

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2009-OLR-9

Howard A. Young
Attorney at Law

Atty. Howard J. Young (“Young”), Wisconsin bar member since 1983, practices law in Middleton, Wisconsin.

During the spring of 2007, a woman sought telephonic legal advice from Young regarding her father who was receiving Veterans’ Administration (“VA”) benefits and was in jeopardy of having benefits suspended pending the establishment of a guardianship. On or about April 17, 2007, during a phone conversation, the woman asked Young about the VA requirement for a conservatorship for her father and Young scheduled an appointment for May 19, 2007. As described in more detail below, there was (at least at the outset), some confusion between the woman and Young as to whether “guardianship” and “conservatorship” were terms with distinct meanings as far as the VA matter was concerned.

In a letter dated April 19, 2007, the VA sent the woman a list of requirements and a notice that her father’s benefits would be suspended effective June 1, 2007. The letter stated that the benefits would remain suspended until the VA received the requested information to include Letters of Conservatorship. The VA advised the woman to contact her attorney to petition the court.

Prior to her scheduled meeting with Young, the woman called Young’s office on April 26, 2007, May 7, 2007, and May 14, 2007. On May 19, 2007, the woman met with Young.

During their meeting, the woman signed a retainer agreement, paid Young \$1,000 by check, and gave Young the VA letter that stated that her father's benefits would be suspended June 1, 2007 if the letters of conservatorship were not received.

According to the retainer agreement signed on May 19, 2008, Young was to prepare guardianship documents for the woman's father. The agreement also listed Young's hourly charges and stated that he would "keep records of all time spent and the nature of the service rendered."

The woman filed a grievance against Young on February 20, 2008 for failing between May 19, 2007 and July 20, 2007 to complete the guardianship papers in a timely manner. According to the woman, she advised Young throughout that the matter was extremely time sensitive because the VA had suspended her father's benefits. The Woman asserted that at the end of their May 19, 2007 appointment Young stated he would have a court date by the end of June 2007.

Young asserted that the woman's focus during the May 19, 2007, meeting was to file bankruptcy and to pursue a conservatorship. He indicated that the woman provided the VA letter to support her position that a conservatorship was needed not a guardianship and that she did not express any urgency about the June 1, 2007 suspension date. Young stated he advised her that conservatorship was probably a nationwide term that included guardianship in Wisconsin and he urged the woman to contact the VA for clarification.

The woman stated there was confusion concerning the VA's use of terms at the beginning; however, she asserted that by the end of their May 19, 2007 meeting, she knew of no lingering questions keeping Young from completing the paperwork.

Phone records supplied by the woman, show that she placed calls to Young's law office, number 608-662-0984, as follows:

<u>Date</u>	<u>Minutes</u>
March 29, 2007	1
March 30, 2007	12
April 17, 2007	13
April 26, 2007	2
May 7, 2007	5
May 14, 2007	6
May 19, 2007	2
June 19, 2007	3
June 19, 2007	2
July 2, 2007	2
July 10, 2007	2
July 16, 2007	3
July 19, 2007	1

In a responsive submission, Young confirmed phone contacts between the woman and his office on March 30, 2007, April 17, 2007, May 19, 2007, June 19, 2007, and July 10, 2007. Although Young did not have exact dates, he supplied evidence of contacts with the woman as follows: a phone call with the woman on April 14, 2007, a phone call with the woman on an unknown date in which an appointment was set for May 19, 2007, a phone call with the woman

on June 19, 2007, two phone calls with the woman subsequent to July 10, 2007, and the woman came to Young's office on May 19, 2007 and July 20, 2007.

Based on the woman's phone records and on Young's response, after their May 19, 2007 meeting there were no phone calls between the woman and Young until June 19, 2007.

According to the woman, a telephone call she received from the VA on June 19, 2007, asking her about the status of the guardianship, prompted her to call Young. While the woman and Young agreed that they had a phone exchange on June 19, 2007, they disputed the content of the exchange. The woman asserted that Young told her the paperwork was almost done and should be mailed June 20, 2007. Young stated in his June 4, 2008 response to OLR that he did not tell the woman that the paperwork was finished. He stated, "I called [the woman] and left message [sic] to inquire: 1) had she procured bond? 2) had VA confirmed guardianship appropriate? 3) Had she obtained conservatorship papers?"

Despite the disagreement between Young and the woman as to how to proceed, Young did not contact the VA to clarify the matter. Young, however, acknowledged he received a call from the VA. He stated:

I made no effort to contact the VA because I did not need nor expect any information from them. I was not retained for any such purpose. I received a telephone call from the VA representative in June or July. The VA representative inquired whether I needed guardianship forms for the [the woman] case. I replied no, I had the forms. What I needed was the VA to correct [the woman's] misunderstanding of their usage of the term "conservatorship."

The woman asserted that Young promised her on several occasions in June and July of 2007 that he had the paperwork almost completed and that he would send it to her. According to the woman, on July 3, 2007, she called Young who advised her that the paperwork should be in the mail soon. Phone records verify that the woman called Young's office on July 2, 2007. According to the woman, on July 9, 2007, she called Young's office and talked with Young's paralegal who stated she would have Young call her. Phone records verify that the woman called Young's office on July 10, 2007. According to the woman, Young never returned her call.

According to her grievance, on July 12, 2007, the woman called the VA to advise them of the status and she gave the VA Young's phone number as the VA stated they would call Young. The woman states that she followed up with a call to the VA on July 16, 2007 and they advised her that Young told them he sent the paperwork to her several weeks earlier and that Young would call the woman. The woman called Young and according to the woman, Young said he would send the paperwork again.

As of July 18, 2007, the woman had not received the paperwork from Young so she called Young's office and stated she would pick up the paperwork. On July 20, 2007, the woman picked up the incomplete paperwork and she decided to discontinue working with Young. Concerning the state of the documents the woman retrieved from Young's office on July 20, 2007, Young stated, "The documents were incomplete because I did not know the extent of the reasons for the guardianship." Young further asserted he did not complete the paperwork because he anticipated the woman would obtain more information from the VA. In Young's August 15, 2008 letter to OLR, Young stated, "[The woman] failed to provide the information so that we could promptly assist her."

In correspondence dated April 25, 2008, May 8, 2008, and June 20, 2008, the woman made written demands on Young for either a refund of \$1,000 or a refund of the unearned portion of the \$1,000 fee and she asked for an itemized accounting of services rendered. The May 8, 2008 letter was sent by certified mail and receipted for on May 9, 2008. Young acknowledged that he received those letters from the woman.

Following the OLR intake evaluation, the woman's grievance was designated for formal investigation. By letter dated May 15, 2008, OLR sent Young notice of the formal investigation and informed Young that his complete written response to the grievance was to be submitted no later than June 5, 2008. The notice requested responses to specific questions.

Young's response dated June 4, 2008 was received by OLR on June 9, 2008.

On June 23, 2008, OLR staff sent Young a letter requesting a supplemental response to specific questions, to include the following:

In your response to OLR dated June 4, 2008 you stated, "I will refund the unearned portion of the retainer." The enclosed correspondence is a copy of [the woman's] demand dated June 20, 2008. What, if any portion of the \$1,000 retainer do you intend to refund and when?

Young was to respond to OLR within ten days of June 23, 2008. Young did not respond within ten days.

OLR sent a second notice to Young on July 23, 2008, by both regular first class and certified mail. A new response deadline of July 31, 2008 was established. The letter reminded Young of his duty to cooperate with the investigation.

On July 23, 2008, an agent of Young's signed the certified mail return receipt for the letter that was sent via certified mail. In addition, the letter that was sent by regular mail was not returned to OLR as undelivered. Young did not respond by the July 31, 2008 deadline.

Having received no written response to the June 23, 2008 and July 23, 2008 letters, OLR arranged for personal service of the request for additional information. Personal service was accomplished on August 7, 2008.

Young responded on August 15, 2008. He did not, however, address the question regarding the refund of the unearned portion of the fee other than to say he had not received a demand for a refund from the woman prior to her filing a grievance with OLR.

OLR forwarded a July 28, 2008 letter from the woman and sent a third set of questions to Young on August 20, 2008. A new response deadline of August 29, 2008, was established. Young was asked to provide an itemized accounting of the services he provided to the woman along with the time and fees for those services.

Having received no written response to the August 20, 2008 letter, on September 3, 2008, a letter was sent by regular mail. A new response date of August 29, 2008 was established. No response was received. On September 17, 2008, OLR sent a letter by both regular first class and certified mail. A new response deadline of September 26, 2008 was established.

On September 19, 2008, an agent of Young's signed the certified mail return receipt for the September 17, 2008 letter that was sent via certified mail. In addition, the letter that was sent by regular mail was not returned to OLR as undelivered. Young did not respond by the September 26, 2008 deadline.

Having received no written response to the August 20, 2008 and September 3, 2008 letters, OLR arranged for personal service of the request for additional information. Personal service was accomplished on October 8, 2008.

By letter dated October 16, 2008, Young responded, in part, to the questions OLR posed in its correspondence dated August 20, 2008. Young acknowledged he received the three demand letters the woman sent to him after she filed her grievance and he stated that he had not responded directly to her. Young did not provide an itemization of his services and he did not comment on what if any portion of the fee he intended to refund as unearned fees, nor did he specifically identify which phone calls he made and received concerning the woman's representation.

By check dated February 26, 2009, Young refunded the woman's entire \$1,000 fee. On March 2, 2009, the woman confirmed that she had received the check.

Having been hired on May 19, 2007, to provide services pertaining to a guardianship knowing that benefits would be suspended effective June 1, 2007 pending receipt of the guardianship, by failing to timely advance his client's interests and complete work on the guardianship over the course of two months, and by failing to take action to resolve a dispute concerning the nature of the filing required, Young violated SCR 20:1.3, that states, "A lawyer shall act with reasonable diligence and promptness in representing a client."

Having received written demands for a refund and for an itemization of services, Young failed to promptly respond to his client's request for information concerning fees and expenses, in violation of SCR 20:1.5(b)(3), that states, "A lawyer shall promptly respond to a client's request for information concerning fees and expenses."

After his client terminated his representation and made demands on him for either a refund of \$1,000 or a refund of the unearned portion of the \$1,000 fee and she asked for an itemized accounting of services rendered, by failing to timely refund the unearned portion of her fees, Young violated SCR 20:1.16(d), that states in pertinent part, “Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as ... refunding any advance payment of fee or expense that has not been earned or incurred.”

By failing in his responses to address portions of OLR’s supplemental requests asking for an itemization of services provided, information concerning his statement that he would refund the client, and to address other matters, Young violated SCR 22.03(6) via SCR 20:8.4(h). SCR 20:8.4(h) states, in relevant part, “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 22.03(6).” SCR 22.03(6) states, “In the course of the investigation, the respondent’s willful 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.”

Young has one prior private reprimand, imposed in 1999.

In accordance with SCR 22.09(3), Atty. Howard A. Young is hereby publicly reprimanded.

Dated this 24 day of April, 2009.

SUPREME COURT OF WISCONSIN

/s/
Jonathan V. Goodman, Referee