



## OFFICE OF THE CLERK

**Supreme Court of Wisconsin**

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WI 53701-1688

TELEPHONE (608) 266-1880

FACSIMILE (608) 267-0640

Web Site: [www.wicourts.gov](http://www.wicourts.gov)

November 10, 2020

**To:**

John T. Payette  
William J. Weigel  
Heidi T. Johnson  
Office of Lawyer Regulation  
110 E. Main Street, Suite 315  
Madison, WI 53703

Carl R. Scholz  
627 N. Green Bay Road  
Thiensville, WI 53092

Kim M. Peterson  
W339 N6748 Log House Circle  
Oconomowoc, WI 53066

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

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2017AP2530-D

Office of Lawyer Regulation v. Carl Robert Scholz

Pending before this court is Attorney Carl R. Scholz's appeal from a report and recommendation filed by Referee Kim M. Peterson on August 2, 2019. The court has determined that it requires additional information to facilitate its review of the recommended sanction, specifically with respect to the question of restitution. The Office of Lawyer Regulation (OLR) requested a restitution order in the disciplinary complaint and renewed its request for a restitution order in post-hearing briefing. The OLR asked that Attorney Scholz be ordered to restore \$60,975.94 in disputed funds either to the Ozaukee County circuit court or to opposing counsel's trust account pending resolution of the fund dispute addressed in N.A. Associated Bank, N.A. vs. Kathryn Brogli, Ozaukee County Circuit Court Case No. 2012CV259, and any appeal therefrom.

In the ensuing report the referee observed that "[w]hile Scholz's conduct might not have harmed his client, it did harm the opposing party, who lost out on the funds he improperly distributed to himself, and later his client." The referee did not recommend a restitution order; indeed, the report is silent as to restitution.

In its restitution statement filed on August 19, 2020, the OLR said: "OLR's disciplinary Complaint sought a restitution order that Attorney Scholz restore funds pending resolution of a civil matter. The civil case has since been dismissed and no appeal was filed. The referee focused on whether Scholz's conduct caused harm to his client, finding that it did not, and the referee did not recommend restitution." (Footnote omitted). The OLR did not appeal the

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referee's report, although in its brief to this court the OLR observed that with respect to determining appropriate discipline, "perhaps most concerning is the fact that Scholz's misconduct continues to deprive a rightful owner of tens of thousands of her dollars to this day." OLR Br. at 44.

The OLR's current position regarding the appropriateness of restitution under Supreme Court Rule 21.16 is unclear in light of the referee's factual findings and the dismissal of the underlying lawsuit following the death of Attorney Scholz's client, A.B. We direct the OLR to provide this court with a memorandum within 15 days of the date of this order, addressing whether there is legal authority regarding the use of restitution in the lawyer disciplinary context to compensate a third-party non-client who was deprived of funds as a result of a lawyer's professional misconduct, or whether these constitute damages more appropriately determined in a civil adjudication. Attorney Scholz may file a response to the OLR's memorandum within seven days of its receipt. Therefore,

IT IS ORDERED that the Office of Lawyer Regulation is directed to provide this court with a memorandum within 15 days of the date of this order, addressing the use of restitution in the lawyer disciplinary context to compensate a third-party who was deprived of funds as a result of a lawyer's professional misconduct; and

IT IS FURTHER ORDERED that Attorney Carl R. Scholz may file a response to the OLR's memorandum within seven days of its receipt; and

IT IS FURTHER ORDERED that Attorney Carl R. Scholz's appeal from a report and recommendation filed by Referee Kim Peterson on August 2, 2019 remains under advisement and a decision will issue in due course.

BRIAN HAGEDORN, J., did not participate.

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Sheila T. Reiff  
Clerk of Supreme Court