

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

JERRY T. DELCORE,
Attorney at Law

2014-OLR- 4

Attorney Jerry T. Delcore of Racine engaged in misconduct in two matters investigated by the Office of Lawyer Regulation (OLR).

FIRST MATTER

Attorney Delcore represented a woman in a divorce. A default divorce was granted on July 18, 2007, the findings of facts, conclusions of law and judgment of divorce were entered on August 15, 2007, and the marital settlement agreement was approved by the court on August 22, 2007. Following the approval of the marital settlement agreement, Attorney Delcore assumed responsibility for pursuing entry of Qualified Domestic Relations Orders (QDROs) to secure the woman's interests in her former husband's pension and retirement assets.

With regard to two 401(k) plans in which the woman had an interest, Attorney Delcore had all of the information necessary to pursue entry of the QDROs no later than September 12, 2007, but he did not apply for the QDROs until early 2008. Following notice no later than August 2008 that the QDROs had been pre-approved by the plan administrators, Attorney Delcore did not timely act to pay the required processing fees or, if he believed the woman would not consent to payment of the fees, to communicate with her regarding the consequences of failing to pay the fees. In January 2009, Attorney Delcore paid the required processing fees from funds he held in trust for the woman. In February 2009, Attorney Delcore forwarded the

approved QDROs to opposing counsel, but Attorney Delcore did not take the steps necessary to obtain the signed QDROs from opposing counsel and file them with the court before January 2010. One of the two QDROs was entered by the court on January 26, 2010, but Attorney Delcore did not send it to the plan administrator until August 28, 2012. The second QDRO was not entered by the court until August 29, 2012.

With regard to a third retirement account, Attorney Delcore was aware of the account no later than September 2007 and he had all of the information necessary to pursue entry of a QDRO no later than March 2008. Attorney Delcore did not take the action necessary to pursue the QDRO until 2010, after the woman had filed a grievance with OLR. The QDRO for the third retirement account was not entered by the court until October 31, 2011.

By failing to timely pursue approval and entry of the QDROs necessary to secure his client's interests in her former husband's retirement and pension assets, after agreeing to pursue such interests, Attorney Delcore violated SCR 20:1.3, which states, "A lawyer shall act with reasonable diligence and promptness in representing a client."

Following approval of the marital settlement agreement, the woman contacted Attorney Delcore about numerous matters, including requests that he assist her in recovering personal property in the possession or control of her former husband and pursue her former husband for payment of medical and other bills which she believed her former husband was obligated to pay. She also sought advice regarding the effect of cashing checks she received related to her share of her former husband's retirement or pension assets. Attorney Delcore violated SCR 20:1.4(b) which states, "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation," by failing to communicate to the woman in a clear and timely manner that he would not take any further action with regard to: (i)

personal property she believed Attorney Delcore would help her recover from her former husband; (ii) payment or repayment of certain of her medical and other bills, which she believed her former husband was obligated to pay; and (iii) whether cashing certain checks she received in 2012 would affect her other payments from her former husband.

SECOND MATTER

Attorney Delcore was hired in 2010 to represent a second client in a divorce. Attorney Delcore's fee agreement stated that he had quoted the client a non-refundable, "minimum fee retainer" that was required for the client to hire Delcore. The fee agreement further provided that upon receipt of \$1,000.00, Delcore was hired to represent the client, and acknowledged that the client had made the required \$1,000.00 payment via check. The fee agreement also made reference to an hourly rate of \$150.00. Following a stipulated divorce hearing, Attorney Delcore would later bill the client an additional \$500.00, for a total fee of \$1,500.00 in the matter.

Notwithstanding Attorney Delcore's characterization of the initial \$1,000.00 payment from the client as a non-refundable, minimum fee retainer, under SCR 20:1.0(ag), the initial payment was actually an advanced fee, as it was "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." Attorney Delcore placed the \$1,000.00 advanced fee into his law firm operating account. His fee agreement with the client did not indicate an intention to follow the measures stated in SCR 20:1.15(b)(4m), which would have allowed his placement of the advanced fee in his operating account, as opposed to his trust account.

Upon receipt of \$1,000.00 in anticipation of providing legal representation to a client, by failing to deposit those funds into his trust account, instead depositing the money into his law firm operating account, with no evidence that he intended to utilize the alternative advanced fee

placement measures stated in SCR 20:1.15(b)(4m), Attorney Delcore violated SCR 20:1.15(b)(4), which states in relevant part, “Except as provided in par (4m), unearned fees and advanced payments of fees shall be held in trust until earned by the lawyer, and withdrawn pursuant to sub. (g)...”

Attorney Delcore has prior discipline. In 2007, Attorney Delcore received a private reprimand for violations of SCR 20:1.1 and 20:1.4(b) in his representation of a man in a criminal matter.

In accordance with SCR 22.09(3), Attorney Jerry T. Delcore is hereby publicly reprimanded.

Dated this 16th day of May, 2014.

SUPREME COURT OF WISCONSIN

/s/ Richard C. Ninneman
Richard C. Ninneman, Referee