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Supreme Court of Wisconsin

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October 24, 2022

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

No. 2020AP2166-D OLR v. Matthew T. Luening

This matter was scheduled for oral argument on November 7, 2022 but was removed from the oral argument calendar because the court has determined that it is not yet ripe for oral argument or decision.

Some of the counts of misconduct alleged in the Office of Lawyer Regulation's (OLR) complaint arose out of Attorney Matthew T. Luening's practice in the area of immigration law. As to those counts of misconduct, the complaint cited the specific Rules of Professional Conduct, as adopted by this court, which Attorney Luening was alleged to have violated. The referee found that the OLR met its burden of proof as to some of those counts of misconduct.

The court notes that in OLR v. Din, No. 2020AP2165-D, in a complaint filed the same day as the complaint in the instant case, the OLR also alleged various counts of misconduct arising out of an attorney's practice in the area of immigration law. The Din complaint, in addition to citing the specific Rules of Professional Conduct alleged to have been violated, also cited the applicable rules set forth in 8 C.F.R. § 1003.102, which have been promulgated by the United States Department of Justice and establish rules of procedure and standards of professional conduct governing practitioners who are permitted to practice before the Executive Office of Immigration

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No. 2020AP2166-D

OLR v. Matthew T. Luening

Review (EOIR). Supreme Court Rule (SCR) 20:8.5(b) contains a choice of law provision which provides that: “In the exercise of the disciplinary authority of this state, the rules of Professional Conduct to be applied shall be as follows: (1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise” The choice of law issue was litigated before the referee in Din, and the referee in that case concluded that SCR 20:8.5 unambiguously provided that EOIR’s rules of conduct apply with respect to any conduct in matters pending before the EOIR. Neither the OLR nor Attorney Din appealed the referee’s conclusion on the choice of law issue. See also Atty’s Grievance Comm’n of Maryland v. Tatung, 476 Md. 45, 258 A.3d 234 (2021).

IT IS ORDERED that, on or before November 3, 2022, the OLR shall inform the court, in writing, why the complaint in this matter did not cite the applicable rules set forth in 8 C.F.R. § 1003.102, as did the complaint in Din, and why SCR 20:8.5(b) does not require the counts of misconduct arising out of Attorney Luening’s immigration practice to be governed by EOIR rules of conduct.

Sheila T. Reiff
Clerk of Supreme Court