

SUPREME COURT OF WISCONSIN  
OFFICE OF LAWYER REGULATION

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Public Reprimand With Consent

2024-OLR-06

Walter W. Stern, III,  
Attorney at Law

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Attorney Walter W. Stern, III, is a Wisconsin-licensed attorney, admitted to the practice of law on May 20, 1974.

In May 2019, a Client hired Stern to represent her in filing a civil complaint in federal court against her former employer alleging discrimination based on her race and religion, retaliation, and constructive discharge in violation of Title VII of the 1964 Civil Rights Act (Title VII).

In 2018, before hiring Stern, Client had filed a complaint and an amended complaint with the Equal Employment Opportunity Commission (EEOC). She had not, however, filed a new or amended complaint with the EEOC after her employment ended in December 2018, to allege that she had been constructively discharged or to otherwise make a termination-based claim against her former employer with the EEOC. On March 1, 2019, the EEOC issued a Right to Sue letter to Client regarding the claims she had asserted in her complaint and amended complaint. The Right to Sue letter required Client to file a civil complaint against her former employer by May 30, 2019.

Stern failed to note that Client had not included in her EEOC complaint or amended complaint allegations of constructive discharge or a termination-based claim against her former employer, and, therefore, she was prohibited from raising those claims in a civil complaint.

Because Stern did not note Client's failure to assert allegations of constructive discharge or a termination-based claim in her EEOC complaints, he could not provide her legal advice regarding any potential constructive discharge or termination-based claims, including whether she should file a new EEOC complaint alleging those claims.

On May 29, 2019, Stern filed a complaint against Client's former employer in the United States District Court for the Eastern District of Wisconsin. The complaint alleged that her former employer subjected Client to discrimination because of her religion, failed to accommodate her reasonable religious accommodation requests, and then retaliated against her and subjected her to a hostile work environment. The complaint also alleged that her former employer had constructively discharged her due to the hostile work environment and retaliation. The civil complaint sought unspecified damages under Title VII and attorneys' fees. Stern did not include any claims for discrimination or retaliation based on Client's race.

On August 21, 2019, Stern filed Client's first amended complaint, in which he added additional factual allegations concerning her former employer's alleged discrimination based on her race, in addition to her religion. The paragraphs describing her injuries from her former employer's discriminatory conduct, retaliation, and the alleged hostile work environment and constructive discharge claims, however, referenced only discrimination based on her religion, and not based on her race.

On September 20, 2019, opposing counsel filed the former employer's Answer, Defenses and Affirmative Defenses, in which it denied key allegations included in the amended complaint; asserted that Client failed to state a claim for constructive discharge and failed to exhaust her administrative remedies concerning the constructive discharge claim; asserted that Client failed to state a claim upon which relief could be granted; and, asserted other defenses that could be

raised in a dispositive motion or Motion for Judgment on the Pleadings pursuant to Federal Rule of Civil procedure 12(c).

In approximately September 2019, in anticipation of Stern's planned retirement, Stern began speaking with two other lawyers (Co-Counsel) about referring to them a number of clients, including Client. Stern proposed that he and the Co-Counsels work on Client's case as a team or joint venture, with Stern acting more as a consultant until Client's case went to trial or mediation, when Stern might take a more active role in the representation.

In September, October, and November 2019, Stern continued to represent Client in the civil case, while also discussing Client's case with the Co-Counsel.

In October 2019, Stern told Client in a letter that he was in the process of "semi-retiring from the practice of law" and that he wanted to refer her case to the Co-Counsel as part of a "newly formed joint venture" he was entering into with them. Stern told Client that he would "remain involved in [her] case until its completion, but more in a consulting role"; he would be "joining with" the Co-Counsel, who would handle the day to day work on her case; he would "remain as a mentor and an overseer, but [the Co-Counsels's respective] staff will be responsible for handling the majority of the work going forward"; and, she should "rest assured that [Stern] will be involved until the conclusion of [Client's] case." Stern also sent Client a new representation agreement that was substantially similar to the May 2019 agreement she had entered into with Stern, but that included all three lawyers and stated that they would share the one-third contingent fee. Stern asked Client to sign and return the new representation agreement if she "wish[ed] to continue [her] case with the newly formed joint venture" between Stern and the Co-Counsel. Stern also told Client that if she didn't want to be represented by Stern and the Co-Counsel, she could seek other alternate counsel, but that if she sought other alternative

counsel Stern intended to retain his lien for the full one-third contingent fee against any recovery she might receive.

Client agreed to be represented by the Co-Counsel in conjunction with Stern, but she refused to sign the new representation agreement because she believed that it would cause her to be subject to two separate representation agreements.

On October 27, 2019, Stern sent Client a letter that was addressed to Client and electronically signed by him, but the body of which was written as if from Client. Stern included a signature line at the bottom of the letter for Client to sign. The letter authorized the Co-Counsel to work with Stern on Client's case; described the division of any legal fees between Stern and the Co-Counsel; stated that the terms of the original representation agreement with Stern would otherwise remain in full force and effect; and, stated that Stern was in the process of retiring and that the Co-Counsel would "be handling some of the day to day aspects of the case with [Stern] heading up the team of lawyers."

While it is unclear whether Client signed the letter, it was consistent with her understanding of the division of fees between the lawyers and consistent with her understanding that Stern that he was bringing the Co-Counsel on to help him with her case because he was going to semi-retire, but that he would continue to be part of the team of lawyers representing her. Client did not agree to have Co-Counsel take over her entire case without Stern's involvement in the representation.

Co-Counsel did not begin actively representing Client until approximately November 30, 2019, and they did not assume primary responsibility for Client's case until approximately December 5, 2019. Co-Counsel did not file a notice of appearance with the court until January 21, 2020.

On December 5, 2019, Stern told opposing counsel by email that he would stipulate to the dismissal of Client's constructive discharge claim. He also told opposing counsel that Client's case was being transferred to Co-Counsel, and that opposing counsel should communicate with Co-Counsel going forward. Stern copied Co-Counsel on the email to opposing counsel.

In December 2019, both Co-Counsel signed a stipulation drafted by opposing counsel to dismiss Client's constructive discharge claim with prejudice. Stern did not sign the stipulation in December 2019.

Between December 31, 2019, and January 14, 2020, opposing counsel emailed Stern and both Co-Counsel regarding the stipulation. He informed them that he would prepare and file a summary judgment motion unless he received the fully executed stipulation signed by all three lawyers. Ultimately, on January 14, Stern authorized opposing counsel to affix his signature to the stipulation. On January 15, opposing counsel filed the stipulation with the court.

While Client told OLR that she did not authorize any of the lawyers to dismiss her constructive discharge claim, all three lawyers agreed that they could not ethically pursue the claim because there was not sufficient evidence to support her constructive discharge claim and she had not exhausted her administrative remedies prior to filing the complaint.

During the January 14 telephone call, Stern also told opposing counsel that for all intents and purposes, he was off Client's case and that opposing counsel should communicate only with Co-Counsel regarding Client's case. Stern did not tell Client that for all intents and purposes, he was off Client's case.

Between January 9 and 20, 2020, Stern communicated with Co-Counsel and their respective staff regarding a second amended complaint that Stern believed that Co-Counsel would be filing on Client's behalf.

Co-Counsel filed a notice of appearance with the court on January 21, 2020, in which they stated that Stern had hired them to assist in Client's case. They did not file a motion for substitution or otherwise indicate to the court that Stern should be withdrawn or removed as Client's counsel. Despite his statement to opposing counsel on January 14, Stern did not file a motion to withdraw and he remained counsel of record with the court at all times relevant to this matter.

On January 23, 2020, Co-Counsel filed a motion for leave to file Client's second amended complaint and the proposed second amended complaint. Co-Counsel failed, however, to file a brief in support of their motion as required by the court's local rules. There is no evidence that Co-Counsel consulted with Stern regarding the version of the second amended complaint Co-Counsel filed with the court, that they showed Stern the proposed motion, or that Stern had a role in their failure to file a brief in support of the motion.

On January 23 and 24, 2020, opposing counsel engaged in settlement negotiations with Co-Counsel, but Client rejected her former employer's highest settlement offer. On January 24, 2020, opposing counsel filed his client's motion for summary judgment with supporting brief and materials.

After January 15, 2020, Stern contacted Co-Counsel several times regarding the status of Client's case, settlement negotiations, and other issues, but they did not respond to all of his inquiries or provide him with sufficient information for Stern to maintain an accurate and contemporaneous understanding of Client's case or to allow Stern to actively participate in

responding to the opposing party's motion for summary judgment. Stern told OLR that shortly after they began representing Client, Co-Counsel cut him out of the process of representing Client and refused to provide him with updates as to the status of Client's case

On February 11, 2020, Client called Stern four times regarding her case. Stern did not answer or return her calls. Instead, Stern emailed one of the Co-Counsel to inform him of Client's calls. Stern told him that he did not return Client's calls because he knew Co-Counsel were working on the response to the motion for summary judgment; Stern did not have substantive information to share with Client; and, Stern did not want to undermine Co-Counsel's communications and relationship with Client. Stern also provided his assessment of Client's case and described the affidavits he believed should be filed in support of her brief opposing the motion for summary judgment.

Between February and June 2020, Client continued to contact Stern for information about her case and to discuss with him concerns she had regarding the case. Stern continued to discuss the case with Client and to at times relay information to and from her and Co-Counsel. Stern did not tell her that Co-Counsel had cut him out of the representation, that they were refusing to provide him with information or allow him to participate in representing her, or that he believed that his representation of her had effectively ended.

On February 13, 2020, opposing counsel filed a brief in opposition to Client's motion for leave to file an amended complaint.

On February 14, 2020, Co-Counsel filed Client's brief in opposition to the motion for summary judgment. While the brief and supporting materials were defective or inadequate in several respects, there is no evidence that Stern had a role in preparing, reviewing, or filing the brief and supporting materials.

On February 25, 2020, opposing counsel filed a reply brief in support of the motion for summary judgement.

On March 30, 2020, one of the Co-Counsel expressed to Stern that both Co-Counsel did not believe that Client had a good case. Stern responded by email that he had met with Co-Counsel and discussed Client's case with Co-Counsel numerous times and that Stern believed that she did have a good case to prove religious discrimination. On April 9, 2020, Stern again told Co-Counsel by email that he believed that Client had a good case.

Stern did not resume the lead role in representing Client or communicate to Client that Co-Counsel did not believe that she had a strong case.

Between April 22, 2020, and June 24, 2020, Co-Counsel attempted to negotiate a settlement with opposing counsel. Ultimately, Client authorized Co-Counsel to accept a settlement only if she would receive at least a certain amount after payment of all legal fees and costs. On June 24, opposing counsel made another offer to settle the case. Client rejected the offer unless her former employer agreed to also pay her legal fees, which it would not do.

In approximately June 2020, one of the Co-Counsel told Client that he believed that the judge would likely grant the motion for summary judgment. On June 26, Stern, on behalf of Client, emailed Co-Counsel to ask them to consider filing a motion asking the court to receive audio recordings Client believed would be beneficial to her opposition to the motion for summary judgment. One of the Co-Counsel responded that they had determined that the audio recordings were "not of benefit" to her case and that they would not be filing such a motion.

On September 23, 2020, the court entered an order adopting the parties' stipulation to dismiss Client's constructive discharge claims with prejudice; denying Client's motion for leave to file a second amended complaint; granting the defendant's motion for summary judgment;



and, dismissing the remainder of Client's claims with prejudice. One of the Co-Counsel advised Client and Stern by email that the court had dismissed her case and that Co-Counsel did not believe an appeal would be successful. He advised Client to consult with an appellate attorney if she wished to file an appeal.

By failing to diligently review Client's EEOC complaints so that he could properly identify the claims for which Client had received a Right to Sue letter and so that he could provide Client with informed legal advice regarding any potential constructive discharge or termination-based claims against her former employer, Stern violated SCR 20:1.3.<sup>1</sup>

By failing to file a motion to withdraw, and failing to tell Client that Co-Counsel had cut him out of the representation, he was effectively unable to participate in the representation, or that he believed his representation of her had effectively ended, Stern in each instance violated SCR 20:1.16(d).<sup>2</sup>

Stern has prior discipline. Stern received private reprimands in 1988 for communicating on the subject of the representation with a party he knew to be represented by a lawyer without the consent of that lawyer; 1993 for failing to pay a third-party lien from settlement proceeds after receiving notice of the lien; and 2008 for committing criminal acts that reflected adversely on his honesty, trustworthiness, or fitness as a lawyer. Stern was publicly reprimanded in 1992, *Public Reprimand of Walter W. Stern, III, 1992-11*; and in 2022, *Public Reprimand of Walter W. Stern, III, 2022-6*. In 2013, the Supreme Court of Wisconsin suspended Stern's license to

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<sup>1</sup> SCR 20:1.3 provides: "A lawyer shall act with reasonable diligence and promptness in representing a client."

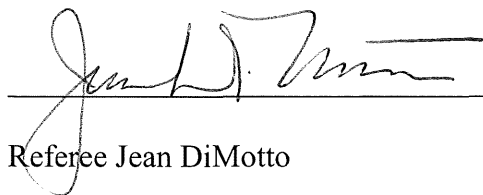
<sup>2</sup> SCR 20:1.16(d) provides: "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to 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."

practice law for two years. *Disciplinary Proceedings Against Stern*, 2013 WI 46. In 2021, the Supreme Court suspended Stern's license for 60 days. *Disciplinary Proceedings Against Stern*, 2021 WI 84.

In accordance with SCR 22.09(3), Attorney Walter W. Stern, III, is hereby publicly reprimanded.

Dated this 15<sup>th</sup> day of August, 2024.

SUPREME COURT OF WISCONSIN



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Referee Jean DiMotto