

SUPREME COURT OF WISCONSIN

OFFICE OF LAWYER REGULATION

Public Reprimand with Consent

James T. Martz

2013-OLR 8

On October 25, 2012, Attorney James T. Martz was charged with one count of misdemeanor contempt of court, in violation of Wis. Stat. §785.04(2)(a). *State v. James T. Martz*, Milwaukee County case no. 2012CM5680. According to the criminal complaint, the factual basis for the charge was as follows:

Martz represented a man facing charges of Battery, Domestic Abuse; Disorderly Conduct, Domestic Abuse; and Resisting an Officer.

A friend of the victim was present during and witnessed the alleged criminal conduct. At some point, the victim told the witness that neither the victim nor the witness needed to appear at the trial. The victim further asked the witness to call Martz.

At some point after speaking to the victim about the matter and receiving a subpoena to appear at the jury trial, the witness contacted a victim/witness specialist. It was arranged that the witness would call Martz and that the phone call would be monitored by two investigators.

During his phone call with the witness, Martz discussed with the witness the fact that she had received her subpoena “in the mail.” Martz told the witness that she had not been properly served, that she did not have to go to court, and that there would be no repercussions for her not attending court. Martz went on to state that even if the witness had been properly served, nothing would happen to her if she did not appear and the case against his client would be dismissed “...and nobody cares.” At the end of the phone call, Martz said to the victim while laughing, “I hope, I hope I never see you again.”

Martz was asked to appear at the District Attorney's office to discuss the case against his client and his continued representation of his client. Martz listened to a recording of his phone call with the witness and acknowledged it was accurate.

The State of Wisconsin moved the court to remove Martz as trial counsel based upon his violation of the rules of professional conduct. That motion was granted.

At a hearing on November 11, 2012, Martz disputed portions of the criminal complaint filed against him. More specifically, Martz disputed those portions of the complaint which suggested that Martz had asked the victim to have the witness call him (Martz) and those portions which suggested that Martz told the victim to tell the witness that she did not have to appear at court. Further, Martz disputed those portions of the complaint which suggested he had asked the victim not to appear at court and told her that she did not need to appear. That same day, the parties stipulated to portions of the criminal complaint, along with other factors presented by Martz in court, as the factual basis for a no contest plea entered by Martz. Martz was then convicted of the single count contained in the criminal complaint.

Martz contends that he believes his statement to the witness that she had not been properly served was accurate based on the facts the witness presented to him and his former and current understanding of the law.

Martz asserts that his statements to the witness that she would not face any consequences for not appearing at the jury trial were based on anecdotal evidence. He admits they were "less than appropriate" and "inartful."

As to his statement that he hoped never to see the witness again, Martz contends the statement was made in "a laughing manner" and was not intended to be a directive or a threat.

On December 19, 2012, Martz was sentenced to ten days in jail. That sentence was stayed on the conditions that Martz pay a \$1,000 fine plus all costs and surcharges, and that he perform 150 hours of community service, preferably with an agency serving domestic violence victims.

By engaging in the conduct that led to his criminal conviction on a charge of misdemeanor contempt of court, Martz violated the following Rule of Professional Conduct:

SCR 20:3.4(a), which states, “A lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act.”

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.”

SCR 20:8.4(c), which states, “It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

Martz has no prior discipline.

In accordance with SCR 22.09(3), Attorney James T. Martz is hereby publicly reprimanded.

Dated this 7th day of July, 2013.

SUPREME COURT OF WISCONSIN

/s/ Hannah C. Dugan
Hannah C. Dugan, Referee