

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2015-OLR- 7

John Miller Carroll,
Attorney at Law

In September 2013, a woman (the client) hired Attorney John Miller Carroll (Carroll) to represent her regarding an OWI matter resulting from an incident in Green Bay, Wisconsin. The client paid Carroll a fee of \$2,500, pursuant to a written fee agreement which defined the scope of the representation as relating to an OWI first offense matter. In October 2013, the Green Bay City Attorney referred the matter to the Brown County District Attorney to be filed as an OWI 2nd criminal matter, due to the client's prior OWI. On or about October 31, 2013, the arresting officer issued a new citation for an OWI 2nd, with a return date of January 23, 2014. It was anticipated that a criminal complaint would be filed. Carroll did not enter into a new fee agreement with the client or request additional fees from the client, but he continued to represent her with regard to the OWI 2nd criminal matter.

On November 4, 2013, Carroll sent the client an authorization for Carroll to appear on the client's behalf in the criminal matter in Brown County Circuit Court. In the accompanying letter, Carroll asserted that the initial appearance was scheduled for January 23, 2014, but that the client would not need to appear at the initial appearance if the enclosed authorization was signed and timely filed with the court. The client signed and returned the authorization to appear. On or about November 8, 2013, Carroll filed the signed authorization to appear with the Brown County Circuit Court.

On December 19, 2013, the Wisconsin Supreme Court issued an order suspending Carroll's license for a period of five months effective January 23, 2014 in a matter unrelated to his representation of the client.

On January 13, 2014, Carroll caused a member of his staff to contact another attorney regarding a possible referral of the client's case. Sometime between January 13, 2014 and January 23, 2014, Carroll asked the other attorney to appear at the client's initial appearance on January 23, 2014 for the purpose of asking the court to adjourn the initial appearance date. Carroll did not tell the client that he would not be appearing on her behalf or that he had asked another attorney to seek an adjournment of her initial appearance.

On January 14, 2014, Carroll filed a motion with the Wisconsin Supreme Court asking the Court to change the effective date of his suspension to February 1, 2014. On January 17, 2014, the Wisconsin Supreme Court granted Carroll's motion.

On January 17, 2014, the anticipated criminal complaint was filed against the client. The client's initial appearance remained scheduled for January 23, 2014.

Between December 19, 2013 and January 21, 2014, Carroll did not tell the client that his license would be suspended or that he would not be able to represent her during the suspension.

On January 22, 2014, the client called Carroll to ask questions about the initial appearance scheduled for January 23, 2014. Carroll asked the client whether she was going to appear at the initial appearance, to which she responded in the negative because Carroll had told her previously that she did not need to appear. While Carroll asked the client to come to the initial appearance, he did not tell her that he was not going to appear on her behalf, that she must appear because he would not be appearing on her behalf, or that another attorney would be

asking the court to adjourn the initial appearance date. During the January 22, 2014 telephone call, Carroll also did not tell the client about his impending suspension.

As of January 23, 2014, Carroll's license to practice law was active and in good standing. There was no reason that Carroll could not appear on his client's behalf at the January 23, 2014 initial appearance, as he had previously advised her he would do. Carroll, however, did not wish to appear because it would have required him to thereafter file a motion to withdraw given his pending suspension.

On January 23, 2014, Carroll went to the Brown County Courthouse, but he did not go into the courtroom where the initial appearance took place, and he did not appear before the court on his client's behalf at the initial appearance. The other attorney asked the court to adjourn the initial appearance due to Carroll's suspension. The court continued the client's initial appearance until February 20, 2014, to allow her to hire successor counsel.

On January 23, 2014, the client reviewed the online CCAP record for her case, and learned for the first time that another attorney had appeared instead of Carroll, and that Carroll's license had been suspended. The client called Carroll and confronted him about the information she learned on CCAP, at which time he told her that his license would be suspended effective February 1, 2014.

On February 10 and 11, 2014, the client left Carroll two telephone messages stating that she was terminating his representation and requested a full refund of the \$2,500 that had been paid to him and the return of her case-related information by February 12, 2014.

By letter dated February 28, 2014, Carroll provided the client with an itemization of his time spent in representing her which showed legal fees totaling \$2,390 and costs of \$1.75. He also included a check in the amount of \$108.25 as a refund of the remainder of the \$2,500 she

had paid to him for the representation. Carroll included in the itemization legal fees for time spent by him on January 23, 2014 going to the courthouse and speaking with the other attorney, even though Carroll did not appear on his client's behalf, the other attorney had previously agreed to appear, and Carroll did not advise his client of his intent to have the other attorney appear in his stead to seek an adjournment of the initial appearance date.

In the February 28, 2014 letter to his client, Carroll stated, "Due to the suspension of my license originally effective on that date (but later extended until February 1, 2014) I appeared along with [the other attorney], and advised you that we would be moving the date to allow you to either obtain other counsel or move dates to early July. [The other attorney] did this as a favor to me and was attempting to assist you in this matter. I appeared personally on January 23, 2014 to assure that this matter was continued so your interest would be protected."

In a letter to OLR dated November 7, 2014, Carroll asserted, "At the January 23, 2014 appearance I was present in the courtroom with [the other attorney], however he appeared on the record for me to adjourn the date so [the client] would have time to consult with a different lawyer."

The fee dispute between Carroll and his client was resolved through a small claims action filed by the client.

By failing to appear at the January 23, 2014 initial appearance when his license was active and in good standing on that date, Carroll violated SCR 20:1.3, which states, "A lawyer shall act with reasonable diligence and promptness in representing a client."

By failing on or before January 22, 2014 to tell his client that he would not be appearing on her behalf at the initial appearance, and that he had asked another attorney to appear at the initial appearance for the purpose of requesting that the initial appearance be postponed until a

later date, Carroll violated SCR 20:1.4(a)(3), which states, “A lawyer shall...keep the client reasonably informed about the status of the matter...” and SCR 20:1.4(a)(4), which states, “A lawyer shall...promptly comply with reasonable requests by the client for information...”

By failing between December 19, 2014 and January 23, 2014 to tell his client that the Wisconsin Supreme Court had ordered that his license be suspended and that he would not be able to represent her during his suspension, so as to allow his client to make informed decisions about whether to hire successor counsel, represent herself, or request that her matter be continued until after Carroll’s license was reinstated, Carroll violated SCR 20:1.4(b), which states, “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

By charging his client for going to the courthouse on January 23, 2014 and discussing the matter with the other attorney, when Carroll had filed the authorization to appear in November 2013, Carroll could have appeared on his client’s behalf, and Carroll had already arranged for the other attorney to appear at the initial appearance in his stead to request that the initial appearance be adjourned without obtaining his client’s authorization for the same, Carroll charged his client an unreasonable fee, in violation of SCR 20:1.5(a), which states, “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.”

By asserting in his February 28, 2014 letter to his client, “... I appeared along with [the other attorney]” and “I appeared personally on January 23, 2014 to assure that this matter was continued so your interest would be protected,” when Carroll did not appear in the courtroom with the other attorney or appear on the record as counsel for his client on January 23, 2014, Carroll violated SCR 20:8.4(c), which states, “It is professional misconduct for a lawyer to...engage in conduct involving dishonesty, fraud, deceit or misrepresentation...”

By asserting in his November 7, 2014 letter to OLR that “At the January 23, 2014 appearance I was present in the courtroom with [the other attorney]...” when Carroll did not go into the courtroom for the January 23, 2014 initial appearance, Carroll violated SCR 22.03(6), which states, “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.” SCR 22.03(6) is enforced under the Rules of Professional Conduct via SCR 20:8.4(h), which states, “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)...”

In 1992, Carroll received a private reprimand for failing to hold funds in trust in which both he and his former law firm claimed an interest. In 1997, he received a private reprimand for performing work for a client after his services were terminated and for misrepresenting that he

had filed a motion on behalf of the client. In 1999 he received a public reprimand for neglect of a matter, failing to communicate with a client, and failing to return a retainer.

In 2002, Carroll's license was suspended for one year for eight counts of professional misconduct, four of which related to trust account and fee matters, and the other four involving failure to diligently pursue a client's claim, failure to keep a client reasonably informed about the status of a matter, failure to disclose to and cooperate with the Board of Attorneys Professional Responsibility (the predecessor to the Office of Lawyer Regulation (OLR)), and engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation. While suspended, Carroll consented to the issuance of a public reprimand for pre-suspension conduct involving loaning funds to a personal injury client in conjunction with pending litigation.

As noted above, Carroll's license was suspended for five months effective February 1, 2014 for misconduct that included failing to act with reasonable diligence on behalf of a client, failing to provide competent representation to a client, acting under a concurrent conflict of interest without obtaining a written waiver from his client in two client matters, making a false statement of fact to the court, making misrepresentations to his client related to the representation, and making misrepresentations to OLR during the course of the investigation.

In accordance with SCR 22.09(3), Attorney John Miller Carroll is hereby publicly reprimanded.

Dated this 2nd day of September, 2015.

SUPREME COURT OF WISCONSIN

/s/ Richard C. Ninneman
Richard C. Ninneman, Referee