

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2020-OLR-6

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Attorney at Law

In August 2017, Torphy succeeded another attorney (“predecessor counsel”) in representing a man (“the client”) and the client’s LLC as defendants in a civil case in Milwaukee County Circuit Court. The case involved disputes over an easement and management of the common areas used by 12 neighboring apartment buildings, one of which was owned by the client’s LLC. Predecessor counsel had encouraged the client toward largely baseless counterclaims that not only had very little chance of success but also exposed the client and his LLC to frivolous claim sanctions and caused the civil case to be needlessly complicated.

Unbeknownst to the client, when Torphy took over the representation, Torphy was representing predecessor counsel in a disciplinary action brought by the Office of Lawyer Regulation (OLR). That case included allegations that predecessor counsel had discussed with another client claims that lacked legal and evidentiary support, without advising that client about the meager chances of those claims ever succeeding. When hired, Torphy did not tell his client of his representation of predecessor counsel in the disciplinary action.

When Torphy took over the representation, the client, the LLC, and predecessor counsel were subject to a motion to strike the answer and counterclaims filed by predecessor counsel and for sanctions pursuant to Wis. Stat. § 802.05(3). Torphy successfully moved to withdraw the answer, affirmative defenses, and counterclaims filed by predecessor counsel, and made new

filings. The sanctions motion remained pending as to predecessor counsel but was rendered moot as to the client and the client's LLC.

On or before December 13, 2017, Torphy sent the client an Affidavit in Support of a Motion to Dismiss the client as a party to the civil case. Torphy instructed the client to sign the Affidavit, but not to date it, and to email Torphy a scan of the signed affidavit. The client did that on December 14, 2017. On or about December 14, 2017, Torphy notarized his client's signature on the Affidavit, falsely stating that on December 14, 2017 the client had subscribed and sworn to the Affidavit before Torphy. On January 4, 2018, Torphy filed the motion to dismiss the client from the Milwaukee County civil action, along with the Affidavit containing the false notarization.

On or about March 7, 2018, Torphy began representing predecessor counsel in an open grievance investigation pending with OLR. This grievance was separate from the disciplinary action already being pursued by OLR against predecessor counsel, and did not involve predecessor counsel's representation of the client then being represented by Torphy in the Milwaukee County civil action. As in the disciplinary action and the Milwaukee County civil action, the grievance included allegations that predecessor counsel had made unrealistic predications about potential recoveries and procedural matters, without providing proper advice as to the slim chances for such outcomes. Torphy did not inform the client that he had taken on the representation of predecessor counsel in the new grievance matter.

On March 16, 2018, Torphy's client filed his own grievance against predecessor counsel, alleging misconduct related to the Milwaukee County civil action in which Torphy then represented the client. The client alleged that predecessor counsel failed to provide competent representation, had caused the client and the LLC harm by filing meritless claims, and that the

client had to hire Torphy to withdraw predecessor counsel's filings and make proper filings in the civil action, all of which cost the client additional legal fees. The client alleged in his grievance that he learned from Torphy how unlikely predecessor counsel's predications were regarding large recoveries of damages and attorney fees that the client and his LLC could anticipate in the civil action. No later than March 16, 2018, the client told Torphy that he had filed a grievance against predecessor counsel. On several occasions after March 16, 2018, the client discussed the grievance with Torphy and communicated with Torphy regarding the client's efforts to obtain a refund of fees paid to predecessor counsel, believing he was communicating with Torphy as his and the LLC's attorney. Torphy believed the client's OLR grievance was not the best way to pursue a fee refund from predecessor counsel, and Torphy knew of other means by which the client could pursue such a refund. However, due to Torphy's perceived obligations to predecessor counsel, whom he was also representing, Torphy did not tell the client about other ways to seek a refund.

Prior to September 24, 2018, Torphy did not tell his client that Torphy represented predecessor counsel in both the pending disciplinary action and the unrelated grievance matter. Torphy further failed to advise the client that, because Torphy represented predecessor counsel in the other matters, the client should not discuss with Torphy any claims the client believed he and/or the LLC had against predecessor counsel, Torphy would not provide any advice regarding such claims, or the client should consult with other counsel regarding those claims. Torphy also did not seek or obtain from the client or the LLC a waiver of any conflicts of interest that might be present due to Torphy's simultaneous representation of the client, the LLC, and predecessor counsel.

On March 13, 2018, opposing counsel in the Milwaukee County litigation sent Torphy Plaintiffs' First Set of Interrogatories and Request for Production of Documents (the Discovery requests). Responses were due April 13, 2018, but Torphy did not provide his client with a copy of the Discovery requests until May 11, 2018.

The scheduling order in the civil case called for the parties' witness lists and statements of damages to be filed by March 16, 2018. Opposing counsel made timely filings. Torphy did not. Torphy had not negotiated with opposing counsel for an extension, nor had he filed a motion with the court to modify the scheduling order. On April 18, 2018, Torphy contacted the client for assistance in preparing a witness list, which Torphy told the client had to be filed by midnight that night. Torphy did not inform the client that the filings due March 16, 2018 were already late, that he had not negotiated an extended deadline with opposing counsel, nor had he filed an extension motion with the court, and that it was possible the court would not allow a late filing. On April 19, 2018, Torphy filed the client's and LLC's witness list and statement of damages, along with a Motion For Enlargement of Time to file the witness list and statement of damages, and to extend the period for discovery until April 30, 2018. In the Motion, Torphy asserted the untimely filing was due to Torphy miscalendaring the due date as June 13, 2018 rather than March 16, 2018, stemming from Torphy's "over obligated calendar, a broken rib and the loss of an assistant all between January 3, 2018 and [April 18, 2018]."

On April 20, 2018, opposing counsel advised Torphy that her clients would not object to the timeliness of the defendants' witness list if she received Discovery responses by April 30, 2018, and if Torphy agreed to extend the discovery period until May 31, 2018 in order to allow time for opposing counsel to depose Torphy's client after her receipt of the Discovery responses. Torphy agreed to the proposal. On April 24, 2018, consistent with her April 20, 2018

negotiations with Torphy, opposing counsel filed a stipulation to modify the scheduling order and a proposed order, which the court entered on April 25, 2018. Between April 20, 2018 and May 11, 2018, Torphy did not provide his client with a copy of the Discovery requests, or discuss with his client that opposing counsel's agreement to modify the scheduling order was conditioned on her receipt of the Discovery responses by April 30, 2018. Torphy also did not advise his client that a failure to provide complete and accurate Discovery responses by April 30, 2018 could result in opposing counsel filing a motion for sanctions, nor did Torphy explain what any such sanctions might entail.

On or about April 26, 2018, opposing counsel and Torphy agreed that opposing counsel would take Torphy's client's deposition on May 15, 2018. Opposing counsel memorialized this with a May 8, 2018 Notice of Deposition sent by email. In a May 8, 2018 cover letter that accompanied the Notice, opposing counsel inquired as to the status of the Discovery responses, which she wanted with sufficient time to review prior to the scheduled May 15, 2018 deposition. The same day, Torphy forwarded the May 8, 2018 email to his client, but Torphy did not take any action to prepare, or cause his client to prepare, the Discovery responses. On May 11, 2018, opposing counsel sent Torphy by email a letter informing Torphy that she would not depose Torphy's client until she had received the Discovery responses, and she requested that Torphy advise her of when she would receive the Discovery responses. Opposing counsel also wrote in the letter, "Kindly advise [your client] that if he does not cooperate with discovery before the extended [discovery] deadline of May 31, 2018, I will seek sanctions for his continued delay." On Friday, May 11, 2018, after receipt of opposing counsel's letter, Torphy sent his client by email opposing counsel's March 13, 2018 letter and the accompanying Discovery requests. Torphy advised in his email, "I need to get these answers completed over the weekend." The

client's initial response was that he did not intend to provide the plaintiffs with certain information sought in the Discovery requests. Torphy replied, "[W]e don't have the right to refuse to answer any question legitimately associated with the properties. If you don't answer them the court will compel us and then you will have to pay the cost...for that hearing." The client then introduced the matter of his pending grievance against predecessor counsel to the email exchange with Torphy. The client told Torphy he did not believe information about his personal interests should be provided to the plaintiffs until after OLR completed its investigation of his grievance against predecessor counsel, adding that predecessor counsel had promised the client he would not be a party in the civil action in his personal capacity. The client also complained that he would have liked to have received the Discovery requests from Torphy a week earlier because the client would be extremely busy over the upcoming weekend and he did not have the requested information readily available. Shortly thereafter, the client told Torphy by email he would be unable to compile the information required to respond to the Discovery requests by Monday, May 14, 2018. The client asked Torphy why Torphy had not forwarded the Discovery requests prior to May 11, 2018 if the Discovery requests had been sent to Torphy on March 13, 2018. In the course of their May 11, 2018 email exchange, Torphy did not provide his client with a copy of opposing counsel's May 11, 2018 letter, nor did Torphy explain that opposing counsel intended to cancel the client's May 15, 2018 deposition if the Discovery responses were not filed by Monday, May 14, 2018. On May 14, 2018, opposing counsel postponed the deposition scheduled for the next day because she had not received the Discovery responses. Opposing counsel informed Torphy that she still intended to conduct the deposition before the May 31, 2018 discovery deadline.

On May 21, 2018, the client sent Torphy by email information and documents the client intended for Torphy's use in preparing Discovery responses on behalf of the client and the LLC. The materials provided to Torphy did not respond to any of the plaintiffs' interrogatories, were not in the proper form of a discovery response, were not signed, and provided incomplete responses to plaintiffs' request for production of documents. Further, the materials provided to Torphy included potentially confidential information related to the client's interpretations or beliefs about documents and the civil case, communications the client had had with opposing counsel prior to commencement of the civil case, and the client's suggested settlement terms.

On June 6, 2018, opposing counsel filed a Motion to Compel Discovery, Modify Scheduling Order, and Assess Costs against Torphy's client and the client's LLC for their failure to provide responses to the Discovery requests, and notified Torphy that a hearing on the Motion was scheduled for June 28, 2018. Between the client's May 21, 2018 transmission of information to Torphy and June 6, 2018, Torphy had failed to prepare Discovery responses or provide his client with guidance necessary for the client himself to prepare proper Discovery responses. On June 6, 2018, in response to opposing counsel's email conveying the Motion, Torphy sent opposing counsel the materials that his client had provided to Torphy on May 21, 2018, including the client's communications to Torphy of potentially confidential information. In the accompanying email to opposing counsel, Torphy wrote, "Oddly, I just received these. I have not had time to completely review but perhaps we both can and then discuss how to proceed re your motion." On June 6, 2018, opposing counsel advised Torphy by email that the materials Torphy had provided to her were not responsive to the interrogatories, were unsigned, unacceptable, and that she intended to proceed with the June 28, 2018 hearing on the Motion.

On June 6, 2018, Torphy forwarded opposing counsel's June 6, 2018 email to his client. Torphy, however, did not provide his client with a copy of the Motion to Compel or the supporting affidavit, which described opposing counsel's efforts to obtain Discovery responses and the asserted failings of Torphy's client and the client's LLC to properly respond to Discovery. While Torphy and his client communicated about the Discovery on June 7 and 8, 2018, Torphy did not thereafter prepare proper Discovery responses for the client's review and signature, nor did Torphy provide his client with the information that would allow the client himself to prepare proper Discovery responses. Torphy likewise did not provide his client with a copy of the Motion to Compel or cause his client to understand that if the client and his LLC did not provide complete and accurate responses to the Discovery prior to the June 28, 2018 hearing, the court could sanction the client and the client's LLC. Torphy also failed to explain what any sanctions might entail.

During the June 28, 2018 hearing, with regard to assigning fault for the delayed Discovery responses, Torphy told the circuit court:

With respect to the actual delay itself between the time of the receipt of the interrogatories and the responsive information provided, um, myself and [my client] were not in good communication. I fault myself primarily in that regard. The time period in question I had several matters which were occupying significant amounts of my time, and I believe that I had actually e-mailed the interrogatories to him immediately after receiving them. It looks like in a review that I did not. Subsequent to that, obviously, [my client] did receive them from me prior to [June] 6th, took time, put them together, put responses together, and we did provide those responses. I would note for the Court that I did e-mail the same

day that I received them and provided that copy to [opposing counsel] at that point. The delay relative to the actual service, effectively, and the response is [sic] I accept responsibility as my own. I do believe there was probably about a three and a half week period in the middle there where [my client] did not receive them from me so he was unaware...In the interest of trying to provide the copy that I received from [my client] directly to opposing counsel, I did in fact e-mail it that same day.

Torphy's statements to the court misrepresented the length of time it took him to provide the Discovery requests to his client, which was in fact more than eight weeks after Torphy received them from opposing counsel. Torphy also misrepresented to the court that he provided opposing counsel the materials he received from his client the same day that he received them. In fact, Torphy received the materials from his client on May 21, 2018, but he did not send the materials to opposing counsel until June 6, 2018, after Torphy received opposing counsel's Motion to Compel.

At the June 28, 2018 hearing, the court granted plaintiffs' Motion to Compel Discovery and ordered Torphy's client and the LLC to provide the plaintiffs with signed notarized Discovery responses within 21 days of the hearing. The court also set new deadlines for depositions. On July 20, 2018, Torphy provided compliant Discovery responses to opposing counsel.

The court also issued a sanctions order adverse to Torphy at the June 28, 2018 hearing, requiring Torphy to personally pay opposing counsel's costs in having to bring the Motion to Compel. On July 1, 2018, opposing counsel sent Torphy a statement for services showing \$1,248 due as sanctions. Torphy did not object to the amount of sanctions or request any further

documentation. Sometime between July 1, 2018 and August 29, 2018, Torphy discussed the sanctions with opposing counsel, and Torphy acknowledged that he owed opposing counsel the amount shown on her statement. Opposing counsel informed Torphy that she would work with him regarding payment of the sanctions and she did not pursue collection of the sanctions. As of June 30, 2020, however, Torphy had not paid anything toward the court-ordered sanctions.

By letter dated July 19, 2018, OLR requested information and records from the client concerning his grievance against predecessor counsel. OLR's letter specifically referenced the grievance and the OLR case number assigned to the matter. OLR asked the client to provide, or have his successor counsel provide, documents related to the Milwaukee County civil action. The client passed the letter on to his successor counsel, Torphy, who then telephoned the assigned OLR investigator on July 24, 2018 to discuss OLR's request for documents. The OLR investigator pointed out that while only case-related documents were being sought from Torphy at that time, Torphy was also a potential witness in the investigation, given his status as successor counsel to the attorney who was the subject of the client's grievance. The OLR investigator was aware that Torphy was counsel for predecessor counsel in a disciplinary action and in an open, unrelated grievance matter. Torphy broached the subject of a global resolution of all OLR matters then pending against predecessor counsel. The investigator provided general information regarding a petition for consensual license revocation pursuant to SCR 22.19, and stated that resolution of the disciplinary action then pending against predecessor counsel should be taken up with the attorney representing OLR in that matter.

On or about July 24, 2018, Torphy discussed OLR's July 19, 2018 letter with predecessor counsel and obtained predecessor counsel's consent to provide OLR with the requested documents. Torphy, however, had not sought the client's permission to discuss OLR's letter or

the nature of the requested information with predecessor counsel. Further, Torphy still had not disclosed to the client that he represented predecessor counsel in other OLR matters or that he had sought predecessor counsel's consent to the production of records for OLR relevant to the client's grievance against predecessor counsel. Torphy engaged in no discussion of conflicts of interest with the client at that time. On July 24, 2018, Torphy provided OLR with the documents requested in OLR's July 19, 2018 letter.

In late July 2018, Torphy made contact with the attorney representing OLR in the disciplinary action then pending against predecessor counsel to discuss a petition for consensual revocation pursuant to SCR 22.19, so as to resolve all matters, at all stages, then pending against predecessor counsel. During an August 13, 2018 telephone call with OLR's counsel, Torphy acknowledged that he was aware of at least one open grievance matter in which he did not represent predecessor counsel, in addition to the disciplinary action and the unrelated grievance matter in which he did represent predecessor counsel. During the August 13, 2018 telephone call, OLR's counsel advised Torphy that a petition filed pursuant to SCR 22.19 would be accompanied by a copy of OLR's complaint in the pending disciplinary action and a summary of the allegations being investigated in all pending OLR grievance matters not yet before the Court. By email sent on August 13, 2018, Torphy informed OLR's counsel in the disciplinary proceedings that predecessor counsel "desire[d] to resolve all existing matters" through a petition for consensual license revocation. In that email, Torphy acknowledged that he represented predecessor counsel in the pending disciplinary action and in the investigation of the grievance unrelated to the client's grievance, and that predecessor counsel had informed Torphy of at least one other pending grievance investigation. At that time, the only other grievance pending against predecessor counsel was the one filed by Torphy's client in the Milwaukee County civil action.

On August 15, 2018, opposing counsel in the Milwaukee County litigation issued a Notice of Deposition to Torphy's client requiring the client to appear for his deposition on August 28, 2018, and to bring certain documents with him. Torphy did not provide his client with a copy of the August 15, 2018 Notice or inform him that he was required to bring specific documents with him to his deposition.

On August 22, 2018, the attorney representing OLR in the disciplinary action then pending against predecessor counsel provided Torphy a draft petition for voluntary revocation for predecessor counsel's consideration. The accompanying cover letter informed Torphy that attached to the petition was a summary of the pending investigations in "two presently uncharged grievance matters." The summary recited the allegations under investigation in the client's grievance against predecessor counsel as well as the allegations lodged in the unrelated pending grievance. Torphy asserts he did not read the attached summary of pending grievances before forwarding the petition to predecessor counsel.

On August 28, 2018, Torphy and his client failed to appear for the client's deposition. When contacted by opposing counsel, Torphy cited calendaring problems. Opposing counsel agreed to reschedule the deposition for the next day. On August 28, 2018, Torphy texted his client to tell him that he was required to appear on August 29, 2018 for his deposition. Torphy still did not provide his client a copy of the August 15, 2018 Notice or instruct the client to bring the specified documents to the deposition. During the evening of August 28, 2018, the client texted Torphy to request a copy of the Notice requiring him to appear for the August 29, 2018 deposition. Torphy responded by referencing the May 2018 Notice of Deposition, but the client persisted in his request for a copy of the Notice of his August 29, 2018 deposition. Torphy then emailed his client a copy of the May 8, 2018 Notice of Deposition, but not the August 15, 2018

Notice of Deposition. The May 8, 2018 Notice did not include instructions for the client to bring any specific documents with him to the deposition. The client informed Torphy by text that he needed something in writing with a date on it to show his employer that he was required to appear the next day. Instead of providing a copy of the August 15, 2018 Notice of Deposition, Torphy emailed his client a letter from Torphy stating that the client was required to appear for his deposition on August 29, 2018.

On August 28, 2018, Torphy and his client also exchanged a series of text messages regarding the client's OLR grievance against predecessor counsel. In those texts, the client told Torphy that he wanted a copy of the Notice of Deposition requiring him to appear on August 29, 2018 to "turn over to the State," meaning OLR. By text, Torphy responded, "Why would you need to turn this over to the State? This is long after [predecessor counsel.]" The client referenced OLR's investigation and stated, "I thought you knew this when the state ask[ed] for the entire case to be forward[ed] to them." Torphy responded, "Okay not sure how that will affect [predecessor counsel]. He exposed you to claims of over trial and frivolousness but those have been eliminated by the amended filing." Torphy then emailed his client a copy of the Third Amended Answer and Counterclaims that Torphy had filed on behalf of the client and the LLC, and texted the client, "I sent you copies of the amended filings we made[.] [T]hese effectively cut off any liability [predecessor counsel] exposed you to."

On August 29, 2018, opposing counsel in the Milwaukee County civil case deposed Torphy's client, who did not bring the required documents to the deposition because Torphy had failed to instruct him to do so. During the deposition, when reference was made to the client's grievance against predecessor counsel, Torphy stated, "I'm not going to explain anything [about the client's grievance against predecessor counsel]. I'm just going to -- because the issue relative

to this case is related to prior counsel, it doesn't need to be of record in this matter. And frankly, I'm not allowed to disclose anything one way or the other because I'm stuck in an awkward situation relative to that.”

On September 5, 2018, Torphy received from predecessor counsel the signed signature page for the SCR 22.19 petition for consensual license revocation. Torphy signed the petition as counsel for predecessor counsel and returned the signed petition to OLR. On September 18, 2018, OLR filed the petition with the Wisconsin Supreme Court. On September 21, 2018, OLR sent Torphy’s client in the Milwaukee County litigation a copy of the petition, as the client’s grievance was one of the matters that would be resolved by the petition. The client received OLR’s correspondence on September 24, 2018. It was only at that time, by reviewing the petition, that the client learned that Torphy represented predecessor counsel in the other OLR matters. The client texted Torphy on September 24, 2018 and asked Torphy whether he represented predecessor counsel. Torphy did not respond. On September 25, 2018, the client filed an OLR grievance against Torphy.

In emails to Torphy sent between October 3 and 5, 2018, the client expressed concerns that Torphy had failed to respond to requests for information since September 19, 2018, and that Torphy may have been acting under a conflict of interest during his representation of the client and the client’s LLC in the Milwaukee County litigation. On October 5, 2018, Torphy sent his client a letter in which Torphy for the first time informed the client that Torphy represented predecessor counsel with regard to two OLR matters. Torphy requested that the client waive the conflicts of interest caused by Torphy’s simultaneous representation of predecessor counsel, the client, and the client’s LLC. In the letter, Torphy misrepresented that he had not been aware of the client’s grievance against predecessor counsel until September 2018. Between October 5 and

30, 2018, Torphy and his client exchanged emails and texts, and attempted to speak by telephone, regarding several versions of conflict waivers proposed by Torphy. Torphy continued to misrepresent that he had not been aware until September 2018 that his client had filed a grievance against predecessor counsel, which contributed to the client's distrust of Torphy's efforts to obtain a waiver.

On October 30, 2018, Torphy filed a Motion to Withdraw from his representation of the client and the client's LLC in the Milwaukee County civil case. That same day, the client and Torphy appeared for the final pre-trial in the matter, during which the court granted Torphy's motion to withdraw. During the hearing, Torphy misled the court as to his knowledge of the client's grievance against predecessor counsel, and as to his communications with OLR. Torphy told the court:

At that point, I provided to an OLR investigator a series of documents associated with [the civil case]; some of which were public record and some of which were discovery responses. The OLR investigator specifically refused to inform me of whether or not there was even or not there was [sic] an open case against [predecessor counsel] and merely agreed that if [the client] directed me to e-mail the documents to her that I could do so...There is no information that I received that [the client's] case had been reduced to an actual case number or in fact that there was any direction that they were headed with it. As I tried to explain to [the client], many cases are initially complained to the OLR and result in no action...I never spoke with an OLR investigator or had any representations other than to try to secure information from OLR if it had been reduced to a formal investigation, and they would not gave [sic] me that information.

Torphy did not inform the court that the client had informed Torphy about the investigation of his grievance against predecessor counsel, and that the client had provided Torphy with a copy of correspondence from OLR that referenced the open investigation and included the matter number assigned to the investigation. Torphy also did not inform the court that during the telephone call, OLR informed Torphy that it considered him a potential witness in the investigation of the client's grievance against predecessor counsel, or that OLR specifically informed Torphy that while it was seeking only documents from him at that time, OLR would likely approach Torphy thereafter as a witness, in his role as the client's successor counsel, to opine as to whether predecessor counsel had provided the client and the client's LLC with competent and diligent representation in the civil case.

Between October 5 and 30, 2018, Torphy made factual misrepresentations to his client about when and how the conflict of interest arose, Torphy's knowledge of his client's grievance against predecessor counsel, and OLR's communications with Torphy, including misrepresenting to his client: "While I have been aware you were upset with [predecessor counsel], and that you were seeking financial reimbursement for fees you paid to him, I was not aware you had filed a complaint with the OLR until approximately September 24, 2018."; "At the time I reached this agreement [for predecessor counsel to file a petition pursuant to SCR 22.19] with the OLR, I was aware of only one other complaint, that of [the unrelated pending grievance]. I was not aware you had filed a complaint..."; "None of the work I did for [predecessor counsel] had anything to do with your complaint."; and, that Torphy had been unaware prior to September 24, 2018 that his client's grievance against predecessor counsel would be resolved as part of the SCR 22.19 petition for consensual license revocation. Torphy

also provided a timeline of events to his client, which Torphy asserted would help the client “understand fully the manner in which this conflict arose.” In both letters that contained the timeline, however, Torphy omitted relevant information and events from the timelines, including: the client providing Torphy with OLR’s July 19, 2018 letter; Torphy’s July 24, 2018 telephone call with OLR; that Torphy discussed OLR’s July 19, 2018 letter with predecessor counsel and sought predecessor counsel’s permission to provide the requested documents to OLR; Torphy’s July and August 2018 advice to predecessor counsel to pursue a SCR 22.19 petition; Torphy’s communications with his client between March 16, 2018 and October 9, 2018 regarding the client’s grievance against predecessor counsel; and, that Torphy was informed by OLR during the July 24, 2018 telephone call, in a July or August 2018 telephone call with OLR’s counsel, and in the August 22, 2018 letter that accompanied predecessor counsel’s SCR 22.19 petition, that the petition would resolve all OLR matters then pending against predecessor counsel. In an October 27, 2018 letter to his client, Torphy purported to include a more complete timeline of the events surrounding the conflict of interest, but Torphy again omitted relevant events.

Torphy also made misrepresentations to OLR in responding to the grievance the client filed against him: regarding the extent of communications with the client concerning responses to Discovery requests; that he provided the client with a copy of the Discovery requests in March 2018 and again on April 18, 2018; and that he was unaware prior to September 24, 2018 that OLR had received a grievance from the client regarding predecessor counsel. As to the timing of his knowledge of his client’s grievance against predecessor counsel, Torphy misrepresented to OLR: “Appendix B [to the SCR 22.19 petition] included the first reference to [the client] that I had received in connection with [predecessor counsel]. To be specifically clear, as this was a

significant misunderstanding of [the client] in my attempts to get a conflict waiver signed by him, this is the first point at which OLR revealed they had the client's complaint and in which I was working on something which addressed [the client's] complaint."

By failing to promptly inform his client of case developments, including receipt of discovery requests and developments related to discovery deadlines, Torphy violated SCR 20:1.4(a)(3), which states, "A lawyer shall... keep the client reasonably informed about the status of the matter."

In the Milwaukee County civil case, by failing to promptly work with his client regarding production of discovery responses; by failing to review discovery materials provided by the client before relaying them to opposing counsel; and by failing to file a witness list by the deadline established in a court scheduling order, Torphy in each instance violated SCR 20:1.3, which states, "A lawyer shall act with reasonable diligence and promptness in representing a client."

In the Milwaukee County civil case, by providing plaintiffs' counsel with untimely and incomplete discovery responses, Torphy violated SCR 20:3.4(d), which states, "A lawyer shall not...in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party."

By representing the client and the client's LLC in the civil case and by discussing with the client potential claims the client and/or the client's LLC may have had against predecessor counsel, when a significant risk was present that his representation would be materially limited by a duty of loyalty owed to predecessor counsel as a result of his concurrent representation of predecessor counsel in OLR matters, without explaining the ramifications of the dual representation to the client, and without obtaining the client's informed, written consent to the

dual representation, Torphy violated SCR 20:1.7(a)(2), which states, “Except as provided in par. (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if... there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.”

By notarizing and misrepresenting that the Affidavit in support of the client’s Motion to Dismiss in the civil case was subscribed and sworn before Torphy on December 14, 2017, Torphy 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 making misrepresentations to his client regarding the timing and substance of his knowledge about the client’s grievance against predecessor counsel, and regarding matters related to the conflicts of interest caused by his concurrent representation of predecessor counsel, the client, and the client’s LLC, Torphy in each instance 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 making misrepresentations to the Milwaukee County Circuit Court during the June 28, 2018 and October 30, 2018 hearings, Torphy in each instance violated SCR 20:3.3(a)(1), which states, “A lawyer shall not knowingly...make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”

By making misrepresentations to OLR during the investigation of his client’s grievance against him, Torphy violated SCR 22.03(6), which states, “In the course of the investigation, the respondent's wilful failure to provide relevant information, to answer questions fully, or to

