

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

FILED
DEC 05 2011
CLERK OF COURT
SUPREME COURT OF OHIO

In re:	:	
	:	
Complaint against	:	Case No. 11-056
	:	
Kim Gerette Martorana	:	Findings of Fact,
Attorney Reg. No. 0060109	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Geauga County Bar Association	:	the Supreme Court of Ohio
	:	
Relator	:	

DISCIPLINE BY CONSENT

{¶1} On August 8, 2011, a hearing panel was assigned to hear this matter. The panel consisted of McKenzie K. Davis, Sanford E. Watson and Janica A. Pierce Tucker, chair. None of the panel members are from the appellate district from which the complaint arose or served as a member of the probable cause panel that considered this matter.

{¶2} A timely agreement for consent to discipline was submitted to the hearing panel on October 6, 2011.

{¶3} The hearing panel finds that this agreement conforms to BCGD Proc. Reg. Sec. 11 and the panel recommends acceptance of the agreement including the stipulated facts and the clear and convincing evidence of violations of Prof. Cond. Rule 1.5(a) [charging an excessive fee], 1.5(d) [charging a nonrefundable fee] and 1.5(e) [failing to divide fees in proportion to the services performed], Prof. Cond. R. 5.3 [failure to supervise nonlawyer assistants], Prof. Cond. R. 5.4 [failing to maintain professional independence], Prof. Cond. R. 5.5 [engaging in the unauthorized and multijurisdictional practice of law] and Prof. Cond. R. 5.7 [failing to disclose

relationships with of-counsel lawyers]. The panel further agrees with the proposed sanction of a six-month stayed suspension on the condition that Respondent: (1) completes three hours of law firm management CLE; and (2) meets monthly with a mentor agreed to by the parties for a period of one year.

{¶4} In further support, the panel relies upon the holdings in *Cincinnati Bar Assn. v. Harwood*, 125 Ohio St.3d 31, 2010-Ohio-1466 (violations included Prof. Cond. R. 5.4(a) and 5.5(a) and Respondent received a six-month stayed suspension) and *Disciplinary Counsel v. McCord*, 121 Ohio St.3d. 497, 2009-Ohio-1517. However, the panel distinguishes *McCord* from this case as Respondent has made substantial restitution to the clients harmed by her actions.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 1, 2011. The Board voted to accept and adopt the agreement entered into by Relator and Respondent. The agreement sets forth the misconduct and the sanction of a six-month suspension from the practice of law in Ohio, with all six months stayed and with conditions as listed in the panel report, and this is the recommendation of the Board. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

**Pursuant to the order of the Board of Commissioners on
Grievances and Discipline of the Supreme Court of Ohio,
I hereby certify the foregoing Findings of Fact, Conclusions
of Law, and Recommendations as those of the Board.**



**RICHARD A. DOVE, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**

FILED

OCT 07 2011

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

**BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
OF THE SUPREME COURT OF OHIO**

In re:
Complaint Against

) CASE NO.
)
)

KIM GERETTE MARTORANA
Martorana Legal Services LLC
8251 Mayfield Rd. Suite 100
Chesterland, OH 44026

) **FIRST AMENDED COMPLAINT**
)
)

) **(Rule V of the Supreme Court Rule for**
) **the Government of the Bar of Ohio)**
)

RESPONDENT
)
)
)

GEAUGA COUNTY BAR ASSOCIATION
Certified Grievance Committee
114 East Park Street
Chardon, OH 44024

RELATOR
)
)
)

Now comes the Relator and alleges that Kim Gerette Martorana, an Attorney at Law, duly admitted to the practice of law in the State of Ohio, is guilty of the following misconduct:

1. Relator is a certified grievance committee certified by the Board of Commissioners on Grievance and Discipline of the Supreme Court pursuant to Rule V, Section 3(C), of the Supreme Court Rules for the Government of the Bar to investigate allegations of misconduct by judges and attorneys and mental illness affecting judges or attorneys and to initiate complaints as a result of such investigations.

2. Respondent, Kim Gerette Martorana ("Martorana"), is admitted to the practice of law in the State of Ohio since November 20, 1992 and has been assigned Registration No. 0060109.

3. Respondent is subject to the Ohio Rules of Professional Conduct and the Rules of the Government of the Bar of Ohio.

4. Relator has given the Respondent notice of each allegation contained in this Complaint and has given him an opportunity to respond to such allegations as required by Rule V, Section 4(1), of the Supreme Court Rules for the Government of the Bar.

5. The undersigned counsel for Relator are each admitted to the practice of law in Ohio.

6. Respondent has not previously been the subject of disciplinary action before the Supreme Court of Ohio.

FACTS & CIRCUMSTANCES

7. Respondent performs services under the name of Martorana Legal Services LLC ("MLS") in an office located at 8251 Mayfield Road, Suite 100 in Chesterland, Ohio.

8. She shares the Mayfield Road office with Timothy H. Snyder ("Snyder") and a company known as Performing Investment Corp. ("PIC").

9. PIC is owned and operated by Robert Ruckstuhl and is purportedly a paralegal business and mortgage bailout company which works with attorneys.

10. PIC pays a national advertising group to advertise for clients needing assistance with foreclosure or the threat of foreclosure. PIC and/or Martorana receives client calls, compiles information from clients and contacts lenders to negotiate the options.

11. PIC employs a number of people including three "case analysts", Julie Zubic, Kim Pschirer and Sharon Moore, and a disbarred attorney, Jonathan Evans. PIC also employs the owner's wife, PJ Ruckstuhl as a receptionist. PIC supervises the paralegals and trains the staff who each manage 150-200 files at any given time.

12. Martorana contracts with PIC for services performed by the staff of PIC.

13. Martorana accepts referrals from PIC and enters into agreements with clients and flat fees are paid by the client. Martorana then pays PIC all monies received except \$300.00 which she keeps for herself. PIC bills the attorney on a weekly basis.

14. Martorana takes the flat fee she receives and deposits it to a merchant checking account and is then transferred to her operating account. Martorana pays PIC from her operating account. Martorana maintains a valid client trust account (IOLTA) but rarely uses it.

15. Martorana has no oversight of the employees of PIC.

16. Martorana maintains office hours from 9:00 a.m. to 3:30 p.m.

17. Martorana does attend hearings in court regarding foreclosure matters.

18. Martorana represents on her letterhead that she has other attorneys who are "of counsel" in multiple states.

19. Martorana individually, or together with PIC, receives telephone inquiries from clients only to collect the entire fee and send approximately \$150.00 of said fee to attorneys in other states who are listed "of counsel" on Respondent's letterhead.

COUNT ONE
(O'Connor Matter)

20. Relator incorporates the statements and allegations contained in Paragraphs 1 through 19, inclusive, of the Complaint as though fully rewritten herein.

21. On or about January, 2010, Thomas J. O'Connor ("O'Connor) of Honesdale Pennsylvania saw a television advertisement promising mortgage assistance.

22. O'Connor contacted MLS and spoke with "Alyssa" at which time he informed her that he had been unemployed for approximately three years and wished to receive assistance in reducing his mortgage loan interest rate.

23. O'Connor was informed at that time that there would be a fee of \$1,695.00 at which time O'Connor informed "Alyssa" that he did not wish to proceed if there was nothing that MLS could do to assist him.

24. On January 29, 2010, O'Connor was met at his home by an individual, not Martorana, who he believed to be employed by MLS at which time O'Connor provided credit card authorization for a charge of \$1,695.00 and signed some paperwork.

25. On February 1, 2010, O'Connor was contacted by MLS and instructed to fax a signed copy of the Fee Agreement to MLS. At that time O'Connor inquired if a refund would be provided if there was nothing that MLS could do to assist O'Connor. "Alyssa" responded that a refund would be given if they could not assist him.

26. On February 2, 2010, O'Connor received a call from Sharon Moore who identified herself as an office manager and who further stated that there was nothing that MLS could do to assist O'Connor. O'Connor asked about a refund of the fee and was informed that he needed to fax a letter terminating the services of MLS.

27. On February 11, 2010, O'Connor received a refund of \$495.00 from MLS.

28. At no time did O'Connor speak with Martorana or any other attorney associated with MLS.

29. Respondent has since made full restitution to O'Connor. She sent a check for the remaining \$1,200 to Bar counsel, Patricia Schraff, on September 7, 2011 to distribute to O'Connor.

**COUNT TWO
(Sedivy Matter)**

30. Relator incorporates the statements and allegations contained in Paragraphs 1 through 30, inclusive, of the Complaint as though fully rewritten herein.

31. On or about February 9, 2010, Dennis Sedivy ("Sedivy") contacted Respondent regarding mortgage loan modification.

32. Sedivy paid money to Martorana and/or MLS and did not receive the services for which he contracted.

33. Sedivy received \$695 of the monies paid to MLS by successfully filing a chargeback with his credit card company. Respondent provided a reimbursement check for the remaining \$1,100 to Bar counsel, Patricia Schraff, on September 7, 2011 to distribute to Sedivy.

**COUNT THREE
(Hicks Matter)**

34. Relator incorporates the statements and allegations contained in Paragraphs 1 through 33, inclusive, of the Complaint as though fully rewritten herein.

35. On or about August 11, 2010, Sharon Hicks ("Hicks") contacted MLS regarding mortgage assistance.

36. Hicks spoke to Chris Wilfong ("Wilfong"), who informed her that for the price of \$2,295.00, they could assist her in her mortgage difficulties.

37. Wilfong also informed Hicks that she would receive a refund of the monies paid if, after an initial review of her case, they would not be able to provide assistance.

38. Wilfong also informed Hicks that she could make payments pursuant to a payment plan. Hicks made two payments, approximately two weeks apart, to pay the \$2,295.00 in full.

39. On or about August 16, 2010, Hicks signed a contract with MLS (attached hereto as "Exhibit A")

40. Paragraph 4(b) of the Contract between Hicks and MLS states that the monies paid is a fixed fee amount deemed earned in full by MLS and no refund is due Client unless no legal work is performed beyond an initial review.

41. Paragraph 7 of the Contract states that upon termination of the attorney/client relationship by the Client, all legal work will be charged at an hourly rate of \$225.00 per hour for attorney services and \$125.00 per hour for paralegal services.

42. On or about September 3, 2010, Hicks was informed by a receptionist at Martorana Legal Services that Hicks' mortgage company would not work with Hicks or her representatives to resolve her mortgage issues.

43. On or about September 3, 2010, Hicks demanded a refund of the money paid to Martorana Legal Services.

44. On or about September 7, 2010, Hicks spoke with Jonathan Evans ("Evans"), a paralegal, and informed him that she wanted a refund of her money.

45. On or about September 10, 2010, Hicks again spoke with Evans, who attempted to get Hicks to pay more money. Hicks again demanded a refund.

46. On or about September 15, 2010, Evans informed Hicks that she would be getting a refund after they calculated the amount owed for services rendered.

47. On or about September 21, 2010, MLS sent a letter to Hicks stating that she was not entitled to a refund of any monies paid but would, however, receive a \$500.00 "courtesy refund."

48. On or about September 30, 2010, Hicks received a refund check in the amount of \$500.00.

49. Respondent has since made full restitution to Hicks. She sent a check for the remaining \$1,800 to Bar counsel, Patricia Schraff, on September 8, 2011 to distribute to Hicks.

**COUNT FOUR
(Hanson Matter)**

50. Relator incorporates the statements and allegations contained in Paragraphs 1 through 49, inclusive, of the Complaint as though fully rewritten herein.

51. David and Dawn Hanson (the "Hansons"), Minnesota residents, contacted MLS in November, 2009, seeking assistance with a loan modification.

52. The Hansons executed an Attorney/Client Fixed Fee & Service Agreement on December 4, 2009. They also executed a Fixed Fee Invoice and Authorization and paid \$1,835.38 to MLS.

53. Mr. Hanson spoke with MLS representatives about obtaining a loan modification, and provided certain financial records to MLS for its review.

54. After Respondent and an of-counsel attorney in Minnesota reviewed the file, a MLS representative informed Mr. Hanson that MLS could not obtain a loan modification for him and his wife.

55. On January 24, 2010, Mr. Hanson sent an email to MLS stating that he and his wife no longer wanted MLS' services and requested a refund.

56. MLS responded on or about February 6, 2010, stating that it would not be issuing a refund to the Hansons because MLS had already performed work on the file. The letter also confirmed the termination of MLS' Attorney/Client relationship with the Hansons.

57. Respondent has since made full restitution to the Hansons. She sent a check for \$1,835.38 to Bar counsel, Patricia Schraff, on September 7, 2011 to distribute to the Hansons.

**COUNT FIVE
(Mattox Matter)**

58. Relator incorporates the statements and allegations contained in Paragraph 1 through 57, inclusive, of the Complaint as though fully rewritten herein.

59. James Mattox ("Mr. Mattox") contacted MLS for mortgage related assistance, and entered into an Attorney/Client Fixed Fee & Service Agreement on January 30, 2010. Mr. Mattox executed a Fixed Fee Invoice and Authorization the same day.

60. Mr. Mattox paid Respondent an up-front, flat fee of \$1,695.00 on or about February 10, 2010.

61. Mr. Mattox informed MLS that he was not going to file for bankruptcy and would therefore no longer need MLS' services.

62. Respondent sent a letter to Mr. Mattox on January 23, 2011, acknowledging that the Attorney/Client relationship had been terminated.

63. Respondent did not initially provide a refund to Mr. Mattox, but has since made full restitution to Mr. Mattox. She sent a check for \$1,733.14 to Bar counsel, Patricia Schraff, on September 12, 2011 to distribute to Mr. Mattox, representing reimbursement of the fee and costs associated with payment of the legal fee.

COUNT SIX
(Excessive or Non-Refundable Fee)

64. Relator incorporates the statements and allegations made in Paragraphs 1 through 63, inclusive, of the Complaint as though fully rewritten herein.

65. By acting in the manner alleged, Respondent violated Rule 1.5(a) and (d) of the Ohio Rules of Professional Conduct by charging an excessive fee and/or charging a non-refundable fee.

COUNT SEVEN
(Division of Fees)

66. Relator incorporates the statements and allegations made in Paragraphs 1 through 65, inclusive, of the Complaint as though fully rewritten herein.

67. By acting in the manner alleged, Respondent violated Rule 1.5(e) of the Ohio Rules of Professional Conduct which requires the division of fees in proportion to the services performed and with full disclosure to the client by referring cases to out of state counsel and keeping a portion of the fee for himself without providing services that would reasonably justify keeping said funds or informing the client of any co-counsel relationship.

COUNT EIGHT
(Supervision of Non-Lawyer Assistants)

68. Relator incorporates the statements and allegations made in Paragraphs 1 through 67, inclusive, of the Complaint as though fully rewritten herein.

69. By acting in the manner alleged, Respondent violated Rule 5.3 of the Ohio Rules of Professional Conduct, which requires supervision of non-lawyer assistants.

COUNT NINE
(Professional Independence)

70. Relator incorporates the statements and allegations made in Paragraphs 1 through 69, inclusive, of the Complaint as though fully rewritten herein.

71. By acting in the manner alleged and by failing to disclose the existence of her relationship with PIC, Respondent violated Rule 5.4 of the Ohio Rules of Professional Conduct, which commands the professional independence of a lawyer.

COUNT TEN
(Multijurisdictional Practice/Unauthorized Practice)

72. Relator incorporates the statements and allegations made in Paragraphs 1 through 71, inclusive, of the Complaint as though fully rewritten herein.

73. By acting in the manner alleged, by taking cases and "farming" them out to attorneys in other jurisdictions, and through her relationship with PIC, Respondent violated Rules 5.5 of the Ohio Rules of Professional Conduct, which prohibits the multijurisdictional practice of law and the unauthorized practice of law.

COUNT ELEVEN
(Disclosures)

74. Relator incorporates the statements and allegations made in Paragraphs 1 through 74, inclusive, of the Complaint as though fully rewritten herein.

75. By acting in the manner alleged, Respondent violated Rule 5.7 of the Ohio Rules of Professional Conduct, which requires the disclosure of the lawyer's relationship with any firm or entity providing law related services.

CONCLUSION

WHEREFORE, Relator requests that a Hearing Panel of the Board of Commissioners on Grievance and Discipline of the Supreme Court find that the Respondent, Kim Gerette Martorana, violated the Ohio Rules of Professional Conduct as alleged, and that the Board make an appropriate recommendation to the Supreme Court concerning the disciplinary action to be taken against Respondent for her conduct.

Patricia J. Schraff by consent
Patricia J. Schraff (0006830)
2802 SOM Center Road, Ste. 200
Willoughby Hills, OH 44094
440-585-1600
Counsel for Relator

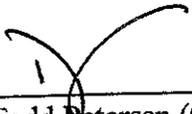

Todd Petersen (0066945)
428 South Street
Chardon, OH 44024
440-279-4480
Counsel for Relator

EXHIBIT A

MARTORANA LEGAL SERVICES, LLC

9251 Mayfield Rd., Suite 100
esterland, OH 44026

Kim Gerette Martorana, Esq.
Ohio Registration Number 0060109

Phone: 440.729.1000
Facsimile: 440.729.1004

ATTORNEY-CLIENT, FIXED FEE & SERVICE AGREEMENT

On this 16th of August, 2010, the parties identified as

Client's Name/s: Sharon Hicks

Mailing Address: 1542 N. Massasoit Ave.

Phones: Home: _____

Work: _____ Work: _____

Cell: _____ Cell: _____

hereinafter "The Client", and **Martorana Legal Services, LLC ("MLS")**, hereinafter "MLS", ("MLS" includes itself as well as its agents/staff) hereby acknowledge and agree to the following:

Client hires and engages MLS, and any other attorneys, law firms, paralegals, assistants, clerks, employees or independent contractors hired now, or in the future in the sole discretion of MLS to address a certain Real Estate Mortgage for the premises located, at 5733-5735 W. North Ave a/k/a 1542-1544 N. Massasoit Ave with Apex mortgage as the Lender, and for representation as described herein. ⁶⁰²

1) **General Duties of Attorney(s)/MLS:**

a) **Goal of this Agreement:** The goal of this agreement is to provide representation to help the client achieve a satisfactory resolution with a mortgage that is in or about to enter default. The goal is to work with the lending institution to allow the client to stay in the home, and/or renegotiate monthly payments, and/or renegotiate the terms of the loan, and/or seek a mutually agreeable release from the mortgage, and/or process an orderly judgment against the debtor. The results are not guaranteed and will depend on your particular circumstances and what the lender will allow. The client agrees that there has been no fraud in obtaining this mortgage; if fraud is determined this agreement is void and any legal fees paid are forfeited; the determination of fraud is within the sole discretion of the MLS legal staff.

b) Attorney/MLS shall perform all legal services rendered herein, in accordance with the Ohio Rules of Professional Conduct, and other applicable standards of law and ethics, as may be required in different jurisdictions. Client shall be regularly updated on case progress and Client's questions/inquiries will be addressed without unreasonable delay.

c) Any and all other duties set forth herein.

2) **Duties of Client:** Client shall do the following

a) Client shall be honest and cooperate with the MLS and its staff/agents, keeping MLS and its staff/agents fully aware of all necessary and relevant facts, circumstances and changes that could affect Client's matter.

b) Client/s shall notify MLS and its staff/agents of all changes in address, phone numbers, or any other means of reaching the Client/s.

c) Client agrees to make any and all payments according to this Agreement, on or before the due date.

d) Client shall assure, or take the proper steps to assure that all of the information provided to MLS and its staff/agents is complete and accurate, including but not limited to, reasons for delinquency; Lender's name; relevant account numbers; specific contact information (if any); status of Client's indebtedness, and accurate financial statements of personal income and expenses.

e) Client shall timely and accurately provide MLS and its staff/agents all documents as required by the Lender to address issues toward resolution of curing Client's delinquency with the Lender. If Client receives any litigation documents, Court documents, or any other Lender-provided documents, Client shall immediately forward same to MLS for review and reasonable response.

f) Client agrees to deposit \$ 3,112.50 each and every month in a financial account controlled and maintained by Client for future use toward addressing any and all financial arrears. This obligation benefits the client by timely accumulating funds in a manageable manner if the resolution between the Client and the Lender requires funding. Failure to maintain these funds or to timely deposit funds will seriously and adversely affect Client's ability to obtain a reasonable result. This obligation is the sole responsibility of the Client.

g) In the absence of another document, Client's signature/s hereon shall act as a grant of Power of Attorney/Release for MLS and its staff/agents to access all confidential records of Client/s with regard to this matter. This document, in full or redacted, original or by fax or photocopy, shall qualify as a Power of Attorney/Release for all of Client's confidential records reasonably related to this matter until this matter is concluded or the agreement is terminated.

h) Client must pay the legal fee in full as agreed in the Fee Invoice and Authorization agreement and return a completed/signed Attorney-Client, Fee, & Service Agreement before work begins. Failure to pay or any subsequent rescission of payment or of this Agreement is cause for termination of services/representation.

i) Any and all other duties set forth herein.

3) **Outcome Not Guaranteed:** As with all legal matters and causes of action, Client's preferred outcome is not guaranteed and no promises of favorable results, success, or outcome are made.

4). **Payment of Fees:** The Client shall be responsible for and agrees to pay the following:

a) The legal representation services described herein shall be provided for a fixed fee amount of \$ 2,295.00 subject to additional expenses described herein. This fee/amount shall be paid upon the signing of this Agreement and work will not begin until payment and a completed/signed Attorney-Client, Fee, & Service Agreement is received by MLS. Client acknowledges and understands that the fee shall be paid in advance of representation.

b) **The fixed-fee amount is deemed earned-in-full by MLS and no refunds shall be made except as set forth herein.** Upon receipt of the file, MLS will review the file. Should MLS determine to decline representation and no legal work beyond such initial review has been done, Client shall be entitled to a full refund of legal fees paid.

c) Client is responsible for all banking expenses and fees incurred for returned checks plus an additional 50% handling fee.

d) Any civil litigation against the Lender, and/or Third Party or any other party, if any, other than to accomplish the goal stated herein, shall constitute a new matter, requiring a separate attorney-client agreement and attorney fee payment.

e) The fixed-fee amount does not include court costs, filing fees, damages, fines, penalties, and/or other litigation expenses that may be assessed to Client. If a judgment is rendered against the Client, Client retains sole responsibility for court costs and litigation expenses regardless of outcome and shall indemnify MLS and/or its agents/staff from all liens imposed upon it.

f) Client agrees that in addition to the agreed upon fees recited here, Client shall be responsible for any and all "out of pocket" costs incurred in working the Client's file. Costs shall include, but not be limited to Court costs, subpoena costs, photos, photocopying costs, depositions, court reporter costs, witness statements, expert witness costs, parking, travel expenses, expert reports, and other out of pocket expenses incurred shall be paid by Client. Client shall be advised by Attorney prior to incurring said costs, and shall obtain permission by Client to do so; such permission shall not be unreasonably denied and if denied, may be grounds to terminate this agreement/representation.

5) **Services Provided by MLS:** MLS and/or its agents/staff agree to perform the following services:

a) Communicating with Lender for purpose of obtaining information related to nature/extent of existing defaults in Client's obligation to Lender.

b) Discuss and develop a plan with Client to consider financial or legal options in the effort of obtaining a desired result and/or relief.

c) Discuss with Client and investigate/review all relevant documents for possible so called "predatory lending"; improper charges; improper application of funds received; misplaced or non-recorded payments; improper assignments, and similar/related issues.

d) If Client wishes to save the property, discuss with and develop a plan with Client to cure existing default through various alternatives, including financial and/or legal solutions.

e) Bankruptcy representation is not included in this Agreement.

f) Defend Client in Foreclosure litigation through responsive filings, and possible discovery, and Court appearances or Court hearings. Any "Extraordinary work" will be subject to a new agreement and additional fees. "Extraordinary work" will include but not be limited to, presenting and litigating viable legal counter-claims such as Fraud, RESPA, TILA, or HOEPA violations, retaining "experts", performing more discovery than an initial "first set"; responding to Summary Judgment filings, any Court appearances beyond an initial "Case Management Conference" (telephonic or otherwise), any Mediation hearings (telephonic or otherwise), and conducting or participating in depositions, expert testimony, or any ancillary proceedings not otherwise a normal part of a Foreclosure lawsuit.

6) **Attorney's Agents/Staff:** Client agrees and understands that any conversations with agents, staff, assistants, and any other non-attorney personnel does not and cannot constitute legal advice or counsel. Agents and/or staff are working under the supervision and control of the Attorney.

7) **Commencement/Termination - Fees & Costs:** Client hereby understands and agrees that responsibility to provide services, work, and/or representation will begin only AFTER payment

of the fees as described in the Fee Invoice and Authorization agreement has been made to MLS. Failure to timely pay initial and subsequent fee/expenses may cause refusal to provide services and/or termination of this Agreement without refund of amounts already paid. **If at any time Client terminates the attorney-client relationship in accordance with this Agreement, all legal work will be charged hourly rates against any monies paid to said date. Client shall be responsible for any balance remaining.**

Client will be billed at an hourly rate of \$225.00 per hour for attorney services and at an hourly rate of \$125.00 per hour for paralegal services. Client will be billed at this rate anytime an Attorney and/or Paralegal works on Clients file, including but not limited to time spent writing, re-viewing and signing letters, documents and forms, file review, legal research, preparing or responding to interrogatories or other information gathering procedures, preparation of court papers, telephone or conference time with Client, Lender/Plaintiff, Plaintiffs Counsel, relatives, friends or other persons involved in the case, depositions, meetings with experts, travel time from the office and return, court appearances (which includes waiting time for a judge, the opposing attorney or a courtroom to open up and any other time spent and/or work and negotiation performed by any and all staff of MLS relating to Client's case.

In case this Agreement is ended and attorney's fees and/or costs are owed by the Client, MLS shall have a lien on all property or assets of Client to secure the fees and/or costs.

8). **Use of Experts:** At some point, the MLS may recommend the use of experts. Client/s maintain sole responsibility for costs of experts. MLS will not advance costs for experts or other similar expenses.

9). **Credit Check:** MLS may need to request a credit check on Client or obtain a Credit Report; Client authorizes MLS to obtain a credit check/credit report, if necessary, and Client shall pay the related expenses to obtain a credit check/credit report, if any.

10). **Insufficient Funds/Returned Checks:** If Client writes a check, or advances credit that is returned for any reason, including a dishonor for insufficient funds, or a stop payment order, Client shall pay all services charges for the return PLUS an additional handling fee that is 50% of the charged service fee. Client also agrees to immediately make good on the payment due and owing as well. Failure to do so is cause for termination of this agreement without refund of amounts already paid.

11). **Withdrawal:** MLS reserves the right to withdraw representation and terminate this Agreement if Client refuses to cooperate in delivering documents, and/or information needed to perform a defense, and/or attempt a resolution of the delinquency with the Lender, and/or refuses to pay fees owed, as well as for other proper causes.

12). **Lien for payment of Fees:** If MLS has fees or costs still due and owing at the termination of this Agreement, MLS shall have a lien upon all property and assets of the Client to secure payment of fees and costs. Client agrees and understands that MLS may file and record this Agreement as a certificate of lien on any real and personal property owned by Client.

13). **Fee Disputes & Choice of Law:** Client and MLS agree to resolve all fee disputes through binding arbitration before the Bar Associated located in the County of Counsel's Business. Any fee disputes beyond binding arbitration shall be filed only in the County of Counsel's Business. This Agreement is governed by the State in which representation is provided.

14). **Client Participation & Availability:** Client will be required to attend scheduled meetings, conferences, appointments, Court appearances and other activities and this scheduling can change at any time. Client agrees to provide current contact numbers and promptly notify MLS is Client is unable to attend any scheduled event.

15). **Client's Right to Withdraw:** Client has the right to terminate this Agreement by notifying the MLS in writing. Fees earned shall be retained and outstanding fee/expenses will remain due and owing. MLS shall return original documents or copies, where appropriate, to client upon written request.

16). **General Provisions:** This agreement represents the full agreement between MLS and Client. All modifications, amendments, and/or addendums to this Agreement must be in writing and signed by both parties. Written documents supersede all oral representations. Client shall ask questions if any term or condition of this Agreement is not fully understood. Client/s' signature/s below indicate that client/s fully understand and accept this agreement, are entitled to enter into this agreement, possesses the appropriate legal capacity, and shall fully perform the terms of this agreement. This Agreement is limited in scope to the above referenced matter ONLY.

Client affirms that s/he has read, fully understands, and agrees to the terms of this Agreement, and has had the opportunity to ask questions about this agreement before signing it.

Signed and agreed to this 16th of August, 2010.

Sharon Hicks
Client Signature
(Print Name): Sharon Hicks

Client Signature
(Print Name): _____

Martorana Legal Services, LLC
By Attorney:

STATE OF OHIO)
) SS **AFFIDAVIT OF KIM GERETTE MARTORANA**
COUNTY OF GEAUGA)

Now comes Kim Gerette Martorana, first having been duly sworn according to law, and hereby deposes and states as follows:

1. I am an attorney duly admitted to the practice of law in Ohio since 1992. I have personal knowledge of the information and events contained in this Affidavit, and I am competent to provide this Affidavit.
2. At all times relevant to Case No. 11-056, captioned *Geauga County Bar Association v. Kim Gerette Martorana*, I was engaged in the private practice of law, doing business as Martorana Legal Services LLC.
3. At all times relevant to Case No. 11-056, my office was located at 8251 Mayfield Road, Suite 100 in Chesterland, Ohio. My office was shared with a company known as Performing Investment Corp. ("PIC"), which was owned and operated by Robert Ruckstuhl. As of March 25, 2011, I moved my office to 11289 Stafford Road in Auburn Township, Ohio, and no longer share office space with PIC.
4. At all times relevant to Case No. 11-056, I contracted with PIC for paralegal and support staff services. PIC employees provided paralegal services for me and interacted with clients on the phone. I terminated her relationship with PIC on March 25, 2011.
5. At all times relevant to Case No. 11-056, PIC subcontracted with a marketing firm that assisted me in attracting potential clients. As of March 25, 2011, I no longer received assistance from the marketing firm.

6. At all times relevant to Case No. 11-056, I had clients enter into an Attorney-Client, Fixed Fee & Services Agreement, which required an up-front, flat fee deemed earned in full by MLS and that no refund will be paid to the client unless no legal work is performed beyond an initial review. The Agreement further stated that upon termination of the attorney-client relationship by the client, the client will be charged at an hourly rate of \$225.00 per hour for attorney services and \$125.00 per hour for paralegal services. After March 25, 2011, I changed her Attorney-Client, Fixed Fee & Services Agreement so that it no longer requires an up-front, flat fee that is deemed earned upon receipt that will not be returned to the client. Instead, I now charge an hourly fee and require a retainer from which the hourly fee is deducted as it is earned.
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 12. I have since made full restitution to Mr. O'Connor. I sent a check for the remaining \$1,200 to Bar counsel, Patricia Schraff, on September 7, 2011 to distribute to Mr. O'Connor.
 13. Dennis Sedivy contacted MLS about his mortgage in 2009. Mr. Sedivy entered into an Attorney-Client, Fixed Fee & Service Agreement on October 31, 2009 and executed a Fixed Fee Invoice and Authorization on November 18, 2009. Mr. Sedivy paid an up-front, flat fee of \$1,795 to Ms. Martorana in two installments: \$1,100 and \$695.
 14. Mr. Sedivy provided certain financial documents to MLS, but MLS was unable to negotiate with Mr. Sedivy's lender with the documents received.

15. After Mr. Sedivy expressed his dissatisfaction with the result, I terminated the attorney-client relationship with Mr. Sedivy on March 23, 2010. I did not provide Mr. Sedivy with a refund. However, Mr. Sedivy filed a chargeback with his credit card company for \$695 and was successful. I therefore only received \$1,100.
16. I have since made full restitution to Mr. Sedivy. I sent a check for the remaining \$1,100 to Bar counsel, Patricia Schraff, on September 7, 2011 to distribute to Mr. Sedivy.
17. Sharon Hicks contacted MLS for mortgage assistance in 2010. She entered into an Attorney-Client, Fixed Fee & Service Agreement on August 16, 2010, and paid MLS a flat fee of \$2,300 in two installments of \$1,150.
18. On September 3, 2010, a MLS representative called Ms. Hicks and left a message on her answering machine that MLS had spoken with Apex Mortgage, the holder of Ms. Hicks' mortgage, and Apex Mortgage expressed that Ms. Hicks was not working with Apex Mortgage in good faith, she was not living in the property at issue, and she had defaulted on a previous Forbearance Agreement with Apex Mortgage. The representative asked that Ms. Hicks call MLS back.
19. On September 13, 2010, Ms. Hicks spoke to the receptionist at MLS and said that she wanted a refund since MLS could not help her. Ms. Hicks also spoke with another MLS representative on September 21, 2010 wherein she indicated that she did not want to pay for attorneys' fees. Ms. Hicks was informed that no additional fees beyond the initial flat fee were required.
20. On September 21, 2010, a MLS representative informed Ms. Hicks that she would not be receiving a full refund and confirmed that Ms. Hicks wished to terminate the

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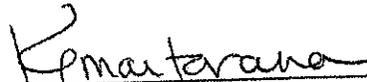
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23. Mr. Hanson spoke with MLS representatives about obtaining a loan modification, and provided certain financial records to MLS for its review. After I and an of-counsel attorney in Minnesota reviewed the file a MLS representative informed Mr. Hanson that MLS could not obtain a loan modification for him and his wife.
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25. I have since made full restitution to the Hansons. She sent a check for \$1,835.38 to Bar counsel, Patricia Schraff, on September 7, 2011 to distribute to the Hansons.
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27. Mr. Mattox informed MLS that he was not going to file for bankruptcy and would therefore no longer need MLS' services. I sent a letter to Mr. Mattox on January 23, 2011 acknowledging that the attorney-client relationship had been terminated.

28. I did not initially provide a refund to Mr. Mattox, but has since made full restitution to Mr. Mattox. I sent a check for \$1,733.14 (which included the flat fee of \$1,695 plus credit card payment fees paid by Mr. Mattox) to Bar counsel, Patricia Schraff, on September 12, 2011 to distribute to Mr. Mattox.

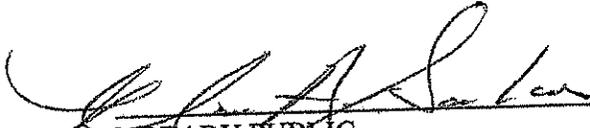
FURTHER AFFIANT SAYETH NAUGHT.



KIM GERETTE MARTORANA

SWORN TO AND SUBSCRIBED in my presence this 29th day of December,

2011.



NOTARY PUBLIC

MONICA ANNE SANSALONE, ATTY.
NOTARY PUBLIC • STATE OF OHIO
My Commission Has No Expiration Date
Section 147.03 O.R.C.

FILED

OCT 07 2011

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

**BEFORE THE BOARD OF COMMISSIONERS
OF GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

**GEAUGA COUNTY BAR
ASSOCIATION,**

Relator,

v.

KIM GERETTE MARTORANA,

Respondent.

) **NO. 11-056**
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**Agreement for Disposition of Disciplinary Proceedings With Admission of Misconduct and
Consent to Discipline**

The Geauga County Bar Association (the "Bar") and Kim Gerette Martorana ("Ms. Martorana") make this Agreement for Disposition of Disciplinary Proceedings With Admission of Misconduct and Consent to Discipline (the "Agreement") effective October 6, 2011. The Bar has its offices at 114 East Park Street, Chardon, Ohio 44024. The Bar maintains a Grievance Committee that the Supreme Court of Ohio has certified as authorized to investigate and prosecute complaints of misconduct within the meaning of Gov. Bar R. V. Ms. Martorana currently maintains an office at 11289 Stafford Road, Auburn Township, Ohio 44023.

Recitals

1. On May 13, 2011, the Bar filed a Complaint with the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (the "Board") charging Ms. Martorana with misconduct within the meaning of Gov. Bar R. V, § 6(A)(1).
2. On June 13, 2011, a Probable Cause Panel of the Board entered an order certifying that the Bar had probable cause to file a formal Complaint charging Ms. Martorana with misconduct.
3. On June 13, 2011, based on the probable cause finding and the certification of the Bar's Complaint against Ms. Martorana, the Secretary of the Board filed the Complaint.
4. The Bar captioned the proceedings before the Board *In re: Complaint Against Kim Gerette Martorana, Martorana Legal Services LLC Respondent, Geauga County Bar Association, Relator.*
5. The Secretary of the Board assigned the proceedings Case No. 11-056.
6. On June 13, 2011, the Secretary of the Board issued notice to Ms. Martorana that the Bar had filed the Complaint, thereby commencing Case No. 11-056.
7. By agreement on October 5, 2011, an Amended Complaint was filed, adding counts for two additional clients stemming from allegations similar to those contained in the original Complaint.
8. In Case No. 11-056, the Bar charged Ms. Martorana with violating (i) the oath of office Ms. Martorana took when the Supreme Court of Ohio admitted him to the practice of law in the State of Ohio and (ii) various Ohio Rules of Professional Conduct.
9. Specifically, the Bar charged Ms. Martorana with violating Rule 1.5(a), (d) and (e), Rule 5.3, Rule 5.4, Rule 5.5 and Rule 5.7 as follows:

- Rule 1.5(a) by charging an excessive fee by requiring each of the five clients to pay an up-front flat fee that was non-refundable, regardless of the services Ms. Martorana performed in the case;
- Rule 1.5(d) by charging an up-front, non-refundable fee, irrespective of the services Ms. Martorana performed in the case;
- Rule 1.5(e) by failing to divide fees in proportion to the services performed, referring cases to out-of-state counsel and keeping a portion of the fee for herself without providing services that would reasonably justify keeping such funds, and failing to fully disclose such division of fees and the of-counsel relationships with the five clients;
- Rule 5.3 by failing to supervise Ms. Martorana's non-lawyer assistants that were employees of PIC;
- Rule 5.4 by failing to maintain professional independence as a lawyer by failing to inform the five clients of Ms. Martorana's relationships with PIC;
- Rule 5.5 by engaging in the multijurisdictional and unauthorized practice of law by taking cases and sending them to of-counsel attorneys in other jurisdictions and utilizing the services of PIC; and
- Rule 5.7 by failing to disclose Ms. Martorana's relationships with her of-counsel attorneys to the five clients.

10. To dispose of Case No. 11-056, Ms. Martorana wishes to proceed under Rule 11 of The Rules and Regulations Governing Procedure on Complaints and Hearings Before The Board of Commissioners on Grievances and Discipline of the Supreme Court. In proceeding under Rule 11, Ms. Martorana wishes to admit that she committed the

misconduct with which the Bar charged her in the Complaint and to agree to the sanction that she should receive for that misconduct.

11. In disposing of Case No. 11-056, the Bar is willing to proceed under Rule 11 of The Rules and Regulations Governing Procedure on Complaints and Hearings Before The Board of Commissioners on Grievances and Discipline of the Supreme Court, on the terms set forth in this Agreement.

Consent to Discipline

1. **Conditional Admission by Ms. Martorana.** Subject to the Board's acceptance of this Agreement, Ms. Martorana admits that she committed the misconduct set forth herein. Ms. Martorana admits that:

- a. She is an attorney duly admitted to the practice of law in Ohio since 1992.
- b. At all times relevant to Case No. 11-056, she engaged in the private practice of law, doing business as Martorana Legal Services LLC.
- c. At all times relevant to Case No. 11-056, Ms. Martorana's office was located at 8251 Mayfield Road, Suite 100 in Chesterland, Ohio. Her office was shared with a company known as Performing Investment Corp. ("PIC"), which was owned and operated by Robert Ruckstuhl. As of March 25, 2011, Ms. Martorana moved her office to 11289 Stafford Road in Auburn Township, Ohio, and no longer shares office space with PIC.
- d. At all times relevant to Case No. 11-056, Ms. Martorana contracted with PIC for paralegal and support staff services. PIC employees provided paralegal services for Ms. Martorana and interacted with clients on the phone. Ms. Martorana terminated her relationship with PIC on March 25, 2011.

- e. At all times relevant to Case No. 11-056, PIC subcontracted with a marketing firm that assisted Ms. Martorana in attracting potential clients. As of March 25, 2011, Ms. Martorana no longer received assistance from the marketing firm.
- f. At all times relevant to Case No. 11-056, Ms. Martorana had clients enter into an Attorney-Client, Fixed Fee & Services Agreement, which required an up-front, flat fee deemed earned in full by MLS and that no refund will be paid to the client unless no legal work is performed beyond an initial review. The Agreement further stated that upon termination of the attorney-client relationship by the client, the client will be charged at an hourly rate of \$225.00 per hour for attorney services and \$125.00 per hour for paralegal services. After March 25, 2011, Ms. Martorana changed her Attorney-Client, Fixed Fee & Services Agreement so that it no longer requires an up-front, flat fee that is deemed earned upon receipt that will not be returned to the client. Instead, Ms. Martorana now charges an hourly fee and requires a retainer from which the hourly fee is deducted as it is earned.
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- j. Mr. O'Connor spoke with MLS representatives on at least two occasions about obtaining an interest rate adjustment, but never spoke with Ms. Martorana or any other affiliated attorney. After obtaining and reviewing necessary financial documents from Mr. O'Connor, a MLS representative informed Mr. O'Connor that MLS could not negotiate an interest rate adjustment with his lender.
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Sedivy paid an up-front, flat fee of \$1,795 to Ms. Martorana in two installments: \$1,100 and \$695.

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- u. Ms. Martorana has since made full restitution to Ms. Hicks. She sent a check for the remaining \$1,800 to Bar counsel, Patricia Schraff, on September 8, 2011 to distribute to Ms. Hicks.
- v. David and Dawn Hanson, Minnesota residents, contacted MLS in November 2009, seeking assistance with a loan modification. The Hansons executed an Attorney-Client, Fixed Fee & Service Agreement on December 4, 2009. They also executed a Fixed Fee Invoice and Authorization and paid \$1,835.38 to MLS.
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Hansons because MLS had already performed work on the file. The letters also confirmed the termination of MLS' attorney-client relationship with the Hansons.

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2. **Conditional Agreement as to Sanction for Misconduct.** Subject to acceptance by the Board of this Agreement as a consent-to-discipline-agreement under Rule 11 of The Rules and Regulations Governing Procedure on Complaints and Hearings Before The Board of Commissioners on Grievances and Discipline of the Supreme Court, Ms. Martorana admits, and the Bar agrees, that an appropriate sanction for Ms. Martorana's

misconduct is a sixth-month stayed suspension, 3 hours of the Ohio Supreme Court's law firm management CLE, monthly meetings with a mentor agreed to by the Parties for twelve months, and payment of the costs of this proceeding.

3. **Affidavit of Kim Gerette Martorana.** The Bar and Ms. Martorana attach the Affidavit of Kim Gerette Martorana, as Exhibit I to this Agreement.

a. In the Affidavit, Ms. Martorana admits that she committed the misconduct set forth herein and admits the following facts:

- i. She is an attorney duly admitted to the practice of law in Ohio since 1992.
- ii. At all times relevant to Case No. 11-056, she engaged in the private practice of law, doing business as Martorana Legal Services LLC.
- iii. At all times relevant to Case No. 11-056, Ms. Martorana's office was located at 8251 Mayfield Road, Suite 100 in Chesterland, Ohio. Her office was shared with a company known as Performing Investment Corp. ("PIC"), which was owned and operated by Robert Ruckstuhl. As of March 25, 2011, Ms. Martorana moved her office to 11289 Stafford Road in Auburn Township, Ohio, and no longer shares office space with PIC.
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4. Aggravating Factor.

a. Ms. Martorana has engaged in the aforementioned practices with multiple clients.

5. Mitigating Factors.

a. Ms. Martorana has no previous disciplinary record.

b. Ms. Martorana has no dishonest motive.

c. Upon receiving notice from the Ohio Disciplinary Counsel in 2011 that she may be engaging in unethical conduct, Ms. Martorana significantly changed her practices and procedures. She terminated her relationship with PIC, moved her office out of the building that she shared with PIC, scaled back her practice to only Ohio cases, eliminated all of-counsel relationships, began handling all cases by herself, and began properly using her IOLTA. With the assistance of the ODC, Ms. Martorana also changed her existing Fixed Fee & Service Agreement to eliminate the up-front, flat fee payment. Ms. Martorana now charges hourly fees for her services and obtains a retainer from which legal fees are deducted until the retainer is exhausted.

- d. Ms. Martorana has not taken any new cases or clients upon receiving the Complaint in Case No. 11-056.
- e. Ms. Martorana cooperated fully in the disciplinary process and made full and free disclosures.
- f. Ms. Martorana made full restitution to each party who filed a grievance that is part of Case No. 11-056.

(SIGNATURES ON NEXT PAGE)

KIM GERETTE MARTORANA

Dated: ~~September~~ ^{October} 3, 2011
Willoughby, Ohio

Kim Martorana
Respondent

Dated: October 4, 2011
Cleveland, Ohio

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Trial Counsel for Respondent
Kim Gerette Martorana

**THE GEAUGA COUNTY BAR
ASSOCIATION**

Dated: October 6, 2011
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By: Patricia J. Schraff Esq.
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Dated: October 6, 2011
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