

2020 WI 74

SUPREME COURT OF WISCONSIN

CASE No.: 2019AP1154-D

COMPLETE TITLE: In the Matter of Disciplinary Proceedings
Against James T. Runyon, Attorney at Law:

Office of Lawyer Regulation,
Complainant,

v.

James T. Runyon,
Respondent.

DISCIPLINARY PROCEEDINGS AGAINST RUNYON

OPINION FILED: September 9, 2020

SUBMITTED ON BRIEFS:

ORAL ARGUMENT:

SOURCE OF APPEAL:

COURT:

COUNTY:

JUDGE:

JUSTICES:

Per Curiam.

NOT PARTICIPATING:

ANN WALSH BRADLEY, J., did not participate.

ATTORNEYS:

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NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 2019AP1154-D

STATE OF WISCONSIN

:

IN SUPREME COURT

**In the Matter of Disciplinary Proceedings
Against James T. Runyon, Attorney at Law:**

Office of Lawyer Regulation,**Complainant,****v.****James T. Runyon,****Respondent.**

FILED**SEP 9, 2020**

Sheila T. Reiff
Clerk of Supreme Court

ATTORNEY disciplinary proceeding. *Attorney's license*
revoked.

¶1 PER CURIAM. We review Referee L. Michael Tobin's report recommending that the court declare Attorney James T. Runyon in default and revoke his license to practice law in Wisconsin for professional misconduct. The referee also recommends that Attorney Runyon make restitution to the Wisconsin Lawyers' Fund for Client Protection (Fund) and to certain clients.

¶2 No appeal has been filed so we review the referee's report pursuant to Supreme Court Rule (SCR) 22.17(2). After

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review of the matter, we agree with the referee that, based on Attorney Runyon's failure to answer the Office of Lawyer Regulation's (OLR) complaint, the OLR is entitled to a default judgment. We further agree with the referee that revocation of Attorney Runyon's license is an appropriate sanction for his professional misconduct. We agree that Attorney Runyon should be required to make restitution to the Fund and certain clients and, finally, we conclude that he should be assessed the full costs of this proceeding which are \$1,080.34 as of June 26, 2020.

¶3 Attorney Runyon was admitted to practice law in Wisconsin in 1978. His professional disciplinary history in Wisconsin consists of:

(a) A one-year suspension in 1984 for dishonest conduct, consisting of concealing fees from his law partners, and keeping them for himself. Attorney Runyon also gave false testimony at a John Doe proceeding concerning the withholding of those funds. In re Disciplinary Proceedings Against Runyon, 121 Wis. 2d 37, 357 N.W.2d 545 (1984);

(b) A 2006 private reprimand for dishonest conduct, based on Attorney Runyon entering into a separate agreement for fees without the knowledge or consent of his co-counsel in a products liability case. Private Reprimand No. 2006-11 (electronic copy available at <https://compendium.wicourts.gov/app/raw/001883.html>);

(c) A 60-day suspension in 2015 for failing to hold client funds in trust, converting client funds to cover disbursements

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to other clients, commingling personal funds in his trust account, and failing to keep necessary trust account records. In re Disciplinary Proceedings Against Runyon, 2015 WI 95, 365 Wis. 2d 32, 870 N.W.2d 228; and

(d) A 2017 public reprimand for misconduct for failing to give one client a written communication explaining the representation's scope or required fee information, failing to notify the client before removing fees from his trust account, and agreeing to pay another client's bills while she was incarcerated, but without explaining which bills he would pay, communicating his fee in writing, or promptly providing the client a complete accounting upon the close of the representation. Attorney Runyon also failed to communicate his fee in writing to another client, withdrew the client's entire advanced fee before it was earned, and did not provide the necessary notice after the representation ended. Public Reprimand of James T. Runyon, No. 2017-5 (electronic copy available at <https://compendium.wicourts.gov/app/raw/002958.html>).

¶4 Attorney Runyon's law license is also administratively suspended for failure to pay state bar dues, failure to comply with Continuing Legal Education requirements, and failure to submit the required trust account certification.

¶5 On September 5, 2018, Attorney Runyon signed a power of attorney appointing an attorney-in-fact to assist him in closing his law practice. On September 6, 2018, Attorney Runyon filed a petition seeking to voluntarily resign his Wisconsin law

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license, then filed an amended petition asking the court to suspend his law license immediately and indefinitely due to an unexplained medical incapacity. On October 9, 2018, this court temporarily suspended Attorney Runyon's Wisconsin law license for non-cooperation with the OLR, held Attorney Runyon's petition to voluntarily resign in abeyance, and denied his medical incapacity petition as premature. His law license remains subject to the temporary suspension for noncooperation.

¶6 On June 26, 2019, the OLR filed a disciplinary complaint against Attorney Runyon alleging that he committed 23 counts of professional misconduct in four client matters, and asking the court to revoke his law license and order restitution. Attorney Runyon was personally served with the complaint and order to answer on June 28, 2019. Referee James Erickson was appointed.

¶7 Attorney Runyon failed to respond to the OLR's complaint. On October 4, 2019, the OLR filed a notice of motion and motion for default judgment, serving it upon Attorney Runyon at his last known addresses. Attorney Runyon failed to file any written response to the motion and the OLR renewed its motion on January 21, 2020.¹

¹ The OLR filed an affidavit with its renewed motion for default judgment dated January 21, 2020, transcribing a voice mail message that Attorney Runyon left with the OLR stating his intent not to participate in this matter.

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¶8 Referee Erickson withdrew from the case and Referee L. Michael Tobin was appointed on March 16, 2020.² On April 21, 2020, Referee Tobin notified Attorney Runyon and counsel for the OLR by email of a scheduling conference and hearing on the default motion to be held on April 30, 2020. Attorney Runyon failed to appear or participate.

¶9 On May 21, 2020, the referee issued a report recommending that this court grant the OLR's motion for default judgment, based upon Attorney Runyon's failure to file an answer or appear in the proceeding. The referee found that the factual allegations of the OLR's complaint should be taken as true and proven by clear, satisfactory, and convincing evidence. The referee recommended revocation of Attorney Runyon's Wisconsin law license and the imposition of restitution as set forth herein.

¶10 On May 29, 2020, the OLR filed a restitution statement confirming its request for the restitution, as recommended by the referee. Attorney Runyon did not respond to the OLR's restitution statement.

¶11 Attorney Runyon did not appeal from the referee's report and recommendation, so we proceed with our review of the matter pursuant to SCR 22.17(2). We review a referee's findings of fact subject to the clearly erroneous standard. In re Disciplinary Proceedings Against Inglimo, 2007 WI 126, ¶5, 305

² Referee Erickson waived any fees and expenses he might be entitled to in this matter.

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Wis. 2d 71, 740 N.W.2d 125. We review the referee's conclusions of law de novo. Id. We determine the appropriate level of discipline independent of the referee's recommendation. In re Disciplinary Proceedings Against Widule, 2003 WI 34, ¶44, 261 Wis. 2d 45, 660 N.W.2d 686.

¶12 We agree with the referee that Attorney Runyon should be declared in default. In addition, the referee properly relied on the allegations of the complaint, which were deemed admitted by Attorney Runyon's failure to answer. We therefore agree with the referee that the factual allegations of the OLR's complaint may be taken as true and they prove by clear, satisfactory, and convincing evidence that Attorney Runyon committed all of the counts of misconduct alleged in the complaint.

¶13 With respect to the appropriate level of discipline, upon careful review of the matter, we agree with the referee's recommendation for revocation of Attorney Runyon's license to practice law in Wisconsin and the imposition of restitution. We will merely summarize the allegations of misconduct for each separate client matter.

Matter of A.D. and T.D. (Counts 1-5)

¶14 In October 2017, Attorney Runyon was retained by two brothers, A.D. and T.D., to sell real estate held by the testamentary trust of their late mother. The property was sold and proceeds of the sale were to be divided between the brothers. On December 22, 2017, a title company sent Attorney Runyon a check for \$135,785.42, payable to the P.A.T. Trust,

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representing the proceeds from the sale of the property. Over the next six months Attorney Runyon proceeded to empty this fund for his own benefit, while misrepresenting the status of the matter to his clients. By July 9, 2018, Attorney Runyon's trust account held only \$48.35 attributable to the P.A.T. Trust. Around the same time, Attorney Runyon mailed his clients a brochure from the Fund and a copy of the check from the real estate sale, indicating they could try to recover their funds from the Fund. He then failed to respond to the OLR's requests for information about the grievance that ensued.

Matter of S.S. (Counts 6-10)

¶15 In October 2017, Attorney Runyon was retained by G.G. to represent S.S., a minor, regarding possible criminal allegations. Attorney Runyon was paid \$10,000 in advanced fees but did not provide his clients with a written fee agreement. Attorney Runyon deposited the \$10,000 in advanced fees into his trust account then proceeded to disburse the funds for his own use. Later that month, the Lincoln County District Attorney's Office closed its matter involving S.S. without filing charges. After some delay, Attorney Runyon told the clients he would return the advanced fee by August 11, 2018. He failed to do so. Instead, he sent the clients a handwritten letter suggesting they seek reimbursement from the Fund. The Fund eventually reimbursed G.G. for the fees paid on behalf of S.S.

Matter of M.B. (Counts 11-18)

¶16 In November of 2017, M.B. hired Attorney Runyon to recover \$1,788.30 in erroneous fees incurred from Associated

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Bank. She paid Attorney Runyon a flat fee of \$500 to commence a small claims action against Associated Bank. Attorney Runyon did not give her any written communication regarding the fee. Attorney Runyon did file a small claims action against Associated Bank and the parties settled the matter for \$1,788.30 in exchange for dismissing the case. However, Attorney Runyon did not notify the court of the settlement, and it eventually issued a default judgment against Associated Bank. He then deposited the settlement check into his client trust account without informing his client that he had received the settlement. He then proceeded to disburse most of the settlement funds for his own purposes, while falsely telling his client that he had not yet received the settlement funds.

¶17 On February 6, 2018, Attorney Runyon told the client that the client could pick up a settlement check at Attorney Runyon's law office. When the client went to Attorney Runyon's office the next day, Attorney Runyon offered a check for \$1,000, which the client declined, asking for the full settlement, consistent with the initial agreement.

¶18 The client commenced a small claims action against Attorney Runyon, who filed an answer claiming that M.B. owed him fees of \$1,150 plus costs in her case. He attached a false itemized statement in support of this misrepresentation. He also failed to fully cooperate with the OLR's investigation into this matter.

¶19 In August 2018, a court trial was conducted in M.B.'s small claims case against Attorney Runyon. At the trial,

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Attorney Runyon testified that he had not received the settlement funds by early January of 2018, and that he was owed an hourly fee. The court rejected Attorney Runyon's arguments and granted judgment against him for \$1,612.89, reflecting the Associated Bank settlement amount, less filing, service, and other costs. Attorney Runyon never satisfied the judgment. The Fund eventually reimbursed M.B.

Matter of R.G. (Counts 19-23)

¶20 In late July 2018, Attorney Runyon retained counsel to assist him with closing his practice. Nonetheless, on August 7, 2018, Attorney Runyon accepted representation of R.G. to negotiate a debt she owed. She paid Attorney Runyon \$1,835 in advance. Attorney Runyon did not provide her with a written fee agreement and did not deposit the fees into his trust account. On or around September 24, 2018, Attorney Runyon falsely told R.G. that he was working on her matter. R.G. tried contacting Attorney Runyon after that date, but his phone number had been disconnected. Attorney Runyon has not refunded any of R.G.'s advanced payment. The Fund eventually reimbursed R.G.

¶21 The referee concluded that the OLR's complaint demonstrates that Attorney Runyon committed the 23 counts of misconduct, as alleged, involving four separate clients. In so doing, Attorney Runyon committed eight counts of misconduct in violation of SCR 20:8.4(c)³ (Counts 2, 4, 7, 9, 14, 15, 19, and

³ SCR 20:8.4(c) provides: "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

22). He made a false statement to a tribunal in violation of SCR 20:3.3(a)(1)⁴ (Count 17). He engaged in multiple trust account violations, violating SCR 20:1.15(b)(1)⁵ (Counts 3, 13), SCR 20:1.15(e)(1)⁶ (Counts 1 and 12), and SCR 20:1.16(d)⁷ (Counts

⁴ SCR 20:3.3(a)(1) provides: "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."

⁵ SCR 20:1.15(b)(1) provides:

A lawyer shall hold in trust, separate from the lawyer's own property, that property of clients and 3rd parties that is in the lawyer's possession in connection with a representation. All funds of clients and 3rd parties paid to a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable trust accounts.

⁶ SCR 20:1.15(e)(1) provides:

Upon receiving funds or other property in which a client has an interest, or in which the lawyer has received notice that a 3rd party has an interest identified by a lien, court order, judgment, or contract, the lawyer shall promptly notify the client or 3rd party in writing. Except as stated in this rule or otherwise permitted by law or by agreement with the client, the lawyer shall promptly deliver to the client or 3rd party any funds or other property that the client or 3rd party is entitled to receive.

⁷ SCR 20:1.16(d) provides:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

10, 23). He violated rules pertaining to fee agreements, including SCR 20:1.5(a)⁸ (Count 16), SCR 20:1.5 (b)(1) and (2)⁹

⁸ SCR 20:1.5(a) provides:

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

⁹ SCR 20:1.5(b)(1) and (2) provides:

(1) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate as in the past. If it is reasonably foreseeable that the total cost of representation to the client, including attorney's fees, will be \$1000 or less, the communication may be

(Counts 6, 20), SCR 20:1.5(f)¹⁰ (Count 21), and SCR 20:1.5(h) (1)¹¹ (Counts 8 and 11). In addition, for failing to cooperate with aspects of the disciplinary proceeding, Attorney Runyon violated

oral or in writing. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.

(2) If the total cost of representation to the client, including attorney's fees, is more than \$1000, the purpose and effect of any retainer or advance fee that is paid to the lawyer shall be communicated in writing.

¹⁰ SCR 20:1.5(f) provides:

Except as provided in SCR 20:1.5(g), unearned fees and funds advanced by a client or 3rd party for payment of fees shall be held in trust until earned by the lawyer, and withdrawn pursuant to SCR 20:1.5(h). Funds advanced by a client or 3rd party for payment of costs shall be held in trust until the costs are incurred.

¹¹ SCR 20:1.5(h) (1) provides:

At least five business days before the date on which a disbursement is made from a trust account for the purpose of paying fees, with the exception of contingent fees or fees paid pursuant to court order, a lawyer shall transmit to the client in writing all of the following:

a. An itemized bill or other accounting showing the services rendered.

b. Notice of the amount owed and the anticipated date of the withdrawal.

c. A statement of the balance of the client's funds in the lawyer's trust account after the withdrawal.

SCR 22.03(2),¹² enforceable via SCR 20:8.4(h)¹³ (Count 5) and SCR 22.03(6),¹⁴ enforceable via SCR 20:8.4(h) (Count 18).

¶22 With respect to his recommendation that we revoke Attorney Runyon's law license, the referee found instructive In re Disciplinary Proceedings Against Grogan, 2014 WI 39, 354 Wis. 2d 659, 847 N.W.2d 817. Attorney Grogan, like Attorney Runyon, had a prior disciplinary history. This court revoked his law license for misappropriating the funds of several clients; lack of diligence; for engaging in dishonest and

¹² SCR 22.03(2) provides:

Upon commencing an investigation, the director shall notify the respondent of the matter being investigated unless in the opinion of the director the investigation of the matter requires otherwise. The respondent shall fully and fairly disclose all facts and circumstances pertaining to the alleged misconduct within 20 days after being served by ordinary mail a request for a written response. The director may allow additional time to respond. Following receipt of the response, the director may conduct further investigation and may compel the respondent to answer questions, furnish documents, and present any information deemed relevant to the investigation.

¹³ SCR 20:8.4(h) provides: "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)."

¹⁴ SCR 22.03(6) provides: "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."

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fraudulent practices in multiple matters; and for failing to cooperate with the OLR's investigations into his misconduct.

¶23 We adopt the referee's findings and conclusions and we declare Attorney Runyon in default and we revoke his law license and impose the restitution, as recommended. The facts detailed in the complaint demonstrate a clear pattern of misconduct by Attorney Runyon and disregard for his obligations as an attorney in this state. He converted thousands of dollars he had obtained from the clients or their relatives for his own use and failed to respond to the numerous grievances filed by his clients. The severe sanction of the revocation of his license to practice law in Wisconsin must be imposed to protect the public from a repetition of this misconduct and to deter other attorneys from engaging in similar misconduct. We further agree with the referee that Attorney Runyon must be held responsible for the \$135,785.42 he owes to the P.A.T. Trust and for the amounts that the Fund had to pay to the clients harmed by his misconduct. We further conclude that he shall bear the full costs of this disciplinary proceeding.

¶24 IT IS ORDERED that the license of James T. Runyon to practice law in Wisconsin is revoked, effective the date of this order.

¶25 IT IS FURTHER ORDERED that within 60 days of the date of this order, James T. Runyon shall pay restitution of \$135,785.42 to the P.A.T. Trust.

¶26 IT IS FURTHER ORDERED that within 60 days of the date of this order, James T. Runyon shall pay restitution to the

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Wisconsin Lawyers' Fund for Client Protection in the amount of \$10,000 for the claims of S.S. and G.G.; \$1,612.89 for M.B.'s claim; and \$1,835 for R.G.'s claim.

¶27 IT IS FURTHER ORDERED that within 60 days of the date of this order, James T. Runyon shall pay to the Office of Lawyer Regulation the costs of this proceeding, which are \$1,080.34 as of June 26, 2020.

¶28 IT IS FURTHER ORDERED that payment of restitution is to be completed prior to paying costs to the Office of Lawyer Regulation.

¶29 IT IS FURTHER ORDERED that James T. Runyon shall comply, if he has not already done so, with the requirements of SCR 22.26 pertaining to the duties of a person whose license to practice law in Wisconsin has been revoked.

¶30 IT IS FURTHER ORDERED that James T. Runyon's petition for voluntary resignation of his law license, which was held in abeyance pending consideration of this disciplinary proceeding, is dismissed as moot.

¶31 ANN WALSH BRADLEY, J., did not participate.

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