

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2017-OLR-2

Attorney Jerry T. Delcore,
Attorney at Law

A woman hired Attorney Jerry T. Delcore to represent her in a pending child support matter. Delcore quoted the woman a \$600 flat fee, which he deposited in his business account. Delcore intended to comply with the alternate fee provisions of former SCR 20:1.15(b)(4m), in effect prior to July 1, 2016, but he failed to provide the woman with notices required by former SCR 20:1.15(b)(4m).

Delcore also provided the woman with inconsistent and confusing information regarding the rate and basis of his fees. While Delcore quoted the woman a flat fee, his office sent the woman a letter in which he asserted that the \$600 was a “minimum fee retainer,” which was described in the letter as a deposit of Delcore’s “initial Attorney’s fees,” as opposed to a flat fee. The letter also asserted that the \$600 was “non-refundable” once Delcore had “commenced [the woman’s] action,” when SCR 20:1.16(d) and former SCR 20:1.15(b)(4m)a.4., in effect prior to July 1, 2016, required Delcore to refund any unearned fees should the representation terminate before the matter was completed. The letter further stated that the \$600 was “not [the woman’s] Final Billing Statement” and that if her case “becomes more involved than anticipated, [the woman would] receive an ‘Interim Billing’ to let [her] know where [her] account with [Delcore stood],” thereby asserting that the \$600 was not a flat fee but an advance payment of hourly fees. The letter also asserted, “If I receive more contacts from you than are necessary, they will be

taken into consideration on your Invoice,” but did not include any clarification for what contacts would be “necessary” and which would be considered unnecessary contacts that would somehow cause the client to incur additional fees. The letter also included an hourly rate of \$150, despite the fact that Delcore had agreed to accept the representation on a flat fee basis. The letter also incorrectly told the woman that the State Bar of Wisconsin had a “Mediation Program” she could utilize if she believed that the fees were “unfair or unwarranted,” but the letter lacked any of the notices required by former SCR 20:1.15(b)(4m), including the notice related to the State Bar’s Fee Arbitration program and Delcore’s obligation to submit fee disputes for arbitration.

By letter to Delcore, the woman promptly disputed the terms as outlined in Delcore’s letter. By telephone, Delcore advised the woman that the letter was the standard letter he sends to all his clients, but that she would not be charged above \$600 for his representation of her at the pending hearings. Delcore did not provide the woman with any other written documentation of their fee agreement or any of the written notices required by former SCR 20:1.15(b)(4m)(a).

After a court commissioner declined to issue an order on pending child support motions, the woman asked Delcore to file a motion for de novo review of the court commissioner’s failure to issue a decision on child support. Delcore, through his office staff, quoted the woman an additional \$500 flat fee for representing the woman with regard to the motion for de novo review. The woman paid the \$500, which Delcore again deposited in his business account without providing the woman with any of the notices required by former SCR 20:1.15(b)(4m)(a). Delcore’s office mailed to the woman a copy of the motion for de novo review and a letter substantially similar to the one previously sent to the woman regarding fees.

After the woman terminated the representation, Delcore did not provide the woman with an accounting or the notices required by former SCR 20:1.15(b)(4m)(b).

By failing to clearly and accurately communicate the rate and basis of his fees to the woman, and by including misleading and confusing terms about his fees in his communications with her, Delcore 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.”

By failing to provide the woman with all of the notices and the accounting required by former SCR 20:1.15(b)(4m)(a) and (b), Delcore violated former SCR 20:1.15(b)(4m)(a) and (b), in effect prior to July 1, 2016, which stated, “A lawyer who accepts advanced payments of fees may deposit the funds in the lawyer's business account, provided that a court of competent jurisdiction must ultimately approve the lawyer's fee, or that the lawyer complies with each of the following requirements: a. Upon accepting any advanced payment of fees pursuant to this subsection, the lawyer shall deliver to the client a notice in writing containing all of the following information: 1. the amount of the advanced payment; 2. the basis or rate of the lawyer's fee; 3. any expenses for which the client will be responsible; 4. that the lawyer has an obligation to refund any unearned advanced fee, along with an accounting, at the termination of the representation; 5. that the lawyer is required to submit any dispute about a requested refund of advanced fees to binding arbitration within 30 days of receiving a request for such a refund; and 6. the ability of the client to file a claim with the Wisconsin lawyers' fund for client

