

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:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

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

On April 18, 2011, respondent was publicly reprimanded by the Minnesota Supreme Court for failing to diligently pursue litigation, failing to communicate with the client or to keep the client reasonably informed, failing to deposit an unearned client advance into trust, failing to refund the unearned portion of the retainer, failing to provide the client with copies of pleadings and materials until long after termination of the representation, failing to protect the client's interests upon termination of representation, and knowingly making false statements about the case to a representative of the client, in violation of Rules 1.3, 1.4(a)(3) and (4), 1.15(a), 1.16(d), 1.5(a), 4.1, and 8.4(c), Minnesota Rules of Professional Conduct.

FIRST COUNT

1. By order dated January 19, 2012, respondent's Minnesota license to practice law was restricted by the Minnesota Supreme Court based on respondent's failure to comply with Rule 9 of the Rules of the Minnesota State Board of Continuing Legal Education (CLE rules).
2. Respondent received a copy of the January 19, 2012, order in the U.S. Mail from the Minnesota Supreme Court shortly after January 19, 2012.
3. Under Rule 12(B) of the CLE rules, a lawyer on restricted or involuntary restricted status may not engage in the practice of law or represent any person or entity in any legal matter or proceedings within the State of Minnesota other than himself or herself.
4. Respondent made the following court appearances on behalf of clients while his license was restricted as described above:
 - a. On February 15, 2012, respondent appeared before the Hon. Jon A. Maturi in Itasca County District Court on behalf of client *Michael Ray Eckelman* in the case of *Eckelman v. Holm f/k/a Eckelman*, File No. 31-FA-08-3549.
 - b. On February 6, 7, and 8, 2012, respondent appeared before the Hon. John P. Smith in Cass County District Court on behalf of Scott Brian Johnson in the case of *State of Minnesota v. Johnson*, File No. 11-CR-11-2157. When Judge Smith discovered that respondent's license was restricted, he ordered Scott Brian Johnson released from custody.
5. On April 30, 2012, respondent filed proof of compliance with the CLE rules and the restriction on his license was lifted by the Minnesota Supreme Court on May 1, 2012.
6. Respondent's conduct violated Rule 5.5(a), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

7. On February 21, 2012, the Director's Office sent to respondent a copy of a complaint submitted to the Director by the Hon. John P. Smith, along with a notice of investigation. Although a response was due within 14 days, respondent did not respond to the complaint. Instead, respondent contacted the Director's Office on March 26, 2012, and stated he would submit an answer to the complaint.

8. Respondent did not respond to the complaint or contact the Director's Office, so on April 25, 2012, an attorney with the Director's Office wrote to respondent. Respondent was told his response was overdue and that failure to cooperate with a disciplinary investigation could be grounds for discipline. Respondent was asked to notify the Director's Office when his response to the complaint would be submitted.

9. Respondent did not respond to the complaint or contact the Director's Office, so on May 22, 2012, an attorney with the Director's Office wrote to respondent and provided another copy of the complaint of the Hon. John P. Smith. Respondent phoned the Director's Office on June 4, 2012, and submitted a response to the complaint on June 19, 2012.

10. On May 31, 2012, the Director's Office sent to respondent a copy of a complaint submitted to the Director by Christopher Cadem, along with a notice of investigation. Although a response was due within 14 days, respondent did not respond to the complaint.

11. Respondent did not respond to the complaint or contact the Director's Office, so on July 25, 2012, an attorney with the Director's Office wrote to respondent. Respondent was told his response was overdue and that failure to cooperate with a disciplinary investigation could be grounds for discipline. Respondent was asked to submit a response within seven days or the Director would proceed accordingly. Respondent failed to respond.

12. On August 6, 2012, respondent left a phone message with the Director's Office to say he had just returned from vacation and would submit a response to the complaint of Christopher Cadem "today or tomorrow."

13. Respondent did respond to the complaint or contact the Director's Office again, so on August 17, 2012, an attorney with the Director's Office wrote to respondent and instructed him to appear for a meeting at the Director's Office on August 30, 2012, at 11:00 a.m. to discuss the two pending complaints.

14. Respondent phoned the Director's Office on August 29, 2012, and rescheduled the meeting to September 19, 2012. Respondent appeared for the meeting and submitted a response to the complaint of Christopher Cadem.

15. Respondent's conduct violated Rule 25, RLPR, and Rule 8.1(b), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent or imposing otherwise 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.

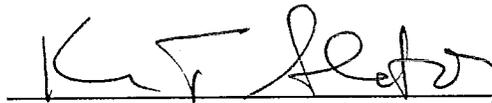
Dated: Nov. 6, 2012.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

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and



KEVIN T. SLATOR
SENIOR ASSISTANT DIRECTOR
Attorney No. 204584

This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: November 16, 2012. 
RICHARD H. KYLE, JR.
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD