

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

14-OLR- 7

Dean P. Delforge
Attorney at Law

In early 2008, Attorney Dean P. Delforge began representing the personal representative in the administration of an estate. The decedent, who was the sister of the personal representative, died intestate in December 2007.

There were six heirs to the estate. On January 24, 2008, Delforge sent a letter to all interested parties, setting forth his general plans and confirming that the decedent's sister would serve as the personal representative. On February 25, 2008, Delforge filed an application for probate of the estate, along with other opening documents. The decedent's sister was appointed personal representative.

Early in the case, the personal representative requested that she be given responsibility for the estate checkbook and distribution of estate proceeds. She further requested that bank statements be sent to her. Delforge believed the personal representative understood the responsibilities of handling the estate's checking account, and agreed to her request. The personal representative thereafter disbursed estate funds, making occasional payments to the heirs totaling about \$274,876.

Delforge understood that it was his responsibility to file federal and state income tax returns for the decedent, to file fiduciary returns for the estate, and to file the ultimate estate tax returns. Delforge did not hire an accountant to prepare or file the necessary returns.

On April 15, 2008, Delforge applied for an automatic extension of time to file the decedent's 2007 federal income tax returns. Delforge did not file for any further extensions to file the 2007 federal income tax returns, and he never prepared or filed such returns. Delforge did not know whether the decedent's 2006 federal and state income tax returns were filed. Delforge never requested an extension of time to file the 2006 returns and never prepared any such returns.

On April 20, 2008, Delforge requested copies of the decedent's 2004 and 2005 federal and state income tax returns from the taxing authorities. Delforge received these returns at a later date.

Delforge did not act further with respect to the tax returns after his request for the automatic extension for the 2007 return. This failure resulted in penalties and interest being assessed. In addition, Delforge took on the responsibility of filing fiduciary returns for the years 2008, 2009, and 2010, but failed to take any steps to prepare or file these returns.

On September 8, 2008, the court sent a Notice of Order to Show Cause to Delforge for failure to file an inventory for the estate. The hearing on the order was set for October 14, 2008. On October 13, 2008, Atty. Delforge filed an inventory with the court showing property worth \$480,667.55, and therefore no hearing was held on the Order to Show Cause.

On September 4, 2009, the court scheduled an Order to Show Cause hearing for October 13, 2009 for failure to close the estate. On October 13, 2009, Delforge appeared at the hearing and stated that he needed to prepare closing certificates and requested that the matter be adjourned until January 12, 2010. That request was granted, but Delforge did not enter the January 12, 2010 hearing date in his calendar, and he failed to appear in court on January 12, 2010. On January 20, 2010, the court sent an Order to Show Cause letter to Delforge, requiring

him to appear at an adjourned hearing on February 9, 2010 or face removal as attorney for the personal representative.

On January 29, 2010, Delforge filed a petition with the court to extend the time to close the estate. In an accompanying letter, Atty. Delforge requested an additional 60 days from February 9, 2010 to close the estate. In the letter, Delforge explained that a dispute with one heir was preventing a final accounting. Delforge further represented to the court that the tax returns were almost complete and would be filed by February 9, 2010. As requested by Delforge, the judge granted an extension of time to April 13, 2010. The Order to Show Cause hearing was later adjourned to May 11, 2010.

On May 11, 2010 Delforge appeared at the Order to Show Cause hearing. The Wisconsin Circuit Court Access entry for that hearing states, "Appearances by: Attorney Dean P. Delforge Failure to close (sic) Attorney Delforge notified the Court he will sign tax returns and file." The matter was adjourned to August 10, 2010. Delforge admits that he did not place this date on his calendar. Delforge failed to appear at the rescheduled Order to Show Cause hearing on August 10, 2010.

The personal representative prepared and forwarded to each of the heirs a document outlining the disbursements she had made from the estate. The document showed disbursements of approximately \$40,000 to each of the six heirs between March 2008 and December 2010. The personal representative indicated on the document that there was a balance in the account of a little over \$266,000 as of December 10, 2010.

On March 18, 2011, the court removed the personal representative and appointed a local attorney as successor personal representative. On April 1, 2011, the successor personal representative filed his Consent to Serve as Successor Personal Representative. Upon taking

over, the successor personal representative received a check in the amount of \$123,265.69, representing the funds then remaining in the estate. On May 11, 2011, Delforge transferred his case file to the successor personal representative.

On July 14, 2011, the successor personal representative filed an Amended Inventory of the estate showing remaining assets of \$123,265.69. The successor personal representative continued to work on the estate in order to resolve remaining issues and bring the matter to conclusion. In addition to making certain the inventory of the estate, the successor personal representative filed the necessary personal and fiduciary tax returns for the years that Delforge did not file. The late filings resulted in penalty and interest amounts for the personal tax returns for 2006 and 2007.

The successor personal representative also instituted a claim against the bonding company for the first personal representative. The successor personal representative, Delforge, and the bonding company's representative reached an agreement which divided the monetary responsibilities. Delforge was responsible for \$12,244.64 in interest, penalties, and assessments paid by the estate to the IRS and Wisconsin Department of Revenue for the decedent's 2006 and 2007 personal income tax returns, \$10,000.00 of the total \$21,280.00 in fees for the successor personal representative, \$1,500.00 of the total \$5,190.00 in accountant's fees incurred subsequent to appointment of the successor personal representative, and the \$3,500.00 in fees for the bonding company's attorney. The court approved a Stipulation and Order to Resolve Surcharge Motion on November 14, 2012. Delforge promptly paid the amounts owed by him under the terms of the stipulation.

SCR 20:1.3 provides, "A lawyer shall act with reasonable diligence and promptness in representing a client." Delforge violated SCR 20:1.3 as follows: By failing to properly calendar

and appear at court hearings scheduled for January 12, 2010 and August 10, 2010, which delayed the processing and closing of the estate; by failing to complete and file the decedent's state and federal income tax returns for the years 2006 and 2007, resulting in penalties and interest being assessed; by failing to take any steps to file fiduciary returns for the years 2008, 2009, and 2010; and, notwithstanding repeated warnings from the court, by otherwise failing to perform sufficient work during the period of his representation to bring the estate matter to a close.

By failing to implement appropriate organizational and calendaring systems to ensure he would not miss court appearances or tax deadlines and would otherwise be able to complete the estate work, Delforge violated SCR 20:1.1, which states, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

By representing to the court in his letter accompanying his January 29, 2010 petition for more time that the tax returns were almost complete and would be filed by February 9, 2010, when he had in fact done little or no work on the returns and he was in no position to file any returns when so informing the court, Delforge violated the following Rules of Professional Conduct: SCR 20:3.3(a)(1), which states, "A lawyer shall not knowingly...make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;" and SCR 20:8.4(c), which states, "It is professional misconduct for a lawyer to...engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

Atty. Delforge was privately reprimanded in 2003.

