

SUPREME COURT OF WISCONSIN  
OFFICE OF LAWYER REGULATION

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Public Reprimand With Consent

2017-OLR-10

Matthew T. Luening  
Attorney at Law

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The Respondent, Attorney Matthew T. Luening (“Luening”), age 45, was admitted to the practice of law in Wisconsin on May 24, 2010, and practices in Milwaukee, Wisconsin.

On April 29, 2015, a husband and wife hired Luening to represent the husband in a postconviction relief and immigration matter and the wife in an immigration proceeding. Luening and the clients signed a fee agreement for Luening’s representation.

The written fee agreement did not contain the notices or otherwise signal intent to comply with the alternative placement measures for advanced fees permitted under former SCR 20:1.15(b)(4m) or current SCR 20:1.5(g). The clients paid Luening a \$3,000 advanced fee for Luening’s representation. Luening deposited the \$3,000 advanced fee payment into his business account.

On July 22, 2015, Luening, on behalf of the husband, filed a Motion for Postconviction Relief requesting that the court vacate the husband’s plea and reopen a prior case. At a motion hearing, the court informed the prosecutor, Luening, and the husband that the husband had not met the burden of proof on the motion and the motion needed to be rescheduled. Thereafter, the motion hearing was rescheduled several times.

In a February 21, 2016 letter to the husband, Luening stated, “I hereby send you an updated affidavit for your signature. Sign the name you used at the time of the...case. Send it back to me.”

On June 29, 2016, Luening filed an Amended Memorandum of Law in Support of Motion for Postconviction Relief and an unsigned Affidavit in Support of Motion for Postconviction Relief.

On July 7, 2016, the court denied the husband's Motion for Postconviction Relief. In an Order Denying Motion and Canceling Hearing, dated July 7, 2016, the court stated, "The motion is summarily denied, because defendant has not set forth anything more than unsupported assertions as to the issues raised. Specifically, defendant has submitted an affidavit dated May 20th, 2016. However the affidavit on its face is invalid—the signature/notary area appears as follows (copied area of filed document):..." The court further stated, "The court observes defendant's signature does not appear on the document. There is no basis for this matter to move forward. The motion is denied, the judicial assistant is directed to so notify the parties and remove the matter from the court's calendar."

In the July 7, 2016 Order, the copied area of the filed document showed Luening's notary stamp, the date, and Luening's signature, but the affidavit was unsigned by the husband.

With respect to the wife's matter, on August 23, 2016, the U.S. Citizenship and Immigration Services (USCIS) Field Office Director sent the wife a notice to appear for an interview on September 20, 2016. Luening was copied on the August 23, 2016 notice. In the August 23, 2016 notice, the Field Office Director stated that the reason for the appointment was "Pertaining to your I-485 Adjustment of Status Application."

Luening told the wife that she did not need to appear for the September 20, 2016 interview. However, Luening did not recall telling the wife that she did not need to appear. Luening had also told the husband that they did not need to appear on September 20, 2016.

On September 20, 2016, the wife and Luening did not appear for the interview at the USCIS office in Milwaukee, Wisconsin. In a September 22, 2016 Decision, the USCIS Field Office Director stated, “On September 20, 2016, USCIS requested that you appear for an interview about your application, but you did not appear as requested. Because you did not appear as requested, USCIS considers your application abandoned and, therefore, denies it. See Title 8, Code of Federal Regulations (8 CFR), section 103.2(b)(13).”

Previously the wife had an interview scheduled at the Immigration Office on August 16, 2016. The wife appeared for the August 16, 2016 interview, but was informed that Luening had canceled the interview. Luening had not asked the wife if he could cancel the August 16, 2016 interview and did not tell her that he had done so.

Luening failed to ascertain and communicate correct information to the wife as to whether she needed to appear at the September 20, 2017 interview. Furthermore, Luening did not contact or attempt to contact the USCIS Field Office Director to request an adjournment or to reschedule the September 20, 2016 interview. Throughout the representation, Luening did not keep the clients reasonably informed about the status of their matters.

In or around February 2017, Luening provided the clients with a cashier’s check in the amount of \$1,500 as a partial refund of the \$3,000 advanced fee.

By filing an invalid Affidavit in Support of Motion for Postconviction Relief resulting in the court denying the husband’s Motion for Postconviction Relief, and by failing to appear for the wife’s interview on September 20, 2016, resulting in the denial of the wife’s application, Luening violated SCR 20:1.3, which states, “A lawyer shall act with reasonable diligence and promptness in representing a client.”

