

SUPREME COURT OF WISCONSIN  
OFFICE OF LAWYER REGULATION

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Public Reprimand With Consent

2021-OLR-7

Kerri T. Cleghorn  
Attorney at Law

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Kerri T. Cleghorn (“Cleghorn”) was admitted to the practice of law in Wisconsin on May 19, 2003 (State Bar ID no. 1045719). Cleghorn’s State Bar address of record is 2505 N. Mayfair Road, Suite 219, Milwaukee, Wisconsin 53226-1404. Cleghorn’s law license is active and in good standing. Cleghorn engaged in misconduct in two client matters.

**FIRST MATTER**

On June 5, 2017, Cleghorn signed a written fee agreement with a woman (“F.J.”) for Cleghorn to provide representation for F.J.’s son (“D.J.”), for a flat fee of \$15,000 (the “Agreement”). As to the services to be provided, the Agreement states: “I am hiring Kerri T. Cleghorn as the attorney, for [D.J.] in the Supreme Court of Wisconsin petition for review in appellate case number 16AP[XXXX].” The Agreement calls for an initial payment of \$5,000 to be made on June 5, 2017 and states: “Work will not be begun until full \$5,000 is paid.” The Agreement also notes that \$2,700 was paid on today's date, which date was June 5, 2017. The Agreement then calls for additional payments of \$500 per month until the \$15,000 is paid in full.

The appellate case referenced in the Agreement involved an appeal of a 2013 Milwaukee County circuit court case, in which case D.J. had been convicted after a jury trial of six felony counts, including a count of 1st-Degree Intentional Homicide for which D.J. was sentenced on November 24, 2014 to life in prison.

D.J. was represented in the appellate proceedings by another attorney who filed appellate and reply briefs on D.J.'s behalf in September and November 2016, respectively. On May 10, 2017, the Wisconsin Court of Appeals, District I issued an opinion and order summarily affirming both D.J.'s judgment of conviction and a circuit court order denying D.J.'s postconviction motion.

On May 30, 2017, the other attorney filed a Petition for Review in the appellate case with a no merit statement. On June 1, 2017, the Court of Appeals received a motion from D.J., which was granted, giving D.J. until August 31, 2017 to serve and file a supplemental petition in support of review, but indicating that if a supplemental petition is not filed by that time, the matter will be disposed of based solely on the no-merit petition for review filed by the attorney.

Despite being hired on June 5, 2017 to "petition for review in appellate case number 16AP[XXXX]", Cleghorn did not file any documents in that case related to the Petition for Review. Having received no supplemental petition from or on behalf of D.J., a decision denying the Petition for Review was entered on November 13, 2017.

Cleghorn represents that she received the following payments totaling \$15,000 for her representation of D.J., which payments were not held in trust and were deposited into her business account: \$2,700 on 6/5/17; \$800 on 9/16/17; \$1,500 on 11/16/17; \$270 on 5/7/18; \$150 on 6/8/18; \$1,000 on 8/6/18; \$300 on 8/20/18; \$650 on 2/28/19; \$900 on 3/1/19; \$500 on 3/8/19; \$1,000 on 4/24/19; \$4,000 on 5/14/19; and \$1,230 on 4/17/20. Cleghorn provided OLR with receipts for these payments except for the November 16, 2017 payment.

Despite the fact that Cleghorn deposited the advanced fee payments in her business account rather than holding them in trust, she failed to deliver to D.J., upon accepting the advance payments, a notice in writing containing the following information as required by SCR 20:1.5(g)(1) as part of the alternative protection for advanced fees not held in trust:

d. The lawyer's obligation to refund any unearned advanced fee, along with an accounting, at the termination of the representation.

e. The lawyer's obligation to submit any unresolved dispute about the fee to binding arbitration within 30 days of receiving written notice of the dispute.

f. The ability of the client to file a claim with the Wisconsin Lawyers' Fund for Client Protection if the lawyer fails to provide a refund of unearned advanced fees.

At some point, Cleghorn and D.J. reached an oral understanding during telephone conversations that the scope of Cleghorn's representation of D.J. would be to attempt to find new information in order to get a new trial granted. Cleghorn indicates there was no deadline for this work. However, other than the June 5, 2017 Agreement, Cleghorn never entered into any written fee agreement related to her representation of D.J. and never informed D.J. in writing of any change in the scope of her representation from what was stated in the Agreement.

D.J. asserts that any oral understanding to change the scope of Cleghorn's representation came about as a result of Cleghorn's failure to file a petition for review or request an extension in a timely manner and Cleghorn's misrepresentation to D.J. and his family that she did not miss the appellate filing deadline but, instead, had a different legal strategy that did not involve any time limits.

Despite receiving multiple requests from D.J. between March 2020 and June 2020, Cleghorn never directly provided D.J. with a copy of the Agreement. In explanation for why she did not provide the Agreement to D.J., Cleghorn states that D.J.'s mother informed Cleghorn on April 17, 2020 that she had given D.J. her copy and needed a new one, and that Cleghorn gave her a new copy. However, D.J. made at least three written requests to Cleghorn for a copy of the Agreement after April 17, 2020 which were received by Cleghorn, and Cleghorn still never provided D.J. a copy.

D.J. sent Cleghorn an undated letter postmarked on or around April 16, 2020 in which he indicated that his mother had been calling Cleghorn to make the last payment, he requests a copy of everything that was paid for his records, and he asks Cleghorn to fight for him and get him this new trial. On or around April 17, 2020, Cleghorn received the final payment toward the \$15,000 fee for her representation of D.J.

Beginning on or about May 20, 2020, D.J. sent Cleghorn several written communications in which he indicated that he wanted to terminate Cleghorn's representation. D.J. also requested a refund of the fees paid, an itemized accounting for any amount Cleghorn intended to keep, and that his file either be returned to him or sent to a new attorney D.J. intended to hire.

On June 12, 2020, Cleghorn sent D.J. a letter enclosing a retainer agreement contract for a federal case, stating in the letter: "We also need a letter from you stating that our representation of your appeal is continuing. Such a statement is necessary because we are still hearing from those who claim that you are hiring another attorney for the appeal. This letter can be mailed in the same envelope as the signed retainer agreement."

After June 12, 2020, Cleghorn received no written correspondence from D.J. indicating that he wished for Cleghorn's representation on the appeal to continue.

On August 17, 2020, Cleghorn met with members of D.J.'s family. Cleghorn indicates that at that time she provided them with an invoice dated August 17, 2020 (the "Invoice"). The Invoice reflects time spent on the case billed at an hourly rate of \$250, totaling \$11,975, although there was no reference to billing at an hourly rate in the Agreement. Cleghorn communicated to D.J.'s family during the meeting that she would be willing to refund \$4,000. Although Cleghorn asserts that she provided the Invoice to D.J.'s family, D.J. disputes that she did so. Either way, Cleghorn did not provide the Invoice to D.J. at that time.

On August 24, 2020, D.J. sent Cleghorn a letter stating:

“I have been informed that you met with my family again on August 17, 2020, gave them information about my case, and also told them that you would only refund \$4,000 out of the entire \$15,000 paid to you.

As I have said before and want to make clear again:

1. I do not want you to represent me in any matter.
2. Do not communicate with my family about my case, except to refund the full amount and give them my case files I sent you 3 years ago.
3. I do not want to talk with you until you have sent me an itemized billing statement showing deposits made, time spent, and fees you claim you earned. I also want trust account statements showing all the funds I paid you.

Thank you for your cooperation. I look forward to getting the items requested in # 2, above.”

D.J. filed a grievance against Cleghorn that was received by OLR on September 21, 2020 expressing a number of concerns related to Cleghorn’s representation. In the grievance, which was signed by D.J. on September 9, 2020, D.J. states that Cleghorn scheduled a call with him on August 28, 2020 and that during the call Cleghorn again tried to convince him to keep her as his lawyer. D.J. states in the grievance that he told Cleghorn he was not interested at all and asked Cleghorn for a billing accounting of the \$11,000 she told his family she spent.

OLR staff first sent D.J.’s grievance to Cleghorn requesting a response on November 4, 2020. Cleghorn provided an initial response on November 6, 2020, which made it clear that she still had not terminated her representation of D.J. Cleghorn’s asserted basis for the representation continuing was that D.J. had told her during their last conversation on August 28, 2020 that he wanted her to continue. In response to follow up questions from OLR staff, Cleghorn stated in a December 14, 2020 email that she “cannot explain why [D.J.] is inaccurately stating [their] conversation.”

After being provided with further written communications from D.J. to OLR staff reiterating his position that he wanted to terminate Cleghorn’s representation and OLR staff

pointing out to Cleghorn requirements of SCR 20:1.16 and 1.5(g)(2) related to termination, Cleghorn finally sent D.J. a letter dated January 20, 2021 in which she communicated to D.J. that she had returned D.J.'s file to his brother with a check in the amount of \$6,000. Enclosed with the letter to D.J. was the Invoice dated August 17, 2020.

The Invoice reflects that Cleghorn performed a relatively limited amount of work on behalf of D.J. during the more than three-year period in which she represented him. The invoice reflects a total of approximately 50 hours of work performed. Many of the Invoice entries relate to communications with or from D.J. and his family members, some of which appear to have been at least in part related to securing payment. The Invoice entries reflect that Cleghorn spent only a total of 32.1 hours on reviewing file materials and/or investigating D.J.'s case outside of meetings with D.J. and his family members.

D.J. asserts that, although Cleghorn claims to have spent over 32 hours reviewing records, investigating witnesses, preparing trial strategy, and outlining trial issues and witnesses, no documents or notes evidencing such extensive work was included in the file that Cleghorn turned over on January 20, 2021.

During the more than three-year period that Cleghorn represented D.J., she never filed any notice of appearance or any other document on behalf of D.J. in the appellate case, the circuit court case, or any other court proceeding.

By failing to communicate to her client in writing the scope of her representation and the basis or rate of the fee, Cleghorn violated SCR 20:1.5(b)(1), which states: "The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client

on the same basis or rate as in the past. [...] Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.”

By failing to communicate to her client in writing the purpose and effect of advanced fees she was paid, Cleghorn violated SCR 20:1.5(b)(2), which states: “If the total cost of representation to the client, including attorney's fees, is more than \$1000, the purpose and effect of any retainer or advance fee that is paid to the lawyer shall be communicated in writing.”

By failing to deposit advanced fee payments in trust or fully comply with the requirements for the alternative protection for advanced fees, Cleghorn violated SCR 20:1.5(f), which states: “Except as provided in SCR 20:1.5(g), unearned fees and funds advanced by a client or 3rd party for payment of fees shall be held in trust until earned by the lawyer, and withdrawn pursuant to SCR 20:1.5(h).”

By failing to provide her client with a copy of the fee agreement for her representation despite receiving multiple requests, Cleghorn violated SCR 20:1.4(a)(4), which states, “A lawyer shall... promptly comply with reasonable requests by the client for information”; and SCR 20:1.5(b)(3), which states, “A lawyer shall promptly respond to a client's request for information concerning fees and expenses.”

By delaying in providing her client with an invoice for services performed for a period of approximately eight (8) months between May 20, 2020 and January 20, 2021, Cleghorn violated SCR 20:1.4(a)(4), which states, “A lawyer shall... promptly comply with reasonable requests by the client for information”; and SCR 20:1.5(b)(3), which states, “A lawyer shall promptly respond to a client's request for information concerning fees and expenses.”

By delaying in providing her client a refund of unearned fees and his client file for a period of approximately eight (8) months between May 20, 2020 and January 20, 2021, Cleghorn violated

SCR 20:1.16(d), which states: “Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as [...] 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.”

By completing a very limited amount of work on her client’s case during the more than three-year period that she represented him, Cleghorn violated SCR 20:1.3, which states: “A lawyer shall act with reasonable diligence and promptness in representing a client.”

## **SECOND MATTER**

On April 23, 2020, Cleghorn entered into a written fee agreement with a client (“L.B.”) for Cleghorn to transfer jurisdiction of a Dallas County, Texas juvenile guardianship case to Milwaukee County, Wisconsin, and to file and litigate a termination of the guardianship. L.B.’s minor daughter is the subject of the guardianship. L.B. is not the guardian.

On May 6, 2020, Cleghorn filed a petition to accept guardianship transfer to Wisconsin in Milwaukee County Circuit Court. On May 8, 2020, Cleghorn filed a petition to terminate guardianship pursuant to Wisconsin Statutes section 54.64 in the same court case.

At a hearing on August 27, 2020, the court ultimately found that it lacked jurisdiction to hear the petition for transfer of the guardianship and dismissed the case, concluding that Wisconsin Statutes section 53.32 (a procedural statute regarding adult guardianships) required that a petition to transfer a guardianship be filed by the guardian, which L.B. was not. This finding was made in spite of Cleghorn’s argument that Wisconsin Statutes section 54.34, not section 53.32, identified the process for acceptance of foreign guardianships regarding juveniles. Due to the finding of lack of jurisdiction for the transfer, the court did not address the petition to terminate the guardianship.



Believing that the court incorrectly applied the adult guardianship law to a juvenile guardianship case, Cleghorn agreed to appeal the dismissal on L.B.'s behalf. Sometime shortly after August 27, 2020, Cleghorn and L.B. entered into a new written fee agreement, requiring L.B. to pay an advanced fee of \$2,500 for the appellate representation to be billed at \$250 per hour.

On September 15, 2020, Cleghorn mistakenly filed a Notice of Intent to Pursue Postconviction or Postdisposition Relief in the court case (the "Notice of Intent"). The Notice of Intent form Cleghorn filed indicates it is pursuant to Wisconsin Statutes section 809.30(2)(b), which includes criminal cases and cases under Chapters 48, 51, 55, and 938. The Notice of Intent was inapplicable to L.B.'s case under both Wisconsin Statutes Chapters 53 and 54.

On or about September 15, 2020, Cleghorn requested transcripts of the three hearings in the case. On or about October 27, 2020, Cleghorn received those transcripts. On October 28, 2020, Cleghorn texted L.B. stating: "I just received the transcripts last night. I am finishing a trial today and will get on that tomorrow. Should be ready to file next week."

The evening of November 16, 2020, L.B. texted Cleghorn for an update. L.B. texted Cleghorn again the next morning asking if an appeal had been filed. Cleghorn responded, "The notice has been filed. Remember, the process takes a bit." L.B. replied, "I was under the impression that once you received the transcripts the appeal would be filed its now november 17th". Cleghorn responded, "I have the documents. I have to do the steps in order. Please remember that it does take awhile."

Cleghorn indicates that there was no written notice of final judgment. Therefore, pursuant to Wisconsin Statutes section 808.04(1), an appeal to the court of appeals must be initiated within 90 days of the order appealed from, in this case, by November 25, 2020. Due to her mistaken belief that the Notice of Intent she filed served as a notice of appeal, Cleghorn did not file a notice

of appeal within the 90-day deadline, despite the fact that she continued to represent L.B. through the deadline date.

On or about December 3, 2020, L.B. terminated Cleghorn's representation and requested a billing statement and refund. On or about December 14, 2020, Cleghorn provided L.B. with a statement reflecting hourly work and transcript fees totaling \$1,067.50. Cleghorn refunded the remainder of the advanced fee and returned L.B.'s file. However, at the time of her termination, because she did not realize she followed the wrong procedure and had missed the appellate deadline, Cleghorn did not provide L.B. with accurate information as to the status of the appeal.

Cleghorn acknowledged to OLR that she made a mistake about which statutory requirements she needed to follow in order to preserve L.B.'s right to appeal.

By agreeing to file an appeal on behalf of a client while not understanding or applying the correct appellate procedure, Cleghorn violated SCR 20:1.1, which states: "A lawyer shall provide competent representation to a client."

By failing to timely file a notice of appeal on behalf of her client, thus causing her client's appellate rights to lapse, Cleghorn violated SCR 20:1.3, which states: "A lawyer shall act with reasonable diligence and promptness in representing a client."

Cleghorn has no prior discipline.

In accordance with SCR 22.09(3), Attorney Respondent is hereby publicly reprimanded.

Dated this 9th day of June, 2021.

SUPREME COURT OF WISCONSIN

          /s/            
James Friedman  
Referee