

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

09-OLR-11

Andrew Salentine
Attorney at Law

The Respondent, Andrew Salentine, lives in San Francisco, California.

On September 18, 2007, the Office of Lawyer Regulation (OLR) received a submission from a circuit court judge regarding conduct by the Respondent that the judge believed violated Supreme Court Rules governing candor toward a tribunal. The conduct reported by the judge took place in the context of a civil action that, at the time, was pending in the judge's court.

Respondent graduated from Marquette University Law School in 1992 and was admitted to practice in Wisconsin on May 18, 1992. After graduation from law school, Respondent moved to California and has lived there ever since. Respondent maintained his status as an active member of the Wisconsin bar until October 31, 2001, when he was suspended for non-payment of dues. Respondent was reinstated from his administrative suspension on February 15, 2006 and he has had an active Wisconsin law license since that time. Respondent is also licensed to practice law in California.

Respondent's mother and his two sisters owned a Limited Liability Corporation (LLC). For several years, the LLC had employed a man as an independent contractor. The man was also a personal friend of the Respondent's family. According to Respondent, the relationship between the man and some of his family members began to deteriorate in 2006, and the man started a competing travel business with some other LLC employees while still employed by the

LLC. As a result, the LLC terminated the man and some other employees and commenced a lawsuit against them on November 3, 2006.

On November 3, 2006, Respondent signed a sworn affidavit in support of the LLC's complaint. In the affidavit, Respondent stated, "I am the Business & Legal Advisor to [LLC], which does business under the name of [company name]." The LLC's complaint also described Respondent as the LLC "Business and Legal Advisor."

A series of emails in 2003 between or among Respondent and the man, his sisters and his mother illustrate Respondent's involvement in advising the LLC with respect to business and legal matters. For example, a May 6, 2003 email from Respondent to the man transmits Respondent's final draft of a new employee contract. In the email, Respondent states, in part:

This essentially is a 2 year guaranteed contract for her and we can only terminate her for cause. That is OK because I think she is worth it. I did not change the language on the health insurance but let me know if I need to do so.

Another example is a March 14, 2003 email from Respondent to the man and his family members on the subject of a specific contract. In the email, Respondent stated, "Here are my redlined changes for your review. Let me know if anything else needs to be changed."

A number of 2006 emails further exemplify Respondent's participation in the LLC's business affairs and legal matters. For example, a series of emails in July 2006 refer to or contain advice from Respondent about possible drug use by an employee and how to deal with it. Another group of emails in July 2006 involve Respondent's opinion and advice about an agreement having to do with the LLC's liability for certain telephone charges.

Additionally, between July 2006 and October 2006, Respondent was included in numerous email exchanges involving various LLC business issues and decisions. One of many

examples is a July 31, 2006 email from Respondent to the man with a subject line “RE: Profitability.” In the email, Respondent made several statements, including:

I have not seen all the numbers or done the comps. But if your numbers are correct, then I have several concerns...

-we have to make operations profitable on their own without overrides and that is not the case right now

-the money from [a business] and [a business] should really be additional bonus money for paying off debt and acquisitions...

-I have no visibility of when I will get paid back on the remainder of my note from July of 2003.

We need to get \$10m in revenue. Where is the plan of how we are going to bring in new sales and new acquisitions???

Please call me to discuss.

In an August 22, 2006 email to the man, Respondent talked about setting up weekly management meetings in which Respondent would be included. In an October 19, 2006 email to the man, Respondent again mentioned the money the LLC owed him. In the email, Respondent states, “At a minimum, my records are correct and show that the gross amount still owed to me is 88K taking into account the principle and interest owned to me per the note I have with [LLC].”

On February 27, 2007, the man and some of the other defendants in the lawsuit filed a third-party complaint against Respondent, his mother and his sisters.

On May 8, 2007, Respondent, through his attorney, filed a motion to dismiss the third-party complaint against him for lack of personal jurisdiction over him under §801.05 Wis. Stats.

On May 4, 2007, Respondent signed a sworn affidavit which was filed on May 8, 2007 in support of his motion to dismiss. In the affidavit, Respondent attested, among other things:

I am not, nor have I ever been, personally an employee, shareholder, officer or director of [LLC].

I have never had an office at [LLC], nor a business card, an e-mail address, *nor any other connection which would affiliate me with [LLC]* or its division, [company name].

I do not presently, nor have I ever, received any income from [LLC].

I do not personally own or control any property within the State of Wisconsin...

Emphasis added.

A hearing was held on Respondent's motion to dismiss. The hearing commenced on June 15, 2007 and concluded on August 1, 2007. Respondent testified by telephone on August 1, 2007. The above-referenced emails, in addition to other emails, were introduced at the hearing. Most of the emails were adverse counsel's exhibits, although a few were offered by Respondent's attorney.

At the August 1, 2007 hearing, evidence was adduced that Respondent signed a July 2, 2002 mortgage note with his parents, secured by a mortgage on his parents' Wisconsin home. A July 2, 2002 quit claim deed from his parents as grantors to his parents and Respondent as grantees was also introduced at the hearing. Both the mortgage and the quit claim deed were adverse counsel's exhibits.

At the August 1, 2007 hearing, Respondent testified that he cosigned for his parents' mortgage. During direct testimony, Respondent's attorney asked him, "Do you pay any bills on that house?" Respondent responded "No."

With respect to the quit claim deed, Respondent testified that while he knew he was a "cosigner" on his parents' mortgage, "...I didn't know I was on the deed, and the first time I had seen that was when the exhibits came back and I reviewed them."

During questioning by adverse counsel about Respondent's parents' home, the following colloquy occurred:

- Q. And could you – you're on the mortgage for that property?
- A. Yeah, I believe I cosigned on the mortgage like ten years ago or something, but I'm not paying on it.
- Q. You couldn't deduct any portion of the interest paid on the mortgage loan on your income tax return unless you were an owner, could you?
- A. I'm not sure.
- Q. Well, was that your judgment as a lawyer, that it would be – you certainly have a better chance of sustaining the deduction if you were on the deed?
- A. I don't know, I'm not a tax attorney.
- Q. And isn't that why you asked your parents to make you a co-owner of the property?

[Respondent's attorney] Objection, foundation.

THE COURT: Overruled.

A. I don't recall that.

In a letter to an OLR intake investigator, Respondent reiterated that he had not known he was on the deed to his parents' home when he signed the May 4, 2007 affidavit and, referring to the transcript of his August 1, 2007 testimony, stated:

I also explained to the court...that I have never had any control over the home, I have never lived in the home and my parents make all decisions and payments regarding the home.

In his response to questions from OLR staff about whether Respondent deducted interest paid on his parents' mortgage loan on his income tax returns, Respondent stated that in 2002, when Respondent's parents were experiencing financial difficulties, he agreed to act as a guarantor for their mortgage loan. Upon request for more detailed information about any mortgage interest deductions, Respondent submitted Schedule A from his 2002, 2003 and 2004

federal tax returns. Those documents show that Respondent claimed itemized deductions on his federal tax returns for 2002, 2003 and 2004 of \$12,018, \$12,891, and \$11,832, respectively, for interest he paid on his parent's mortgage. Respondent said he had not made any mortgage payments on his parents' home since 2004 and reiterated that he had not known he was on the deed to his parents' home when he signed the May 4, 2007 affidavit.

Respondent states that his testimony on August 1, 2007 that he was "not paying" on his parents' mortgage and that his response of "No" to the question, "[D]o you pay any bills on that house?" was truthful because he was not making payments on the home at the time he made the statements. Likewise, Respondent states that his statement to an OLR intake investigator that his parents "make all...payments regarding the home," was truthful because he was not making mortgage payments for his parents at the time he made the statement and had not made any such payments since 2004.

In response to a request for a copy of the note executed in connection with the loan Respondent made to the LLC, which Respondent mentioned in his July 31, 2006 and October 19, 2006 emails, Respondent said he was unable to locate the note or documentation that one was prepared, so his email references to a note must have been in error.

Respondent did not disclose to the court that, at the time he made his motion to dismiss for lack of personal jurisdiction, he was a licensed and active member of the Wisconsin bar and that he had been admitted to practice in Wisconsin in 1992.

At the conclusion of the hearing on August 1, 2007, the judge denied Respondent's motion to dismiss and stated that the motion was frivolous. The judge found that Respondent had substantial contacts with the state, including numerous connections to the LLC as an advisor

and negotiator, ownership of real property, a mortgage obligation, and ownership of a note on which he was owed interest.

Based on the court's ruling, adverse counsel made a motion for sanctions. Just prior to the hearing on the sanctions motion, the judge said he learned that Respondent was a licensed active member of the Wisconsin bar and had been admitted to practice in Wisconsin in 1992.

At the hearing on the motion for sanctions, the judge questioned Respondent's attorney extensively about Respondent's Wisconsin bar membership. The judge opined that Respondent's Wisconsin bar membership was highly relevant, if not dispositive, to the question of whether the court had personal jurisdiction over Respondent.

At the conclusion of the hearing, the judge awarded sanctions against Respondent and his attorney, but found Respondent to be primarily at fault, and therefore apportioned the sanctions 75% and 25% between them, respectively. In ruling, the judge stated, in part:

I do find that the rule¹ has been violated, that there has been an extraordinary lack of candor by [Respondent] to this court, bordering on fraud, I believe...He is licensed with the privilege of representing clients in this state. I do specifically find that he was exercising his right to serve as an attorney in this state, as a legal advisor to [LLC] which he repeatedly stated was his position both in affidavit and in pleadings, which were submitted on his behalf.

His protestations to the contrary are incredible. His protestations that he lacks substantial and not isolated connections with this state are incredible...

But my secondary holding is that even if we set that aside or if we add to that the fact that this man owns a house in this state, he is subject to a loan and a concomitant mortgage related to that property, and that he has loaned money to or on behalf of this corporation upon which he is insisting on repayment pursuant to a note, all of which I find to be undisputed, or if disputed, undisputed by credible evidence in this record to be the facts on this case. And that's why I find [Respondent's] testimony here, his representations here, his position in this case to be breathtaking in their lack of candor to this court.

¹ The judge is referring to Wis. Stat. §802.05 requiring non-frivolous court filings.

The judge supplemented his oral decision and order regarding sanctions with a written decision explaining why he ordered that the adverse party be fully compensated for having to defend against Respondent's motion to dismiss. In the written decision, the judge stated:

Because the nature of the frivolous conduct by third-party defendant [Respondent] involved multiple false statements in an apparent attempt to mislead the court affirmatively and by omission, his conduct is about as egregious as can be found in a court of law. It goes beyond simply advancing arguments with no factual or legal support, or good faith argument for extension of the law. The lack of candor bordering on fraud here poisons the search for the truth, and makes a mockery of the justice system. Such extreme conduct requires the most extreme sanction.

Respondent said that he was a party in the lawsuit, not an attorney of record, that he relied on his attorney's judgment, and that any factual errors or omissions were the result of his lack of attention to detail rather than to any intent to mislead.

By stating in a May 4, 2007 affidavit filed with the court, that he had no "connection which would affiliate me with [LLC]" and that he did not "personally own or control any property" in Wisconsin, when he had stated in a November 3, 2006 affidavit filed with the court that "I am the Business & Legal Advisor to [LLC]...;" when he was intimately involved in advising the LLC on business and legal matters at least until October 2006; when the LLC owed him money; and when his name was on a 2002 quit claim deed which indicated that he was a co-owner of his parents' home in Wisconsin, Respondent violated former SCR 20:3.3(a)(1), effective prior to July 1, 2007, which stated:

A lawyer shall not knowingly make a false statement of fact or law to a tribunal.

By testifying that he did not pay any bills on his parents' home; by testifying that he cosigned on his parents' mortgage "but I'm not paying on it;" and by testifying that he had not known his name was on the deed to his parents' home at the time he signed his May 4, 2007

affidavit, when he claimed itemized deductions on his federal tax returns for 2002, 2003 and 2004 of \$12,018, \$12,891, and \$11,832, respectively, for interest he paid on his parent's mortgage, Respondent violated SCR 20:3.3(a)(1), effective beginning July 1, 2007, which states:

SCR 20:3.3(a)(1) states:

A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

By stating to an OLR intake investigator that his parents "make all decisions and payments regarding the home" and that he had not known he was on the deed to his parents' home when he signed the May 4, 2007 affidavit, and by reiterating to OLR during the subsequent OLR investigation that he had not known he was on the deed to his parents' home, when, between 2002 and 2004, he claimed more than \$36,000 in tax deductions for interest paid on the mortgage for the property listed on the deed, Respondent violated SCR 20:8.4(c) and SCR 20:8.4(h), which incorporates SCR 22.03(6).

SCR 20:8.4(c) states:

It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

SCR 20:8.4(h) states:

It is professional misconduct for a lawyer to fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by SCR 21.15(4), SCR 22.001(9)(b), SCR 22.03(2), SCR 22.03(6), or SCR 22.04(1).

SCR 22.03(6) states:

In the course of the investigation, the respondent's wilful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance.

The Respondent has no prior discipline.

In accordance with SCR 22.09(3), Attorney Respondent is hereby publicly reprimanded.

Dated this 30th day of June, 2009.

SUPREME COURT OF WISCONSIN

/s/
James C. Boll, Jr., Referee