

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

DANIEL MARTINEZ, JR.,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2021-30,783 (18B)

COMPLAINT

The Florida Bar, complainant, files this Complaint against Daniel Martinez, Jr., respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is and was at all times mentioned herein a member of The Florida Bar admitted on May 18, 2015 and is subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent practiced law in Brevard County, Florida, at all times material.
3. The Eighteenth Judicial Circuit Grievance Committee "B" found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

4. Baltazar Zavala hired respondent on November 7, 2019 and paid respondent a nonrefundable flat fee of \$2,500.00 to handle a paternity case.

5. At the time Zavala hired respondent, respondent was a sole practitioner.

6. Respondent filed the petition for paternity, UCCJEA affidavit, and notice of social security number in Indian River County Circuit Court on March 16, 2020 but failed to file the required financial affidavit despite Zavala having prepared one for respondent to file.

7. Respondent also failed to file his client's required parenting plan.

8. Shortly after filing the petition for paternity, on or about March 20, 2020, respondent became affiliated with a law firm as an independent contractor and utilized the office space and support staff of the firm.

9. Respondent advised Zavala of his new law firm affiliation by letter dated March 17, 2020.

10. Approximately two weeks later, respondent took medical leave.

11. Between approximately late March and mid-June 2020, respondent was out of the office on medical leave but failed to ensure Zavala was notified of this fact.

12. The opposing party was served on June 19, 2020.
13. The opposing party filed her answer, parenting plan, notice of social security number, UCCJEA affidavit, certificate of compliance, and financial affidavit on July 7, 2020.
14. Respondent took no action in the case between July 7, 2020 and October 27, 2020.
15. On October 28, 2020, the circuit court issued an Order Setting Case Management Conference for December 22, 2020 via Zoom and served it on respondent.
16. Respondent failed to advise Zavala of the hearing.
17. Neither respondent nor Zavala appeared at the hearing on December 22, 2020.
18. After the hearing was concluded, respondent sent an email to the court admitting he failed to appear and acknowledging he had not complied with the family court rules by filing the required documents.
19. The court entered its order dismissing the case on December 22, 2020 and served it on respondent.
20. Respondent failed to advise Zavala of the case's dismissal.
21. Zavala learned about the December 22, 2020 dismissal of his case by looking at the online docket in January 2021.

22. On February 18, 2021, respondent filed a Motion to Set Aside the Dismissal, claiming excusable neglect. The hearing on the Motion to Set Aside the Dismissal was scheduled for May 10, 2021.

23. Respondent failed to inform Zavala about the filing of the Motion to Set Aside the Dismissal and about the scheduled May 10, 2021 hearing on the Motion to Set Aside the Dismissal.

24. Zavala learned about the scheduled hearing on the Motion to Set Aside the Dismissal by looking at the online docket in April 2021.

25. When Zavala contacted respondent about the scheduled hearing, respondent did not tell him he needed to file any additional required documents in the case.

26. At the May 10, 2021 hearing on the Motion to Set Aside the Dismissal, respondent advised the court that he was on medical leave from February 2020 through July 2020 and that the law firm with which he was affiliated was responsible for doing the necessary work on his cases, including Zavala's, during his absence.

27. Zavala appeared at the May 10, 2021 hearing on the Motion to Set Aside the Dismissal and advised the court that he had sporadic communication with respondent during the pendency of the case and that

there had been a four- or five-month period with no communication from respondent.

28. Zavala also stated that respondent never advised him of the need to file a parenting plan, attend a parenting class, or attend a mediation.

29. Respondent failed to schedule the mediation as required by court rules.

30. At the May 10, 2021 hearing, respondent advised the court that it took him two months to file the Motion to Set Aside the Dismissal because he had been “busy in criminal court.”

31. After hearing from Zavala and respondent, the court denied the Motion to Set Aside the Dismissal and referred the matter to the bar.

32. In its order entered on May 10, 2021 denying respondent’s Motion to Set Aside the Dismissal, the court noted: “The case is currently 327 days old and exceeds the Supreme Court’s time standards of 180 days. [Respondent] has failed to diligently prosecute this case pursuant to Rule 2.545, file the required documents, schedule mediation, or adequately communicate with his client. Due diligence has not been demonstrated and reinstating the case would be an exercise in futility based upon the inability of [respondent] to comply with the Rules. In fact, [respondent’s]

failure to appear for one appearance before the Court could be considered excusable neglect but coupled with his failure to file a financial affidavit, lack of communication with his client and two-month time period to file a motion after dismissal and five months for a hearing, his conduct extends beyond excusable neglect and constitutes gross negligence.”

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

(a) 4-1.1 A lawyer must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

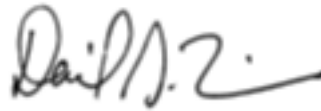
(b) 4-1.3 A lawyer shall act with reasonable diligence and promptness in representing a client.

(c) 4-1.4(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter.

(d) 4-1.4(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(e) 4-8.4(d) A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice.

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



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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 copies provided to Daniel Martinez, Jr., Respondent, by United States Mail, Certified Mail No. 7017 3380 0000 1082 8123, return receipt requested, to his record bar address, 3565 Jupiter Boulevard SE, Suite 2, Palm Bay, Florida 32909, and via email at daniel@martinez.law; and to Daniel James Quinn, Bar Counsel, via email at dquinn@floridabar.org, orlandooffice@floridabar.org; on this 28th day of December, 2021.



Patricia Ann Toro Savitz,
Staff Counsel

NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY EMAIL ADDRESS

PLEASE TAKE NOTICE that the trial counsel in this matter is Daniel James Quinn, Bar Counsel, whose address, telephone number, and primary email addresses are The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, Florida 32801, (407) 425-5424, and dquinn@floridabar.org, orlandooffice@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399, psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES REGULATING THE FLORIDA BAR,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.