

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

James T. Runyon
Attorney at Law

17-OLR-5

FIRST MATTER

Attorney James T. Runyon (Runyon) represented a client in a foreclosure action. There was no fee agreement between Runyon and the client. Runyon did not disclose to the client in writing at or near the start of the representation the basis or rate of his fee for legal services.

Runyon's bill for services provided between October 2012 and September 2013 did not itemize the time spent on each task performed. Instead, it listed the total time as 15.9 hours at \$200 per hour. The client did not become aware of the \$200 per hour rate until he received a bill for services at the conclusion of the case.

Runyon also represented the client in a separate matter, relating to the sale of client's septic business in late 2012 and early 2013. In February 2013 when the business sold, the settlement statement provided that Runyon would hold \$10,000 in his trust account for at least one year to allow the buyer time to obtain a septic license in his name.

There was no fee agreement between Runyon and the client for the sale of the septic business. Runyon did not disclose to the client in writing at or near the start of the representation what his fee would be in the matter of the sale of the septic business.

After the client filed his grievance with the Office of Lawyer Regulation (OLR), Runyon sent the client a bill dated April 22, 2015 for his legal services regarding the sale of the septic business from February 2014 to April 2015. Runyon charged \$250 per hour. The total bill was \$1,055.31. The client did not become aware of the \$250 per hour rate until he received a bill for services at the conclusion of the case.

On about August 29, 2013, the client hired Runyon to represent him in a criminal case. On September 2, 2013, Runyon sent the client a letter stating, "I will bill my time and disbursements in representing you in the criminal case against the \$10,000 I am holding in trust from the sale of the septic business." Runyon's September 2, 2013, letter did not state an hourly rate or any other basis for his fee in the criminal case.

It was reasonably foreseeable that the total cost of the felony criminal case representation for the client, including attorney's fees, would be over \$1,000.00. Runyon did not provide the client with a fee agreement regarding his representation of the client in the criminal case.

On September 24, 2013, less than a month after the start of Runyon's representation of the client in the criminal case, Runyon withdrew the last of the \$10,000 which was being held in the trust account for the client. Runyon did not notify the client of his intent to withdraw the trust account funds prior to the withdrawal. Runyon did not send the client a billing statement or accounting for either the criminal case or the business sale at the time of the withdrawal from the trust account.

Runyon represented the client through trial and did significant work on the case. Though Runyon accumulated time and expenses totaling \$41,792.93 if he had been

billing at his normal hourly rate, Runyon only charged and accepted the fee of \$10,000 for the representation. Such fee charged was not unreasonable under the circumstances.

By failing to provide, in writing, the scope of the representation and the basis or rate of the fee and expenses for which the client would be responsible before or within a reasonable time after commencing each of three representations of the client, Runyon violated SCR 20:1.5(b)(1) and (2), which state, “(1) 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. (2) If the total cost of representation to the client, including attorney's fees, is more than \$1000, the purpose and effect of any retainer or advance fee that is paid to the lawyer shall be communicated in writing.”

By failing to provide notice to the client, at least 5 business days before the date on which a disbursement was made from his trust account for the purpose of paying fees, Runyon violated former SCR 20:1.15(g)(1), effective through June 30, 2016, which states, “Notice to client. At least 5 business days before the date on which a disbursement is made from a trust account for the purpose of paying fees, with the exception of contingent fees or fees paid pursuant to court order, the lawyer shall transmit to the client in writing all of the following: a. an itemized bill or other accounting

showing the services rendered; b. notice of the amount owed and the anticipated date of the withdrawal; and c. a statement of the balance of the client's funds in the lawyer trust account after the withdrawal.”

SECOND MATTER

In a second unrelated matter, Runyon represented a client who had been charged with Conspiracy to commit 1st-Degree Homicide, a Class A felony carrying a possible 60-year prison sentence. At his first meeting with the client Runyon informed the client that he would need an advanced fee of \$25,000. The client responded that she had only \$15,000 to \$16,000 in savings, but that she could sell her car, which might garner another \$3,000 or \$4,000. Runyon agreed to take the case on those terms. Runyon entered his appearance in the case on March 3, 2014.

On March 4, 2014, the client signed a General Power of Attorney form appointing Runyon as her Power of Attorney, so he could pay bills from her account and be her “life-line.” Runyon, however, did not enter into a written fee agreement with the client until August 19, 2014, just days before her sentencing hearing. The fee agreement provided that Runyon had handled the case on a flat fee basis of \$20,000, which included Runyon’s fee, the disbursements made by Runyon, and the client’s personal bills that Runyon paid.

On March 4, 2014, the client sent a letter to her bank explaining that she had hired Runyon to represent her and directing the bank to transfer the balances of her savings and checking accounts to Runyon. Thereafter, Runyon sold the client’s car and deposited to his trust account the net proceeds of the sale, \$3,927.59. Between the client’s bank

account funds, payments received from tenants renting the client's house, and the net proceeds from the car sale, Runyon received a total of \$21,635.24 from the client.

By May 5, 2014, Runyon had disbursed \$19,915.53 of the client's funds from his trust account to himself, some of which was disbursed in payment of expenses on the client's behalf. By the end of the representation, Runyon's net fees and costs totaled \$18,810.53, which was not unreasonable under the circumstances. The fee Runyon took was significantly less than it would have been had he billed the client at his normal hourly rate of \$250. Runyon indicated his total bill at an hourly rate would have been \$47,375.94 for his services between March 3, 2014 and May 20, 2014.

While a portion of the client's funds were intended to cover Runyon's fees, the parties also contemplated that Runyon would be handling some of the client's bills and personal expenses. However, Runyon never entered into an agreement or clear understanding with the client regarding precisely which bills and expenses he would be paying on her behalf. This caused confusion between the client and Runyon. In many of her letters to Runyon, the client raised the issue of payment of her personal bills, but Runyon never made clear which of the bills he would be paying from her funds. Runyon claims that he paid every bill that the client provided to Runyon and asked him to pay. While the evidence showed that Runyon paid \$2,824.71 of the client's bills and expenses, the client claimed Runyon failed to pay an additional \$2,880.60 worth of bills.

After the representation concluded, on October 30, 2014 the client sent Runyon a letter asking why her bank accounts had been closed and what happened to the remaining balances. Further, she requested an itemized summary of all the transactions and

expenses. Runyon did not provide the client a final accounting until April 20, 2016, after the client filed a grievance with OLR.

Though he agreed to pay some portion of her personal bills and expenses while the client was incarcerated, by failing to enter a written agreement or otherwise confirm with the client precisely which of her personal bills he would pay from the \$21,635.24 belonging to the client that he had in his possession as her Power of Attorney, Runyon 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.”

By failing until August 2014 to enter into a written fee agreement with the client for his representation of her in the felony criminal case, Runyon violated SCR 20:1.5(b)(1) and (2).

Upon conclusion of the representation, by failing to timely comply with his client’s request for a full accounting of her funds that he had held in his trust account, Runyon violated former SCR 20:1.15(d)(2), effective through June 30, 2016, which states, “Upon final distribution of any trust property or upon request by the client or a 3rd party having an ownership interest in the property, the lawyer shall promptly render a full written accounting regarding the property.”

THIRD MATTER

In a third unrelated matter, in April 2014, a woman contacted Runyon about her financial situation and a mortgage loan. Because of poor economic conditions and personal reasons, the woman had to close her gas station and had been trying to sell it for years. The woman hired Runyon and initially paid him \$16,065.00 as an advanced fee for a Chapter 11 bankruptcy. Runyon deposited \$16,065.00 to his trust account on April

17, 2014. Ultimately, they decided against a Chapter 11 because the business was closed and she had no income and no means to reorganize.

The client asked Runyon to sue the bank for tortious interference with her attempts to sell the business and for releasing her confidential financial and personal information. Runyon informed the client that his normal hourly rate was \$250.00, but he agreed to handle the lawsuit against the bank for a flat fee that she had already paid, \$16,065.00. Runyon did not enter into a written fee agreement with the client.

In July 2014, Runyon filed the summons and complaint in circuit court. The bank filed counterclaims relating to non-payment of the loan balance of \$210,705.45 due as of September 18, 2014.

Discovery took place. The client and other witnesses were deposed. Runyon believed that the problem with the case was that testimony from the depositions did not support the client's claim that the bank had discouraged potential buyers from buying the business so that they could purchase it later at a lower price through a foreclosure sale. The realtors testified that the buyers backed out because their own home failed to sell.

In summer 2015, the parties mediated the case. The parties came to a settlement agreement and voluntarily dismissed their respective claims as of October 2015.

In response to OLR's investigation, Runyon produced a billing statement indicating that he had incurred \$31,146.44 in fees and costs, if he had been billing at his normal billing rate of \$250 per hour. Runyon did not charge the client any more than the agreed upon fee of \$16,065.00, which was not unreasonable under the circumstances. Runyon's trust account records reflect that he disbursed all of the \$16,065.00 by May 8,

2014. Runyon did not notify the client that he would be disbursing her funds from the trust account.

By May 8, 2014, Runyon had not completed the complaint in the lawsuit. He first sent the client a draft of the complaint on May 21, 2014. It was not filed until July 25, 2014. Under SCR 20:1.0(ag), a flat fee paid at the outset of representation is one type of an advanced fee. Runyon's billing statement shows that by May 8, 2014, he had worked at most 16.9 hours on the client's case, which would be \$4,225.00 worth of fees at Runyon's normal hourly rate of \$250.00. While the fee agreement in this matter called for a flat fee, he did not earn the fee by the time he had disbursed all of it on May 1, 2014.

Runyon failed to enter into a written agreement with the client and also failed to establish benchmarks by which portions of the flat fee would be earned. In the absence of any such agreement, Runyon should have held the full flat fee in trust until it was fully earned at the conclusion of the representation, which would have been the date the stipulation and order for dismissal was entered in October 2015.

By failing to enter into a written fee agreement with the client in the representation of her relating to the lawsuit against her bank, Runyon violated SCR 20:1.5(b)(1) and (2).

By disbursing the client's entire advanced fee of \$16,065.00 before such time as he had earned it, Runyon violated former SCR 20:1.15(b)(4), effective through June 30, 2016, 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)."

