

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2015-OLR-1

Mario J. Tarara,
Attorney at Law

Attorney Mario J. Tarara (Tarara) primarily practices in Illinois. His license to practice law in Wisconsin has been suspended since October 31, 2006 for failure to pay annual dues and assessments to the State Bar of Wisconsin and since May 29, 2007 for failure to comply with mandatory CLE reporting requirements.

In or about August 2008, a woman hired Tarara to represent her with regard to an ongoing litigation matter in Rock County Circuit Court related to the sale of a business, eviction, and continued use of a trade name. After Tarara became counsel of record, the opposing party filed a second and a third Amended Answer, Affirmative Defenses and Counterclaim. Tarara failed to file a response to the Third Amended Answer, Affirmative Defenses and Counterclaim or a motion for an extension of time in which to file a response. After settlement negotiations between the parties failed to resolve the litigation, opposing counsel filed a motion for default with regard to the Third Amended Answer, Affirmative Defenses and Counterclaim, which the court granted.

The court ordered a trial on damages to be held in June 2009, but the trial was cancelled due to ongoing settlement negotiations. When negotiations failed to result in a settlement, on March 31, 2010, the court held a bench trial on damages, ultimately entering a judgment against Tarara's client for financial damages and enjoining her from further use of the disputed trade

name. The court ordered that continued use of the trade name would result in a \$500 per day penalty.

Immediately following the court's March 31, 2010 oral ruling, the client asked Tarara to begin working on an appeal. Tarara advised the client that he would "take a look at the situation to see if anything could be done" but ultimately determined that an appeal was unlikely to be successful. He did not, however, advise the client that he had determined that an appeal would not be successful and that he would take no further action with regard to the judgment against her. No appeal was filed from the default judgment or subsequent written order granting damages and injunctive relief.

Following the court's March 31, 2010 oral ruling, Tarara's client failed to fully comply with the court's order with regard to the use of the trade name. On April 5, 2010, opposing counsel notified Tarara by email that he had been informed that Tarara's client continued to use the trade name inside the prohibited business location, and that the defendant would seek damages at the rate of \$500 per day that the client's display of the name continued. Tarara failed to discuss the email with his client. While Tarara asserted that he believed that his client understood the court's oral ruling and subsequent written order, she was entitled to be informed that opposing counsel had alleged that she was in violation of the order and subject to additional damages.

On September 8, 2010, opposing counsel moved to amend the judgment to add damages for the client's continued use of the trade name after March 31, 2010. Following an evidentiary hearing, the court amended the judgment, awarding the defendant \$50,000 in additional damages for the client's continued use of the trade name.

Between 2008 and 2010, Tarara included language on his letterhead which stated, “Licensed in Illinois and in Wisconsin,” when his license to practice law in Wisconsin had been suspended since October 31, 2006.

By engaging in the practice of law in Wisconsin at a time when his license to practice law in Wisconsin was suspended, Tarara violated SCR 10.03(6), which states, “...[N]o person whose membership is so suspended for nonpayment of dues or assessments may practice law during the period of the suspension,” and SCR 31.10(1), which states, “A lawyer shall not engage in the practice of law in Wisconsin while his or her state bar membership is suspended under this rule,” and SCR 22.26(2), which states, “An attorney whose license to practice law is suspended or revoked or who is suspended from the practice of law may not engage in this state in the practice of law or in any law work activity customarily done by law students, law clerks, or other paralegal personnel, except that the attorney may engage in law related work in this state for a commercial employer itself not engaged in the practice of law.” Violations of SCR 10.03(6), SCR 21.10(1) and SCR 22.26(2) are enforced under the Rules of Professional Conduct via SCR 20:8.4(f), which states, “It is professional misconduct for a lawyer to...violate a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of lawyers.”

By failing to file a response to the defendant’s Third Amended Answer, Affirmative Defenses and Counterclaim, Tarara violated SCR 20:1.3, which states, “A lawyer shall act with reasonable diligence and promptness in representing a client.”

By failing to advise his client of the contents of opposing counsel’s April 5, 2010 email, Tarara violated SCR 20:1.4(a)(3), which states, “A lawyer shall...keep the client reasonably informed about the status of the matter...”

Having advised his client that he would “take a look at the situation to see if anything could be done” regarding a possible appeal of the court’s March 31, 2010 decision, by: (i) failing to advise his client that he had determined that an appeal was unlikely to be successful, Tarara 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,” and 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;” and (ii) failing to inform his client that he would not file an appeal and that he believed the representation was concluded, Tarara violated SCR 20:1.16(d), which states, “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, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.”

By stating on his letterhead used between 2008 and 2010 that he was licensed in Wisconsin when his license to practice law in Wisconsin has been suspended since October 31, 2006, Tarara violated SCR 20:7.1(a), which states, “A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it: (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading...” and SCR 20:7.5(a), which states, “A lawyer shall not use a firm name, letterhead or other professional designation that violates SCR 20:7.1...”

Tarara has no prior discipline.

In accordance with SCR 22.09(3), Attorney Mario J. Tarara is hereby publicly reprimanded.

Dated this 7 day of January, 2015.

SUPREME COURT OF WISCONSIN

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