

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

RAUL ENRIQUE GARCIA, JR.,

Respondent.

Supreme Court Case
No.

The Florida Bar File
No. 2016-70,337 (11M)

COMPLAINT

The Florida Bar, Complainant, files this complaint against Raul Enrique Garcia Jr., Respondent, pursuant to Chapter 3, Rules Regulating The Florida Bar and alleges the following:

1. Respondent is, and was at all times material herein, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.
2. Prior to the filing of this complaint, there has been a finding of probable cause by a grievance committee as required by Rule 3-7.4(1), Rules Regulating The Florida Bar. The presiding member of the grievance committee has approved the instant complaint.

3. In May 2014, The Florida Bar received a grievance from Marcia Jackson (“Jackson”) alleging that Respondent had settled her personal injury case in September 2013, but as of the date of the grievance she had not yet received her share of the settlement proceeds.

4. On or about June 10, 2014, Respondent responded to Jackson’s grievance indicating that for some reason Jackson never received the settlement draft that his office had mailed her and when she contacted him at his new job, he immediately re-sent the settlement proceeds to her.

5. On or about December 7, 2014, the Bar served Respondent with a subpoena requiring him to produce numerous trust accounting records for the period of June 1, 2013 through November 30, 2014, including client settlement agreements, receipt and disbursement journals, bank account reconciliations, and reconciliation of client ledger balances.

6. In response to the Bar’s subpoena, Respondent provided a partial production of the requested records, but failed to provide copies of the client settlement agreements, the receipt and disbursement journals, the bank account reconciliations, and the reconciliation of client ledger balances. At the time Respondent was served with the Bar’s subpoena, he was required to maintain all of the aforementioned records and perform the reconciliations for the subject time frame.

7. As described in detail below, in 2012 and 2013, Respondent misappropriated client funds on numerous occasions.

Ramiro Perez, MD/MOSA P.A. (“Perez/Mosa”)

8. On or about September 6, 2012, Respondent deposited an \$81,000.00 settlement check from AvMed for client Perez/Mosa into his trust account.

9. During the period from September 10, 2012 through October 29, 2012, Respondent disbursed \$36,900.00 to his operating account and/or directly to himself in eight (8) transactions.

10. Respondent disbursed \$44,000.00 to the client on or about October 16, 2012. The description area of the check indicates that the payment was for “Ramiro Perez v. AvMed.”

11. Check printing fees of \$64.00 were assessed against these settlement funds.

12. After these disbursements were made, the balance remaining in Respondent’s trust account from this settlement check was \$36.00.

13. On or about November 9, 2012, Respondent disbursed \$10,000.00 to Perez/Mosa. The funds for this disbursement were made from settlement funds received for an unrelated client, Rajkumar Nebhrajani, MD (“Nebhrajani”). The check issued by Respondent to Perez/Mosa indicates that it is for “AvMed Settlement.”

Nebhrajani

14. On or about November 8, 2012, Respondent deposited a \$25,000.00 settlement check from United Healthcare (“United”) for client Nebhrajani into his trust account. The deposit slip for this transaction indicates that the deposit was for “Nebrajani (sic) United (Settlement).”

15. On or about November 9, 2012, \$10,000.00 of the settlement funds received for client Nebhrajani were disbursed to client Perez/Mosa. The description area of the check indicates that the payment was for “AvMed Settlement.”

16. During the period from November 10, 2012 through November 15, 2012, Respondent made four (4) disbursements to his operating account and/or directly to himself, totaling \$15,000.00.

17. After these disbursements, the balance remaining in Respondent’s trust account from this settlement was \$0.00.

18. None of the settlement funds received from United were distributed to Nebhrajani.

19. On or about January 28, 2013, Nebhrajani sent Respondent a text message inquiring, “Any update on united settlement check?” On the same date, Respondent responded “Sending this week.”, even though Nebhrajani’s settlement

20. check had been deposited in Respondent's trust account and completely disbursed more than two (2) months earlier. (A copy of these text messages is attached as The Florida Bar's Exhibit "1.")

21. Subsequently, on or about February 25, 2013 and June 4, 2013, Nebhrajani sent Respondent further text messages advising that he still had not received the United settlement check yet. (A copy of these text messages is attached as The Florida Bar's Exhibit "2.")

22. On or about August 19, 2013, more than nine (9) months after Respondent received Nebhrajani's settlement funds, Respondent finally paid Nebhrajani his \$16,667.50 share of the settlement. The trust account check issued to Nebhrajani indicates that it was for "Dr. N v United".

23. The funds utilized to pay Nebhrajani were made from the proceeds of a loan Respondent received from another law firm.

Vanessa Contreras ("Contreras")

24. On or about September 19, 2013, Respondent deposited a \$12,900.00 settlement check from Progressive Select Insurance Company ("Progressive") for client Contreras into his trust account. The deposit slip for this transaction indicates that the deposit was for "Contreras" and the check reflects that the claimant is "Contreras, Vanes."

25. During the period from September 20, 2013 through September 24, 2013, Respondent made three (3) disbursements to his operating account and/or cash withdrawals directly to himself, totaling \$12,900.00.

26. After these disbursements, the balance remaining in Respondent's trust account from this settlement was \$0.00.

27. None of the settlement funds received from Progressive were distributed to Contreras.

28. On or about January 15, 2014, Respondent's assistant emailed Contreras noting that, "I'm attaching another copy of the Release. . . . Once I receive the original, I will forward it to Progressive and they will send us the check." This message was sent to Contreras in spite of the fact that Respondent had deposited the settlement check and fully disbursed the proceeds more than three (3) months earlier.

29. At some point, Contreras was unable to contact Respondent and/or his office and on or about May 5, 2014, she contacted the adjuster for Progressive concerning her settlement. On the same date, the adjuster advised her that

Progressive's settlement payment had been cashed by Respondent on September 13, 2013.¹

30. Also, on or about May 5, 2014, Contreras advised Respondent that she would be filing a Bar complaint that same day.

31. On or about July 15, 2014, more than nine (9) months after Respondent had deposited the Contreras' settlement check into his trust account, Respondent finally paid Contreras her \$7,700.00 share of the settlement.

32. The funds utilized to pay Contreras were disbursed from Respondent's personal bank account.

33. On or about May 22, 2015, approximately twenty (20) months after Respondent had deposited the Contreras settlement check into his trust account and disbursed the funds to his operating account and/or himself, Respondent paid Merricks Law Group ("Merricks") a \$1,064.25 referral fee for the Contreras case.

34. The funds utilized to pay Merricks were disbursed from Respondent's personal bank account.

¹ There is an apparent error in the Progressive Adjuster's email to Contreras dated May 5, 2014. The email indicates that "the draft was cased (sic) 9/13/13." In fact, this was the date the check was issued by Progressive. The check was deposited into Respondent's trust account on September 19, 2013.

Keila Canales (“Canales”)

35. On or about December 27, 2012, Respondent deposited a \$50,000.00 settlement check from Travelers Insurance (“Travelers”) for client Canales into his trust account. The deposit slip for this transaction indicates that the deposit was for “Canales v. Almeida (Settlement).”

36. During the period from December 28, 2012 through February 19, 2013, Respondent made eight (8) disbursements to his operating account and/or directly to himself, totaling \$49,995.00.

37. After these disbursements, the balance remaining in Respondent’s trust account from this settlement was \$5.00.

38. None of the settlement funds received from Travelers were distributed to Canales.

39. On or about July 10, 2013, more than six (6) months after Respondent had deposited Canales’ settlement check into his trust account, Respondent finally paid Canales her \$31,864.83 share of the settlement. The description area of the check indicates that the payment was for “Almeida Settlement (Replacement Check).”

40. The funds utilized to pay Canales were made from the proceeds of a settlement Respondent received from Humana for unrelated clients, Mark Broudo, MD and Nick Masri, MD (“Broudo/Masri”).

Broudo/Masri

41. On or about June 28, 2013, Respondent deposited a \$75,000.00 settlement check from Humana for clients Broudo/Masri into his trust account.

42. During the period from June 28, 2013 through July 20, 2013, Respondent made five (5) disbursements to his operating account and/or directly to himself, totaling \$43,100.00.

43. On or about July 10, 2013, Respondent disbursed \$31,864.83 to client Canales. The description area of the check indicates that the payment was for “Almeida Settlement (Replacement Check).”

44. After these disbursements, the balance remaining in Respondent’s trust account from this settlement was \$35.17.

45. None of the settlement funds received from Humana were distributed to clients Broudo/Masri.

46. Between July 11, 2013 and October 31, 2013, Dr. Broudo sent Respondent numerous text messages inquiring as to whether the settlement check from Humana had been received and Respondent responded to those messages repeatedly mispresenting that the settlement check had not yet been received and that he would inquire as to the status of the payment. (Copies of these text messages are attached as The Florida Bar’s Composite Exhibit “3.”)

47. Subsequently, on or about November 1, 2013, Dr. Broudo communicated directly with Humana and was advised that the settlement check had previously been cashed.

48. Thereafter, Respondent gave Dr. Broudo a trust account check dated November 25, 2013 in the amount of \$50,000.00 payable to Mark Broudo, MD. P.A. The description area of the check indicates that it was for “Humana Claims.” On the date that this check was issued, the balance in Respondent’s trust account was \$11.82.

49. On or about November 25, 2013, Dr. Broudo sent Respondent a text message advising him that the bank had advised him that there were insufficient funds to cover the check. (A copy of this text message is attached as The Florida Bar’s Exhibit “4.”)

50. Respondent executed a \$50,000.00 promissory note to “Mark Broudo MD and his Medical Practice (which includes Dr. Nick Masri).”

51. Subsequent to the Bar’s commencement of its investigation of this matter, Respondent misrepresented to the Bar on numerous occasions that Dr. Broudo had loaned \$50,000.00 to Respondent.

52. Respondent disbursed \$71,864.83 of the \$75,000.00 settlement to his operating account or himself (\$40,000.00) and another client (Canales - \$31,864.83) *prior* to Dr. Broudo’s aforementioned text messages inquiring of

Respondent as to the status of the settlement check from Humana. (*See The Florida Bar's Composite Exhibit "3."*)

53. On or July 11, 2013, the *same* day that Dr. Broudo initially inquired as to the status of the settlement check, Respondent disbursed an additional \$2,000.00 of the Broudo/Masri settlement funds to his operating account.

54. Despite the fact that Respondent transferred virtually all of the settlement funds out of his trust account prior to Dr. Brudo's initial inquiry as to the status of the settlement check, Respondent repeatedly represented to the Bar that Dr. Broudo *loaned* him the \$50,000.00 from this settlement.

Jackson

55. On or about October 4, 2013, Respondent deposited a \$7,000.00 settlement check from Allstate Insurance Company ("Allstate") for client Jackson into his trust account. The deposit slip for this transaction indicates that the deposit was for "Marcie Jackson Settlement" and the check reflects that the check was issued for "Claimant Marcie Jackson in payment of loss on 6/14/2009."

56. During the period from October 7, 2013 through October 9, 2013, Respondent made two (2) disbursements to his operating account totaling \$7,000.00, the entire amount of the settlement.

57. After these disbursements, the balance remaining in Respondent's trust account from this settlement was \$0.00.

58. None of the settlement funds received from Allstate were distributed to Jackson.

59. On or about October 30, 2013, Jackson emailed Respondent's office to check on the status of the settlement check.

60. On or about October 31, 2013, Respondent's assistant responded via email, "the settlement check they sent us was made out incorrectly and we had to return it. So, as a result the process has been delayed." This message was sent to Jackson in spite of the fact that Respondent had deposited the settlement check and completely disbursed the proceeds approximately three (3) weeks earlier.

61. At some point, Jackson was unable to reach Respondent via telephone and her emails to his office were not returned. Jackson contacted the law firm that referred her to Respondent and they provided updated contact information for Respondent.

62. On or about April 22, 2014, Jackson contacted Respondent at the updated phone number and/or email provided for him.

63. On or about May 23, 2014, more than seven (7) months after Respondent had deposited the settlement check, Respondent finally paid Jackson her \$1,500.00 share of the settlement.

64. The funds utilized to pay Jackson were disbursed from Respondent's personal bank account.

65. Respondent did not pay a medical provider until approximately January 7, 2015, even though Jackson's case was settled in 2013 and Jackson was paid in May of 2014. The \$1,500.00 payment to the medical provider was not made from an attorney trust account.

66. At the time of all of the improper transfers from his trust account, Respondent was a solo practitioner who directed all of the subject improper trust account transfers himself.

66. By reason of the foregoing, Respondent has violated the following Rules Regulating The Florida Bar:


- 3-4.3 (Misconduct and minor misconduct);
- 4-1.4(a) (Informing Client of Status of Representation);
- 4-8.1(a) ([A] lawyer . . . in connection with a disciplinary matter, shall not knowingly make a false statement of material fact);
- 4-8.4(a) (A lawyer shall not violate the Rules of Professional Conduct . . .);
- 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation . . .);
- 5-1.1(b) (Application of Trust Funds or Property to Specific Purpose);
- 5-1.1(e) (Notice of Receipt of Trust Funds; Delivery; Accounting);

- 5-1.2(b) (Minimum Trust Accounting Records); and
- 5-1.2(d) (Minimum Trust Accounting Procedures).

WHEREFORE, The Florida Bar respectfully requests that RAUL ENRIQUE GARCIA, JR., Respondent, be appropriately disciplined in accordance with Chapter 3, Rules Regulating The Florida Bar.



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CERTIFICATE OF SERVICE

I certify that this document has been E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Herman Joseph Russomanno and Herman J. Russomanno, III, Attorneys for Respondent, at hrussomanno@russomanno.com and herman2@russomanno.com using the E-filing Portal; and that a copy has been furnished by United States Mail via certified mail No. 7014 2120 0003 2092 9158, return receipt requested to Herman Joseph Russomanno and Herman J. Russomanno, III, Attorneys for Respondent, whose record bar address is 150 West Flagler Street, Suite 2800, Miami, Florida 33130; and via email to William Mulligan, Bar Counsel, wmulliga@flabar.org, on this 28th day of June 2017.

Adria E. Quintela

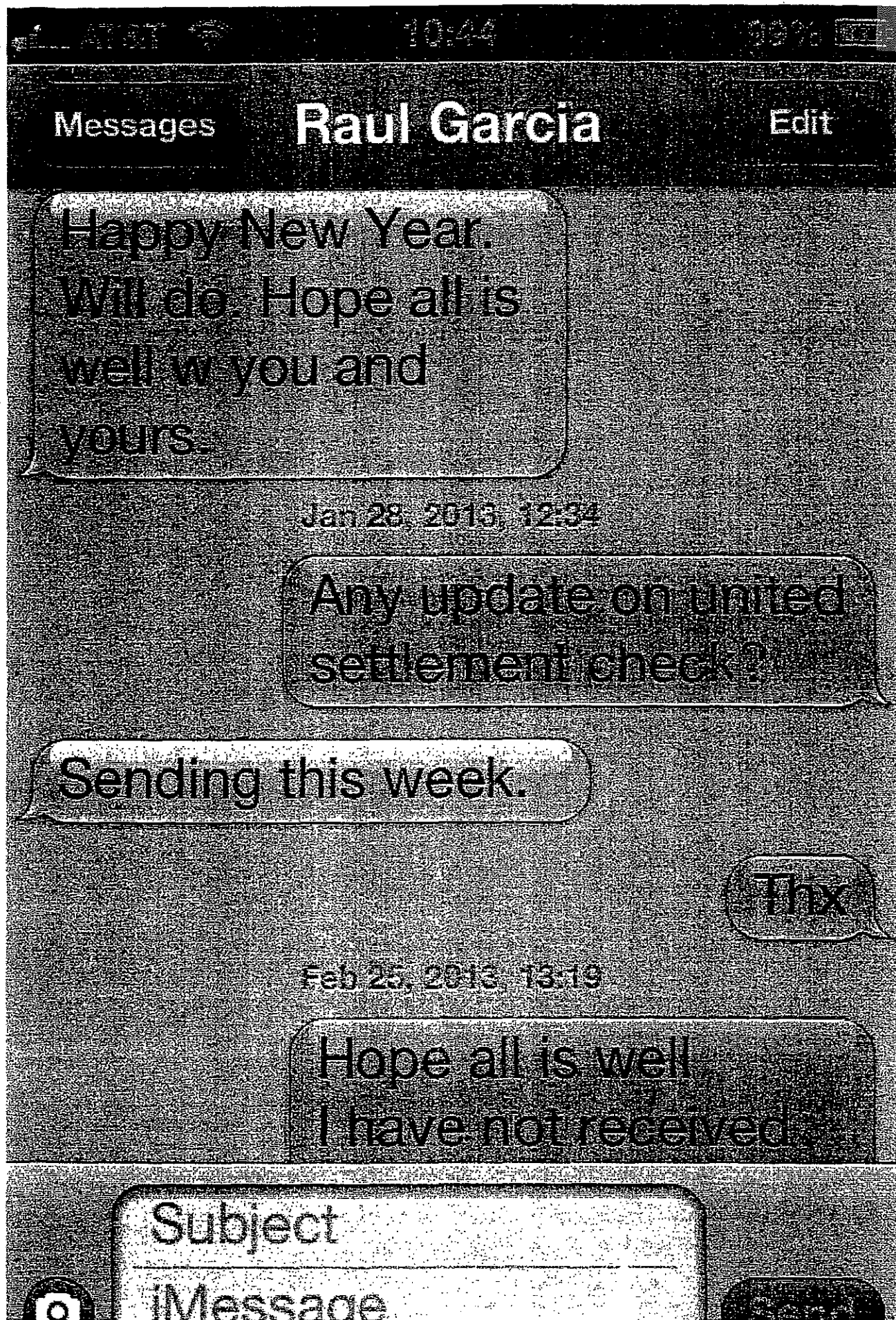
ADRIA E. QUINTELA
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY
EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter is William Mulligan, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Miami Branch Office, 444 Brickell Avenue, Rivergate Plaza, Suite M-100, Miami, Florida 33131-2404, (305) 377-4445 and wmulliga@flabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323, aquintel@flabar.org.

MANDATORY ANSWER NOTICE

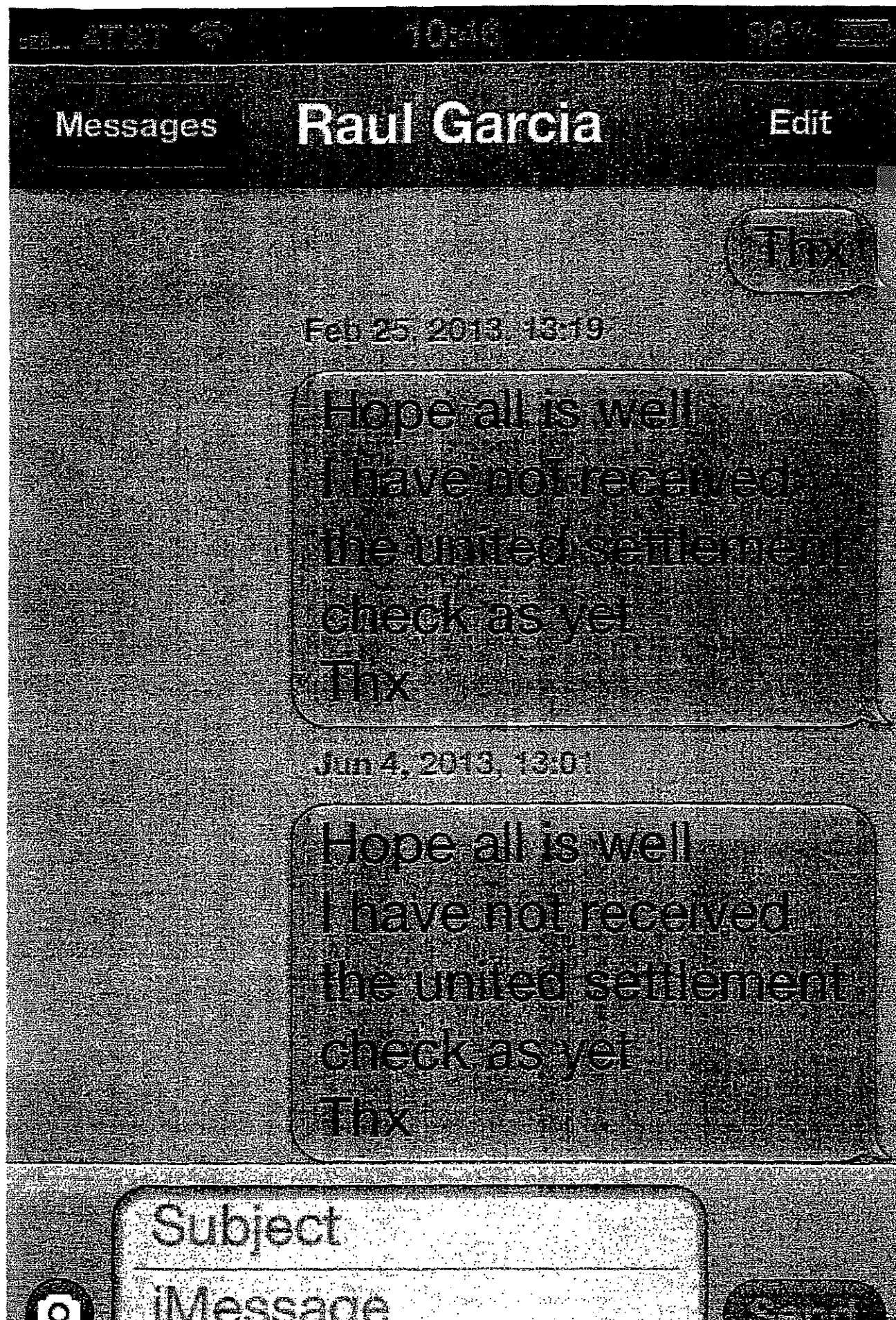
RULE 3-7.6(h)(2), RULES OF DISCIPLINE, EFFECTIVE MAY 20, 2004,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.



Print

<http://us-mg5.mail.yahoo.com/neo/launch?.rand=c98c7sl6j51av#mai>

Sent from my iPhone



My pleasure. The additional amounts owed that were not on the spreadsheet helped tremendously so the other suit was extremely old.

Jun 25, 2013, 6:25 PM

Call me so we can talk, when it's convenient. I think something needs to be added to the Humana agreement.

Jul 11, 2013, 7:08 PM

Has Humana sent the check yet?

Sir right Dr. Grasshopper.

Yes, master

Aug 12, 2013, 12:46 PM

Any sign of the money?

Not yet. I will inquire.

Sep 11, 2013, 1:45 PM

Any word yet?

Sep 11, 2013, 5:02 PM

No, July Aug are bad months. I will get on that ass. Hope all is well w you, the family and Dr. M.

Sep 19, 2013, 2:18 PM

Did they ever happen?

Oct 8, 2013, 1:54 PM

Have you heard anything? It's been nearly four months!

I know. Don't be in and out of hospital w Mom and family the last couple of months have been a blur. I don't wish this on anyone. I'm sorry. I will look into it.

No worries. Family comes first.

Thx. We are powerless when life dictates our priorities. I guess. Not fun to watch.

Oct 30, 2013, 12:13 PM

Hi, hope all is well. Can you call me when you get a chance?

Oct 31, 2013, 1:42 PM

Doc I am going to take care of this and you are right to be concerned. I was w/ Mom at church most of day yesterday.

OK, money is very tight right now and we really need those checks.

Understood.

Nov 1, 2013, 11:55 AM

Just spoke with Humana. They say check was cashed weeks ago. Can I stop by this afternoon to pick up check?

Nov 1, 2013, 2:43 PM

What time do you want to come to my office Monday?

Starting a depo and just saw this. sorry.

Monday Court in morning then labs w/ mom. What works between 1-3? Can do as late as 5. Need to pick up Mom at 6:45.

Hi there! I'm wondering if you
want to see the new design of my
office at 11.

Hi be there at 11. See you then. Have a
good weekend.

You too

Nov 4, 2013, 12:56 PM

I am 5-10 min away

I'm here

I thank you for understanding. Please
keep our conversation between us. It
is very embarrassing. I will deal w/
Jorge without any reference to what
we discussed. THAT was alarming.
Again, thx.

Absolutely.
Talk to you soon

Nov 25, 2013, 10:28 AM

The bank says your account has
insufficient funds. What should I do?