

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2015-OLR- 5

David L. Grace
Attorney at Law

Attorney Grace was hired to represent a client in a divorce proceeding in 2009. CCAP records indicate Grace represented the client from approximately June 12, 2009 through February 26, 2013, and again from approximately March 15, 2013 through October 3, 2013. The Marital Settlement Agreement and Findings of Fact, Conclusions of Law and Judgment of Divorce were both filed on December 21, 2009. CCAP records indicated that on August 11, 2010, a motion to vacate the Judgment of Divorce was filed by the ex-husband, and a guardian ad litem was appointed. A status conference was held on September 15, 2010, during which time the ex-husband moved the court for genetic testing to exclude him as the father of a minor child for whom the ex-husband was paying child support as part of the Marital Settlement Agreement. Grace did not appear at this status conference. A motion hearing was held on November 10, 2010, at which time child support and maintenance paid by the ex-husband were terminated. The client testified at the motion hearing that she did not wish to have an attorney represent her in that matter. Portions of the divorce judgment were vacated on December 13, 2010.

As part of Grace's representation, Grace was to complete a qualified domestic relations order ("QDRO") to obtain IRA funds held by USAA, which were awarded to the client as part of the Marital Settlement Agreement. Grace wrote four letters relating to the IRA awarded to the

client. On September 15, 2010, Grace wrote to USAA informing them that his client had been awarded the ex-husband's IRA, and to request any specific forms required for the transfer. Second, on September 22, 2010, Grace wrote to the client asking her to access USAA's website to attempt to locate a form to assign an interest in the ex-husband's IRA. Grace indicated that while the client was not a member of USAA at that time, it was his understanding that because she was a member at one time, she would have access to the website. Grace stated that once the client had the forms, they could possibly use them to prepare the document for the transfer of the IRA to the client. Third, on May 3, 2012, Grace wrote to the ex-husband reminding him that the divorce judgment awarded his IRA to Grace's client. Grace enclosed the form necessary to transfer the IRA to the client and requested that the ex-husband complete and return the USAA form so Grace could forward it to USAA. Grace wrote directly to the ex-husband and did not attempt to determine whether he was represented by counsel because Grace did not believe the ex-husband was represented by counsel after the conclusion of the divorce. Lastly, on March 7, 2013, Grace wrote to the ex-husband's divorce counsel, informing him that "[m]ore than one request was made to [the ex-husband] for the information necessary for the transfer of his IRA to [Grace's client] in accord with the judgment of divorce." Grace wrote that he had not received any response from the ex-husband and again enclosed the form received from USAA required for the transfer. Grace also requested an explanation from adverse counsel in the event that the ex-husband no longer possessed the IRA.

Grace's September 22, 2010 letter appeared to be the only correspondence or discussion Grace had with the client regarding the QDRO. In regard to any additional conversations or correspondence with his client, Grace told OLR that he had "no specific memories regarding any oral conversations I had with [the client] nor does my file reflect any notes regarding the

conversations.” In explaining the significant gaps in time between his letters sent in an effort to resolve the QDRO issues, Grace told OLR that the matter had not been brought to his attention. Grace further explained that he believed the client was responsible for bringing the matter to his attention and that because she had not done so, “no action was taken on her behalf.” Grace said nothing about any duty he might have had as the client’s counsel to not rely solely on prompting from the client, but to independently calendar the matter for review and/or action.

Review of Grace’s itemized billing statement sent to the client, dated August 31, 2013, reveals only two items relating to the QDRO. On September 15, 2010, the “Professional Service Rendered” was listed as “Correspondence regarding QDRO,” which appeared to correspond with Grace’s September 15, 2010 letter to USAA. On September 22, 2010, the “Professional Service Rendered” was listed as “Correspondence to client re QDRO,” which appeared to correspond with Grace’s September 22, 2010 letter to the client. No other “Professional Service Rendered” involving the QDRO appears on the billing statement.

Grace indicated that he had difficulty obtaining information from the ex-husband because the ex-husband was in the military and did not reside in Wisconsin. Grace explained that he relied on the client’s “experience with the military” to obtain the information from the ex-husband needed to complete the QDRO documents because the client was married to her ex-husband while he was on active duty, and that “[w]ithout an address, action could not be taken.” Grace further stated, “I was not aware of any further efforts which would provide this information in light of [the ex-husband] not residing in Wisconsin.”

The client alleged that because she could not get a response from Grace regarding the IRA, she decided to file a motion to hold her ex-husband in contempt for failing to provide the IRA funds. It appeared that the client submitted an Order to Show Cause along with an Affidavit

for Finding of Contempt on February 7, 2013. Review of CCAP records and Grace's billing statement suggested that the client filed these pro se. The client asserted that she contacted Grace again when her ex-husband got his attorney involved in February, 2013. According to CCAP records, Grace appeared with the client for an order to show cause hearing on March 15, 2013.

The ex-husband's attorney wrote a letter to Grace dated August 27, 2013, which addressed approximately \$7,000 that was withheld from the client's federal tax refund, purportedly to pay off debt. The ex-husband's attorney requested proof that any of the \$7,000 was applied toward payment of the client's student loans. The ex-husband's attorney further advised that he and his client planned to pursue temporary maintenance to reimburse the ex-husband for payments made towards the Grace's client's student loans. As part of the Marital Settlement Agreement, the ex-husband had agreed to pay maintenance in the amount of \$200.00 per month toward the client's student loan debts.

Grace then sent a letter dated September 25, 2013 to his client terminating his representation. With that letter, Grace enclosed a Notice of Hearing addressed to Grace providing notice of an order to show cause hearing scheduled for October 3, 2013. Grace also enclosed a copy of adverse counsel's August 27, 2013 letter. Grace's letter to the client stated:

As I have absolutely no answer to any questions arising from this matter and based upon your current employment status, I do not see that my continued participation is of any merit. I suggest that you respond directly to [adverse counsel] and try to work something out to resolve this situation.

On October 3, 2013, Grace failed to appear at the order to show cause hearing. CCAP records indicated that the ex-husband appeared with his attorney, and the client appeared alone. CCAP records further indicated that the client expressed her wish to hire new counsel.

The judge who presided over the matter wrote a letter dated October 10, 2013 to Grace informing him that a hearing had been held in the divorce matter, and also communicated his surprise at Grace's failure to appear. The judge went on to inform Grace that the Court was provided with the letter Grace had written to the client terminating representation, and further instructed Grace to take steps to effectuate his withdrawal:

Opposing counsel provided the Court with a copy of a letter you wrote to your client telling her you wouldn't be representing her any longer. The client then went on to state that she received that letter with a piece of correspondence from opposing counsel dated August 27 [2013] or earlier only 5 days before our hearing. Consequently, she had no time to prepare or seek other counsel. Additionally, you are the attorney of record in this case and must take steps with this Court to effectuate your withdrawal.

Please take steps to either submit a stipulation and withdrawal signed by yourself and your client or a stipulation and substitution for attorney if she has hired new counsel. Additionally, you should be warned that opposing counsel has asked for attorney fees and costs related to showing up for court when nothing could be accomplished because of your withdrawal. I have that request under advisement now, but would assess those fees against you and not against your client if that came to pass.

In explaining why he did not inform the client of the October 3, 2013 hearing for over a month after the Notice of Hearing was issued, and of the letter from adverse counsel regarding the student loan debt and temporary maintenance for approximately one month after he received it, Grace said he had "No explanation." Grace also confirmed to OLR that his letter of September 25, 2013 was the first instance that he informed the client of the termination of his representation. Grace never did file a stipulation for withdrawal or substitution of counsel, but by November 11, 2013 the client had a new attorney, and the presiding judge did not view it as necessary to enforce his directive that Grace take steps to formally withdraw from the case.

By allowing approximately one year and eight months to pass between his September 22, 2010 letter to the client and his May 3, 2012 letter to the adverse party, then later allowing

approximately ten months to pass between his May 3, 2012 letter to the adverse party and his March 7, 2013 letter to adverse counsel, each regarding the QDRO, Grace violated SCR 20:1.3, which provides, “A lawyer shall act with reasonable diligence and promptness in representing a client.”

Grace identified the QDRO as the means necessary for the client to obtain the IRA funds awarded to her in the divorce. By conferring with the client regarding the QDRO only once, by his letter dated September 22, 2010, and then by failing to follow up on the matter until his May 3, 2012 letter to the adverse party because, according to Grace, the client did not bring the matter to his attention, Grace violated SCR 20:1.4(a)(2), which states, “A lawyer shall reasonably consult with the client about the means by which the client’s objectives are to be accomplished.”

After his September 22, 2010 letter to his client, by failing to update his client regarding the status of the QDRO matter until meeting with her in or about March 2013 about the order to show cause hearing, Grace violated SCR 20:1.4(a)(3), which states, “A lawyer shall keep the client reasonably informed about the status of the matter.”

By informing his client that he was terminating his representation only eight days before her hearing scheduled for October 3, 2013, and only informing her of that hearing by enclosing the Notice of Hearing with a letter sent nearly a month after the Notice was issued, Grace violated SCR 20:1.16(d), which provides, in relevant part, “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, [and] allowing time for employment of other counsel”

Grace received a private reprimand in 1999 for violations of SCR 20:1.3 and SCR 20:1.7(b), a private reprimand in 2004 for violations of SCR 20:1.3, SCR 20:1.4(a) and SCR

