

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2022-OLR- 1

Daniel A. Enright
Attorney at Law

On March 17, 2016, Enright filed a civil suit on behalf of a client against the client's ex-husband. That same day, Enright sent to the client a contingent fee agreement for his representation, which the client signed on March 25, 2016.

In the civil case, the client alleged that on March 18, 2013, the client's ex-husband physically assaulted and battered her, which resulted in serious injuries and damages. The complaint stated that the damages "should be paid by the defendant in accordance with law and include, but are not limited to pain, suffering, medical expense, mental anguish and possible permanent disability and possible future losses for the aforesaid." On October 11, 2016, the court dismissed the civil case without prejudice because Enright failed to serve the defendant with an authenticated copy of the summons and complaint within the required statutory time period. Enright acknowledged this failure in his August 17, 2021 response to the Office of Lawyer Regulation (OLR), stating, "The case that was dismissed because of failure to timely serve the summons and complaint was [the civil case] and I have no excuse. I had it on my desk and simply neglected to have it served."

On January 18, 2018, Enright filed a second civil suit on the client's behalf against the client's ex-husband. The complaint again alleged that on March 18, 2013, the client's ex-husband physically assaulted and battered her, resulting in serious injuries and damages that

should be paid by the client's ex-husband. Enright hoped that the client's ex-husband had "paid for some medical expense through his work health insurance or a payment of that nature," which would have extended the original statute of limitations. Enright did not know at the time of filing the second civil case that a restitution payment stemming from a criminal case could extend the statute of limitations.

On February 5, 2018, the client's ex-husband filed an answer to the complaint arguing that the client's claim was time-barred. Section 893.54 of the Wisconsin Statutes states that an action to recover damages for injuries to the person must be commenced within three years. On February 6, 2018, the client's ex-husband filed a Motion to Dismiss, again asserting that the client's claim was time-barred by Wis. Stat. § 893.54.

The client's ex-husband's February 2018 filings were made pro se. On January 18, 2019, counsel entered a notice of appearance for the client's ex-husband in the second civil case. On February 15, 2019, the defense filed an amended answer with affirmative defenses. Among the listed affirmative defenses were that the applicable statute of limitations barred the client's claims, and that the client's claims "may be barred by virtue of an accord and satisfaction for payments received, in whole or in part."

On June 13, 2019, the defense filed a Motion to Dismiss Based on Statute of Limitations. The Motion to Dismiss argued that the incident alleged in the complaint was an intentional tort that took place on March 18, 2013. Section 893.57 of the Wisconsin Statutes states, "An action to recover damages for libel, slander, assault, battery, invasion of privacy, false imprisonment or other intentional tort to the person shall be commenced within 3 years after the cause of action accrues or be barred." Based on the date of the incident alleged in the complaint, the original

statute of limitations expired on March 18, 2016. However, the defendant's June 13, 2019 Motion to Dismiss stated:

The defendant recognizes that advance payments have the effect of extending the Statute of Limitation. Pursuant to section 893.12 Stats., the period fixed for the limitation of commencement of actions "shall be either the period of time remaining under the original statute of limitations or 3 years from the date of the last payment made under s. 888.285(1), whichever is greater.

The defendant's June 13, 2019 Motion to Dismiss went on to argue that under the relevant case law, restitution payments made by the client's ex-husband, while he was on probation in a criminal case stemming from the March 18, 2013 incident, could have extended the original statute of limitations. In the criminal case, the client's ex-husband pled guilty to one count of Disorderly Conduct with a Domestic Abuse modifier, and one count of Battery with a Domestic Abuse modifier was dismissed but read in. However, only payments made prior to the original statute of limitations expiring, March 18, 2016, would have such an effect of extending the original statute of limitations. The defense argued that the client's ex-husband had made one payment in October 2014 and one on July 22, 2016. The July 22, 2016 payment was made outside the original statute of limitations; therefore, only the October 2014 payment could have triggered the extension. The defense concluded:

To date, the plaintiff has neither alleged nor provided any evidence of payments made prior to the original Statute of Limitations that would have extended the same. The evidence that the defendant has been able to gather shows that the Statute of Limitations, even as extended, would have expired in October of 2017, months prior to commencement of this action.

On January 15, 2014, the court in the criminal case had ordered the client's ex-husband to pay restitution in the amount of \$7,690, plus a \$769 surcharge. The restitution order specifically noted that restitution could be amended after a restitution hearing. Enright provided OLR with a copy of a Unit Receipt for a \$500 restitution payment made by the client's ex-husband on September 23, 2014. A comment on the Unit Receipt states: "Requesting a hold be entered on this payment as a restitution hearing is being scheduled and disbursement of this payment is pending the outcome of the hearing." On April 24, 2015, the court issued a Decision from Restitution Hearing ordering the client's ex-husband to pay restitution in the amount of \$7,690. The Decision did not mention the client's ex-husband's September 23, 2014 \$500 payment.

Enright stated to OLR his belief that the statute of limitations could have been extended three years from the date the court entered a decision from the restitution hearing, but he was not aware of that at the time. Enright stated:

I had only a vague idea of these dates because I was not aware of their significance. It was not until [opposing counsel] filed his motion to dismiss on 6/3/19 that I realized restitution payments could extend the statute of limitation but by then it was too late for us to use those and what we were trying to find was payments made by [the client's ex-husband] for [the client's] injuries or property damages related to her claim but we were unsuccessful.

On October 28, 2019, while the case was still open, Enright and the client entered into an agreement intended to limit Enright's liability for his handling of the client's claims against her ex-husband. The document, titled "Stipulation for Full Release of All Claims," stated:

This agreement is made and entered into by the undersigned parties, on their own behalf, in full and final settlement of any and all claims, known or unknown, currently existing or arising in the future which arise from or are related to legal services with were to be

provided by Daniel A. Enright (the “Released Party”), to [the client] (the “Claimant”) concerning an action against [the client’s ex-husband], for alleged personal injuries to the Claimant

In return, Enright agreed to pay the client \$15,000 “in full settlement of the said claims by January 31, 2020.” According to the Stipulation, if Enright failed to pay the client \$15,000 by January 31, 2020, the Stipulation was void and had no legal effect of any claims the client may have against Enright. The client was not independently represented in making the October 28, 2019 agreement, and Enright did not advise her in writing of the desirability of seeking such independent counsel.

On March 5, 2020, the court accepted the parties’ stipulation to dismiss the second civil case on the merits without costs to either party. Enright ultimately paid the client \$5,000 in August 2020, but made no further payments.

By failing to timely serve the defendant with an authenticated copy of the summons and complaint within the required statutory time period in Chippewa County case no. 16CV76, Enright violated SCR 20:1.3, which states, “A lawyer shall act with reasonable diligence and promptness in representing a client.”

By failing to properly determine the expiration date of the applicable statute of limitations, and by failing to understand how the expiration date for that statute of limitations may have been extended, resulting in the dismissal of Chippewa County case no. 18CV17, Enright violated SCR 20:1.1, which states, “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

By entering into an agreement with his client that absolved Enright of any liability arising from his representation without advising the client of the appropriateness of independent

representation, and without the client obtaining such independent representation, Enright violated SCR 20:1.8(h)(1), which states, “A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement.”

Enright had no prior discipline.

In accordance with SCR 22.09(3), Attorney Daniel A. Enright is hereby publicly reprimanded.

Dated this 23 day of March, 2022.

SUPREME COURT OF WISCONSIN

/s/ David A. Piehler

Referee