

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2012-OLR- 14

Kirk J. Foley
Attorney at Law

Kirk J. Foley (“Foley”), age 57, resides in Superior, Wisconsin and is not currently engaged in the practice of law in Wisconsin. Foley’s Wisconsin State Bar membership status is inactive.

By facsimile transmission on January 6, 2010, a Carlton County (Minnesota) Assistant County Attorney informed the Office of Lawyer Regulation (“OLR”) of then-pending criminal charges filed against Foley in *State of Minnesota v. Kirk J. Foley*, Carlton County case no. 09-CR-09-3039. The ensuing OLR investigation brought to light additional criminal cases brought against Foley.

According to Foley, he was convicted in Bayfield County, Wisconsin of non-criminal, first offense operating while intoxicated (“OWI”) following a June, 1996 offense.

State of Minnesota v. Kirk John Foley, Carlton County case no. 09-TX-00-2559

On July 27, 2000 at approximately 1:15 p.m., Cloquet, Minnesota Police Department officers were dispatched in response to a request for assistance from a neighboring jurisdiction regarding a vehicle lodged on its roof. Foley, the suspected driver of the vehicle, was seen walking in the area.

Foley was spotted, placed in a squad car, and admitted ownership of the vehicle in question. Foley stated that he had lost control of his vehicle, rolled it onto its roof, and

submerged it into a swamp. Foley stated that he was able to crawl out of one of the vehicle's windows and was walking home.

The officer who made contact with Foley suspected that Foley had been drinking. Following field sobriety tests and a PBT indicating an alcohol level of .189, Foley was placed under arrest for driving while under the influence ("DWI") and taken to the Carlton County, Minnesota jail. Foley performed a breath test at the jail, which indicated an alcohol level of .17.

Foley was charged with MSD DWI and MSD DWI .10 or more in *State of Minnesota v. Kirk J. Foley*, Carlton County case no. 09-TX-00-2559, filed July 27, 2000.

Foley was convicted on September 13, 2000 of the criminal offense of MSD DWI in *State of Minnesota v. Kirk John Foley*, Carlton County case no. 09-TX-00-2559. The charge of MSD DWI .10 or more was dismissed. Foley's sentence included 1 year of probation and a \$690 fine. Foley did not report the conviction to lawyer regulators in Wisconsin. At the time of the conviction, the Supreme Court Rules did not specifically require such a report. OLR learned of the criminal conviction in this case as a result of investigative measures taken following the Carlton County (Minnesota) Assistant County Attorney's January 2010 contact with OLR.

State of Minnesota v. Kirk John Foley, Carlton County case no. 09-CR-06-960

On March 14, 2006, at approximately 1:00 p.m. in the City of Cloquet, Minnesota, police responded to a report of a male individual sleeping in his vehicle on a city street. The responding officer awakened the driver, Foley, who was confused upon being woken, and exhibited signs of being intoxicated. Following field sobriety tests and a PBT indicating an alcohol level of .20, Foley was arrested and taken to the Carlton County, Minnesota jail.

Foley consented to a breath test at the jail. Foley had two series of tests and he was able to give an adequate breath sample on the second series. The combined results were .18.

Foley was charged with DWI - Operate Motor Vehicle Under Influence of Alcohol and DWI - Operate Motor Vehicle – Alcohol Concentration 0.08 Within 2 Hours in *State of Minnesota v. Kirk J. Foley*, Carlton County case no. 09-CR-06-960, filed March 14, 2006.

Foley was convicted on May 24, 2006 of criminal DWI-Operate Motor Vehicle-Alcohol Concentration 0.08 Within 2 Hours in *State of Minnesota v. Kirk John Foley*, Carlton County case no. 09-CR-06-960. The charge of DWI - Operate Motor Vehicle Under Influence of Alcohol was dismissed. Foley's sentence included 30 days in jail, 2 years of probation and a \$3,000 fine. Foley did not report his conviction to the Clerk of the Wisconsin Supreme Court or OLR.

State of Wisconsin v. Kirk John Foley, Douglas County case no. 2009CT000205

On August 18, 2009 at 5:03 p.m., in response to reports of a vehicle swerving in highway traffic, the Douglas County Sheriff's Department dispatched a deputy sheriff to locate a possible drunk driver. The driver, Foley, had pulled off of the highway and parked on a town road, where the deputy located him.

Foley exhibited signs of being intoxicated, and declined to perform field sobriety tests. Foley was taken to a hospital for a blood draw, which indicated a blood alcohol level of .272.

Foley was charged with Operating a Motor Vehicle While Under the Influence of an Intoxicant (4th) and Operating a Motor Vehicle With a Prohibited Alcohol Concentration (4th) in *State of Wisconsin v. Kirk John Foley*, Douglas County case no. 2009CT000205, filed August 19, 2009.

On March 26, 2010 pursuant to a plea of no contest, Foley was convicted of misdemeanor Operating While Under the Influence of an Intoxicant (4th) in *State of Wisconsin v. Kirk John Foley*, Douglas County case no. 2009CT000205. The charge of Operating a Motor

Vehicle With a Prohibited Alcohol Concentration (4th) was dismissed on the prosecutor's motion. Foley's sentence included 330 days in jail with Huber privileges, 2 years of probation, driver's license revocation for 33 months and a \$3,513 fine.

On March 29, 2010, Foley reported to the Clerk of the Wisconsin Supreme Court and OLR his conviction in *State of Wisconsin v. Kirk John Foley*, Douglas County case no. 2009CT000205.

State of Minnesota v. Kirk J. Foley, Carlton County case no. 09-CR-09-3039

Shortly after 12:00 a.m. on December 1, 2009 officers from the Fond du Lac, Minnesota Police Department were on routine patrol in Carlton County, when they noticed a vehicle on a roadside, with its engine running, high beams on and right turn signal activated.

The officers approached the vehicle and found Foley, who appeared to the officers to be heavily under the influence of alcohol.

Foley attempted to hand one of the officers a credit card, stating that it had a \$60,000 credit limit. Foley refused to perform any field sobriety tests. Foley did perform a preliminary breath test, which showed a .202 alcohol concentration. Foley was then taken into custody on suspicion of DWI and brought to the Carlton County Law Enforcement Center for additional testing. At the Law Enforcement Center Foley refused to take a breath test.

Foley was charged with felony Bribery-Offer, Give, Promise-Influence Performance-Public Officer/Employee; felony Bribery-Offer, Give, Promise-Witness-Influence Testimony; felony Traffic-DWI Refuse to Submit to Chemical Test; and felony Traffic- DWI-Operate Motor Vehicle Under Influence of Alcohol in *State of Minnesota v. Kirk J. Foley*, Carlton County case no. 09-CR-09-3039, filed December 1, 2009.

On March 22, 2010, Foley entered an amended plea of guilty to felony Traffic - DWI - Operate Motor Vehicle Under Influence of Alcohol in *State of Minnesota v. Kirk J. Foley*, Carlton County case no. 09-CR-09-3039. Foley was convicted on April 21, 2010 and his sentence included 300 days in the Carlton County Jail to run concurrent to his Wisconsin sentence, supervised probation for 3 years and a \$1,500 fine. All other charges filed against Foley on December 1, 2009 were dismissed.

Foley reported his conviction in *State of Minnesota v. Kirk J. Foley*, Carlton County case no. 09-CR-09-3039 to OLR and the Clerk of the Supreme Court.

Foley has been diagnosed as suffering post traumatic stress disorder (PTSD) as a result of a horrific fire at his home in February 1996. Foley has been treated for PTSD, depression, and alcoholism over the past several years.

Foley has successfully completed inpatient and outpatient treatment programs, he regularly attends Alcoholics Anonymous meetings, and he regularly meets with a Licensed Independent Clinical Social Worker.

By engaging in conduct leading to a criminal conviction on September 13, 2000 of MSD DWI in *State of Minnesota v. Kirk John Foley*, Carlton County case no. 09-TX-00-2559, Attorney Foley violated SCR 20:8.4(b), which states, "It is professional misconduct for a lawyer to...commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

By engaging in conduct leading to a criminal conviction on May 24, 2006 of DWI-Operate Motor Vehicle-Alcohol Concentration 0.08 Within 2 Hours in *State of Minnesota v. Kirk John Foley*, Carlton County case no. 09-CR-06-960, Attorney Foley violated SCR 20:8.4(b).

By engaging in conduct leading to a criminal conviction on March 26, 2010 of Operating While Under the Influence of an Intoxicant (4th) in *State of Wisconsin v. Kirk John Foley*, Douglas County case no. 2009CT000205, Attorney Foley violated SCR 20:8.4(b).

By engaging in conduct leading to a felony criminal conviction on March 29, 2010 of Traffic - DWI - Operate Motor Vehicle Under Influence of Alcohol in *State of Minnesota v. Kirk J. Foley*, Carlton County case no. 09-CR-09-3039, Attorney Foley violated SCR 20:8.4(b).

By failing to report his May 24, 2006 criminal conviction of DWI - Operate Motor Vehicle - Alcohol Concentration 0.08 Within 2 Hours in *State of Minnesota v. Kirk John Foley*, Carlton County case no. 09-CR-06-960 to OLR and the Clerk of the Supreme Court, Attorney Foley violated SCR 21.15(5), which states:

An attorney found guilty or convicted of any crime on or after July 1, 2002, shall notify in writing the office of lawyer regulation and the clerk of the Supreme Court within 5 days after the finding or conviction, whichever first occurs. The notice shall include the identity of the attorney, the date of finding or conviction, the offenses, and the jurisdiction. An attorney's failure to notify the office of lawyer regulation and clerk of the supreme court of being found guilty or his or her conviction is misconduct.

SCR 21.15(5) is enforceable under the Rules of Professional Conduct via SCR 20:8.4(f), which states, "It is professional misconduct for a lawyer to...violate a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of lawyers."

As conditions to the imposition of this consent public reprimand, the Respondent agreed to the following:

- 1) Respondent shall continue under the treatment of his current Licensed Independent Clinical Social Worker, or another qualified treatment provider, for a period of one year following the imposition of the public reprimand.

- 2) Respondent shall continue to attend Alcoholics Anonymous meetings for a period of one year following the imposition of the public reprimand.
 - 3) Respondent shall submit quarterly reports from his current Licensed Independent Clinical Social Worker, or another qualified treatment provider, to the Office of Lawyer Regulation documenting Respondent's continued treatment for a period of one year following the imposition of the public reprimand, with the submission dates of the quarterly reports being set by the Director of the Office of Lawyer Regulation.
 - 4) Respondent shall pay all costs incurred in connection with satisfying the conditions.
- Foley has no prior discipline.

In accordance with SCR 22.09(3), Attorney Kirk J. Foley is hereby publicly reprimanded.

Dated this 14th day of September, 2012.

SUPREME COURT OF WISCONSIN

/s/ Hannah C. Dugan, Referee