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Supreme Court of Wisconsin

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March 24, 2021

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

2015AP2303-D

Office of Lawyer Regulation v. Scott E. Selmer

On March 3, 2021, this court issued a per curiam decision, reinstating Attorney Scott E. Selmer's license to practice law in Wisconsin, with conditions. In re Disciplinary Proceedings Against Selmer, 2021 WI 16. The court reserved the question of costs under SCR 22.24.

On February 8, 2021, Referee L. Michael Tobin filed a supplemental report recommending the court exercise its discretion to waive the reinstatement costs of this proceeding. The referee indicates and the record reflects that Attorney Selmer did not object to the OLR's initial cost summary, but Attorney Selmer stated that at present he is unable to pay those costs due to indigency.

As the referee notes, SCR 22.29(5) provides that this court may "waive payment in any case in which to do otherwise would result in hardship or injustice." The referee made detailed findings regarding Attorney Selmer's circumstances, including his current income and the fact that he owes \$15,830.35 in costs associated with other disciplinary proceedings, exclusive of post-judgment interest. See Ex. 104 at 5. He has been deemed indigent, following his disclosure of extensive financial documentation.

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2015AP2303-D; OLR v. Selmer

On February 16, 2021, the OLR filed an amended statement of costs totaling \$3,830.38. The OLR recommends the court impose full costs and states it will work with Attorney Selmer to arrange a payment plan. The OLR did not, however, appeal the referee's supplemental recommendation.

It is this court's general policy to impose all costs in reinstatement proceedings. SCR 22.24(1m); In re Disciplinary Proceedings Against Harman, 2003 WI 45, ¶11, 261 Wis. 2d 322, 661 N.W.2d 403 ("Reinstatement proceedings – even if unsuccessful – should not be free"). The court may exercise its discretion to reduce costs, guided by the factors in SCR 22.24(1m)(a)-(f). SCR 22.24(1m)(f) permits the court to consider "other relevant circumstances."

Nothing in this record suggests the costs are inaccurate or inflated, and indeed, Attorney Selmer did not object to the costs. In re Disciplinary Proceedings Against Inglimo, 2007 WI 126, ¶96, 305 Wis. 2d 71, 740 N.W.2d 125, we declined to "adjust the amount of costs imposed against Attorney Inglimo based on a claim of lack of assets at this time." We directed Attorney Inglimo to work out an agreement with the OLR by which the cost assessment may be paid over time. We then stated: "If such an agreement cannot be reached *or if Attorney Inglimo is too indigent to be able to make any payments toward the cost assessment*, then he may seek relief from the court." (Emphasis added.)

Several factors distinguish this case from Inglimo, Attorney Selmer already has a payment plan with the OLR. He has already submitted detailed financial information and has demonstrated indigency. The referee, who handled the underlying reinstatement petition considered the relevant circumstances and determined that imposition of costs would result in hardship, in part due to Attorney Selmer's individual circumstance, see SCR 22.29(5) (providing this court may "waive payment in any case in which to do otherwise would result in hardship or injustice.") No appeal was filed from this recommendation.

We accept the referee's supplemental recommendation and agree that on the specific facts and record in this matter, it is appropriate to exercise our discretion to waive payment of costs associated with the reinstatement proceeding.

IT IS ORDERED that no costs are imposed in connection with Scott E. Selmer's reinstatement proceeding, In re Disciplinary Proceedings Against Selmer, 2021 WI 16.

Sheila T. Reiff
Clerk of Supreme Court