

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

09-OLR-15

Sallie L. Rubenzer
Attorney at Law

The Respondent, Attorney Sallie L. Rubenzer, practices in West Bend, Wisconsin.

On April 23, 2007, a client hired Respondent to represent her in a divorce. The client gave Respondent an initial payment of \$2000 and agreed to be billed at the rate of \$180 an hour for Respondent's services.

Over the course of the ensuing year, Respondent conducted discovery, engaged in negotiations with the client's husband's attorney regarding marital property division issues, including the client's ownership of a business she operated, child support and custody, and performed other services on the client's behalf. The negotiations ultimately resulted in a stipulated Marital Settlement Agreement.

The final divorce hearing was scheduled to be heard at 11:30 a.m. on May 22, 2008. According to the client, when Respondent appeared five minutes before the scheduled time, she was completely intoxicated and disheveled.

At the beginning of the hearing, the judge stated:

All right. I would like to make a record; and first my conversation with [the client's] attorney. It was brought to my attention today by several sources that Attorney Rubenzer appeared to be impaired. One of the individuals indicating this to me was a professional trained law enforcement officer, who has training in identifying the impaired. But from my own observations it's clear that she is very, very substantially impaired, not just at a minor level.

The judge said he would not allow Respondent to appear in her “state.”

The client terminated Respondent’s representation and chose to appear *pro se* rather than delay the divorce any longer. The judge indicated that if, at any time, the client felt uncomfortable or changed her mind, he would grant an adjournment to allow the client time to consult with an attorney.

The hearing proceeded on May 22, 2008 and the divorce was granted. Findings of Fact, Conclusions of Law and Judgment that had been previously drafted by Respondent and submitted to the client’s husband’s attorney for approval, were accepted and filed on that date. During the course of the representation, Respondent periodically asked for, and received, additional payments from the client. The client’s payments to Respondent totaled \$8300. The client’s last payment of \$800 was made on May 7, 2008.

In a letter dated June 1, 2008, the client asked Respondent for a full refund of the fees she had paid. According to the client, Respondent’s inability to represent her at the final hearing was unprofessional and inexcusable.

In a June 6, 2008 response to the client’s letter, Respondent refunded \$871 to the client, which amount represented \$169 in unearned fees and \$702 in payment for services Respondent had provided between April 28, 2008 and May 19, 2008. Additionally, Respondent agreed not to bill the client for \$648 in services rendered between May 19 and May 21, 2008. Respondent concluded her letter by stating, “I hope you will accept these payments with my deepest apologies for any distress this has caused you.”

The client continues to state that she is entitled to “full reimbursement for all services paid.”

In response to the grievance, Respondent said she does not normally keep alcohol in her house because she is a recovering alcoholic, but on May 21, 2008 she had a bottle of wine on hand that she had purchased for consumption by others at an upcoming get-together. Respondent said she has chronic insomnia and was unable to sleep the night before the May 22, 2008 hearing. Respondent said she took an over-the-counter sleep aid at 12:00 a.m. and, to her “great shame,” when she still could not sleep, she began drinking the bottle of wine about 12:30 a.m. Respondent said she finished the bottle about 3:30 a.m.

Respondent did not believe she was intoxicated when she appeared in court eight hours later. Respondent said she never slept the night before, and the sleep deprivation might have partially accounted for the witnesses’ impression of her at the hearing.

Respondent believes that, despite her unavailability for the May 22, 2008 hearing, the Marital Settlement Agreement was very favorable to the client and that she achieved an excellent result for her client.

Respondent states that she takes her relapse very seriously, that she has returned to regular attendance at Alcoholics Anonymous meetings, and that she has a sponsor. Additionally, Respondent said she did not drive to court on May 22, 2008, not because she believed she was intoxicated, but because she did not have a valid driver’s license at the time.

Aside from her conduct at the May 22, 2008 hearing, Respondent’s representation was otherwise satisfactory and a reasonable outcome was obtained by her client in the divorce.

By appearing in court to represent a client at a final divorce hearing while she was noticeably impaired due to alcohol consumption, Respondent violated SCR 20:1.1, which 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.

Respondent has prior discipline. In 2003, Respondent received a private reprimand for non-alcohol-related violations of SCR 20.1.1 and SCR 20:1.16(d). In 2004, Respondent received a private reprimand for violating SCR 20:8.4(b), following her convictions of a third Operating While Intoxicated (OWI) offense and for bail-jumping, due to her failure to maintain absolute sobriety while the OWI charge was pending. In 2007, Respondent was publicly reprimanded for a fourth OWI offense, contrary to SCR 20:8.4(b). Respondent also violated SCR 21.15(5) by failing to report her conviction to the Clerk of the Wisconsin Supreme Court and to OLR.

In accordance with SCR 22.09(3), Attorney Sallie L. Rubenzer is hereby publicly reprimanded. As a condition of this reprimand, Attorney Rubenzer submitted evidence to the Director that she has commenced treatment for alcohol dependence from a treatment provider approved by the Director. As a further condition of the reprimand, Atty. Rubenzer shall continue her treatment for alcohol dependence for a period of one year following the imposition of the reprimand, and shall arrange for the treatment provider to provide OLR with quarterly reports, due on June 30, 2009, September 30, 2009, December 31, 2009, and March 31, 2010, and June 30, 2010, regarding her progress in treatment and compliance with her treatment plan. Atty. Rubenzer certified to the Director that she has submitted copies of this reprimand and all prior reprimands, including her private discipline, to her treatment provider.

Dated this 28th day of August, 2009.

SUPREME COURT OF WISCONSIN

/s/
James W. Mohr, Jr. Referee