

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against LYNNE A. TORGERSON,
a Minnesota Attorney,
Registration No. 208322.

**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 May 11, 1990. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Black Matter

1. In or about the end of August 2008, Kevin Black retained respondent to represent him against criminal charges alleging violation of controlled substance law. Respondent had represented Black previously.

2. Trial began on October 3, 2011.

3. During the third day of trial, respondent stated on the record, "I have - - the conclusion I have drawn is that your Honor is trying to intentionally prejudice me

in the eyes of the jury." This statement was made knowing it was false or with reckless disregard for its truth or falsity.

4. The case was given to the jury at approximately 4:30 p.m. on the afternoon of October 6, 2011. The court advised the prosecutor and respondent that the jury would not deliberate past 6:00 p.m. that evening and instructed the prosecutor and respondent to be able to return to court within ten minutes of a phone call from the court.

5. At approximately 5:45 p.m. the judge's law clerk on behalf of the judge contacted respondent and instructed her to return to court. Respondent failed to do so.

6. A few minutes later the judge's law clerk again contacted respondent and, at the judge's instruction, told respondent to return to court. Respondent failed to do so.

7. The judge then spoke with respondent, who continued to refuse to return. Respondent stated that she would not return unless there was a jury verdict or jury question. Respondent continued to demand to know whether the jury had "submitted" a question; the judge informed respondent there was a question; respondent again demanded to know whether a question had been "submitted," and the judge stated there was. Respondent stated that she would return to court, but would not do so at that time and would not return until approximately 7:00 p.m., about an hour later.

8. The judge then instructed respondent to return to court at 9:00 a.m. the next morning.

9. Respondent was found in direct and constructive contempt of court and ordered to pay \$250 within 30 days of October 12, 2011. Respondent timely paid.

10. On the morning of October 7, 2011, the court declared a mistrial (for reasons unrelated to respondent's misconduct).

11. On or about October 14, 2011, respondent served and filed a document entitled, "Offer of Proof," which she had signed. In that document, respondent stated,

“On October 6, 2011, Mr. [Gary] Wolf, Esq., Mr. Black’s former attorney, told [respondent] that Judge Stephenson was treating [respondent] poorly because of political reasons, because she was ‘running against [Keith] Ellison’ and that ‘Ellison is [Judge Stephenson’s] man.’” These statements were made knowing they were false or with reckless disregard for their truth or falsity. Wolf had not made these statements to respondent. Additionally, Judge Stephenson’s treatment of respondent was based on her conduct, not because she was a candidate for political office against Keith Ellison. Additionally, Judge Stephenson has little, if any, connection with Keith Ellison.

12. On or about December 28, 2011, respondent served and filed a motion which she had signed. Respondent reiterated the substance of her statements quoted in the preceding paragraph. These statements were made knowing they were false or with reckless disregard for their truth or falsity.

13. In that December 28 motion, respondent also stated, “I also thought that Judge Stephenson was trying to set me up so that he would hold me in contempt again if I did not show up for the pre-trial (in connection with the rescheduled trial after the mistrial) in the Black matter.” This statement was made knowing it was false or with reckless disregard for its truth or falsity.

14. In that December 28 motion, respondent also stated, “My impression was that the judge’s goal was to make the undersigned [respondent] look bad in front of the jury.” This statement was made knowing it was false or with reckless disregard for its truth or falsity.

15. Respondent’s misconduct violated Rules 3.4(c), 3.5(h), 4.1, 8.2(a), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Pattern of Statements That Are False and/or Made for No Substantial Purpose

Sittard Matter

16. Respondent filed a petition for expungement on behalf of Robert Sittard. The matter was venued in Stearns County. A hearing on the petition was scheduled for September 22, 2011.

17. The court later rescheduled the hearing to September 29, 2011, beginning at 9:00 a.m. Because respondent had not filed a certificate of representation in the matter, notice of the rescheduled hearing date was not sent to respondent, but to the lawyer who represented Sittard in the underlying criminal matter. It appears that the notice was not forwarded to respondent.

18. At 9:00 a.m. on September 22, 2011, respondent telephoned the Stearns County Court Administrator's Office to state that she would be late for the hearing. Respondent was told by Heidi Lock of that office that the hearing was scheduled for September 29. Respondent became irate and began yelling. Lock put respondent on hold to attempt to learn more information about the matter. When Lock returned to the call, respondent again began yelling at Lock. The call ended when Lock transferred respondent to her supervisor, Kathy Moen.

19. Moen identified herself to respondent. Respondent identified herself and said that she was upset because she was on her way to St. Cloud for a 9:00 a.m. hearing and had been told it was continued. Moen told respondent that she was late for a 9:00 a.m. hearing. Respondent screamed that she knew she was late but was on her way and about 15 miles away. Moen asked for the name of respondent's client. After respondent provided that information, Moen reviewed the court's computer record regarding the file. Moen told respondent that the notice of the rescheduled hearing

date was mailed on September 15, 2011, and that the matter had been rescheduled because of a five-day jury trial in front of the assigned judge.

20. From this point on, respondent yelled at Moen throughout the rest of the conversation. Respondent yelled that rescheduling was unacceptable and demanded that the judge take a brief recess to hear the matter. Moen told respondent that she did not think that would happen but would see what she could do.

21. Respondent continued to yell and complain about the case being reset at the last minute. As respondent continued to yell, Moen told respondent that if she continued to yell, Moen would not continue to try to communicate with respondent. Respondent then screamed that she demanded respect from the court system.

22. Moen asked respondent for her telephone number, which respondent provided.

23. Moen also asked respondent for the spelling of her last name, which respondent gave and also screamed words to the effect of, "With the internet it is very easy to look up attorneys these days" and yelled that Moen could use Google to find her. Moen told respondent that she would check with the judge and call respondent back.

24. At approximately 9:37 a.m., Moen telephoned respondent. When respondent answered, Moen told respondent that the assigned judge would not be able to hear the matter that morning but would be able to at 3:00 that afternoon if the county attorney was available. Respondent began to yell at Moen again. Respondent yelled how she was not available at 3:00 that day and listed the places she needed to be that day.

25. Moen told respondent that because respondent had not filed a certificate of representation, notice was not sent to her. Respondent yelled words to the effect of, "You mean I didn't even get a notice sent to me?" and "In all my years filing petitions, I

have never been required to file a certificate of representation." Respondent continued to yell about her dissatisfaction with the system.

26. Moen asked respondent if she wanted the hearing at 3:00 p.m. that day. Respondent began to yell again.

27. Moen told respondent the hearing would remain on September 29. Respondent screamed that she was not available on September 29 and that Moen needed to notify the county attorney, judge and judge's clerk. Moen stated that she would do so.

28. Respondent demanded to speak with the judge at that time. Moen told respondent that was not possible because the judge was conducting a jury trial. Moen told respondent that she was now 40 minutes late for a 9:00 a.m. hearing.

29. Respondent yelled that she was sitting outside the courtroom at that time. This statement was false. Respondent was not outside the courtroom or otherwise in the courthouse building when she made this statement.

Woodson Matter

30. Respondent represented Wendy Woodson against criminal charges venued in Freeborn County. The prosecutor was Assistant Freeborn County Attorney, David J. Walker.

31. During a February 23, 2011, hearing respondent stated, "Your Honor, I just -- from, you know, my perspective, I can't tell you how improper it seems to me to have a -- somebody who was investigated for criminal sexual conduct, a detective, who did a deal in this court with -- you know, with this -- these prosecutors' [Walker and Freeborn County Attorney Craig Nelson] knowledge, with the presiding judge, all prosecuting my client." This statement was false. Neither Walker nor Nelson was involved in the prosecution of Farris, and neither knew of the plea deal before it was entered.

32. On May 11 and 12, 2011, Walker and respondent exchanged email messages regarding discovery. Respondent was requesting Walker to provide discovery which had already been provided. Respondent stated to Walker, "One thing is true; you are consistent. You are consistently a liar and unethical." This statement was made for no substantial purpose and could serve only to burden, harass or the like.

State v. Tope Matter

33. Respondent represented Shawn Tope against criminal charges venued in Freeborn County. Walker was the assigned prosecutor.

34. In August 2011, respondent exchanged email messages related to scheduling with Walker. Respondent called Walker a "loser," "repugnant to the profession of law" and "part of the bad part of government." These statements were made for no substantial purpose and could serve only to burden, harass or the like.

35. On June 15, 2011, an omnibus hearing was conducted. During the hearing, the following exchange occurred:

Q. And have you received a result from the BCA?

A. Yes.

Q. And what was the result?

A. They came back with the test results that they had tested positive for methamphetamine.

[RESPONDENT]: Objection. Move to strike. Misstates the evidence. Hearsay. Plain-out false.

THE COURT: I'm sorry. I didn't catch the last one.

[RESPONDENT]: Unreliable and false.

THE COURT: Okay. Well, I do find that BCA is reliable, so I'm going to overrule that objection.

[RESPONDENT]: Your Honor, he has not--they have not introduced the test result from the BCA. He is misstating the test results. The test result found it negative.

THE COURT: Well--

[RESPONDENT]: So, I move to strike the evidence. Lack of foundation.

THE COURT: Could you--

[RESPONDENT]: He hasn't introduced the test result.

THE COURT: Could you do me a favor? Could you give me a copy of that test result, then?

[RESPONDENT]: Dear, Lord.

THE REPORTER: Excuse me?

(Pause.)

MR. WALKER: I think the reporter has asked her to repeat what she just said, your Honor. That's not on the record.

THE REPORTER: That is what I asked. I didn't hear what you just said.

[RESPONDENT]: Okay. I didn't--I wasn't talking to anybody, so . . .

THE COURT: Well, everything that goes on in this courtroom is recorded.

[RESPONDENT]: Okay.

THE COURT: So, if you are talking to yourself, that has to be recorded. Understand that.

[RESPONDENT]: Okay. Well, then, record it.

THE COURT: Well, she didn't hear what you said.

[RESPONDENT]: Okay. Well, I can't--I don't recall what I said.

36. Later during the June 15 hearing, Walker was making an argument. The following exchange occurred:

[RESPONDENT]: Objection. Objection.

MR. WALKER: She shouldn't be--

THE COURT: Don't you--

MR. WALKER: --interrupting.

THE COURT: --interrupt. You understand?

[RESPONDENT]: I need to make--

THE COURT: The next time you do that you're going to be fined.

[RESPONDENT]: I need to--

THE COURT: Don't interrupt.

[RESPONDENT]: I need to make an objection.

THE COURT: All right. You have a \$100 fine. And I want that paid before you leave here. Don't interrupt.

37. Later during the same hearing, the court waived the \$100 fine.

38. Also during that hearing, as Walker was making his presentation, the following exchange occurred:

[RESPONDENT]: Your Honor, I would like the opportunity to respond to what he just said.

THE COURT: No, no, no, no.

[RESPONDENT]: All right. Then I need to make an offer of proof, your Honor, because what he said is

not the truth. And we need to make a record. We did not just ask--

THE COURT: Sit down.

[RESPONDENT]: I need to make an--

THE COURT: Sit down. Do you want to get another hundred-dollar fine?

[RESPONDENT]: I need to make an--

THE COURT: Just hang on.

[RESPONDENT]: --offer of proof.

THE COURT: Okay. You'll have an opportunity.

39. Respondent's pattern of misconduct in the Sittard, Woodson and *State v. Tope* matters violated Rules 4.4(a), and 8.4(d), MRPC. Respondent's misconduct in the Sittard and Woodson matters also violated Rules 4.1 and 8.4(c), MRPC. Respondent's misconduct in the *State v. Tope* matter also violated Rule 3.5(h), MRPC.

THIRD COUNT

Woodberry Matter

40. In September 2012, Edward Woodberry retained respondent for representation in expungement matters.

41. On that date, Woodberry signed respondent's retainer agreement, which provided that once twenty-four hours after representation began had expired, all advance fees would be deemed nonrefundable.

42. Woodberry paid to respondent a \$2,700 advance fee.

43. Respondent's misconduct violated Rule 1.5(b), MRPC.

FOURTH COUNT

Disciplinary Investigation

44. Respondent filed a complaint with the Director against Nelson and Walker. By letter to the Director dated January 19, 2011, respondent stated:

I have complaints against attorney David Walker for:

* * *

(3) wrongfully and in an *ex parte* fashion communicating with getting the presiding judge Chesterman and getting him to go forward with one defendant's case, which defendant was missing a witness it had subpoenaed to trial the same defendant [sic] my client was scheduled for trial and getting the judge Chesterman to continue Ms. Woodson's jury trial scheduled for the same day of the other case last week when he knew he would lose his case if it went to trial because his critical witness was unavailable.

This statement was false. The scheduling of cases was done by a scheduling clerk in the court administrator's office. Walker had not communicated *ex parte* with Judge Chesterman about the scheduling of these matters.

45. By letter dated February 2, 2011, respondent stated to the Director that the victim of Farris' offense was "under age eighteen at the time of the offense." This statement was false. The victim was eighteen years old at the time of the offense.

46. In that February 2 letter respondent also stated:

It should also be noted that David Walker, Esq., when he knew I was representing her last fall 2010, *subpoenaed Ms. Woodson to testify in a companion drug case* to one of the cases she is a defendant in with David Walker, Esq. as the prosecutor. David Walker, Esq. did so without notice to me.

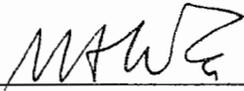
This statement was false. No subpoena was served on Woodson or filed with the court.

47. In that letter respondent also stated, "When I called him [Walker] about it [the subpoena of Woodson referenced in the preceding paragraph], he thought it was perfectly fine." This statement was false. There was no subpoena issued to Woodson.

48. Respondent's misconduct violated Rules 8.1(a) and 8.4(c) and (d), MRPC.

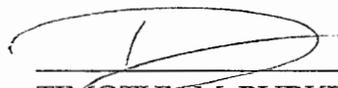
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: November 22, 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



TIMOTHY M. BURKE
SENIOR ASSISTANT DIRECTOR
Attorney No. 19248x