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Supreme Court of Wisconsin

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April 18, 2023

To:

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

In the Matter of the Admission of Nicholas J. Helmer II to the Practice of Law

In October 2020, the State Bar of Wisconsin informed this court that Attorney Nicholas J. Helmer II had not enrolled in the State Bar and has also failed to respond to its certified letter requesting that he do so. On August 25, 2022, and again on September 26, 2022, this court issued orders directing Attorney Helmer to show cause why his license to practice law in Wisconsin should not be suspended for his failure to enroll in the State Bar as required by SCR 10.03(2). Attorney Helmer has filed no response;

IT IS ORDERED that the license of Attorney Nicholas J. Helmer II to practice law in Wisconsin is temporarily suspended as of the date of this order. Attorney Helmer shall comply with the requirements of SCR 22.26 relating to license suspension if he has not already done so.

Page 2

April 18, 2023

In the Matter of the Admission of Nicholas J. Helmer II to the Practice of Law

REBECCA GRASSL BRADLEY, J. (*concurring*).

I can live with no responsibility whatsoever. The price I pay is that nothing matters. Or I can reverse it and everything matters, but I have to take the responsibility that's associated with that.

Jordan Peterson, Professor, Univ. of Toronto, Lecture: Everything Matters or Nothing Matters, at 3:39 (uploaded Dec. 3, 2019), <https://www.youtube.com/watch?v=pBi9OTWCa5w>.

I concur with this court's decision to temporarily suspend the law license of Nicholas J. Helmer II. I write separately to address the dissent's disregard for personal responsibility. Contrary to the dissent's lament, no one but Attorney Helmer is at fault for his failure to enroll in the State Bar of Wisconsin.

A simple review of the facts makes clear the propriety of this court's decision. Attorney Helmer has not joined the Bar despite possessing a law license for over two years. Accordingly, he has long been in violation of SCR 10.03(2) (2020), which requires attorneys to enroll in the Bar within 10 days after the admission to practice. He has continued to be in violation even though the clerk of this court—via a staff member—emailed Attorney Helmer in July 2022 advising him that he needed to enroll:

Good afternoon,

Records indicate that you have been sworn in to the . . . Bar but have never completed enrollment. Please advise if you have completed your enrollment in [t]he . . . Bar. If you have not enrolled, please do so as soon as possible. If you no longer have the enrollment forms, please contact the . . . Bar directly at 608-257-3838 or customerservice@wisbar.org and they can send you the forms electronically.

Your admission to practice law in Wisconsin is not final until you have enrolled with [t]he . . . Bar . . . Pursuant to SCR 10.03(2), you are required to enroll in the . . . Bar within 10 days after admission to practice.

We will hold the failure to enroll information we received from [t]he . . . Bar . . . until Aug. 15, 2022, before notifying the court.

....

In-take clerk

WI Court System

Attorney Helmer did not respond. This court then issued an order to show cause as to why his law license should not be suspended for failure to enroll. The order was sent by certified mail to Attorney Helmer's address of record and was returned as undeliverable. Thereafter, another staff member spoke to Attorney Helmer's former employer, requesting an updated address. Failure to "promptly" report a change of address is a standalone violation of SCR 10.03(2). This former

Page 3

April 18, 2023

In the Matter of the Admission of Nicholas J. Helmer II to the Practice of Law

employer told the staff member that Attorney Helmer was working elsewhere. The staff member called Attorney Helmer's new business phone number, left a voicemail, and sent an email to Attorney Helmer's new business email address. At some point, this staff member and Attorney Helmer corresponded by email and spoke over the telephone and Attorney Helmer provided the staff member with his new mailing address, after which another order to show cause was sent via email and certified mail to that address. A signed receipt was not received.

Under the circumstances, if SCR 10.03(2) is to matter, this court must enforce the rule by temporarily suspending Attorney Helmer's license. The dissent not only disagrees but castigates this court for Attorney Helmer's failure. The dissent would have this court take on a parental role, in which this court would "make greater efforts to ensure that attorneys who have failed to enroll in the . . . Bar have actually received the correspondence and orders informing them of . . . [their failure] and its repercussions." Dissent, ¶1 (quoting *In re Admission of Connor*, unpublished order (Wis. June 14, 2017) (Abrahamson & Ann Walsh Bradley, JJ., dissenting)). What the dissent has in mind is unclear, as even the dissent acknowledges Attorney Helmer was sent multiple emails and two orders to show cause (the second of which was sent to an address Attorney Helmer recently provided). He was also contacted by telephone and, in the dissent's words, "confirmed the current mailing address." *Id.* ¶8. The clerk's staff have expended substantial resources trying to ensure Attorney Helmer complies with his responsibilities, but the dissent devalues their work while ignoring Attorney Helmer's individual responsibility for his failure to enroll.

This court oversees attorneys, not children. We rather reasonably expect attorneys will fulfill their professional responsibilities, particularly after they have been given multiple opportunities to remedy their lapses. I respectfully concur.

I am authorized to state that Chief Justice Annette Kingsland Ziegler joins this concurrence.

ANN WALSH BRADLEY, J. (*dissenting*). Over six years ago, in another failure to enroll case, I wrote "the State Bar and this court should make greater efforts to ensure that attorneys who have failed to enroll in the State Bar have actually received the correspondence and orders informing them of this fact and its repercussions." *In re Admission of Kathryn Chelsea Connor*, unpublished order (Wis. S. Ct. June 14, 2017) (Abrahamson and Ann Walsh Bradley, JJ., dissenting).

In another circumstance where temporary suspension is an available remedy, I joined a dissent which provided that "it would be better practice for this court to personally serve respondent-lawyers with orders to show cause why their [license should not be temporarily suspended]." *OLR v. Goldmann*, No. 2017XX594-D, unpublished order (Wis. S. Ct. June 13, 2017) (Abrahamson, J., dissenting).

A review of such cases reflects that sometimes personal service is utilized, see *OLR v. Sayaovong*, 2015 WI 100, 365 Wis. 2d 200, 871 N.W.2d 271; *OLR v. Cannaday*, No. 2013XX1207-D, unpublished order (Wis. S. Ct. October 15, 2013), and sometimes it is not.

Page 4

April 18, 2023

In the Matter of the Admission of Nicholas J. Helmer II to the Practice of Law

The initial facts here are straightforward. On September 29, 2020, Attorney Nicholas Helmer II (Helmer) was admitted to the practice of law in Wisconsin. Pursuant to SCR 10.03(2) he was required to enroll in the State Bar of Wisconsin within 10 days after admission to practice. He failed to do so.

Thirty-one days later, the State Bar sent the Clerk of the Court a letter, informing the office that Helmer had not enrolled. The standard practice upon receipt of such a letter is that the Clerk will send notice to the Commissioner's office regarding the failure to enroll and an order will be issued requiring the licensee to show cause as to why their license should not be suspended for failing to enroll. However, no such actions took place here.

Almost two years later, in July of 2022, the Board of Bar Examiners (BBE) requested the Clerk's office look into this matter as Helmer had still not enrolled. The Clerk's office then sent Helmer an email noting that records indicate he had not completed enrollment. The Clerk's office did not receive a response to this letter.

Helmer's file was submitted to the court in early August of 2022. Following the standard practice, the court issued an order that Helmer show cause as to why his license to practice law should not be suspended for his failure to enroll. The order was sent by certified mail and returned to the court as undeliverable around September 11, 2022.

The Clerk's office then contacted Helmer's former employer and obtained an updated home address and email address. Helmer then confirmed the current mailing address. The court issued another order to show cause on September 26, 2022, and sent to Helmer via certified mail and email. No signed receipt was received for the certified mail and there was no response to the email.

This tale reinforces the above referenced prior writings: (1) the State Bar, and most certainly this court, should endeavor to ensure that the attorneys who have failed to enroll in the State Bar have actually received the correspondence and orders informing them of this fact and its repercussions, and (2) for such an important matter, certified mail with no signed, returned receipt fails to provide sufficient assurance of notification. As this court has previously done, albeit inconsistently, when such high stakes are at risk, that assurance requires personal service.

I understand that some of this case unfolded during the early days of COVID-19. But if that is an excuse for the court system, it may also serve as an excuse for Helmer. I do not know if he was ever made aware of the repercussions of failure to enroll and I have no idea (nor does anyone else) whether he actually received the certified letters containing an Order to Show Cause.

Because I determine that our system would be better-served by both greater efforts to assure contact with the attorney and by personal service of the Order to Show Cause, I respectfully dissent.

I am authorized to state that Justice Rebecca Frank Dallet joins this dissent.

Sheila T. Reiff
Clerk of Supreme Court