

Private Discipline

The Wisconsin Supreme Court permits the Office of Lawyer Regulation (OLR) to publish, for educational purposes, a summary of facts and professional conduct rule violations in matters in which the OLR imposed private reprimands. The summaries do not disclose information identifying the reprimanded attorneys. The summaries of selected private reprimands are printed to help attorneys avoid similar misconduct problems.

Lack of Diligence and Communication Violations of SCR 20:1.3 and 1.4(b)

An attorney took over representation of a client in the middle of a contested divorce case. The client expressed concerns to the attorney that her spouse had violated previous court orders related to assets and that the spouse's retirement pension had restrictions in the event of a divorce. Upon receiving the file, the attorney observed that there were some financial documents from the client's spouse and incorrectly assumed discovery requests had been made through Wis. Stat. sections 804.08 and 804.09. The attorney did not attempt to make formal discovery requests until the day of the contested divorce hearing, and the court denied the requests. In addition, upon learning the client was pregnant, the attorney did not expect the contested divorce hearing to continue and, consequently, did not prepare financial disclosure forms or a property division worksheet. By not issuing discovery for financial or retirement records and not preparing a property division worksheet for the contested divorce hearing, the attorney violated SCR 20:1.3.

After the contested divorce hearing, the client expressed concern to the attorney that the attorney failed to address any of the items that she prioritized. The attorney told the client he could and would address all the remaining issues through post-hearing motion work, modifying the judgment, and subpoenas. The client believed, consistent with the attorney's representations, that many of the terms of the judgment of divorce were still negotiable or able to be modified when,

under the circumstances, that was not the case. By not adequately explaining the client's postjudgment rights and remedies, the attorney violated SCR 20:1.4(b).

The attorney had no prior discipline.

Lack of Diligence

Violation of SCR 20:1.3

An attorney represented a client in an internal investigation by the client's municipal employer that resulted in the termination of the client. Over the next year, the attorney continued to talk with the client about potential legal actions. The attorney did not file a legal action nor discuss with the client the relevant statute of limitation on further actions, including a possible discrimination complaint to be filed with the Wisconsin Department of Workforce Development – Equal Rights Division (ERD/EEOC) against the municipality. A year after the client's termination, the client contacted another attorney and learned the statute of limitation for filing a claim with the ERD/EEOC had expired.

By failing to ascertain the statute of limitation for the client and missing a potential deadline to file a claim, the attorney failed to act with reasonable diligence and promptness in representing a client, in violation of SCR 20:1.3.

The attorney had no prior discipline.

Lack of Diligence

Violation of SCR 20:1.3

A law firm represented a client who was the plaintiff in a civil case. An attorney with the law firm was assigned to represent the client and was responsible for

handling all aspects of the client's case. The defendant filed a motion to modify the scheduling order and a motion to strike the plaintiff's experts based on allegations that the client had failed to comply with discovery obligations.

The attorney failed to file a response to either motion and did not appear at the motion hearing. The court granted the motions and ordered the attorney to show cause, in writing, for the attorney's failure to respond to the defendant's motions and the attorney's failure to attend the noticed hearing. The court further ordered, "[The attorney] must also explain why the Court should not dismiss this case for failure to prosecute."

The owner of the law firm filed the plaintiff's response to the court's order to show cause and an affidavit in support. In the affidavit, the owner of the law firm stated that until the court's entry of the order to show cause, the owner was not aware that the discovery issues were still outstanding, that an agreement with opposing counsel had not been reached, and that the attorney had failed to appear at the motion hearing. The owner further stated that he immediately terminated the attorney's employment with the law firm.

The court found its order to show cause was satisfied and determined that the case would proceed according to the revised scheduling order.

By failing to file a response to the defendant's motion to modify the scheduling order and motion to strike the plaintiff's experts and thereafter failing to appear at the motion hearing, the attorney violated SCR 20:1.3.

The attorney had no prior discipline.

Criminal Act Reflecting Adversely on Fitness to Practice

Violation of SCR 20:8.4(b)

On May 2, 2023, an attorney pled no contest to one misdemeanor count of obstructing a police officer and one misdemeanor count of disorderly conduct. The attorney's convictions stemmed from an incident on June 16, 2022. The attorney

had been consuming alcohol beverages at a theatre when a uniformed sheriff's deputy providing security asked the attorney to leave because the deputy believed the attorney was intoxicated. The attorney briefly left the premises before returning to retrieve personal property left outside the theatre. The deputy again approached the attorney, who ran from the deputy. As the deputy chased the attorney, the deputy grabbed the attorney's shirt in an attempt to gain control; both the attorney and the deputy fell. The deputy sustained injuries as a result of the fall.

By engaging in conduct resulting in a misdemeanor conviction of obstructing an officer and a misdemeanor conviction of disorderly conduct, the attorney violated SCR 20:8.4(b).

The attorney had no prior discipline.

Criminal Act Reflecting Adversely on Fitness to Practice

Violation of SCR 20:8.4(b)

On June 22, 2023, an attorney pled guilty to one misdemeanor count of endangering safety by use of a dangerous weapon and one misdemeanor count of negligent operation of a motor vehicle. The attorney also pled guilty to one count of first-offense operating while intoxicated. The attorney's convictions stemmed from an incident on March 13, 2022. The attorney drank to the point of intoxication before driving home. The attorney drove the wrong way on an interstate highway bridge, passing at least six vehicles while traveling south in the wrong lane of traffic. A police officer encountered the attorney after the attorney exited the highway and parked. The attorney failed field sobriety tests and refused a preliminary breath test. At the time of the incident, the attorney was struggling with significant personal and mental health issues. The attorney acknowledged that these were not excuses for the conduct. After the arrest, the attorney sought outpatient treatment and counseling.

By engaging in conduct resulting in a misdemeanor conviction of endanger-

ing safety by use of a dangerous weapon and a misdemeanor count of negligent operation of a motor vehicle, the attorney violated SCR 20:8.4(b).

The attorney had no prior discipline.

Incompetence and Inadequate Communication

Violation of SCR 20:1.1 and 20:1.4(a)(2) and (b)

A lawyer prepared a supplemental needs trust (SNT) for a client at the request of a person who had power of attorney for the client. The client's money was used to fund the SNT, which was meant to benefit the client's child. The lawyer never met or spoke directly with the client at any time during the representation to confirm that the trust met the client's objectives. The person with power of attorney over the client had misled the client to believe the person was safeguarding and carefully managing the client's finances, but the

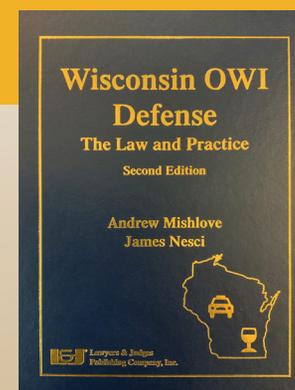
person stole large sums of money from the client, including the money used to fund the SNT.

The lawyer's failure to speak directly to the client before preparing the SNT constituted a lack of preparation necessary to provide competent representation in violation of SCR 20:1.1. The lawyer's failure to discuss directly with the client the advisability of certain provisions in the SNT constituted a failure to provide the consultation and information necessary for the client to decide whether the SNT as drafted met the client's objectives and should be signed. The lawyer thereby violated SCR 20:1.4(a)(2) and (b). **WL**

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By Andrew Mishlove & James Nesci

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