

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO**

In re:

Case No. 2014-109

Complaint against

**Hector Gerald Martinez, Jr.
Attorney Reg. No. 0068832**

**Findings of Fact,
Conclusions of Law, and
Recommendation of the
Board of Professional Conduct
of the Supreme Court of Ohio**

Respondent

Disciplinary Counsel

Relator

OVERVIEW

{¶1} This matter was heard on July 9, 2015 in Columbus before a panel consisting of Charles J. Faruki, McKenzie Davis, and Keith A. Sommer, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 11.

{¶2} Respondent was represented Geoffrey Stern. Joseph M. Caligiuri appeared on behalf of Relator.

{¶3} On December 15, 2014, Relator filed a complaint against Respondent alleging violations of the following disciplinary rules in connection with his participation in an attempted bribery of a past client:

- Prof. Cond. R. 8.4(b) [an illegal act that reflects adversely on the lawyer's honesty or trustworthiness];
- Prof. Cond. R. 8.4(c) [conduct involving fraud, dishonesty, deceit, or misrepresentation];
- Prof. Cond. R. 1.7(a)(1) [material limitation conflict]¹; and

¹ See ¶29, *infra*.

- Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice].

{¶4} Over a period of time, Respondent contacted his client and communicated several offers of settlement in increasing amounts of money. When Respondent realized that this was an illegal activity, he wrote a letter of termination to his client stating reasons that were untrue for his termination of representation of the client.

{¶5} Respondent and Relator entered into agreed stipulations of facts, violations, mitigation, sanction, and exhibits that were filed on May 8, 2015. Amended agreed stipulations were filed at the hearing on July 9, 2015 for the purpose of typographical corrections.

{¶6} Based upon the parties' stipulations, the panel finds, by clear and convincing evidence, that Respondent engaged in professional misconduct as outlined below, and recommends that Respondent be suspended from the practice of law for six months with the suspension stayed in its entirety.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶7} Respondent was admitted to the practice of law in the state of Ohio on November 10, 1997 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

Representation of L.A.

{¶8} Respondent was retained by L.A. to obtain a civil protection order (CPO) against Castro who was stalking her. Castro had consented to the CPO. Respondent and L.A. met with a detective to discuss the criminal assault. Castro was indicted on several counts of rape and sexual battery involving L.A. and another woman. Stipulations ¶¶3 and 8.

{¶9} Respondent met with L.A. to discuss the criminal case against Castro, and L.A. authorized Respondent to write a letter to the prosecutor stating that she did not want to pursue criminal charges against Castro. Stipulation ¶9.

{¶10} Respondent's representation of L.A. ended after L.A. consulted with Respondent as to the meeting with the prosecutor. Stipulation ¶10.

{¶11} Castro pled guilty to criminal charges and was scheduled for sentencing. Respondent called L.A. and informed her that Castro had pled guilty. Stipulation ¶11.

{¶12} Anthony Calabrese, Castro's business attorney, contacted Respondent requesting to speak with him. Calabrese at the time was under federal indictment. Calabrese had referred minor traffic cases to Respondent in the past. Stipulations ¶¶13-14.

{¶13} Calabrese told Respondent that Castro was willing to settle any civil claims that L.A. might have against Castro in return for L.A. writing a favorable letter on behalf of Castro to the judge. In Respondent's car, Calabrese wrote on a note "No Jail." Respondent understood this note to mean that L.A.'s letter would include a "no jail" request for Castro in return for a monetary settlement. Stipulations ¶¶16-17.

{¶14} Respondent had not been retained to pursue a civil action against Castro and never discussed suing Castro with L.A. Respondent knew that some civil claims had expired, although he thought there may be some viable claims relating to the stalking incident that previously occurred. Stipulation ¶19.

{¶15} Respondent contacted L.A. and informed her that another victim may have received a settlement from Castro and asked if he could pursue a civil settlement on her behalf, which L.A. authorized. Stipulation ¶20.

{¶16} Text messages ensued between Respondent and L.A. wherein Respondent stated that Castro had increased his offer of settlement that L.A. had previously declined. Stipulation ¶21.

{¶17} L.A. met Respondent at his office to discuss the offer and told her that he would charge a contingent fee of 15 percent. Respondent advised L.A. that some of her civil claims had expired, but she still had various civil claims that could be brought against Castro and stated that she was less likely to recover against Castro after his sentencing. Stipulations ¶¶25-26.

{¶18} L.A. then sent a text to Respondent stating “no deal and I intend to write a bad letter.” Respondent stated he would let them know and added they were increasing their offer again and that he was obligated to tell L.A. of that fact. Stipulation ¶28.

{¶19} Later, Respondent texted L.A. stating the offer had increased. L.A. declined stating it was her understanding that offering her any money was illegal prior to the sentencing. Respondent replied stating it was not illegal as they are offering to resolve civil claims and that what she cannot do is offer to dismiss criminal charges. Stipulation ¶29.

{¶20} L.A. then met with a detective to discuss her interactions with Respondent. The following day, L.A. sent a text to Respondent stating the prosecutor thinks the offer of money is illegal and they want her to move forward with the agreement because they can increase his sentence to a charge for bribery. She stated she wanted “to agree to the letter to trick him into getting busted for bribery.” Stipulation ¶30.

{¶21} Respondent then sent a letter to L.A. terminating his representation of L.A. stating that she failed to advise him of her change in address; failed to remain in contact and communicate with Respondent; failed to promptly pay any costs or expenses of litigation; and failure to sign a written fee agreement. He concluded stating L.A. had engaged in conduct that renders it

unreasonably difficult for him to carry out legal representation. Respondent's bases for termination of his representation were unsubstantiated. Stipulation ¶31.

{¶22} Later Respondent, upon the advice of counsel, agreed to a proffer with the prosecutor in return for a misdemeanor charge relating to Respondent's involvement in the bribe. Stipulation ¶32.

{¶23} Calabrese pled guilty to engaging in corrupt activity and four counts of bribery stemming from his role with L.A. and another woman. Stipulation ¶33.

{¶24} At the request of the prosecuting attorney, Respondent testified for the state in the trial of Castro's two criminal lawyers, both of whom were charged and convicted of orchestrating a felonious bribe of Castro's other victim. Stipulations ¶¶35-36.

{¶25} Respondent pled no contest to obstructing official business in violation of R.C. 2921.31(A), a second degree misdemeanor. He was sentenced to ten days in jail, which were suspended, three months of probation, 25 hours of community service, and a \$750 fine. Respondent successfully completed his terms of probation, performed the community service, and paid the fine. Stipulations ¶¶36-37.

Respondent's Testimony

{¶26} Respondent testified in the trial of Attorneys Marshall and Doumbas, who were Castro's criminal lawyers, even though that was not a part of his initial agreement. He stated that his proffer of testimony resulted in a conviction of Calabrese. Hearing Tr. 33.

{¶27} Respondent testified that he agreed with all factual stipulations recognizing that they are true statements and recognized the stipulated recommended sanction. Hearing Tr. 15.

{¶28} Respondent further admitted that he violated Prof. Cond. R. 8.4(b), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(d). Hearing Tr. 16, 17 & 33.

Panel's Findings

{¶29} The complaint alleges a violation of Prof. Cond. R. 1.7(a)(1) followed by the language “[A conflict of interest exists if there is a substantial risk that the lawyer’s ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer’s responsibilities to a third person or by the lawyer’s own personal interest].” Prof. Cond. R. 1.7(a)(1) refers to representation of that client will be directly adverse to another current client, whereas the quoted language is from Prof. Cond. R. 1.7(a)(2). There was no testimony or stipulations supporting a violation of Prof. Cond. R. 1.7(a)(1) or (2) and therefore the panel dismisses the alleged violation.

{¶30} Based upon the parties’ joint stipulations as to facts and rule violations, evidence presented at the hearing, and Respondent’s exhibits, the panel finds that Relator has proven, by clear and convincing evidence, that Respondent committed the acts set forth in the agreed stipulations and committed the stipulated violations of Prof. Cond. R. 8.4(b), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(d).

MITIGATION, AGGRAVATION, AND SANCTION

{¶31} With regard to the factors in mitigation that may be considered in favor of a less severe sanction for professional misconduct listed in Gov. Bar R. V, Section 13(C), the panel finds that Respondent has no prior disciplinary record; has demonstrated full and free disclosure and cooperative attitude toward the disciplinary Board and these proceedings; has demonstrated good character and reputation; and other penalties and sanctions have been imposed.

{¶32} Attorney Joseph Klammer testified as a character witness on behalf of Respondent. Klammer is the past president of the Lake County Bar Association and the law director for the City of Eastlake. Klammer testified as to Respondent’s competence, honesty, integrity, and reliability,

and has not changed his opinion based upon Respondent's actions. Klammer would contact Respondent to discuss any issues or problems he would have in his personal life and that Respondent's bravery and candor has made Klammer a better lawyer. Hearing Tr. 50-54.

{¶33} There were a substantial number of detailed letters supporting Respondent's character, high standards in the practice of law, and honesty. Respondent was a very impressive witness and was contrite and truly remorseful for his misconduct. It was apparent from his demeanor and his testimony that he has learned the necessary lessons from this experience. The articles in a local newspaper were very embarrassing and humiliating to him and his family. An actual suspension would be devastating to his practice, his wife, and children.

{¶34} Relator and Respondent jointly recommended that the sanction should be a six-month suspension stayed in its entirety. Several cases were cited in the stipulated sanction, all of which involved suspended sentences and another involving a public reprimand. Two of the cases involved six months stayed suspensions involving charges of a first degree misdemeanor.

{¶35} The most relevant case is *Disciplinary Counsel v. Grubb*, 142 Ohio St.3d 521, 2015-Ohio-1349. The respondent was convicted of a first degree misdemeanor count of complicity to commit Workers' Compensation fraud and received a six-month stayed suspension.

{¶36} In *Grubb*, the Court cited *Disciplinary Counsel v. Grigsby*, 128 Ohio St.3d 413, 2011-Ohio-1446. The respondent was convicted of a misdemeanor for misusing employer's credit card and was found to have violated Prof. Cond. R. 8.4(b), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h). The respondent had two aggravating factors which were a dishonest or selfish motive and engaging in a pattern of misconduct for two-and-one-half years. Respondent received an 18-month suspension, all stayed.

{¶37} The panel recommends that the stipulated sanction be approved and that Respondent receive a six-month suspension, all stayed.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on October 2, 2015. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Hector Gerald Martinez, Jr., be suspended from the practice of law in Ohio for six months, with the suspension stayed in its entirety, and ordered to pay the costs of these proceedings.

Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing findings of fact, conclusions of law, and recommendation as those of the Board.



RICHARD A. DOVE, Director