

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

Kirk D. Reese, Attorney at Law

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Kirk Reese is a Wisconsin-licensed attorney admitted to practice on November 23, 1983.

Reese represented a client in the separation of a corporation from its subsidiary. Reese negotiated the separation on behalf of the client, who served as Director and President of the corporation. The client's equal partner served as Director and Secretary of the corporation. The client signed an *Agreement to Separate* the corporation from the subsidiary on March 14, 2011. Pursuant to the *Agreement to Separate*, the client would acquire full ownership of the subsidiary and the partner would acquire full ownership of the corporation.

The *Agreement to Separate* did not become binding on the client and the partner until the partner signed it on August 9, 2011. Prior to August 9, 2011, it was unknown to Reese and the client whether the partner would agree and sign the *Agreement to Separate*. On April 4, 2011, despite ongoing discussions regarding separation, the client and the partner signed a \$200,000 commercial promissory note on behalf of the corporation. Prior to August 9, 2011, both the client and the partner remained directors and officers of the corporation with the ability to act on behalf of the corporation.

On May 5, 2011, the client requested that Reese assist him in collecting a debt which was secured by mortgage in favor of the corporation. Reese did not enter into a written fee contract with the corporation regarding the collection of the debt secured by the mortgage. Reese negotiated the satisfaction of the mortgage on behalf of the corporation between May and July, 2011 while the client

remained President of the corporation. All of Reese's communications regarding the mortgage negotiation were with the client. The partner was never consulted.

Reese negotiated the satisfaction of the mortgage and on July 15, 2011, the client gave Reese permission to settle on behalf of the corporation for the \$24,794.80 offered by the title company in exchange for release of the mortgage. The client instructed Reese to deposit the check into Reese's trust account and make the settlement check payable to the subsidiary. The client gave Reese permission to deduct his fees before cutting the check for the balance.

On July 2, 2011, Reese drafted a *Satisfaction of Mortgage* which was signed by the client for the corporation. On July 28, 2011, Reese deposited the check from the title company in the amount of \$24,794.80 into his firm's trust account. On July 28, 2011, Reese retained \$2,036 from the satisfaction of the mortgage and deposited it into his firm's business account for the client's attorney's fees. On July 28, 2011, despite the client's instructions to have the settlement proceeds issued to the subsidiary, Reese issued a check from his trust account to the client individually in the amount of \$22,758.80. The partner was not informed of the mortgage satisfaction or the manner in which the proceeds were handled. As of the time of the receipt of funds the subsidiary remained wholly owned by the corporation, and the client had authority to act on behalf of each entity.

On August 2, 2011, Reese provided the client with an accounting by letter. Reese failed to include the total settlement amount in the accounting but indicated he had taken out his attorney's fees. On August 3, 2011, the client deposited the \$22,753.80 into the business account of the subsidiary.

On August 9, 2011, the partner signed the *Agreement to Separate* at which time he acquired a 100% interest in the corporation and the client acquired a 100% interest in the subsidiary. The corporation never received the proceeds of the satisfaction of the mortgage despite being the mortgage holder.

Reese simultaneously represented both the corporation in the satisfaction of the mortgage and the client individually in the client's attempt to separate himself and the subsidiary from the corporation. At the time the mortgage was satisfied, the client had already indicated his intent to separate by signing the *Agreement to Separate*. There was a significant risk that Reese's representation of the corporation would be materially limited by his simultaneous representation of the client. By representing both, Reese 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 (2) 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."

After the satisfaction of the mortgage, Reese distributed the funds directly to his client, giving one client, the client in his individual capacity, the opportunity to do what he wanted with the funds that belonged to his other client, the corporation. Reese retained attorney's fees earned through the representation of one client, the client in his individual capacity, from the funds that belonged to another client, the corporation. Having received the funds in satisfaction of a mortgage owned by the corporation, by disbursing none of the funds to the corporation, and instead disbursing a portion to himself for fees earned through the representation of the client in an individual capacity, and disbursing the remainder to the client individually, Reese violated SCR 20:1.15(d)(1) and 20:8.4(c).

SCR 20:1.5(d)(1) provides, "Upon receiving funds or other property in which a client has an interest, or in which the lawyer has received notice that a 3rd party has an interest identified by a lien, court order, judgment, or contract, the lawyer shall promptly notify the client or 3rd party in writing. Except as stated in this rule or otherwise permitted by law or by agreement with the client, the lawyer shall promptly deliver to the client or 3rd party any funds or other property that the client or 3rd party is

