SUPREME COURT OF WISCONSIN

OFFICE OF LAWYER REGULATION

Public Reprimand with Consent

DANIEL W. MORSE 2022 OLR 2

In 1995, R.K. and his wife, who died in 2014, deeded a remainder interest in their home (the property) to their four children, while retaining a life estate in the property for themselves. The property is located in Hennepin County, Minnesota, which operates under the Torrens system. The Torrens system is a land registration and transfer system under which a governmental entity creates and maintains a register of land holdings. The register serves as conclusive evidence of ownership of land. The owner is issued a certificate of title and land is transferred by registration of a transfer of title. The certificate of title issued with regard to R.K.'s property listed as owners of the property R.K.'s children and noted the spouse of each child. One of his children had since divorced.

In July of 2016, R.K.'s son, M.K, contacted Attorney Daniel W. Morse (Morse) on behalf of his father. R.K. wanted to take whatever steps were necessary to ensure that that his children's spouses and ex-spouse would not have a claim to an interest in the property. R.K. was considering moving into a retirement home and there had been talk of selling the property.

In early October of 2016, Morse exchanged a series of e-mails with staff in the Hennepin County Recorder/Registrar of Titles office (collectively, the registrar). Morse endeavored to better understand the Torrens Title System, as well as issues specific to R.K.'s matter. With

regard to the issue of a marital interest in the property, the registrar informed Morse that in Minnesota, "spouses have a marital interest in property, which only courts can decide the value of that spousal interest. Spouses must sign (deed) out any interest that they have [in] a property in order for the grantee to receive a clean (unclouded) title. When we record a deed the grantor's marital status is required and if married the spouse must join the deed." The registrar went on to explain that at the time of the deed in question, 1995, information about the spouses was supplied on a document called an Affidavit of Purchaser of Registered Land and that while that document is no longer required, the spousal interest claim remains.

In response to the information provided by the registrar, Morse recited to the registrar Minnesota's law regarding marital property as it relates to gifts and stated that adding the spouses' names to the Certificate of Title "has obviously muddied the water and created unnecessary confusion." He suggested that using a simple form indicating the land transfer was a gift, "would avoid the issue." He ended by stating he was "quite disappointed in the gratuitous obfuscation of the ownership interests." The registrar responded by clarifying that if the spouse signs a deed, a court decision is not needed.

On October 25, 2016, M.K. e-mailed Morse asking for an update as he was "hoping to provide an update to my Dad" when he saw him the next week. In response, Morse stated that he recommended that R.K.'s children have their spouses and ex-spouse sign deeds assigning any interest in the property to R.K.'s respective children. Morse opined that M.K.'s parents had deeded the property to only their children, that the transfer was a gift, and that a gift did not create a marital property interest in the spouse of a child. Morse continued that a "knucklehead clerk" in Hennepin County had "added all the spouses to protect their interests in case they had a marital property right to the property." Morse stated it would cost $1,500-$2,000 for him to draft

the deeds but suggested it might be better to have an attorney in Minnesota do the work. Morse was not licensed to practice law in Minnesota, where the subject property is located. Morse did not, at that time, provide further written communication about the terms of the representation.

Morse asserts that M.K., not R.K., was his client. Morse describes M.K. as a "long-term client." Morse further describes the problem he was hired to address as, "not one for [R.K.]." However, on November 8, 2016, Morse sent a letter to R.K. stating, "You asked me to assist in confirming the record ownership to the remainder interest to your home in your children." The letter also contained the text of a letter Morse proposed to send to R.K.'s children. That letter opened with the sentence, "Your father has asked me to review…." R.K. believed that with regard to the matter described in the November 8, 2016 letter, Morse was acting as his attorney. Given the language of Morse's November 8, 2016 letter, and several other factors discussed below, R.K. reasonably believed that he, not his son, was Morse's client.

An invoice sent to R.K. dated May 12, 2017 states that Morse had completed a total of 6.5 hour of work on the matter, including communications with the registrar, drafting the deeds, obtaining the signed deeds, and preparing correspondence to record the deeds. Morse charged for his time at a "discount" rate of $350/hour. The invoice also listed an "adjustment" of $275. The total fees, which Morse listed as "quoted fee," were $2,000. The invoice also listed costs of $210.80. By check dated May 22, 2017, R.K. paid Morse's invoice. No other funds were paid to Morse for the representation.

Also on May 12, 2017, Morse transmitted to the registrar a set of four deeds, one executed by each of R.K.'s children's spouses and ex-spouse. The deeds had been executed between January and May of 2017. Morse also sent a check for the costs associated with recording of the deeds.

By letter dated May 31, 2017, Morse sent to R.K. copies of the four deeds he had sent to the registrar. He stated that he was awaiting confirmation from the registrar and would let R.K. know when the recording had been completed.

Between May and November of 2017, Morse was twice notified by the registrar that the deeds he had submitted could not be recorded. Morse was informed that he had had failed to note the marital status of the grantor and failed to note to whom the tax bill should be sent. Each time, Morse handwrote the needed changes on the deeds and sent the deeds back, along with a check for the costs. Morse he had been advised that it was acceptable for him to handwrite the changes to the deeds, as opposed to executing new deeds, because the changes were only ministerial in nature.

In December of 2017, Morse was again notified by the registrar that the deeds as submitted could not be recorded. Morse was informed that he needed to note that the total consideration for the transfer was less than $500. He was also directed to a website with information about the possibility of filing only one deed, instead of four.

On January 20, 2018, Morse sent the registrar copies of the modified deeds, each with a handwritten notation about the consideration for the transfer. He stated that he had looked into the filing of one deed but did not see anything suggesting that the use of four deeds was improper. He asked that the registrar advise him as to what additional modification were needed to make the deeds recordable.

Morse did not receive a response to his January 20, 2018 inquiry concerning any additional necessary changes. As he was still in possession of the originals, he knew the deeds had not been recorded. Morse thereafter did not follow up with the registrar, and he made no

further attempts at recording. After commencement of this investigation, Morse told OLR, "The actual recording of the deeds was insignificant to having them prepared."

Morse did not inform R.K. of the three rejections. When asked about informing R.K. of the rejections, Morse asserted that he (Morse) had back surgery on May 25, 2017 and "was unaware that the deeds had not been recorded." Morse's lack of knowledge is not credible given his correspondence with the registrar that postdates May 25, 2017.

On April 14, 2018, M.K. e-mailed Morse asking for an update on R.K.'s matter. Morse did not respond. In a May 15, 2018 e-mail forwarding his April 14, 2018 e-mail to D.J., an attorney and one of the grievants in this matter, M.K. noted that his April 14, 2018 email had been his fourth attempt to contact Morse.

In a May 30, 2018 letter, D.J. informed Morse that M.K. had contacted him about Morse's inability to conclude the matter he had been hired to complete in September of 2016. D.J. also stated that M.K. was concerned because M.K.'s requests for an update had gone unanswered. D.J. asked to set a time to pick up the client file and stated that he was authorized by M.K. and his siblings to terminate Morse's representation.

By letter dated July 14, 2018, R.K. asked Morse for a full refund of the funds paid to Morse. R.K. stated that Morse's services had been terminated "with [M.K.'s] assistance," that Morse had returned R.K.'s client file, and that R.K. had subsequently discovered that the deeds submitted by Morse were, "unacceptable for recording." However, Morse did not receive R.K.'s letter of July 14, 2018 because Morse had moved in April of 2018 and while the letter noted a correct street address, it did not include an apartment number.

By letter dated October 17, 2018, a Minnesota-based attorney hired by D.J. on R.K.'s behalf opined after reviewing the Certificate of Title to the property that, "The only owners of

the property are [R.K.s four children]; [R.K.] holds a life estate interest in the Property…. There are various persons shown as being married to the Property Owners – this is merely for informational purposes; such spouses do not by reason of this certificate have ownership interests in the Property." The attorney further explained:

> If it is desired that this property under the current certificate of title be conveyed to a third party, the purchaser (by way of its title insurer) will require that the deed of conveyance be executed by the Property Owners, the current spouses of the owners, and [R.K.]. To the extent that the spouses of the owners as shown on the certificate are not currently their spouses, the buyer will very probably require documentation providing an explanation for the change in status, and if there has been a divorce, the insurer will very probably require a document from the divorce case proving that the ex-spouse was not granted an interest in the property (or if the property was not dealt with in the divorce, would require a quit claim deed from the ex-spouse – in such case if you still have the deeds which Mr. Morse attempted to record, that might suffice).

By letter dated December 18, 2018, D.J. informed Morse that R.K. had hired him to "pursue collection of the unearned advanced fee paid by him to you in the amount of $2210.80." He explained to Morse that he had referred R.K. to a "qualified Minnesota attorney who has provided [R.K.] with a resolution of the matter which you were completely unable to resolve. His invoice for legal services was in the amount of $680 plus a $10 disbursement for a certified copy of the relevant title." An invoice shows that the Minnesota-based attorney billed for two hours of work at $340/hour.

Morse responded by letter dated January 10, 2019. He enclosed a copy of the May 12, 2017 invoice "for the services that were ***rendered***" (emphasis in the original). Morse noted that he had suggested to M.K. that he use Minnesota counsel and had told M.K. just preparing the deeds could cost $2,000. He closed the letter by stating, "I made no guarantee. My fee was not contingent on the outcome." Morse did not refund any of the fees or costs paid to him by R.K.

In March of 2019, R.K. applied for fee arbitration through the State Bar of Wisconsin. Morse declined to participate, stating that he dutifully performed the work he was hired to do.

In a June 19, 2019 e-mail to Morse, D.J. stated that there was no agreement that the $2,000 in fees paid to Morse was for services rendered, or that it was earned. Rather, D.J. asserted it was an advance fee for the purpose of completing the work Morse had been hired to do, including recording the deeds, work Morse had not accomplished. D.J. also noted that he assumed the $210.80 check for costs had been returned to Morse.

In an e-mail dated June 19, 2019, Morse responded that he had been hired to prepare four deeds and he could not control what the recorders did with those deeds. Morse stated he had made a "good faith effort" to avoid a court proceeding upon R.K.'s death. Morse ended by asserting that the deeds accomplished that which he had been hired to do, namely getting R.K.'s children's spouses to sign away their interest in R.K.'s land.

By letter dated August 26, 2019, Morse sent a check for $210.80, representing a return of the costs paid by R.K. but not ultimately incurred. The letter noted that negotiation of the check, "will fully satisfy all raised, threatened, known, and unknown claims and this matter will be final."

By letter dated September 12, 2019, D.J. returned the check to Morse, noting that there was not, and had never been, an agreement for R.K.'s $210.80 claim against Morse to be settled for $210.80. That same day, D.J. and R.K. filed a grievance against Morse.

Morse did not enter into a fee agreement with regard to his representation in this matter. Morse asserts the representation was on a flat fee basis and that the fee was for the purpose of preparing four deeds, work he completed. R.K. and D.J. counter that Morse did not complete the work he was hired to complete, which included the recording of the four deeds, a task Morse never completed. Morse accepted costs related to the recording of the deeds and attempted to record them three times. These actions show that Morse believed he was hired to act as more

than a scrivener. Morse's assertion that the actual recording of the deeds was "insignificant" was made only after he had failed to successfully record the deeds and had the benefit of reading the opinion of the Minnesota-based attorney. At no time did he inform R.K. that the recording of the deeds was not crucial.

When endeavoring on behalf of R.K. to affect title to Minnesota real property by drafting and recording deeds, by abandoning his efforts after the deeds were returned to him several times, Morse 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 inquiries from M.K. about the status of R.K.'s matter and failing to inform R.K. that the deeds had been rejected and, therefore, not recorded, Morse violated SCR 20:1.4(a)(3), which states, "A lawyer shall keep the client reasonably informed about the status of the matter." and SCR 20:1.4(a)(4), which states, "A lawyer shall promptly comply with reasonable requests by the client for information."

Prior to sending the May 12, 2017 billing invoice, by failing to provide R.K. a written communication stating the terms of the representation, Morse violated SCR 20:1.5(b)(1), which 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."

By failing to refund any portion of the $2,000 paid to him by R.K. when the objectives of the representation, the drafting and recording of the deeds, had not been achieved, Morse

violated SCR 20:1.16(d), which states, "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law."

In 2019, Respondent's license to practice law in Wisconsin was suspended for one year for professional misconduct. The Supreme Court of Wisconsin reinstated Morse's license in 2021.

In accordance with SCR 22.09(3), Attorney Daniel W. Morse is hereby publicly reprimanded. As a condition of the imposition of this reprimand, Morse paid restitution to R.K. in the amount of $2,210.80.

Dated this 5th day of April, 2022.

SUPREME COURT OF WISCONSIN

/s/ James D. Friedman
JAMES D. FRIEDMAN, REFEREE