

SUPREME COURT OF WISCONSIN  
OFFICE OF LAWYER REGULATION

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Public Reprimand With Consent

2021-OLR-5

Michael S. Murphy  
Attorney at Law

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The Respondent, Attorney Michael S. Murphy (Murphy) was admitted to the practice of law in Wisconsin on September 6, 2005, and practices in Janesville, Wisconsin.

On or about November 27, 2017, a defendant in several criminal matters hired Murphy to provide legal representation. The client paid Murphy advanced fees totaling at least \$1,500 for his representation. There was no written fee agreement for Murphy's representation of the client.

In a March 1, 2018 letter to the client, Murphy provided the Judgments of Conviction and described his calculation of the sentence credit the client received in particular cases.

On March 19, 2018, the client was sentenced to two years of initial confinement followed by two years of extended supervision in a case. At the sentencing hearing on March 19, 2018, the Judge stated, "I am going to find him eligible for the Challenge Incarceration Program, Mandatory Release Program, as well as the Substance Abuse Program, to the extent these are otherwise available to him."

In the Judgment of Conviction After Revocation of Probation in the case, the appropriate box for eligibility to participate in the Substance Abuse Program was not checked. In a Department of Corrections (DOC) Information Request sheet dated May 25, 2018, the client stated "My Lawyer is suppose to get JOC fixed." In the Information Requested section, a DOC employee responded to the client by stating, "If the JOC gets changed then we can look at it. So it is possible. We need release dates first and the amended JOC."

In a June 13, 2018 letter to the Judge, a Corrections Sentencing Associate-Senior stated, “Pursuant to Wis. Admin. Code DOC § 302.22, we are requesting that the Court review the sentence credit granted during the sentencing after revocation hearing for the Judgment of Conviction (JOC).” The Corrections Sentencing Associate-Senior further stated, “We believe [the client] is entitled to receive additional credit.”

On June 29, 2018, even though represented by Murphy, the client filed a pro se Motion for Sentence Credit and for Amended Judgment of Conviction in two cases. In the motion, the client stated, “When I was sentenced the Judge told my lawyer to figure out my time and he would fix my JOC.”

On June 29, 2018, the client also filed a pro se Request for Sentence Modification/Resentence in another case. On July 23, 2018, Murphy filed a Motion Re Sentence Credit in three of the clients’ cases. On July 30, 2018, Murphy filed his Affidavit of Counsel. In his Affidavit, Murphy stated, “That, upon review of the within Matters, it appears that the Defendant is entitled to additional sentence credit.” Murphy’s Affidavit did not set forth the basis for the sentence credit or any other supporting facts.

On August 1, 2018, Murphy filed a Motion for Sentence Credit in another case.

At a motion hearing held on August 10, 2018, the court amended the Judgments of Conviction with regard to sentence credit in four cases as follows: 365 days instead of 396; 212 days instead of 31; 13 days instead of zero; and 93 days instead of zero.

On August 22, 2018, a Stipulation and Order Re: Sentence Credit in another case was filed. In the Order, the court ordered, “The within Judgment of Conviction shall be amended to reflect that the Defendant is entitled to 354 days of Sentence Credit on Count 3, and 113 days of Sentence Credit on Count 4.” In the same case, on October 11, 2018, the Judgment of

Conviction was amended to reflect the client's eligibility for the Substance Abuse Program pursuant to stipulation between Murphy and the District Attorney.

On January 7, 2019, the client was scheduled to receive a telephone call from Murphy at the Correctional Institution. Murphy did not call the client. On January 24, 2019, the client was scheduled to receive a telephone call from Murphy at the Correctional Institution. Again, Murphy did not call the client.

On or about, January 30, 2019, the client hired new counsel. Successor counsel identified the error that the appropriate box for Substance Abuse Program eligibility was not checked on the Judgment of Conviction. On or about, January 31, 2019, the client's successor counsel filed a motion to amend the Judgment of Conviction to correct the error.

On January 31, 2019, a Stipulation and Order to Amend Judgment of Conviction was filed in the client's case. The stipulation and order stated, "That the original sentence has been frustrated because the Judgment of Conviction did not reflect defendant's ability to participate in Substance Abuse Programming while in the Wisconsin State Prison System." The stipulation and order further stated, "Had the defendant been eligible to participate, the period of initial confinement would have been shortened and defendant likely would have been released several months prior to the date of this stipulation." Based on these circumstances the parties stipulated to a sentence modification.

On February 1, 2019, the day after successor counsel corrected the error, the client was released from confinement.

On December 20, 2019, the client and his wife, through counsel, filed a summons and complaint alleging legal malpractice against Murphy. Murphy's insurance company was also a named defendant.

In the complaint, the client stated, “Murphy’s negligent acts and omissions spread over several matters all relating to the computation of sentencing and the failure to correct an erroneous calculation.”

On or about August 26, 2020, the parties settled the legal malpractice action.

By failing to communicate to the client in writing the scope of his representation or the basis or rate of his fee or expenses for which the client would be responsible; and by failing to communicate to the client in writing the purpose and effect of the advanced fees that were paid to him, Murphy violated SCR 20:1.5(b)(1), which states:

The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate as in the past. If it is reasonably foreseeable that the total cost of representation to the client, including attorney’s fees, will be \$1000 or less, the communication may be oral or in writing. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.

and SCR 20:1.5(b)(2), which states:

If the total cost of representation to the client, including attorney’s fees, is more than \$1000, the purpose and effect of any retainer or advance fee that is paid to the lawyer shall be communicated in writing.

By failing to take steps to accurately determine the sentence credit the client was entitled to receive in the cases and by failing to verify the accuracy of the Judgment of Conviction in a case, Murphy violated SCR 20:1.3, which states, “A lawyer shall act with reasonable diligence and promptness in representing a client.”

By failing to respond to the client’s telephone calls and failing to call the prison for his scheduled telephone calls with the client, Murphy violated SCR 20:1.4(a)(4), which states, “A lawyer shall...(4) promptly comply with reasonable requests by the client for information...”

Murphy received a private reprimand in 2015.

In accordance with SCR 22.09(3), Attorney Michael S. Murphy is hereby publicly reprimanded.

Dated this 25th day of April, 2021.

SUPREME COURT OF WISCONSIN

                  /s/ Joseph Jacobson                    
Joseph Jacobson, Referee