

SUPREME COURT OF WISCONSIN

OFFICE OF LAWYER REGULATION

Public Reprimand with Consent

JAMES E. TORAN

2021-OLR-4

On July 23, 2015, Attorney James E. Toran was contacted by parents seeking representation for their son, who in 2009 had pled guilty to one count of felony 1st degree sexual assault of a child under the age of 13, and had been sentenced to ten years in prison followed by ten years of extended supervision. That same day, the parents advanced Toran \$1800 for Toran’s representation of their son. The advanced funds would later be deemed to cover both legal services and costs. No apportionment was stated at the time of the delivery of the funds or at the time a fee agreement was executed in November of 2016. *See below.*

On August 6, 2015, Toran deposited the funds advanced by the parents into his trust account. That same day, Toran took a \$100.00 cash withdrawal from funds he deposited into his trust account.

On November 20, 2016, approximately 16 months after receiving the \$1800 advance from the parents, Toran entered into a written fee agreement with the father related to Toran’s representation of the son. The agreement characterized the funds paid to Toran by the parents as an “initial retainer” and contemplated potential additional payments for costs. No funds beyond the initial \$1800 were ever paid to Toran for the representation. Toran eventually determined that part of the \$1800 was intended to cover costs. *See below.* Notwithstanding Toran’s

characterization of the received funds as an “initial retainer,” any funds not apportioned for costs actually constituted an advanced fee¹, as those funds were paid in contemplation of future legal services.

There is disagreement about the scope of Toran’s representation. Toran asserts he was hired to act as a go-between for his client and his client’s appellate counsel and to assess if there were any viable postconviction issues to pursue. The fee agreement notes that Toran will, “investigate status of appeal that was never filed,” visit his client in prison, and obtain a copy of the plea transcripts. A note at the end of the agreement states that Toran had already met with the son’s appellate counsel approximately six times and that Toran, “will do what I can to try to assist him.” Toran ends the note by stating, “This is a very difficult situation for him given Guilty Plea.” Toran never filed a notice of appearance in his client’s case. In fact, the son’s appellate counsel continues to be listed as the son’s counsel of record.

The son asserts that Toran was hired to “pursue my postconviction.” The son asserts Toran was aware of the poor representation appellate counsel had provided the son and was hired to take over the appellate representation.

Toran asserts that, after completing his review of his client’s case, he informed the father that he (Toran) had not identified any viable postconviction issues and it was agreed that it was not wise to invest any more money into the matter, including not ordering the plea transcripts.

According to a January 28, 2019 final accounting provided by Toran to the son, between July of 2015 and December of 2018, Toran performed various work on his client’s behalf

¹ Former SCR 20:1.0(ag), effective until July 1, 2016, defines an advanced fee as an amount paid to a lawyer in contemplation of future services, which will be earned at an agreed-upon basis, whether hourly, flat, or another basis. Any amount paid to a lawyer in contemplation of future services whether on an hourly, flat or other basis, is an advanced fee regardless of whether that fee is characterized as an "advanced fee," "minimum fee," "nonrefundable fee," or any other characterization. Advanced fees are subject to the requirements of SCR 20:1.5, SCR 20:1.15(b)(4) or (4m), SCR 20:1.15(e)(4)h., SCR 20:1.15(g), and SCR 20:1.16(d). Current SCR 20:1.0(ag) differs only as to the rules

including visiting him in prison; speaking with appellate counsel numerous times about the case; speaking with his client's parents about the case, contacting the district attorney to gauge the prosecution's willingness to consider a sentence modification, and conducting legal research.

While it is unclear exactly when Toran made disbursements from his trust account for the purpose of paying himself for the work he performed on the son's behalf, by the end of August 2015, Toran's trust account balance had fallen to \$1,169.24, meaning he no longer held the entirety of the \$1800 advance the parents had paid to him and had, therefore, already disbursed at least some of the funds to himself.

At no time did Toran notify the parents or his client that he was making disbursements from his trust account for the purpose of paying fees earned by him for work performed on the son's behalf.

Along with the January 28, 2019 final accounting, Toran sent a check in the amount of \$85.25, also dated January 28, 2019, and made payable to the father. The check was drawn on Toran's trust account and represented a refund for the cost of the transcripts ultimately not obtained by Toran. The check's memo line reads, "Reimbursement 31 pgs Transcripts \$2.75." (31 pages at \$2.75 per page comes to \$85.25.)

In August of 2017, the balance in Toran's trust account fell to \$22.24. Because Toran had decided to apportion \$85.25 of the advance paid by the parents to the cost of transcripts, and because Toran had not incurred that cost, Toran should have continued to hold the entirety of the \$85.25 in trust.

During the course of the investigation of this matter, Toran was twice asked to provide records showing the deposit of the \$1800 advance paid by the parents into his trust account.

referenced in the final sentence, as necessitated by other rule changes that went into effect July 1, 2016.

Toran failed to produce those records. OLR eventually subpoenaed the records from Toran's bank.

By failing to timely enter into a written fee agreement with regard to his representation of the son when the total cost of the representation exceeded \$1000.00, Toran violated SCR 20:1.5(b)(1) and SCR 20:1.5(b)(2). SCR 20:1.5(b)(1) states in relevant part, "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." SCR 20:1.5(b)(2) states, "If the total cost of the 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 making a cash withdrawal from funds he deposited into his trust account, Toran violated former SCR 20:1.15(f)(2)a., effective until July 1, 2016, which states, "No disbursement of cash shall be made from a trust account or from a deposit to a trust account, and no check shall be made payable to "Cash.""

By withdrawing from his trust account the advanced fees paid to him related to his representation of the son without providing the proper notices, Toran violated Former SCR 20:1.15(g)(1), effective prior to July 1, 2016, and current SCR 20:1.5(h)(1). Former SCR 20:1.15(g)(1) states, "At least 5 business days before the date on which a disbursement is made from a trust account for the purpose of paying fees, with the exception of contingent fees or fees paid pursuant to court order, the lawyer shall transmit to the client in writing all of the following: a.

an itemized bill or other accounting showing the services rendered; b. notice of the amount owed and the anticipated date of the withdrawal; and c. a statement of the balance of the client's funds in the lawyer trust account after the withdrawal.” Current SCR 20:1.5(h)(1) states, “At least 5 business days before the date on which a disbursement is made from a trust account for the purpose of paying fees, with the exception of contingent fees or fees paid pursuant to court order, the lawyer shall transmit to the client in writing all of the following: a. an itemized bill or other accounting showing the services rendered; b. notice of the amount owed and the anticipated date of the withdrawal; and c. a statement of the balance of the client's funds in the lawyer trust account after the withdrawal.”

By failing to hold in trust that portion of the \$1800 advance intended to cover costs, Toran violated former SCR 20:1.15(b)(4), effective prior to July 1, 2016, and current SCR 20:1.5 (f). Former SCR 20:1.15(b)(4) states in relevant part, “Funds advanced by a client or 3rd party for payment of costs shall be held in trust until the costs are incurred.” Current SCR 20:1.5 (f) states in relevant part, “funds advanced by a client or 3rd part for payment of costs shall be held in trust until the costs are incurred.”

By issuing a check from his trust account to the father in the amount of \$85.25 on January 28, 2019 when he did not hold sufficient funds belonging to the parents to cover that check, thereby using funds belonging to another client or 3rd party to cover the check, and thereby failing to hold in trust the funds of another client or 3rd party, Toran violated SCR 20:1.15(b)(1), which states in relevant part, “A lawyer shall hold in trust, separate from the lawyer’s own property, that property of clients and 3rd parties that is in the lawyer’s possession in connection with a representation....”

By issuing a check from his trust account to the father in the amount of \$85.25 on January 28, 2019 when he did not hold sufficient funds belonging to the parents to cover that check, thereby using funds belonging to another client or 3rd party to cover the check, and thereby failing to hold in trust the funds of another client or 3rd party, Toran violated SCR 20:8.4(c), which states, “It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

By willfully failing to provide OLR with trust account records documenting the deposit of the \$1800 advance paid to him by the parents into his trust account, Toran violated SCR 20:1.15(g)(2) and SCR 22.03(6). SCR 20:1.15(g)(2) states in relevant part, “All trust account records have public aspects related to a lawyer’s fitness to practice. Upon request of the office of lawyer regulation, or upon direction of the supreme court, the records shall be submitted to the office of lawyer regulation for its inspection....” SCR 22.03(6) states, “In the course of the investigation, the respondent's wilful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance.” SCR 22.03(6) is enforceable via SCR 20:8.4(h), which states, “It is professional misconduct for a lawyer to fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by SCR 21.15(4), SCR 22.001(9)(b), SCR 22.03(2), SCR 22.03(6), or SCR 22.04(1).”

In 1989, Toran's license to practice law was suspended for 6 months. In 1991, he was publicly reprimanded. In 2007, he received a private reprimand. He was publicly reprimanded in 2012. In 2018, his license was suspended for 60 days.

In accordance with SCR 22.09(3), Attorney James E. Toran is hereby publicly reprimanded.

Dated this 19th day of April, 2021.

SUPREME COURT OF WISCONSIN

/s/ Charles Barr
THE HONORABLE CHARLES H. BARR, REFEREE