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Lawyer Faces Fiduciary Claims in Civil, Criminal Cases

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An Austin solo preparing for an October trial in a [breach of fiduciary duty lawsuit](#) is also defending himself in an unrelated criminal case that alleges that he diverted a company's money to himself.

Real estate attorney Jerry Rios is representing himself pro se in the civil matter, but he's hired a criminal defense lawyer to defend against the second-degree felony charge of misapplication of fiduciary property.

Rios' lawyer, Stephen "Steve" Toland, said that Rios is not guilty.

"Any actions taken by Mr. Rios were lawful actions, and he had permission to do those things. He didn't take any money without anyone's permission. He certainly never stole," said Toland, a partner in Peek and Toland in Austin.

The July 29, 2014, indictment in the case, Texas v. Rios, said that between 2006 to 2009, Rios misapplied property that he held as a fiduciary. The misapplication of the money—valued between \$100,000 and \$200,000—was contrary to an agreement under which Rios held the property, said the indictment. It was done in a manner "that involved substantial risk of loss" to the owners of the property. Rios diverted the company money to himself, the indictment alleged.

Rudy Magallanes, spokesman for the Travis County District Attorney's Office, which is prosecuting the felony case, declined to comment.

Rios also declined to comment.

But Toland said that Rios and the property owners in the indictment were involved in separate civil litigation.

"These are all matters that should be resolved in civil court rather than criminal court," said Toland. "They don't rise to any criminal actions. We're confident going through all the physical evidence ... it will be clear he didn't break the law."

Toland said that the property owners in the indictment were real estate investors, and Rios served as a mortgage broker for them. For example, if a person applied for a loan to purchase

real estate, Rios would assist the buyer in securing nontraditional financing through the investors. Toland said that Rios took the money with permission under an agreement between the investors and Rios to pay Rios for his broker services.

But after certain investments "did not always work the way they wanted," the investors alleged that Rios stole or did things without permission—an allegation that Rios denies, Toland said.

But Rios has also contended that the company loaned the money to him, and he made monthly payments.

In the unrelated civil lawsuit, *Miramón v. Rios*, plaintiffs attorney Jeffrey Taylor deposed Rios and asked about another civil lawsuit that involved the same company as the criminal case. Taylor sent the April 23 deposition transcript to *Texas Lawyer*.

Rios said in the deposition that he took "personal verbal loans" from the company to buy a vehicle and pay personal expenses. Over three to four years, the loan balance grew to \$100,000.

"I had times where I couldn't make the loan payment," Rios said in the deposition. "That's when the trouble started and that's where the lawsuit was filed."

The lawsuit was dismissed after Rios filed for bankruptcy, he said in the deposition.

Miramón Matter

Taylor said that the criminal case isn't related to his client's case.

"It doesn't relate to the exact transaction at issue in my case," said Taylor, an Austin solo. "I don't think it's going to impact the case directly, except to the extent he might plead the Fifth or something—but I don't know the exact circumstances it might come up."

Taylor's clients, restaurant owner Fernando Miramón and his company Sabor Inc., alleged that Rios had a conflict of interest because he was their lawyer in a foreclosure of their restaurant, but he also owned a mortgage brokerage company, Blue Wave Capital, involved in a loan refinancing deal on the restaurant. The plaintiffs claim that Rios botched the refinancing, caused a foreclosure and lost \$500,000 of the plaintiffs' equity.

"Mr. Rios failed to disclose to Mr. Miramón that he had a financial interest in Blue Wave Capital," said Taylor. He noted that Rios had a financial interest in the outcome of the transaction, yet did not disclose it to his client.

The plaintiffs claimed in a May 29 amended petition, filed in Travis County's 250th District Court, that Blue Wave Capital was "an undercapitalized company" that Rios used "as a sham for his personal dealings." He didn't keep separate books and records for the company, and used its assets and funds for his personal use, the amended petition alleged.

Rios, Blue Wave Capital and other defendants have denied all of the allegations. The defendants also claimed in a May 29 first amended answer that they never agreed to represent the plaintiffs in the refinancing and related legal issues. The plaintiffs hired Rios for their foreclosure issue, but "never paid for any other legal service or advice from defendant, nor did they offer to engage defendant as its/their general counsel or counsel on any refinance deal,"

said the answer.

The defendants claim that the statute of limitations would bar many of the plaintiffs' claims.

"Plaintiffs are attempting to fracture a legal malpractice cause of action into similar causes of action that are not barred by the statute of limitations," claimed the amended answer.

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