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March 20, 2024

**To:**

Kim M. Kluck  
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110 E. Main Street, Ste. 315  
Madison, WI 53703

Madaleine R. Mulrey  
[Confidential Address]

Madaleine R. Mulrey  
[Confidential Address]

James Evenson  
Referee  
[Confidential Address]

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

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No. 2020AP1651-D      Office of Lawyer Regulation v. Madaleine R. Mulrey

Attorney Madaleine R. Mulrey has appealed Referee James Evenson's recommendation that she be declared in default for failure to file a timely answer and that she be privately reprimanded for four counts of professional misconduct. After careful review of the matter, we agree with the referee that, based on her failure to timely answer the complaint filed by the Office of Lawyer Regulation (OLR), Attorney Mulrey is in default. We also agree that a private reprimand is an appropriate sanction for her professional misconduct. Finally, we agree with the referee that Attorney Mulrey should be assessed the full costs of this proceeding.

Attorney Mulrey was admitted to practice law in Wisconsin in 2003. She has no prior disciplinary history. On October 8, 2020, OLR filed a complaint alleging four counts of misconduct arising out of Attorney Mulrey's representation of K.H., who retained her to represent him regarding municipal charges of resisting or obstructing a peace officer and unlawful trespass. On February 6, 2018, Attorney Mulrey filed a Notice of Appearance and a Not Guilty Plea in the case, which was scheduled for a pretrial conference on March 6, 2018. On March 6, 2018, Attorney Mulrey contacted the City Attorney's office and asked that the pretrial conference be rescheduled. The Assistant City Attorney agreed and rescheduled it for April 4, 2018. The court sent a notice of the new date to Attorney Mulrey. Attorney Mulrey appeared at the pretrial conference on April 4, 2018 and met with the Assistant City Attorney, who relayed a settlement

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offer to her and asked that the matter be set for a review conference on May 14, 2018 to allow Attorney Mulrey to confer with K.H.

Attorney Mulrey failed to appear at the review conference. As a courtesy, the Assistant City Attorney asked that the court reschedule the matter. The court set another review conference for June 18, 2018 and mailed a notice to Attorney Mulrey. Attorney Mulrey failed to appear at the June 18, 2018 review conference, and the City Attorney's office requested that a default judgment be entered. On June 28, 2018, the court issued an order of default judgment in K.H.'s case and set an August 27, 2018 deadline for payment of the forfeitures due on the citations. A notice of default was sent to both Attorney Mulrey and K.H. K.H.'s copy was returned to the court with no forwarding address. Attorney Mulrey states that she did not receive her copy of the notice.

On June 28, 2018, K.H. texted Attorney Mulrey to inquire about the status of the case. Attorney Mulrey texted back saying that her office had been vandalized and that the prosecutor had made an offer of dismissal and that she would explain it to K.H. in a phone call later that day. On August 29, 2018, K.H. texted Attorney Mulrey to ask about the status of the dismissal. Attorney Mulrey replied that she was still filing reports with the sheriff's department about her home being vandalized and that she would call him later that day with a status update. By September 2018 at the latest, Attorney Mulrey was aware that default judgment had been entered, but she did not advise K.H. of this fact. On September 28, 2018, K.H. texted Attorney Mulrey again and expressed frustration about not knowing the status of his case. K.H. also asked about the dismissal of the charges. Attorney Mulrey told him the prosecutor was willing to hold the case open for a year and drop the charges if certain conditions were met.

On February 4, 2019, K.H. spoke with an Assistant City Attorney and learned that Attorney Mulrey had not appeared for two court dates and that a default judgment had been entered against him. The Assistant City Attorney explained that K.H. could petition to reopen the case. K.H. texted Attorney Mulrey about the default judgment. She responded, "I never received notice of the hearing, . . . and filed a motion to reopen last fall. . . ." Her assertion that she had filed a motion to reopen the case was false. K.H. discharged Attorney Mulrey as his attorney and filed a grievance with OLR. In March 2019 the court reopened the citations against K.H. He accepted the original hold open agreement, and the matter was resolved with the dismissal of the citations.

On April 23, 2019, OLR sent Attorney Mulrey written notice of its formal investigation into K.H.'s grievance and requested that she provide a written response before May 16, 2019. Attorney Mulrey requested, and received, several extensions of time to respond to the grievance. On July 23, 2019, based on her failure to respond, OLR filed with this court a Notice of Motion and Motion Requesting Order to Show Cause as to why Attorney Mulrey's law license should not be suspended for failure to cooperate in OLR's investigation. On July 25, 2019, this court issued an order requiring Attorney Mulrey to show cause within 20 days why her law license should not be temporarily suspended. Attorney Mulrey thereafter provided OLR with sufficient information to continue its investigation, and this court dismissed OLR's motion to suspend Attorney Mulrey's law license.

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The OLR's complaint alleged that by failing to appear at the City Attorney review conferences, resulting in a default judgment against K.H., and thereafter by failing to file a motion to reopen K.H.'s case, Attorney Mulrey violated Supreme Court Rule (SCR) 20:1.3; by failing to inform K.H. of the default judgment and failing to keep him reasonably informed about the status of the case, Attorney Mulrey violated SCR 20:1.4(a)(3); by informing K.H. that she had filed a motion to reopen his case when in fact she had not done so, Attorney Mulrey violated SCR 20:8.4(c); and by willfully failing to provide OLR with a timely written response to the grievance, Attorney Mulrey violated SCR 22.03(2) and 22.03(6), enforceable via SCR 20:8.4(h).

Attorney Mulrey's answer to the complaint was due on January 12, 2021. On January 22, 2021, Attorney Mulrey emailed counsel for OLR asking for additional time to file her answer. Although she said she was requesting "a reasonable accommodation pursuant to the Americans with Disabilities Act [ADA], Title II Regulations, Section 35.160(a)(1)," she did not provide any factual information to support her request. OLR agreed not to object to the timeliness of Attorney Mulrey's answer provided it was filed by February 16, 2021 but noted that any further extension requests must be directed to the referee. Attorney Mulrey did not answer or move for a further extension by February 16, 2021. She had not filed an answer by February 25, 2021 when OLR moved for default judgment. On March 1, 2021, Attorney Mulrey emailed the referee and OLR again asking for a reasonable accommodation pursuant to the ADA. Again, she did not state the nature of her claimed disability or provide any supporting documentation.

In a March 2, 2021 telephone scheduling conference, Attorney Mulrey again said she was seeking an accommodation under the ADA. The referee directed her to provide medical or other documentation of her claimed disability and need for accommodation by March 18, 2021. On March 19, 2021, Attorney Mulrey sent the referee an email requesting an extension of the deadline for her to submit documentation in support of her request for a reasonable accommodation under the ADA. The referee directed her to provide such documentation by March 23, 2021.

On March 23, 2021, Attorney Mulrey sent an email asking for yet another extension of time. She attached a letter dated February 10, 2020—more than thirteen months earlier—from Eileen P. Ahearn, M.D., Ph.D., that read, "Ms (sic) Mulrey is a very nice Veteran who is under my care at the VA Hospital. Due to medical conditions, she may need extra time to complete tasks. Thank you for your consideration in this matter." Attorney Mulrey later conceded that this letter was not adequate to establish the existence of a disability requiring a reasonable accommodation.

On March 30, 2021, the referee held a telephonic scheduling conference and hearing on OLR's motion for default judgment. Attorney Mulrey said she intended to provide documentation from her health care provider regarding her disability and requested accommodation, but she still did not specify the nature of her claimed disability or provide a timeline for submitting supporting documentation.

The referee permitted the parties to make final submissions regarding the pending motion for default judgment. OLR submitted its supporting argument. On April 30, 2021, Attorney Mulrey emailed her response and for the first time identified potential disabilities, which included

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mental health issues. She still provided no medical documentation to support her claimed disability, nor did she specify what reasonable accommodation she was seeking.

By order of May 10, 2021, the referee issued a recommendation that this court grant OLR's motion for default judgment. On June 2, 2021, Attorney Mulrey filed a motion to reconsider the referee's default recommendation. She argued that the referee's decision not to grant her requested accommodation of an extension of time to file an answer constituted a manifest error of law. She attached a blank consent form titled "VA Research Consent Form" for a study titled "An efficient, exposure-based treatment for PTSD compared to Prolonged Exposure: A non-inferiority randomized trial." Attorney Mulrey's name did not appear on the form.

On June 20, 2021, five months after the original deadline to file an answer, Attorney Mulrey emailed her answer to the complaint to the referee and OLR. The untimely answer admitted many of the allegations in the complaint and asserted various defenses, including lack of reasonable accommodations under the ADA. In her reply brief in support of her motion for reconsideration, Attorney Mulrey conceded that at the time of the referee's decision on default, she had not proven a disability. The referee denied Attorney Mulrey's motion for reconsideration of the default recommendation, concluding that the record failed to establish that Attorney Mulrey suffered from a disability; what that disability might be; and what accommodations, if any, would be appropriate.

On September 29, 2021, Attorney Mulrey emailed a document titled "(Corrected) Motion to Reconsider Default Judgment." The motion again referred to PTSD and Attorney Mulrey's "participation in a study." Once again, Attorney Mulrey provided no medical documentation showing that she personally had been diagnosed with PTSD or that she had actually participated in the study she referenced.

Between October 2021 and April 2022, the referee allowed Attorney Mulrey to supplement the evidentiary record with various declarations and exhibits. On May 23, 2022, the referee filed a report and re-stated recommendation finding that OLR met its burden of proof as to all four counts of misconduct alleged in the complaint. The referee recommended that Attorney Mulrey receive a private reprimand and pay the full costs of this proceeding.

Attorney Mulrey appealed the referee's report, arguing that the referee failed to properly address her request for an accommodation of disability under the ADA before recommending that she be declared in default. She asserts that there is substantial uncontroverted evidence in the record that she "actually has serious impairments," but she acknowledges that she and her counsel erred "by sometimes using imprecise language to describe her disability status," and at times spoke of her "as hypothetically falling into a category of not actually disabled but having a record of disability." Attorney Mulrey further states that while she "faced obstacles in obtaining relevant medical records," "her own account explains how the details in the fragmented records fit together, . . ." (citations omitted). She asserts that the entire proceeding, and in particular the default judgment, "were fruits of the ADA violation." She asks that this court dismiss OLR's complaint with prejudice or, in the alternative, vacate the default judgment; reject the referee's report and recommendation; and remand for further investigation or proceedings.

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OLR asserts that although Attorney Mulrey claimed to have a disability, it was not obvious; the claim was initially generalized; and it remained unsupported by medical documentation. OLR says the referee correctly recommended that Attorney Mulrey be found in default because she failed to file a timely answer and failed to demonstrate that she was entitled to an indefinite extension of time as a reasonable accommodation under the ADA. OLR says although Attorney Mulrey asks this court to dismiss the complaint or remand to the referee for further proceedings, "this case has lingered primarily because of her inaction, beginning with her failure to file a timely answer or reasonably provide information to support her request for a claimed disability. The interests of justice—including timely administration of justice—support adoption of the referee's recommendation, entering default judgment, and determining the appropriate sanction."

This court reviews a referee's findings of fact subject to the clearly erroneous standard. In re Disciplinary Proceedings Against Inglimo, 2007 WI 126, ¶5, 305 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. Attorney Mulrey does not challenge any of the referee's findings of fact or conclusions of law. The sole issue she raises on appeal is whether the referee erred in recommending that she be declared in default because she was entitled to reasonable accommodations under the ADA. We find no error.

Persons claiming a disability under the ADA must support requests for "nonobvious, medically necessary accommodations with corroborating evidence such as a doctor's note or at least orally relaying a statement from a doctor." Ekstrand v. School Dis. of Somerset, 583 F.3d 972, 976 (7th Cir. 2009). The record shows that the referee granted Attorney Mulrey multiple extensions of time in which to file her answer to the complaint, and the referee also gave Attorney Mulrey multiple opportunities to provide documentation from her health care provider regarding her claimed disability and requested accommodation, but she never provided that documentation. Having failed to establish the existence of a disability, Attorney Mulrey was thus unable to establish that she was entitled to any additional accommodations than those already afforded to her by the referee. We agree with the referee that it is appropriate to declare Attorney Mulrey in default.

As noted, Attorney Mulrey does not challenge the referee's findings of fact or conclusions of law, and we find that the referee properly relied on the allegations of the complaint, which were deemed admitted by Attorney Mulrey's failure to timely answer. We thus agree with the referee that the factual allegations of OLR's complaint may be taken as true and that they prove by clear, satisfactory, and convincing evidence that Attorney Mulrey committed the four counts of misconduct alleged in the complaint. We further agree with the referee that a private reprimand is an appropriate sanction for Attorney Mulrey's misconduct. Finally, as is our customary practice, we find it appropriate to assess Attorney Mulrey the full costs of this proceeding.

IT IS ORDERED that Madaleine R. Mulrey is privately reprimanded for professional misconduct consisting of failing to file a motion to reopen K.H.'s case, in violation of SCR 20:1.3; failing to inform K.H. of the default judgment and failing to keep him reasonably informed about

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the status of the case, in violation of SCR 20:1.4(a)(3); informing K.H. that she had filed a motion to reopen his case when in fact she had not done so, in violation of SCR 20:8.4(c); and willfully failing to provide OLR with a timely written response to the grievance, in violation of SCR 22.03(2) and 22.03(6), enforceable via SCR 20:8.4(h).

IT IS FURTHER ORDERED that the portions of the record in this case that were ordered sealed shall be maintained under seal until further order of this court.

IT IS FURTHER ORDERED that within 60 days of the date of this order Madaleine R. Mulrey shall pay to the Office of Lawyer Regulation the costs of this proceeding, which are \$19,706.46.

REBECCA GRASSL BRADLEY, J. (*dissenting*). Respondent-Appellant Madaleine Mulrey is a military veteran with a self-reported history of PTSD. Because of her disability, she requested additional, unspecified time to answer the complaint in this matter. The court instead agrees with the referee's recommendation to declare Attorney Mulrey in default and impose a private reprimand for her alleged misconduct. Attorney Mulrey's prior counsel attributed Attorney Mulrey's failure to timely file an answer to a cascade of unfortunate circumstances, including her disability: "Respondent is destitute, displaced, cut off from her records and suffering the effects of trauma. . ." Based on these assertions, I would remand for further investigation of Attorney Mulrey's disability and would give her a final opportunity to receive a reasonable accommodation of her request for additional time to answer the complaint by a date certain. The law disfavors default judgments and prefers a resolution on the merits. I would afford Attorney Mulrey one last opportunity to have her day in court.

I am authorized to state that Chief Justice ANNETTE KINGSLAND ZIEGLER joins this dissent.

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Samuel A. Christensen  
Clerk of Supreme Court