

SUPREME COURT OF WISCONSIN  
OFFICE OF LAWYER REGULATION

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Public Reprimand With Consent

09-OLR-\_\_\_\_\_

Christopher S. Carson  
Attorney at Law

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A man hired Atty. Christopher S. Carson to represent him as the respondent in a divorce case that involved the placement of minor children. Early in the case, and before any child placement order had been issued, Mr. Carson filed a Petition to Enforce Physical Placement Order. The Petition to Enforce Physical Placement Order is a statutory form and relates to Wis. Statute Sec. 767.242(3). The first paragraph of the statutory form states:

- 1a. I was awarded periods of physical placement of (name of child/ren) \_\_\_\_\_ by judgment or order of the Circuit Court or Family Court Commissioner of \_\_\_\_ County. A copy of the placement provisions is attached.

The purpose of the form is to provide relief to parties who had been awarded periods of physical placement of children and subsequently had periods of physical placement denied. On the petition, Mr. Carson inserted the names of the parties' two minor children, the name of the county in which the divorce case was filed, and checked a box indicating that the original order or judgment did not set specific times for physical placement.

The following week, the presiding circuit court judge wrote to Mr. Carson and stated there that was no record of either party having been awarded periods of physical placement. The court stated that Mr. Carson had not attached a copy of the placement provisions that he alleged were being violated; that Carson had filed an enforcement action that appeared to be

without basis; and that Carson may have violated Wis. Stat. Sec. 802.05(2), by filing a pleading that was not true. The court asked Mr. Carson to reconsider his position.

Mr. Carson replied by letter and stated that neither Wis. Stat. Sec. 767.242(3) nor the petition required him to attach a copy of any placement provisions that he believed were being violated. Mr. Carson asserted that the petitioner had violated orders imposed by the Wisconsin Legislature relating to concealing minor children.

The parties and their counsel subsequently attended a temporary order hearing before a county family court commissioner, who entered a temporary order granting periods of physical placement to both parties. On that day, the family court commissioner warned Mr. Carson that the Petition to Enforce Physical Placement Order could not be filed before an initial hearing and that Carson should withdraw the petition.

During the following week, the circuit court judge held a hearing on Mr. Carson's Petition to Enforce Physical Placement Order. During the hearing, Mr. Carson asserted that the wife had violated placement orders imposed by the Wisconsin Legislature. Mr. Carson said he would dismiss the petition but then recanted when adverse counsel said she would seek attorney fees. The hearing was adjourned to a new date. Following the second court date, the circuit court found Mr. Carson's petition to be frivolous and awarded attorney fees of over \$900 against Carson. Mr. Carson appealed the sanction to the Court of Appeals, which affirmed the circuit court order, found the appeal to be frivolous, and remanded the case to circuit court for a determination of costs and fees. The circuit court awarded fees of almost \$8,500 against Mr. Carson. That decision is on appeal.

Mr. Carson told disciplinary authorities that he filed the petition because the wife had been withholding placement of the children from his client. Mr. Carson told disciplinary

authorities that he was in such haste to file the petition that he did not notice a phrase on the petition stating that a copy of the prior placement judgment or order was attached. Mr. Carson also stated that this was the first instance in which he had filed such a petition and that he filed it in an attempt to bypass the family court commissioner and proceed in circuit court. Mr. Carson further stated that he would have attached the order to show cause to the petition to substantiate the violation and that the failure to attach the order to show cause was an oversight. Mr. Carson was in error, however, because during the first hearing in circuit court, he told the court that there was no specific order that had awarded his client periods of placement and that the order was an order of the legislature.

Mr. Carson violated SCR 20:1.1 when he filed the statutory form, “Petition to Enforce Physical Placement Order,” which plainly required that a copy of a previous judgment or order of a circuit court or family court commissioner awarding physical placement of children be attached to the form, when no such previous judgment or order existed. SCR 20:1.1 states, “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

When he continued to prosecute a Petition to Enforce Physical Placement Order even after a circuit court judge and a family court commissioner warned Carson that the Petition lacked any meritorious basis upon which to proceed and when Carson could not make a good faith argument for modification of the existing law, Mr. Carson violated SCR 20:3.1(a)(1), which states, “In representing a client, a lawyer shall not: “knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law.”

In November, 2006, Mr. Carson submitted a brief to the Court of Appeals in which he stated in the Statement of the Case that the wife had withheld **nearly** all visitation of the children from the husband prior to the first temporary hearing. Throughout the remainder of the appellate brief, however, Carson consistently stated (in at least four instances) that the wife had withheld **all** placement. When he repeatedly stated in the brief that the adverse party had withheld all placement of the minor children until after the first temporary hearing, when, in fact, Carson knew that his client had received some placement with the children prior to the first temporary hearing, Mr. Carson violated former SCR 20:3.3(a)(1), applicable to conduct occurring prior to July 1, 2007, which states, “A lawyer shall not knowingly make a false statement of fact or law to a tribunal.” In 2008, Mr. Carson received a private reprimand for other misconduct.

In accordance with SCR 22.09(3), Attorney Christopher S. Carson is hereby publicly reprimanded.

Dated this 18th day of May, 2009.

SUPREME COURT OF WISCONSIN

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/s/  
Jonathan V. Goodman, Referee