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September 5, 2025

To:

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You are hereby notified that the Court has entered the following order:

No. 2023AP2066-D

Office of Lawyer Regulation v. Lane Fitzgerald

Before the court is a report and recommendation filed by Referee Valerie Bailey-Rihn on October 17, 2024. Based on the parties' stipulation, the report recommends that this court conclude that Attorney Lane Fitzgerald be privately reprimanded for one count of violating Supreme Court Rule (SCR) 20:1.3¹ and that he pay the full costs of this proceeding, which amount to \$2,162.36, inclusive of referee costs, as of October 31, 2024. No appeal has been filed, so the court considers the matter pursuant to SCR 22.17(2).²

¹ SCR 20:1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."

² SCR 22.17(2) provides: "If no appeal is filed timely, the supreme court shall review the referee's report; adopt, reject or modify the referee's findings and conclusions or remand the matter to the referee for additional findings; and determine and impose appropriate discipline. The court, on its own motion, may order the parties to file briefs in the matter."

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This court has carefully considered the referee's report, findings of fact, conclusions of law and recommendation, and adopts them as its own. The court agrees that Attorney Fitzgerald's misconduct warrants a private reprimand and that Attorney Fitzgerald should be required to pay the full costs of this proceeding. The referee has advised that restitution is not an issue given the nature of the misconduct.

The OLR commenced this proceeding on November 6, 2023, alleging that Attorney Fitzgerald committed a single violation of SCR 20:1.3 by allowing the appellate deadlines for his client, A.S., to lapse, by not filing a motion to withdraw and failing to file a motion requesting an extension of time to file a postconviction motion or notice of appeal. Attorney Fitzgerald answered, admitting the salient allegations, and asserted various affirmative defenses. Those allegations included that the OLR had offered to resolve the matter by way of a private reprimand agreement before the disciplinary proceedings commenced, which Attorney Fitzgerald refused. Ultimately, the OLR and Attorney Fitzgerald entered into a stipulation under which Attorney Fitzgerald stipulated to the single count of misconduct alleged, agreed that the referee could use the allegations in the complaint as a factual basis for finding the asserted rule violation, and further agreed that the appropriate level of discipline was a private reprimand. The stipulation represented that it was not the result of plea bargaining and that Attorney Fitzgerald understood the underlying rule violation and knowingly and voluntarily relinquished his rights to contest the allegations and put the OLR to its burden of proof.

The referee found the following facts to be undisputed, based on the uncontested allegations in the complaint. Attorney Fitzgerald was admitted to the State Bar of Wisconsin in 2009. He has no prior disciplinary history.

In 2018, the State Public Defender (SPD) appointed Attorney Fitzgerald as postconviction appellate counsel for A.S. in a Dane County criminal case. After being appointed, Attorney Fitzgerald filed a motion for extension of time to file a postconviction motion or notice of appeal with the Wisconsin Court of Appeals. The court granted the motion and extended A.S.'s deadline to November 24, 2019. However, Attorney Fitzgerald did not file a postconviction motion or notice of appeal by the new deadline and did not request a further extension of time to do so.

A.S., acting pro se, subsequently filed a petition for writ of habeas corpus in the Wisconsin Court of Appeals, asking that his direct appeal rights be reinstated on the ground that Attorney Fitzgerald abandoned him. The court of appeals remanded the case to the circuit court for an evidentiary hearing. Following the evidentiary hearing, the circuit court found that A.S. did not want Attorney Fitzgerald to file a no-merit report, but that Attorney Fitzgerald failed to withdraw as counsel and instead "remained as counsel to assist [A.S.] with legal advice on the post-conviction motions that [A.S.] wanted to pursue pro se." The circuit court did not make any finding that A.S. knowingly waived his right to pursue appellate relief. The court further found that A.S. "wished to pursue postconviction proceedings, and that [A.S.] understood that Attorney Fitzgerald remained his appointed counsel to provide legal advice." The State ultimately conceded that Attorney Fitzgerald was ineffective in allowing A.S.'s appellate deadlines to lapse.

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Thus, the court of appeals held that “Attorney Fitzgerald was ineffective by allowing [A.S.]’s appellate deadlines to lapse and that [A.S.]’s appellate deadlines should be reinstated.” Accordingly, the court of appeals granted A.S.’s petition to reinstate his appellate deadlines.

The referee concluded that “[b]y not filing a motion to withdraw and failing to file a motion requesting an extension of time to file a postconviction motion or notice of appeal, thus allowing [A.S.]’s appellate deadlines to lapse, Fitzgerald violated SCR 20:1.3[.]” The referee recommended that a private reprimand is the appropriate sanction for Attorney Fitzgerald’s misconduct, considering “the seriousness, nature and extent of misconduct, the level of discipline needed to protect the public, the courts, and the legal system from repetition of the attorney’s misconduct, the need to impress upon the attorney the seriousness of the misconduct and the need to deter other attorneys from committing similar conduct.” The referee explained that “[s]everal factors mitigate in favor of a private reprimand,” including that Attorney Fitzgerald has no prior disciplinary history, that although his misconduct allowed A.S.’s appellate rights to lapse, those rights were ultimately reinstated, and that the existence of this proceeding “could not have failed to impress on counsel that appellate deadlines are just that, deadlines, with significant consequences if they are not met.” The referee further concluded that “[r]estitution is not an issue in this case.”

On October 30, 2024, the referee issued a report and recommendation as to costs, recommending that the full costs of the proceeding be paid by Attorney Fitzgerald. The OLR reports that costs amount to \$2,162.36, as of October 31, 2024, inclusive of referee fees and disbursements.

We adopt the referee’s findings and conclusions and agree that a private reprimand is appropriate. We further agree that, consistent with this court’s standard practice in attorney disciplinary matters, Attorney Fitzgerald should pay the full costs of this proceeding. We note that those costs could have been avoided had Attorney Fitzgerald entered into the private reprimand agreement offered by the OLR prior to the commencement of this proceeding.

IT IS ORDERED that Attorney Lane Fitzgerald is privately reprimanded;

IT IS FURTHER ordered that within 60 days of the date of this order, Attorney Lane Fitzgerald shall pay to the Office of Lawyer Regulation the full costs of this proceeding.

Samuel A. Christensen
Clerk of Supreme Court