

FILE NO. A10-1028

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against KRISTIAN LEE OYEN,
a Minnesota Attorney,
Registration No. 386383.

**AMENDED 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, filed a petition for disciplinary action on May 28, 2010. Respondent filed an answer to the petition on June 28, 2010, an amended answer on August 17, 2010, and a second amended answer on August 18, 2010. The Director now files this amended petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 22, 2006. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Sexual Relations with Client - JLA Matter

1. On July 13, 2009, JLA was charged in Crow Wing County District Court with a felony controlled substances crime and held in jail. JLA was accused of selling prescription medications to an undercover Brainerd police officer. JLA allegedly obtained the medications in her work as a personal care attendant.

2. Matt Lura is respondent's nonlawyer office assistant and is an acquaintance of JLA's. On July 17, 2009, JLA was released from jail and contacted Lura

about her criminal case. Lura suggested that JLA meet with respondent. JLA agreed, and Lura scheduled an appointment for JLA to meet with respondent on July 21, 2009.

3. On July 21, 2009, JLA met with respondent in his office at noon for about an hour. Respondent and JLA discussed the criminal charges, her mental health diagnoses (that included sexual addiction, depression, and borderline personality disorder), her mental health medications, and that she was currently seeing a therapist named Judith Weis.

4. Respondent told JLA he would represent her in the criminal matter and that he could probably obtain a "stay of adjudication" for JLA. Respondent told JLA that his attorney fees would be limited to a "flat fee" of \$1,500 to cover his representation through trial. JLA told respondent she expected to pay the retainer using her disability benefits or a loan from her father but would need time to obtain the money. Respondent told JLA he was willing to work out a payment plan for the fees.

5. In the evening of July 21, 2009, JLA and respondent began exchanging numerous text messages on their mobile phones. Some of the messages were of a sexual nature.

6. At around 10:00 p.m. on July 21, 2009, respondent told JLA in a text message that he wished to visit her. JLA agreed. Respondent arrived by cab at JLA's apartment shortly after, and was intoxicated. He tried to persuade JLA to accompany him to a nearby bar, but JLA declined because of restrictions on her that had been set upon her release from jail on July 13, 2009.

7. Respondent left JLA's apartment for a short time, and then returned by cab at approximately 1:00 a.m. on July 22, 2009. Respondent spent the night at JLA's apartment and respondent and JLA engaged in sexual relations. JLA told respondent she planned to borrow \$1,000 from her parents to pay respondent. JLA drove respondent back to his apartment on the morning of July 22, 2009.

8. JLA returned to respondent's office on July 23, 2009. Lura was in the office at the time and respondent arrived later. Respondent met briefly with JLA and presented her with a "flat fee retainer agreement" that required a retainer fee of \$1,000. JLA told respondent she still did not have \$1,000 to give him, but would pay him as soon as she had it. Respondent had JLA sign authorizations for release of her treatment records with Judith Weis. Respondent faxed the authorization to Weis shortly after the meeting along with a cover letter stating that he was representing JLA in a criminal matter and looked forward to speaking with Weis. Weis's clinic copied and sent JLA's treatment records to respondent on or about July 29, 2009.

9. Later on July 23, 2009, JLA visited Weis's office for a therapy session and revealed that respondent was her lawyer and that she had sex with him. On July 24, 2009, Weis notified the Brainerd Police Department, which investigated the matter but did not bring criminal charges. The Brainerd Police Department reported the matter to the Director's Office.

10. Respondent continued to contact JLA by text message and email for about two weeks after July 23, 2009. Respondent also agreed to represent JLA in an eviction proceeding.

11. After learning of the police investigation into Weis's report, respondent told JLA that he was not willing to represent her any longer. The Ninth District Public Defender's Office assumed representation of JLA at that time.

12. Respondent's conduct in having sexual relations with JLA, a client, violated Rules 1.8(j) and 1.7(a)(2), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Lack of Communication and Diligence and Continuing to Work on Case After Termination - Robert Jensen Matter

13. In or about June 2007, Robert Jensen entered into a contract for deed with Marian Schroeder for the purchase of real estate, and the mobile home and attached garage situated thereon, in Motley, Minnesota. William Sather was the real estate agent

who handled the transaction. Soon after the transaction was completed and Schroeder had moved from the property, Jensen noticed various defects in the property of which neither Schroeder nor Sather had informed him.

14. In early April 2008 Jensen attended a free legal clinic at the Crow Wing County Courthouse in Brainerd, Minnesota. Jensen met with respondent and another attorney, Roger Hamilton. Jensen discussed with respondent and Hamilton his contract for deed with Schroeder and the defects in the property he was purchasing. Respondent told Jensen he had a good case.

15. After meeting with respondent at the free legal clinic, Jensen began assembling photographs of the property, bids for repair, contractor statements and laser measurement readings. Jensen then called respondent's office and scheduled an appointment to review the documentation and discuss the case with respondent on or about April 21, 2008.

16. Respondent was not present when Jensen arrived for his appointment on or about April 21, 2008. Jensen waited for a period of time, but respondent's assistant, Lura, eventually informed Jensen that respondent was in Duluth and would not return in time to meet with him. Jensen rescheduled his appointment with respondent for April 23, 2008.

17. Jensen met with respondent in his office on April 23, 2008. Hamilton attended at least a portion of that meeting. Respondent informed Jensen that his practice was extremely busy and that Hamilton would help him with Jensen's case. Hamilton, however, never actually performed any work on Jensen's case.

18. During the April 23, 2008, meeting, Jensen gave respondent the evidence he had assembled and they discussed Jensen's case. Respondent and Jensen signed a retainer agreement and Jensen paid respondent a \$1,000 retainer fee. Respondent stated to Jensen that he would promptly begin work on his case. Respondent failed to do so

and, as is further detailed below, failed to work diligently on Jensen's case throughout the entire course of his representation.

19. Respondent also failed to adequately communicate with Jensen throughout the entire course of his representation. Jensen called respondent repeatedly to learn the status of his case. Respondent's voicemail box was often full and Jensen was unable to leave a message. On the occasions on which Jensen was able to leave a message for respondent, respondent rarely returned his call. Jensen also visited respondent's office on several occasions, but was rarely able to speak with respondent. Instead, Jensen usually spoke with Lura. On a couple of occasions early in respondent's representation, Jensen called Hamilton to learn the status of his case. Hamilton was not, however, actively working with respondent on Jensen's case and was not able to provide Jensen with any information.

20. During the course of respondent's representation, Jensen scheduled four meetings with respondent. Respondent failed to appear for all of the meetings. Respondent did not call to inform Jensen that he would be unable to appear for the meetings.

21. Respondent's file contains various letters he purportedly wrote to Jensen and letters respondent wrote to others on which Jensen was purportedly copied. Jensen did not receive these letters and, in fact, never received anything from respondent through the mail.

22. On or about June 6, 2008, respondent sent a demand letter to Schroeder and Sather on Jensen's behalf. Respondent did not provide Jensen with a copy of the demand letter, nor did he discuss the demand letter with Jensen before sending it. During one of Jensen's visits to respondent's office, Jensen happened to notice the demand letter in his file and respondent's assistant provided him with a copy at that time.

23. On July 30, 2008, Kevin Duffy, attorney for Schroeder, responded to respondent's June 6 demand letter. Duffy denied any liability on the part of Schroeder and urged respondent to "prepare your Summons and Complaint and serve it upon me and I will have my client sign an Admissions of Service Form and we can resolve this matter through the court system."

24. Also in July 2008, Jensen discussed with respondent the possibility of discontinuing his contract for deed payments to Schroeder until their dispute was resolved. Respondent advised against a discontinuance of payments, stating that it could prompt Schroeder to commence foreclosure proceedings. Consistent with respondent's advice, Jensen continued to make his payments to Schroeder.

25. On September 22, 2008, Jensen signed a verification to a complaint respondent had prepared on his behalf. Jensen understood and expected that respondent would promptly arrange for service of the summons and complaint on Schroeder and Sather. Respondent failed to do so.

26. Respondent's file contains an October 2, 2008, letter to Duffy that purports to provide Duffy with copies of a summons and the complaint and requests provision of an admission of service. Duffy did not, however, receive respondent's letter or the materials enclosed therewith.

27. Frustrated with respondent's failure to arrange for service of the summons and complaint, Jensen asked his ex-wife, Terri Jensen, to personally serve the documents on Sather. Terri Jensen served Sather with the summons and complaint on November 7, 2008. Sather signed an affidavit of service and Jensen provided it to respondent.

28. On November 14, 2008, Sather wrote to respondent and confirmed receipt of the summons and complaint. Sather stated, "It is my decision to proceed with the court case, if necessary, and let the courts decide the outcome."

29. On November 24, 2008, Brigid Fitzgerald, attorney for Sather, provided respondent with a certificate of representation and requested a three-week extension to answer the complaint. Fitzgerald stated, "It may be beneficial to discuss this matter prior to further legal action." Fitzgerald was later replaced by Debra Newell as Sather's attorney.

30. On December 11, 2008, Jensen picked up his file from respondent and took it to another attorney to review. That attorney questioned why respondent had not arranged for Jensen's monthly payments to Schroeder to be paid into a court escrow account and why respondent had not simply arranged for the sheriff to serve Schroeder with the summons and complaint.

31. On December 11, 2008, Jensen returned to respondent's office and discussed with him the other lawyer's suggestions. Respondent stated that he would make arrangements for Jensen's payments to be escrowed into court, arrange for the sheriff to serve Schroeder and file the matter with the court. Respondent failed to take any of these actions. During his December 11, 2008, meeting with respondent, Jensen gave respondent a \$250 check made payable to the court administrator in payment of the court's filing fee.

32. On January 16, 2009, respondent wrote to Duffy in follow-up to his purported October 2, 2008, letter. Duffy responded on January 23, 2009, stating that he had not received respondent's October 2 letter. Duffy invited respondent to send him the summons, complaint and an admission of service at that time. Respondent made no response to Duffy. Duffy was later replaced by Thomas Sellnow as attorney for Schroeder.

33. Respondent did not forward the summons and complaint to the sheriff for service on Schroeder until February 17, 2009. After making two unsuccessful attempts, the sheriff served Schroeder with the summons and complaint on March 13, 2009. Respondent did not, at that time, file the matter with the court.

34. On or about June 5, 2009, respondent filed the Jensen summons and complaint with the court and tendered to the court Jensen's December 11, 2008, filing fee check. Respondent also enclosed a certificate of service and notice of motion and motion for escrow of Jensen's contract for deed payments. Also on or about June 5, 2009, respondent mailed the summons, complaint, certificate of service and notice of motion and motion to Sellnow and Newell.

35. Respondent's conduct in failing to diligently handle Robert Jensen's case and to communicate with Jensen violated Rules 1.3 and 1.4(a)(3) and (4), MRPC.

THIRD COUNT

Lack of Diligence, Attempting to Persuade Complainant to Withdraw Complaint - Kay Stanich Matter

36. Kay Stanich retained respondent in June or July 2008 to represent her in submitting an application for compensation from the Minnesota Contractor Recovery Fund. Stanich alleged that she was defrauded by a building contractor named Scott Salvevold.

37. At respondent's request, on July 2, 2008, Stanich paid a \$500 advance fee. Respondent did not deposit the advance fee to a trust account, did not prepare a written retainer agreement, and did not keep time and billing records in the case.

38. On August 26, 2008, respondent wrote to Salvevold, with a copy to Stanich, to inform him that he represented Stanich. Respondent asked Salvevold whether he would be willing to confess a judgment in favor of Stanich. Respondent also spoke with Salvevold on two occasions at about this time.

39. Salvevold initially told respondent that he was willing to confess judgment in favor of Stanich, but then changed his mind. In December 2008, respondent prepared a summons and complaint that Stanich signed on December 3, 2008. Respondent did not sign the complaint verification until April 26, 2009, and did not have it served until June 18, 2009.

40. Respondent filed Stanich's case on August 10, 2009. In January 2010, Stanich discharged respondent and retained attorney John B. Person. Stanich obtained a default judgment against Salvevold in April 2010.

41. Respondent's conduct in failing to diligently handle Kay Stanich's case violated Rule 1.3, MRPC.

FOURTH COUNT

Lack of Communication and Diligence - Dennis Wier Matter

42. On June 19, 2008, Dennis Wier retained respondent to represent Wier's company, Red Dog Industries, in a contract dispute with Bogh Industries, LLC of Puyallup, Washington. Wier paid a \$300 retainer and agreed to pay respondent's attorney fees at \$100 per hour.

43. Respondent prepared and sent a draft demand letter to Wier for his review. The draft letter contained numerous errors that Wier corrected and returned to respondent. Respondent corrected some of the errors but failed to correct several others before mailing the letter to Bogh.

44. Bogh's counter-offer was very low, so in July 2008 respondent met with Wier to prepare a summons and complaint and put the matter into suit. Respondent told Wier he would have the complaint ready in two weeks, but respondent did not have it ready until early September 2008.

45. Respondent asked Wier to come to his office on September 3, 2008, to review a draft of the complaint. When Wier arrived for the meeting, respondent's office was empty. Respondent did not phone Wier to apologize or explain his failure to appear for the appointment.

46. On several occasions during the representation, Wier left phone messages with respondent that were not returned, or Wier was unable to leave a message because respondent's voicemail box was full.

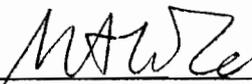
47. After respondent failed to appear for the September 3, 2008, meeting, Wier became dissatisfied with respondent's representation, discharged him, and requested the return of his file and unused portion of a \$300 retainer fee that Wier paid. Respondent promised Wier to return his file, but did not do so.

48. Wier submitted a complaint to the Director's Office on September 24, 2008. In late March 2009, respondent returned Wier's file to him. Respondent stated that Wier's \$300 retainer fee was used up.

49. Respondent's conduct in failing to diligently handle Dennis Wier's case violated Rule 1.3, MRPC. Respondent's failure to communicate with Wier violated Rules 1.4(a)(3) and (4), MRPC. Respondent's conduct in delaying the return of Wier's file upon termination of the representation from September 2008 until March 2009 violated Rule 1.16(d), MRPC.

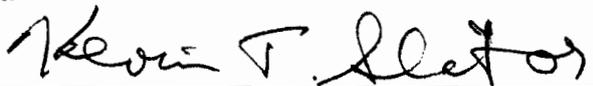
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: October 21, 2010.



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