

FILE NO. A13-0065

STATE OF MINNESOTA

IN SUPREME COURT

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

**SUPPLEMENTARY PETITION
FOR DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this supplementary petition for disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of a November 6, 2012, petition for disciplinary action. The Director has investigated further allegations of unprofessional conduct against respondent.

The Director alleges that respondent has committed the following additional unprofessional conduct warranting public discipline:

THIRD COUNT

16. Keith A. Yarborough ("Yarborough") retained respondent on September 9, 2010, to represent him in a dissolution of marriage from Kerry Yarborough.

17. Yarborough paid respondent a \$500 retainer by check. Yarborough later paid respondent an additional \$500 after respondent said he would stop representing Yarborough if he did not. Yarborough was forced to borrow the money from his roommate in order to pay respondent.

18. Yarborough and Kerry Yarborough were married for 20 years. Yarborough managed the household while Kerry Yarborough worked as a nurse.

19. In 2008, Yarborough took a job outside the home but was injured at work. Yarborough is permanently disabled and supports himself with supplemental social security income of \$698 per month.

20. Respondent told Yarborough he would likely be entitled to spousal maintenance from Kerry Yarborough. Respondent also told Yarborough that he would attempt to locate Kerry Yarborough, who had moved to the state of Wyoming, and seek temporary spousal maintenance. Kerry Yarborough had closed the Yarboroughs' bank accounts, taking \$25,000 and leaving Yarborough with little or no money.

21. Kerry Yarborough told Yarborough she would continue to make mortgage payments on the Yarboroughs' house. In September 2010, Yarborough learned from their mortgage company that Kerry Yarborough had failed to do so.

22. At about the same time, Yarborough suffered a heart attack. While he was hospitalized, Kerry Yarborough had another person remove personal property and documents from the Yarboroughs' house without Yarborough's consent. The property was worth approximately \$60,000.

23. Yarborough phoned respondent from the hospital about the removal of property from the Yarboroughs' house. Respondent advised Yarborough to phone the police, which he did. Respondent also advised bringing a petition for temporary relief as soon as possible.

24. Between September 2010 and August 2011, respondent took little or no constructive action on Yarborough's case.

25. Respondent told Yarborough on more than one occasion that Kerry Yarborough had been "served with the paperwork" in early 2011. Respondent also told Yarborough that "the paperwork" had been filed with the court and that respondent was waiting for court dates to be scheduled. Respondent's statements were false.

26. On August 1, 2011, Yarborough phoned respondent and said he was terminating his representation and planned to file a complaint with the Office of

Lawyers Professional Responsibility (OLPR). Respondent promised Yarborough he would be more diligent in representing him. Because Yarborough did not have enough money to retain another attorney, he did not discharge respondent at that time.

27. Sometime in August 2011, respondent attempted to file a summons and petition with the court. The court rejected the filing because respondent had attempted to serve the documents on Kerry Yarborough by mail. Respondent failed to communicate this information with Yarborough and Yarborough only learned of it by contacting the court administrator's office.

28. Between August 2011 and December 2011, respondent took little or no constructive action on Yarborough's case.

29. Respondent failed to have Kerry Yarborough served with a summons and petition for dissolution of marriage until December 16, 2011, approximately 14 months after Yarborough retained him. Respondent did not tell Yarborough he had served Kerry Yarborough, and Yarborough only learned about it on his own.

30. Between December 2011 and May 2012, respondent took little or no constructive action on Yarborough's case.

31. After December 2011, when Yarborough inquired about what was happening on his case, respondent told him he was waiting on court dates which was false because the case had not been filed. When Yarborough threatened to terminate respondent's representation because of respondent's lack of diligence and progress, respondent told Yarborough he could not do so because he had no money and would not be able to retain another lawyer.

32. Respondent failed to file the summons and petition in Yarborough's case with the court until May 15, 2012.

33. Respondent unreasonably delayed filing a petition for temporary relief in Yarborough's case despite his promises to Yarborough and despite Yarborough's need

for temporary relief. At about the time respondent filed the summons and petition, Kerry Yarborough told Yarborough that the money in their bank accounts was gone.

34. Between May 2012 and August 2012, respondent took little or no constructive action on Yarborough's case.

35. After respondent filed the summons and petition, he told Yarborough he was going to take Kerry Yarborough's deposition and negotiate with her attorney to try and reach a settlement. Respondent failed to do so.

36. Yarborough attended a scheduling conference in his case on June 28, 2012, despite the fact respondent told Yarborough not to attend and threatened to withdraw from representation if he did. Respondent appeared at the conference by phone.

37. In July 2012, respondent phoned Yarborough to tell him he had filled out "disposition papers" that he was mailing to Yarborough for review. Respondent told Yarborough he would send the papers to Kerry Yarborough, and that if she refused to sign them, a judge would order her to do so. Respondent told Yarborough the papers contained information regarding the funds Kerry Yarborough took when she moved out in 2010.

38. Respondent also told Yarborough he planned to go to court regarding the papers, and that he would raise the issue of temporary relief.

39. When Yarborough did not receive the papers in the mail, he phoned respondent and left a message. Respondent failed to return the call. Yarborough attempted to phone respondent again, approximately one week later, and left a message. Respondent failed to return the call.

40. Yarborough waited another week and attempted to phone respondent again. Yarborough left a message saying he would now be filing a complaint with the OLPR. Respondent returned Yarborough's call on August 3, 2012. Respondent told Yarborough he was working on the papers and that Yarborough was being inconsiderate. Respondent threatened to withdraw from representation.

41. Yarborough wrote to respondent and discharged him on August 10, 2012.

42. On September 6, 2012, Yarborough wrote to respondent to request the return of his file and papers. Respondent failed to respond to Yarborough's letter and failed to return his file.

43. Yarborough represented himself at a pre-trial hearing on October 16, 2012. Respondent did not attend the hearing or communicate with the court about it. Because Yarborough did not have his file from respondent, he was unable to prepare himself for the hearing.

44. Yarborough's case is pending in Crow Wing County District Court. Yarborough obtained a new attorney in place of respondent.

45. Respondent's conduct violated Rules 1.3, 1.4(a)(3) and (4), 3.2, 4.1, and 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

FOURTH COUNT

46. On September 20, 2012, the Director's Office received a complaint against respondent from complainant Keith A. Yarborough.

47. On September 26, 2012, a copy of Yarborough's complaint and notice of investigation (NOI) were mailed to respondent at Box 67, Remer, MN 56672, which is the official address for respondent in the Court's lawyer registration system. The Director's letter was not returned by the postal service. Respondent failed to respond.

48. On October 3, 2012, charges of unprofessional conduct were mailed to respondent. The charges were not returned by the postal service. Respondent failed to respond.

49. The Director obtained approval from Panel Chair Richard H. Kyle, Jr. to file a petition for disciplinary action against respondent. On November 21, 2012, two copies of the petition were mailed to respondent along with a cover letter asking respondent to sign and return an admission of service. Respondent failed to respond.

50. On February 26, 2013, respondent phoned the attorney in the Director's Office who is assigned to respondent's case. Respondent said his mail had been forwarded to him and provided a mobile phone number. Respondent said he resides in the Twin Cities area and would provide a current address. Respondent agreed to meet in the Director's Office on February 28, 2013.

51. Respondent appeared at the Director's Office on February 28, 2013. Respondent signed an admission of service of the November 6, 2012, petition for disciplinary action. Respondent confirmed that Box 67, Remer, MN 56672, is a valid and current mailing address. Respondent also confirmed that he has received the mail the Director has sent to him, including a copy of Yarborough's complaint and the NOI.

52. Respondent and a Director's representative discussed the November 6, 2012, petition for disciplinary action. Respondent did not submit a written response to the petition. Respondent orally admitted paragraphs 1, 4(a), 4(b), and 5, and denied the remaining paragraphs. Respondent discussed the complaint of Keith Yarborough, but did not submit a written response.

53. On March 1, 2013, the Director wrote to respondent to confirm that a written response to the complaint of Yarborough was overdue. Respondent phoned the Director's Office on March 19, 2013. Respondent said he received the letter dated March 1, 2013, and would submit a response to Yarborough's complaint by March 22, 2013.

54. As of the date below, respondent has not submitted a response to Yarborough's complaint. Respondent has not communicated with the Director's Office since March 19, 2013.

55. 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

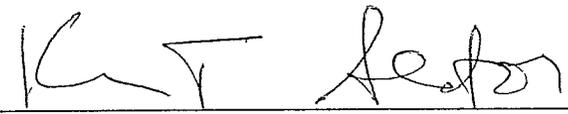
and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: April 29, 2013.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

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: May 2, 2013.



RICHARD H. KYLE, JR.
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD