

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against GEORGE M. KADINGER,
a Minnesota Attorney,
Registration No. 16799X.

**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 petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 18, 1985. Respondent is currently suspended from the practice of law. *See In re Kadinger*, 641 N.W.2d 1 (Minn. 2002).

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

On March 18, 2002, respondent was suspended for three months, to be followed by two years of supervised probation, for failure to diligently pursue client matters, failure to keep clients adequately informed as to the status of their legal matters, improper contact with a represented party, improper withdrawal from representing a client in a criminal matter, failure to obtain written retainer agreements, failure to deposit unearned fees in a trust account, and failure to cooperate with the Director's investigations in violation of Rules 1.1, 1.3, 1.4, 1.5(a) and (b), 1.15(a) and (c)(3), 3.4(c), 4.2, and 8.1(a)(3), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, RLPR.

See In re Kadinger, 641 N.W.2d 1 (Minn. 2002). Respondent remains suspended from the practice of law.

FIRST COUNT

John Dvorak Matter

1. In June 2000 John Dvorak (Dvorak) retained respondent to represent him in a sentence reduction matter. Dvorak did not sign a written fee agreement. On June 19, 2002, respondent contacted Dvorak's mother, Lorraine Dvorak, who provided respondent with a \$500 check for the representation. Since there was no written fee agreement, the \$500 check was an advance fee payment. Respondent cashed the check, but failed to deposit the \$500 into his client trust account (hereinafter trust account).

2. Respondent failed to diligently pursue Dvorak's legal matter and failed to keep him adequately informed as to the status of his case. As a part of the representation, respondent stated that he would contact various police officers and the Hennepin County attorney's office in order to obtain statements favorable to Dvorak's sentence reduction efforts. Respondent indicated that he would then contact Judge Lynn Olson, the sentencing judge, as well as the Anoka County prosecutor. Respondent failed to make most of the contacts described above or take further action on behalf of Dvorak.

3. Respondent met with Dvorak only twice, once in June 2000 and once in July 2000. Thereafter, respondent had no further contact with Dvorak. Both Dvorak and members of his family made repeated attempts to contact respondent; however, respondent failed to return their phone calls. Dvorak also had an official at the Lino Lakes facility attempt to contact respondent on his behalf, but respondent failed to respond to the request for a return call.

4. Dvorak and his mother contacted respondent by phone and requested a refund of the \$500 check. Respondent failed to respond to their request. Respondent retained the entire \$500 legal fee despite his failure to diligently pursue Dvorak's legal

matter. Respondent's failure to refund any portion of the \$500 fee constituted an unreasonable fee.

5. Respondent's conduct in the Dvorak matter violated Rules 1.3, 1.4, 1.5(a), and 1.15(a), MRPC, as further interpreted by Lawyers Professional Responsibility Board Opinion No. 15 (Opinion 15).

SECOND COUNT

Lee Riutzel Matter

6. In March 2001 Lee Riutzel (Riutzel) retained respondent to represent him in a criminal matter. Riutzel did not sign a written fee agreement.

7. On March 12, 2001, Riutzel's great aunt, Roberta Myers (Myers), sent respondent a letter which included a check in the amount of \$500. On March 15, 2001, Myers sent respondent a second letter which included a check in the amount of \$1,500. Since there was no written fee agreement, the \$2,000 was an advance fee payment. Respondent cashed both checks, but failed to deposit the \$2,000 into his trust account.

8. On August 24, 2001, Riutzel was convicted and sentenced. Shortly before the sentencing hearing, respondent informed Riutzel that he would obtain copies of documents from the criminal matter, including a transcript of the trial proceedings and provide him with copies of the materials. During the fall of 2001, Riutzel sent respondent numerous letters requesting a copy of the transcript. Respondent failed to provide him with a copy of the transcript.

9. In late March 2001, Riutzel also retained respondent to represent him on a petition for an order for protection (OFP). On March 26, 2001, Myers sent respondent a letter which a check in the amount of \$750. In early August 2001, respondent further agreed to represent Riutzel in divorce and bankruptcy proceedings. On August 7, 2001, Myers sent respondent a letter which included a check in the amount of \$300. Riutzel did not sign a written fee agreement for any of these matters. Since there was no written fee agreement, the \$1,050 was an advance fee payment. Respondent cashed both checks but failed to deposit the \$1,050 into his trust account.

10. Respondent also failed to diligently pursue the OFF, divorce and bankruptcy matters and failed to keep Riutzel reasonably informed about the status of these matters. Throughout the remainder of 2001, Riutzel and Myers made numerous phone calls to respondent, but respondent failed to return their calls.

11. In January 2002 Riutzel and Myers requested a refund of the \$1,050. Respondent failed to respond to their request. Respondent retained the entire \$1,050 legal fee despite his failure to diligently pursue Riutzel's legal matters. Respondent's failure to refund any portion of the \$1,050 fee constituted an unreasonable fee.

12. Respondent's conduct in the Riutzel matter violated Rules 1.3, 1.4, 1.5(a), and 1.15(a), MRPC, as further interpreted by Opinion 15.

THIRD COUNT

Andrew LaForge Matter

13. Andrew LaForge (LaForge) retained respondent to represent him in a criminal matter. LaForge did not sign a written fee agreement. LaForge paid respondent \$1,500 for the representation. Since there was no written fee agreement, the \$1,500 was an advance fee payment. Respondent failed to deposit the \$1,500 fee into his trust account.

14. After receiving the \$1,500 fee, respondent failed to diligently pursue LaForge's case. Respondent also failed to return LaForge's numerous phone calls, failed to attend scheduled meetings, and failed to keep LaForge reasonably informed on the status of his case.

15. Respondent retained the entire \$1,500 legal fee despite his failure to diligently pursue LaForge's legal matters. Respondent's failure to refund any portion of the \$1,500 fee constituted an unreasonable fee.

16. Respondent's conduct in the LaForge matter violated Rules 1.3, 1.4, 1.5(a), and 1.15(a), MRPC, as further interpreted by Opinion 15.

FOURTH COUNT

Practice While CLE Restricted and Failure to Comply with Court Instruction

17. Respondent represented a client in a dissolution matter in Hennepin County. Respondent appeared with his client at a default hearing on November 28, 2001, before the Honorable Janet N. Poston.

18. At the time respondent made this appearance, he was on CLE restricted status for noncompliance with the CLE requirements. The order placing respondent on restricted status was filed October 30, 2001. Respondent thus engaged in the practice of law without a valid license to do so.

19. Shortly after the hearing, respondent was instructed by the court through Judge Poston's law clerk to submit a judgment and decree for default dissolution. Respondent agreed to provide the court with the requested documents.

20. Judge Poston's law clerk made numerous attempts to follow up on the requested submissions. Respondent told the law clerk that he had hurt his back and that the submissions would be delayed. Respondent never submitted the documents to the court. Judge Poston eventually instructed the law clerk to prepare the documents.

21. Respondent's practice of law while CLE restricted and his failure to comply with the court's instruction violated Rules 3.2, 5.5(a), and 8.4(d), MRPC.

FIFTH COUNT

Non-Cooperation

22. Respondent failed to respond to letters and notices of investigation sent in connection with the complaints against him as follows:

John Dvorak Matter

23. On November 21, 2001, the Director sent respondent a notice of investigation of the complaint of John Anthony Dvorak. The matter was assigned for investigation to Roger A. Jensen (Jensen), an investigator for the Second District Ethics Committee (DEC). Due to respondent's failure to respond to the notice of investigation

and to Jensen's correspondence and requests for information, the DEC referred the matter back to the Director's Office for further investigation.

24. On March 21, 2002, the Director sent respondent a letter requesting an explanation for his non-cooperation with the investigation and a written response to the notice of investigation. On March 29, 2002, respondent left the Director a voice message stating that his failure to respond was due to a back injury.

25. On April 2 and 18, 2002, the Director sent respondent letters requesting medical records regarding respondent's alleged back injury. Respondent failed to respond to both letters within the requested timeframe.

26. On May 1, 2002, the Director sent respondent a letter scheduling a meeting for May 14, 2002, with the Director. Respondent failed to attend the meeting.

27. On May 28, 2002, the Director sent respondent a final letter requesting a response to the notice of investigation and medical records in support of respondent's alleged back injury. Respondent failed to respond within the requested timeframe.

Lee Riutzel Matter

28. On February 26, 2002, the Director sent respondent a notice of investigation of the complaint of Lee Riutzel. The notice requested a response to the complaint within fourteen days. Respondent failed to respond.

29. On March 14 and 25, 2002, the Director sent respondent letters requesting a response to the notice of investigation. Respondent failed to respond within the requested timeframe.

30. On March 29, 2002, respondent phoned the Director's Office and left a message stating his failure to respond was due to a back injury. Over the course of the next three months, the Director sent respondent correspondence requesting a response to the notice of investigation and medical records. The Director's letters, as outlined above in paragraphs 25 through 27, incorporated requests for information on the Riutzel complaint. Respondent failed to respond.

Andrew LaForge Matter

31. On March 18, 2002, the Director sent respondent a notice of investigation of the complaint of Andrew LaForge. The notice requested a response to the complaint within fourteen days.

32. On March 29, 2002, respondent phoned the Director's Office and left a message stating his failure to respond was due to a back injury. Over the course of the next three months, the Director sent respondent correspondence requesting a response to the notice of investigation and medical records. The Director's letters, as outlined above in paragraphs 25 through 27, incorporated requests for information on the LaForge complaint. Respondent failed to respond.

Practice While CLE Restricted and Failure to Comply with Court Instruction

33. On February 27, 2002, the Director sent respondent a notice of investigation regarding respondent's appearance in court while his license was restricted and his failure to comply with the court's request for documents. Respondent's response was due no later than March 13, 2002. Respondent failed to respond.

34. On March 14 and 26, 2002, the Director sent respondent letters requesting a response to the notice of investigation. Respondent failed to respond within the requested timeframe.

35. On March 29, 2002, respondent phoned the Director's Office and left a message stating his failure to respond was due to a back injury. Over the course of the next three months, the Director sent respondent correspondence, as outlined above in paragraphs 25 through 27, which incorporated a request for a response regarding respondent's practice of law while CLE restricted. Respondent failed to respond.

Failure to Timely Comply with Rule 26, RLPR

36. On March 22, 2002, the Director notified respondent, through his counsel, of his obligations as a suspended lawyer under Rule 26, RLPR. Respondent's affidavit was due on April 3, 2002.

37. On April 10, 2002, the Director sent respondent's counsel a letter informing him that respondent's Rule 26, RLPR, affidavit was overdue by a week. The Director requested that respondent provide the Director with an affidavit within seven days. On May 15, 2002, the Director filed an affidavit of noncompliance with the Court regarding respondent's failure to comply with Rule 26, RLPR. The Director did not receive an affidavit from respondent regarding his compliance with Rule 26, RLPR until June 3, 2002.

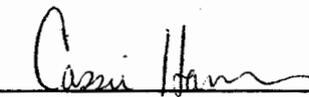
38. Respondent's non-cooperation with the Director's investigations and his failure to timely file an affidavit of compliance with Rule 26, RLPR, violated Rules 3.4(c) and 8.1(a)(3), MRPC, and Rules 25 and 26, RLPR.

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: January 15, 2003.


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