

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against ARLIE MARTIN FUNDAUN,
a Minnesota Attorney,
Registration No. 202071.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 27, 1989. Respondent currently practices law in Remer, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On May 9, 2007, respondent was issued an admonition for failing to competently serve and file a motion in a family law matter in violation of Rule 1.1, Minnesota Rule of Professional Conduct (MRPC).

FIRST COUNT

Thomas Hallquist Matter

1. In August 2008, Thomas Hallquist contacted respondent about obtaining an easement on real property Hallquist owned. Respondent met with Hallquist on August 27, 2008, and agreed to take the case.

2. On September 19, 2008, respondent met with Hallquist and his brother, David. Respondent presented Hallquist with a retainer agreement that both respondent and Hallquist signed. The retainer agreement provided, in part, as follows: "For the professional services rendered and to be rendered by the attorney, the client agrees to pay the attorney an initial retainer fee of 2,500 [sic], plus an additional fee at the rate of 200 [sic] per hour for any services beyond the scope of representation of this agreement."

3. Hallquist gave respondent \$1,000 cash and a post-dated check in the amount of \$1,500 that respondent cashed on or about October 9, 2008. Respondent did not deposit any portion of Hallquist's retainer into a trust account.

4. On or about October 10, 2008, respondent told Hallquist that he was working on the legal paperwork for Hallquist's easement. Thereafter, Hallquist did not hear from respondent. Hallquist attempted to phone respondent in late November 2008, but was unable to reach respondent or leave a message.

5. In December 2008 and January 2009, Hallquist attempted to phone respondent weekly. Hallquist was never able to reach respondent and was unable to leave a message for him.

6. In February 2009, Hallquist contacted another attorney, Ryan Stai. Stai contacted respondent on February 9, 2009. Respondent told Stai that he had all documents drafted and was ready to proceed with an easement proceeding. Respondent told Stai that a notice of *lis pendens* had been submitted to the county recorder and that respondent was awaiting a hearing date from the court. Respondent's statements were false, because he had not filed a notice of *lis pendens* or filed Hallquist's case in court.

7. Stai contacted Hallquist, told Hallquist what respondent had told him, and suggested that Hallquist contact respondent directly, which he did on February 9, 2009. Hallquist demanded that respondent fax to him a copy of all of the papers he had

drafted along with a statement of account by the end of the day. Respondent did not do so.

8. Hallquist phoned respondent again on February 10, 2009. Respondent told Hallquist that he would mail the papers and a statement of account to him. Respondent did not do so.

9. Hallquist still had not received anything from respondent by February 13, 2009, so he contacted Stai again. Stai phoned respondent on February 19, 2009, and demanded that respondent refund to Hallquist the \$2,500 retainer fee. Respondent gave Stai several excuses about why he had not returned Hallquist's client papers to him, including: (1) he had just gotten his fax line fixed, (2) he had recently moved offices, (3) his office building was in litigation, and (4) he had mailed a notice of *lis pendens* to the county recorder. On February 20, 2009, Stai confirmed the demand in a letter, and instructed respondent to send Hallquist's papers to Hallquist by February 26, 2009.

10. Hallquist had not heard from respondent by March 1, 2009, so Hallquist phoned respondent and discharged him.

11. Stai wrote to respondent on March 4, 2009, and repeated Hallquist's demand for a full refund of the \$2,500 retainer by March 11, 2009. Respondent did not respond and did not refund any portion of Hallquist's retainer fee.

12. On March 27, 2009, Hallquist submitted a complaint against respondent to the Director's Office. Respondent responded in writing on April 30, 2009. Respondent still had not provided Hallquist with copies of the pleadings and other materials he had drafted in his case. Respondent did so in early June 2009, at the same time as he responded to the district ethics committee investigator's request for copies. Respondent has not refunded any portion of Hallquist's retainer fee.

13. Respondent's conduct violated Rules 1.3, 1.4(a)(3) and (4), 1.15(a), 1.16(d), 1.5(a), 4.1, and 8.4(c), MRPC.

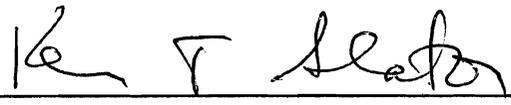
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: July 29, 2010.



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