted respondent, or if Martinez specifically asked respondent to perform a task on a client's behalf.

13. During and after August 2000, respondent used letterhead in his professional capacity that affirmatively represented or implied that Martinez was a duly licensed lawyer:

a. During the period August to November 2000, respondent signed and allowed to be mailed correspondence to clients, opposing counsel and representatives of the workers' compensation system, that was printed on letterhead bearing the heading, "Michael L. Martinez, Attorney at Law," and reflecting Martinez' separate office address. Respondent signed this correspondence in the following capacity: "Joel C. Monke, Esq., . . . for: Michael L. Martinez, Attorney at Law."

b. During the period September 2000 to January 2001, respondent signed and allowed to be mailed correspondence to clients, opposing counsel and representatives of the workers' compensation system, that was printed on letterhead bearing the name, "Michael L. Martinez," with the former "Attorney at Law" designation redacted in black, and reflecting Martinez' separate office address. Respondent signed this correspondence in the

following capacity: "Joel C. Monke, Esq., . . . for: Michael L. Martinez, Attorney at Law."

c. During the period January to April 2001, respondent signed and allowed to be mailed correspondence to clients, opposing counsel and representatives of the workers' compensation system, that was printed on letterhead bearing the heading, "Michael L. Martinez," and reflecting Martinez' separate office address. Respondent signed this correspondence in the following capacity: "Joel C. Monke, Esq., . . . for: Michael L. Martinez."

14. In April 2001, while the Director was investigating the client matters that led to Martinez' January 21, 2003, suspension, respondent met with a representative of the Director. During that meeting, the Director's representative informed respondent that:

a. it was improper to use professional letterhead that represented or implied that Martinez was a duly licensed lawyer;

b. all of Martinez' clients had to be informed of his suspension and his non-lawyer status; and

c. Martinez could properly claim attorney's fees only for those services he provided prior to his suspension.

15. On May 23, 2001, the Director's representative specifically informed respondent of his supervisory responsibilities under Rule 5.7 (now Rule 5.8), MRPC.

16. On June 4, 2001, respondent submitted a "NOTICE" pursuant to Rule 5.7, MRPC, in which he stated that he wanted to employ Martinez as a legal assistant and would not permit Martinez to render legal consultation or advice to clients or otherwise engage in activities that constitute the practice of law.

17. In fact, however, the only change respondent made to his supervisory practices regarding Martinez following his involvement with the Director was to

discontinue using Martinez' letterhead. Respondent continued to (a) allow Martinez to maintain an office separate from his own, (b) allow Martinez to have unsupervised contact with clients, (c) fail to monitor or effectively review Martinez' professional activities, and (d) fail to require Martinez to account for his time or activities. In addition, as noted above, respondent continued to share legal fees with Martinez.

18. Although respondent was supervising Martinez, respondent was unaware of the activities which led to Martinez' January 21, 2003, suspension from the practice of law. The extension of Martinez' suspension was the result of, among other things, Martinez' failures to return client files, cooperate with the Director's Office in its investigation of client complaints, and provide evidence of compliance with the Court's July 25, 2000, suspension order.

19. Among the Martinez clients for whom respondent assumed responsibility following Martinez' suspension were Amy Bergquist, Chukwubunna Alaike, Bertha Suarez, Maria Sanchez, Edmund Wolfe and Delia Granados.

Amy Bergquist

20. Amy Bergquist retained Martinez to represent her in a personal injury matter sometime prior to Martinez' July 25, 2000, suspension.

21. Bergquist was not among the clients to whom Martinez provided formal written notification of his suspension, in the manner required by Rule 26, RLPR, in or around April 2001.

22. Respondent entered into a fee agreement with Bergquist on February 18, 2002. Prior to that date, respondent was not aware that Martinez represented Bergquist and did not attempt to contact Bergquist or determine whether she was in need of any legal services. Further, respondent did not at any time provide Bergquist with written or documented notification of Martinez' suspension.

Chukwubunna Alaike

23. Chukwubunna Alaike retained Martinez to represent him in a workers' compensation matter sometime prior to Martinez' July 25, 2000, suspension. Respondent assumed responsibility for Alaike's representation by or before August 24, 2000.

24. Alaike was not among the clients to whom Martinez provided formal written notification of his suspension, in the manner required by Rule 26, RLPR, in or around April 2001.

25. Respondent did not at any time provide Alaike with written or documented notification of Martinez' suspension.

Bertha Suarez

26. Bertha Suarez suffered a work injury on July 3, 2000. On September 20, 2000, Suarez signed a retainer agreement that provided, "this Retainer Agreement is entered into between Ms. Bertha Suarez, Employee, for date of injury 7/3/00 at Ceneca [sic] Foods, and Michael L. Martinez (MLM) *& Joel Monke*" (the emphasized portion having been handwritten). "MLM" is referred to throughout the retainer agreement as the attorney and the recipient of attorney's fees. Respondent was not involved in the preparation or execution of the retainer agreement.

27. During the period after his July 25, 2000, suspension, Martinez had communications with Suarez that respondent could not have adequately supervised because (a) Suarez spoke only Spanish; (b) Martinez spoke to Suarez only in Spanish; and (c) respondent does not speak Spanish.

28. Suarez was not among the clients to whom Martinez provided formal written notification of his suspension, in the manner required by Rule 26, RLPR, in or around April 2001.

29. Respondent did not at any time provide Suarez with written or documented notification of Martinez' suspension.

Maria Sanchez

30. Maria Sanchez retained Martinez to represent her in a workers' compensation matter sometime prior to Martinez' July 25, 2000, suspension. Respondent assumed responsibility for Sanchez' representation by or before November 6, 2000.

31. Sanchez was not among the clients to whom Martinez provided formal written notification of his suspension, in the manner required by Rule 26, RLPR, in or around April 2001.

32. Respondent did not at any time provide Sanchez with written or documented notification of Martinez' suspension.

33. Respondent also allowed Martinez to lead Sanchez' disability to case manager to believe Martinez was a duly licensed lawyer, allowed Martinez to have unsupervised conversation with the disability case manager and file pleadings with the Office of Administrative Hearings that implied Martinez was a duly licensed lawyer.

34. In a February 13, 2001, report, Sanchez' disability case manager reported, "I also contacted [Sanchez'] attorney, Michael Martinez, who stated that he was okay with me continuing to working [sic] with Ms. Sanchez as her disability case manager."

35. On April 8, 2002, respondent filed and served a rehabilitation request on Sanchez' behalf. Respondent signed the request in the following capacity: "Joel C. Monke . . . for Michael L. Martinez," thus implying that Martinez was a duly licensed lawyer.

Edmund Wolfe

36. Edmund Wolfe retained Martinez to represent him in a workers' compensation matter sometime prior to Martinez' July 25, 2000, suspension. Respondent assumed responsibility for Wolfe's representation by or before August 28, 2000.

37. Martinez did not inform Wolfe of his suspension until at least April 2001. Until that time, Wolfe continued to believe that Martinez was a duly licensed lawyer and was working on his case in that capacity.

38. Respondent did not file and serve a notice of appearance of attorney in Wolfe's case until April 2001, approximately nine months after Martinez's suspension.

39. At no time during the period August 28, 2000, to April 2001, did respondent inform Wolfe of Martinez' suspension.

Delia Granados

40. In approximately December 2000 Delia Granados consulted with Martinez regarding a slip-and-fall accident she had had a month earlier on the premises of HealthPartners. Martinez did not inform Granados of his suspension.

41. Despite his suspension, Martinez told Granados that he would represent her with regard to her accident. Martinez presented Granados with various documents to sign. Martinez told Granados that he would almost certainly deal with HealthPartners' insurance company regarding the matter.

42. Thereafter, Granados had periodic telephone conversations with Martinez, during which conversations Martinez simply indicated that he was still representing Granados and that her case was going well. Martinez typically indicated that he would call or write to Granados with additional information, but he never did. During this time, Granados was providing Martinez with her medical bills. In fact, Martinez took no action regarding Granados' claim.

43. Respondent did not become involved in Granados' representation until June 2001.

44. During an August 2002 meeting with HealthPartners' insurance company that was attended by Granados, respondent and Martinez, neither respondent nor Martinez informed Granados of Martinez' suspension. Granados continued to believe

that Martinez was a lawyer and that he and respondent were simply working together on her case.

45. By Supreme Court order dated July 13, 2006, Martinez was found to have, among other things, engaged in a pattern of neglecting client matters, failing to adequately communicate with clients, failing to inform clients of his suspension from the practice of law and practicing law while suspended. Based on Martinez' misconduct, the Court suspended Martinez from the practice of law for an additional period of at least 18 months.

46. The specific client matters addressed in the Court's July 13, 2006, suspension order were Dianne Ward and Timothy Ruettimann.

Dianne Ward

47. Dianne Ward retained Martinez to represent her in a workers' compensation matter prior to his July 25, 2000, suspension. *See* paragraphs 62 to 88, below. Ward's file was among those for which respondent eventually assumed responsibility after Martinez' suspension.

48. Martinez did not, in April 2001 or any other time, inform Ward of his suspension from the practice of law.

49. During the period August 2000 until September 2001, Martinez continued to communicate with Ward and lead her to believe that he was still her attorney and was working on her case.

50. Respondent did not enter into a fee agreement with Ward until October 26, 2001, 15 months after Martinez' suspension. Respondent did not inform Ward of his involvement in her representation until she signed the fee agreement.

Timothy Ruettimann

51. Timothy Ruettimann retained Martinez to represent him in a workers' compensation matter sometime prior to his July 25, 2000, suspension.

52. Ruettimann was not among the clients to whom Martinez provided formal written notification of his suspension, in the manner required by Rule 26, RLPR, in or around April 2001.

53. During the period August 2000 to September 2003, Martinez continued to communicate with Ruettimann and lead him to believe that he was still his attorney and was actively working on his case.

54. Respondent's failure to adequately supervise Martinez' activities in the Bergquist, Alaike, Suarez, Sanchez, Wolfe, Ward and Ruettimann matters served to assist Martinez in the unauthorized practice of law.

Sharing Fees with a Non-Lawyer

55. Beginning in 2001, respondent prepared billing statements directed to Martinez and detailing, by date, client and time spent, the legal services respondent provided to both Martinez and Monke clients. Respondent did not require Martinez to maintain any record of the time he spent working on Martinez or Monke client matters and did not pay Martinez a salary or an hourly wage.

56. The precise nature of respondent's compensation arrangement is unclear. Respondent has characterized the arrangement in two very different ways:

a. During an April 20, 2005, meeting with representatives of the Director, respondent stated that his compensation arrangement with Martinez provided that when a settlement or attorney fee payment was received in either a Martinez or Monke client matter, respondent was entitled to receive payment for the services reflected on his billing statements, and Martinez was entitled to receive whatever balance remained after payment of respondent's services.

b. During his July 18, 2006, sworn statement, however, respondent stated that he paid Martinez "whatever I believed his value to the case was," which he determined on a "pretty subjective" basis.

57. During the years 2001 through 2005, respondent and Martinez received compensation from respondent's law practice, in accordance with the compensation practices described above, in the following amounts:

YEAR	RESPONDENT	MARTINEZ
2001	$ 35,244	$ 69,504
2002	$ 12,502	$ 79,127
2003	$ 37,792	$ 43,158
2004	$ 44,344	$ 86,630

58. On numerous occasions beginning in August 2001, respondent deposited into his trust account personal injury settlement proceeds or earned workers' compensation attorney fees on behalf of Monke clients, or former Martinez clients with legal matters arising after July 2000, and from those deposits, issued trust account checks to Martinez for his share of the proceeds or earned attorney fees, apparently in accordance with the compensation arrangement described above.

59. For example, on January 2, 2002, respondent deposited into his trust account $4,536.50 in earned workers' compensation attorney fees he had received on behalf of Alvarado, a Monke client. Respondent then issued his trust account check no. 1758 for $3,536.50 to Martinez, and issued his trust account check no. 1759 for $1,000 to himself.

60. Respondent's practices as described in paragraphs 55 through 59 above constituted the sharing of legal fees with Martinez.

61. Respondent's failure to determine the universe of clients for whom Martinez was the attorney of record at the time of his suspension, confirm that the clients were aware of Martinez' suspension, initiate communication with those clients, determine what work was required on their cases, and, if appropriate, promptly enter into fee agreements with the clients or otherwise obtain approval to undertake the

required work violated Rules 1.3, 1.4 and 1.5(b), MRPC. Respondent's failure to properly supervise Martinez in his capacity as respondent's legal assistant violated Rule 5.3, 5.5(a) and 5.7(b), MRPC. Respondent's sharing of legal fees with Martinez violated Rules 5.4(a), MRPC.

SECOND COUNT

Dianne Ward Matter – Neglect, Incompetence, Inadequate Communication and Inadequate Fee Agreement

62. In October 1994, Dianne Ward was electrocuted while working in a hospital kitchen. Ward hired attorney Michael Martinez to represent her in a workers' compensation matter in February 1995. Martinez filed a claim petition on Ward's behalf in April 1996, and a trial was scheduled for February 25, 1997.

63. On February 24, 1997, Martinez requested dismissal of Ward's claim petition. An order dismissing Ward's claim petition was issued on March 4, 1997.

64. Martinez did not inform Ward that he had dismissed her claim petition, nor did he discuss with her the effects of doing so. Ward understood that Martinez had simply postponed the trial in light of Ward's approval to receive social security disability benefits.

65. Although Martinez was suspended from the practice of law on July 25, 2000, Martinez did not, at that time, inform Ward of his suspension. Rather, both before and after his suspension, Martinez continued to have discussions with Ward that led her to believe that he was still her lawyer and was working on her case.

66. In her ongoing discussions with Martinez, Ward informed him of injuries additional to those that had been addressed in her claim petition that were developing as a result of her electrical accident. These additional injuries included right shoulder pain, hip pain, cataracts, fibromyalgia, memory loss, confusion, low back pain, bursitis, headaches, neck pain, internal nerve damage and psychological problems.

67. The statute of limitations relative to Ward's additional injuries expired in October 2000.

68. In December 2000, at Martinez' request, respondent agreed to assume responsibility for Ward's representation. Respondent did not, however, contact Ward or otherwise obtain Ward's approval to work on her file at that time.

69. Respondent has produced copies of three letters to Ward, dated December 11, 2000, March 5, 2001, and March 19, 2001, requesting that Ward complete and return a workers' compensation questionnaire and/or "make an appointment with your treating doctor . . . so I may obtain an updated medical report regarding the same." All of these letters are printed on Martinez' letterhead, reflect Martinez' mailing address and bear a signature block reading, "Joel C. Monke, Esq., 651/735-8657, Attorney ID No. 74445, for: Michael L. Martinez." The letters are not signed.

70. Ward does not recall receiving respondent's December 11, 2000, March 5, 2001, and March 19, 2001, letters. Respondent, however, acknowledges that he was involved in preparing and sending the letters.

71. Other than preparing the letters identified above, respondent took no substantive action on Ward's case during the period December 2000 to at least September 2001. Further, during that period, respondent did not otherwise communicate with Ward and did not obtain Ward's approval to work on her case. Ward continued to communicate with Martinez and continued to believe that Martinez was still her lawyer and was working on her case.

72. In approximately September 2001, Ward contacted the Director and learned of Martinez' July 25, 2000, suspension. Ward promptly began contacting other lawyers regarding possible representation. The lawyers informed Ward that the statute of limitations applicable to her claim had expired.

73. In or about October 2001, respondent contacted Ward and indicated his willingness to undertake her representation. This was the first time Ward heard

directly from or about respondent, or learned that he had some involvement in her representation.

74. Ward asked respondent whether her claims were barred by the statute of limitations. Respondent stated that they were not and that she could still recover on her claims. Respondent did not at that, or any other time have any further discussion with Ward regarding the effect of any statute of limitations on her claims.

75. On October 26, 2001, Ward met with respondent for the first time and signed a blank "Workers' Compensation Contingent Fee Agreement," by which she retained respondent to "litigate or settle [Ward's] workers' compensation claim." The fee agreement did not indicate whether respondent or Ward would be responsible for advancing costs associated with Ward's claim.

76. Also on October 26, 2001, Ward completed a "Legal Services Agreement," and signed a blank notice of appearance of attorney for employee, a series of blank medical authorizations and the last page of a form claim petition. Respondent did not at that, or any other time file a notice of appearance, or any other documents with the workers' compensation court.

77. In a letter she sent to respondent on February 25, 2002, Ward provided respondent with information concerning, among other things, the primary doctors with whom she had treated for the injuries she sustained in the electrical accident.

78. Respondent thereafter took no further substantive action on Ward's case until June 20, 2002, when he wrote to Ward and requested the names and addresses of all the doctors with whom she had treated for "all of the medical problems that we are associating with the electrical shock."

79. On July 23, 2002, respondent wrote to Dr. Jonathan Biebl at Summit Orthopedics and requested copies of Ward's medical records. Summit Orthopedics responded to respondent on August 4, 2002, with a bill for $101.81 for the cost of the

records. Respondent neither paid the bill nor forwarded it to Ward. A notation on the bill indicates, "prepay not rec'd; records destroyed 06-17-03."

80. Respondent took no further substantive action on Ward's case until August 25, 2003, when he wrote to Dr. Biebl and Dr. Marie LaFrance of White Bear Hills Medical Group and requested reports concerning Ward from each of them. On September 4, 2003, Summit Orthopedics again responded to respondent with a bill for $400 for the cost of the requested medical report. On or about September 5, 2003, respondent forwarded the bill to Ward and requested that she pay it.

81. Ward, whose fee arrangement with Martinez had provided that Martinez would advance any necessary costs on her behalf, was surprised by respondent's request for payment of the Summit Orthopedics bill, which she was financially unable to pay. Ward called respondent and scheduled a meeting to discuss matters related to her claims, including the Summit Orthopedics bill. Respondent failed to appear for the scheduled meeting.

82. In September 2003, Ward consulted with and retained attorney Scott Heins to replace respondent as her attorney. Heins obtained the medical records necessary to Ward's claims and, in January 2004, filed a claim petition on Ward's behalf.

83. On November 4, 2004, Ward entered into a stipulation for settlement. In the stipulation, the employer/insurer acknowledged receiving proper statutory notice regarding some of Ward's injuries, *i.e.*, those that had been addressed in her original claim petition, but denied receiving such notice regarding the many other injuries Ward claimed to have later developed as a result of her electrocution. The stipulation assumed and accepted that those additional injuries were barred by the applicable statute of limitations. Ward agreed to accept $40,000 as a full, final and complete settlement of her claims.

84. The award on stipulation was filed on December 6, 2004.

85. Throughout the almost three-year period in which he represented Ward, respondent repeatedly assured Ward that he was working on her case and that the matter would soon be presented to the court for resolution. In fact, however, during that period, respondent failed to even gather the medical records and reports necessary to Ward's claim and did not file with the workers' compensation court a claim petition or a notice of appearance on Ward's behalf or otherwise pursue a recovery for her in any meaningful way.

86. Respondent's neglect of Ward's workers' compensation case, his failure to communicate with Ward during the period December 2000 to October 2001, and his failure to recognize and communicate to Ward the effects of the statute of limitations on her claims violated Rules 1.1, 1.3 and 1.4, MRPC. Respondent's failure to state in his fee agreement with Ward or to otherwise clarify who was responsible for the advancement of costs violated Rule 1.5(b), MRPC.

THIRD COUNT

Delia Granados – Neglect and Inadequate Communication

87. As noted above, Delia Granados consulted with Martinez in December 2000 regarding a slip-and-fall accident on HealthPartners' premises. Respondent became involved in Granados' representation in June 2001.

88. On June 15 and August 30, 2001, respondent wrote to HealthPartners regarding Granados' claim. In his letters, respondent stated that he was representing Granados with regard to her claim. Respondent did not, at that time, contact Granados or otherwise inform her that he had undertaken her representation. Although respondent's letters indicate that copies were provided to Granados, she did not receive them.

89. On November 15, 2001, the St. Paul Medical Liability Insurance Company ("St. Paul") responded to respondent's letters. St. Paul asked respondent to contact the

assigned claims representative to schedule a meeting to discuss Granados' claim and enclosed an authorization for Granados' signature.

90. Granados' signature was apparently obtained on the authorization and, by letter dated December 19, 2001, respondent returned the signed authorization to St. Paul.

91. During the period January to June 2002, respondent wrote to St. Paul on several occasions regarding the scheduling of a meeting to discuss Granados' claim. During this period, St. Paul was apparently in the process of collecting Granados' medical records.

92. In approximately August 2002, a meeting was held in respondent's office. Present for the meeting were respondent, Granados, St. Paul's claims representative and Martinez, who served as Granados' interpreter. During this meeting, the claims representative stated that St. Paul was denying liability with regard to Granados' claim, but that HealthPartners' policy provided for up to $5,000 in payment of Granados' medical bills. The claims representative further stated that although St. Paul usually required that all such bills be presented within one year of the accident, St. Paul was still willing to consider payment of Granados' medical bills. The claims representative requested that respondent produce Granados' medical bills to St. Paul.

93. On September 25, 2002, St. Paul wrote to respondent to confirm the matters discussed during the August 2002 meeting. St. Paul stated that it had not yet received any of Granados' medical bills from respondent.

94. On October 10, 2002, respondent wrote to St. Paul and demanded payment of $5,000 in settlement of Granados' claim. On October 31, 2002, St. Paul rejected respondent's demand.

95. On December 2, 2002, respondent mailed to St. Paul $220 in Granados' medical bills. St. Paul issued a check in payment of those bills and mailed it to

respondent on February 3, 2003. Respondent forwarded St. Paul's check to Granados on February 18, 2003.

96. Thereafter, respondent wrote to Granados on several occasions asking that she contact his office and schedule a meeting to discuss her case. Granados called and scheduled at least two such meetings, which meetings respondent cancelled because he was unable to arrange for the presence of an interpreter.

97. Respondent's last letter to Granados was dated March 3, 2004. Thereafter, Granados called respondent's office on several occasions, but respondent failed to return her calls.

98. Respondent did not, at any time, inform Granados that he was no longer representing her or was no longer pursuing a claim on her behalf. Granados has continued to understand that respondent was attempting to recover $5,000, plus payment of her medical bills, on her behalf. Respondent was not, in fact, doing so.

99. Respondent's neglect of Granados' slip-and-fall case and his failure to adequately communicate with Granados after February 2003, violated Rules 1.3 and 1.4, MRPC.

FOURTH COUNT

Commingling, Trust Account Shortages and Failure to Maintain Required Trust Account Books and Records

100. At all times relevant, respondent has maintained US Bank trust account number 1 359 3002 1021 (hereinafter, respondent's trust account).

101. The Director audited respondent's trust account for the period January 2000 through August 2005. The Director's audit disclosed the deficiencies set forth below.

102. During the period May 2001 to October 2004, respondent routinely deposited earned workers' compensation attorney fees into his trust account. In so doing, respondent commingled his own funds with those of clients and/or third parties.

103. Similarly, beginning in July 2001, respondent frequently failed to promptly withdraw from his trust account attorney fees to which he was entitled in various personal injury and other matters. In so doing, respondent commingled his own funds with those of clients and/or third parties.

104. The lengthiest and most extensive period of respondent's commingling occurred from February to November 2004. During that period, respondent maintained a continuous balance of his own funds in his trust account in amounts ranging from approximately $10,000 to $20,000.

105. During the periods April 17 to May 15, 2001, and January 16 to 20, 2004, the balance in respondent's trust account fell below that necessary to cover balances due clients and third parties. Specifically:

a. On April 17, 2001, respondent's trust account check no. 1720, payable to respondent in the amount of $500, cleared respondent's trust account. At the time, respondent was not entitled to any attorney's fees from the account, and the amount of his own funds in the account was only $223.53. As a result, payment of check no. 1720 created a $276.47 ($223.53 minus $500) shortage in respondent's trust account. This shortage was eliminated on May 15, 2001, when respondent deposited into the account $4,200 in earned workers' compensation attorney fees.

b. On January 16, 2004, respondent's trust account check no. 1875, payable to TG Peterson Construction in the amount of $12,000, cleared respondent's trust account. Respondent issued check no. 1875 in payment of remodeling work TG Peterson Construction had done on his home. The amount of respondent's own funds in his trust account at the time check no. 1875 cleared respondent's trust account was only $11,856.61. As a result, payment of check no. 1875 created a $143.39 ($11,856.61 minus $12,000) shortage in respondent's trust account. This shortage was

eliminated on January 20, 2004, when respondent retained in the account $1,703.19 in attorney fees to which he was entitled from a personal injury settlement.

106. Respondent failed to maintain the trust account books and records required by Rule 1.15, MRPC, as interpreted by Lawyers Professional Responsibility Board Opinion No. 9. In particular, respondent failed to maintain client subsidiary ledgers or perform monthly trial balances and reconciliations.

107. Respondent's trust account shortages, commingling and failure to maintain required trust account books and records violated Rule 1.15(a), (b) and (c)(1), MRPC, as interpreted by Lawyers Professional Responsibility Board 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: July 16, 2008.

MARTIN A. COLE
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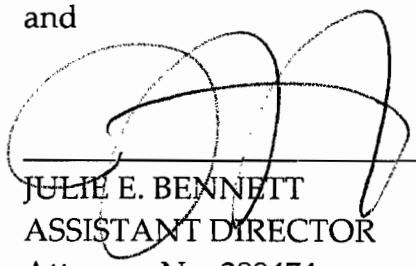

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