

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2015-OLR- 4

Paul Polacek,
Attorney at Law

Paul Polacek (“Polacek”) is a Wisconsin-licensed attorney whose State Bar identification number is 1037606. Polacek practices law in Wisconsin Dells, Wisconsin. Polacek was first licensed to practice law in Wisconsin on April 24, 2001.

Regarding a Trust Account Overdraft Inquiry

In June of 2012, the Office of Lawyer Regulation (“OLR”) received notice that Polacek’s IOLTA account was overdrawn by \$172.95. Polacek explained that the overdraft occurred as a result of a \$3,000 payment to a client in settlement of a matter. Polacek did not have sufficient funds in his trust account to cover the \$3,000 payment. Polacek informed OLR that he had moved offices and purchased new computers and at one point lost his computer data.

Investigation of Polacek’s trust account revealed that Polacek had made multiple electronic transfers from his trust account to his operating account, and, in addition, multiple electronic transfers from his operating account to his trust account. These transfers occurred in May and June of 2012.

OLR asked Polacek to explain these transactions. In addition, OLR asked Polacek to provide a “re-constructed” transaction register as well as a re-constructed client ledger for his trust account for the months of May, June, and July, 2012. In a follow-up letter dated May 9, 2013, OLR also asked Polacek to provide account statements from his business or operating

account for the months of May, June, and July, 2012. Polacek agreed to provide to OLR the requested information, but failed to comply with OLR's request, notwithstanding an extension and an additional request for the promised information.

By failing to hold the funds provided to him by his client in trust, separate from his own property, and by co-mingling personal funds with trust account funds, on multiple occasions, Polacek violated SCR 20:1.15(b)(1), which provides: "A lawyer shall hold in trust, separate from the lawyer's own property, that property of clients and 3rd parties that is in the lawyer's possession in connection with a representation."

By disbursing \$3,000 in funds from his client trust account to his client when the funds were not available, causing an overdraft in his trust account, Polacek violated SCR 20:1.15(e)(5), which provides, "A lawyer shall not disburse funds from any trust account unless the deposit from which those funds will be disbursed has cleared, and the funds are available for disbursement."

By failing to produce trust account records to OLR, after promising to restore/recreate such records, but thereafter never producing the records after the passage of over one year, Polacek violated SCR 20:1.15(e)(7), which provides, "All trust account records have public aspects related to a lawyer's fitness to practice. Upon request of the office of lawyer regulation, or upon direction of the supreme court, the records shall be submitted to the office of lawyer regulation for its inspection, audit, use"

By failing to keep complete records of his client trust account, including a transaction register, individual client ledgers, and reconciliation reports, as well as maintain back up records, Polacek violated SCR 20:1.15(f), which provides, "A lawyer who maintains trust account records by computer shall maintain the transaction register, client ledgers, and reconciliation

reports in a form that can be reproduced to printed hard copy. Electronic records must be regularly backed up by an appropriate storage device.”

By failing to respond to OLR’s request for supplemental information dated May 9, 2013, Polacek violated SCR 22.03(6), as enforced through SCR 20:8.4(h), which provides, “In the course of the investigation, the respondent’s wilful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent’s misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance” and SCR 20:8.4(h), which states, in relevant part, that, “It is professional misconduct for a lawyer to . . . (h) fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by SCR 21.15(4), SCR 22.001(9)(b), SCR 22.03(2), 22.03(2), 22.03(6) or SCR 22.04(1)”

Regarding a Client Divorce Matter

Polacek represented a client in a contentious divorce matter. On October 19, 2012, Polacek filed a motion in the proceeding, accompanied by an affidavit. According to opposing counsel, Polacek failed to serve a copy of the motion and affidavit on him, and the attorney informed Polacek of the absence of service. Polacek and opposing counsel exchanged multiple letters and affidavits regarding the purported service of the motion, and both sought relief from the trial court on the “unknown” motion. Ultimately, it was discovered that Polacek and his staff had failed to serve the motion and affidavit on opposing counsel, and Polacek did not provide a copy of the motion until almost two months had passed. Polacek never did provide a copy of the accompanying affidavit, which opposing counsel had to obtain on his own from court files.

Also in October, 2012, Polacek wrote the trial court a letter regarding scheduling issues. Again, Polacek did not provide a copy of the document to opposing counsel. On two occasions,

opposing counsel requested that Polacek serve him a copy of the letter, but Polacek declined to provide a copy. Opposing counsel obtained a copy of the letter to the court directly from court staff.

In December, 2012, the trial court held a hearing on several motions and ordered the parties to brief issues related to one of the pending motions. The court ordered Polacek to file and serve proposed Findings of Fact and any supplemental legal argument by January 7, 2013. On January 7, 2013, Polacek filed a pleading in response to the court's December, 2012 order. However, Polacek did not serve a copy of the document to opposing counsel on or about January 7, 2013. Records show that Polacek emailed the pleading to opposing counsel on January 16, 2013, almost ten days after filing the document, and did not mail a copy of the submission to opposing counsel until January 18, 2013, just days before the date of the court-ordered response by opposing counsel.

Following receipt of Polacek's submission filed on January 7, 2013 (but not received until January 16, 2013), opposing counsel wrote Polacek and complained of Polacek's "repeated practice of failing to timely serve us with documents [filed] with the court." Noting that this latest incident was the third time Polacek had failed to timely serve filed documents, opposing counsel warned Polacek that he was prepared to file a grievance against Polacek. Notwithstanding repeated requests for timely submission of filed pleadings, Polacek filed a Pre-trial Outline with the trial court (with an accompanying letter to the court) in May of 2013 but once again failed to serve the pleading (or letter) on opposing counsel. Polacek's staff confirmed that she had failed to serve the pleading on opposing counsel. Opposing counsel once again resorted to the court clerk to obtain a copy of the pleading and filed a grievance against Polacek.

By filing pleadings and correspondence with the clerk of circuit court without forwarding copies to opposing counsel in a timely fashion, Polacek engaged in ex parte communications with the tribunal, in violation of SCR 20:3.5(b), which provides, “A lawyer shall not: . . . (b) communicate ex parte with [a judge] during the proceeding unless authorized to do so by law or court order or for scheduling purposes if permitted by the court. If communication between a lawyer and judge has occurred in order to schedule the matter, the lawyer involved shall promptly notify the lawyer for the other party . . . of such communication.”

By failing to ensure that his assistant timely served filed pleadings and correspondence on opposing counsel, knowing that his assistant had failed on multiple occasions to follow specified service rules, and failing to remedy such lapses, Polacek violated SCR 20:5.3(c), which provides, “a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (1) the lawyer orders, or with knowledge of the specific conduct, ratifies the conduct involved, or 2) the lawyer . . . has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.”

By failing to serve copies of pleadings and correspondence filed with the clerk of circuit court on opposing counsel in a timely fashion, as required by Wis. Stat. § 801.14, Polacek violated SCR 20:8.4(f), which provides, “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.”

Polacek has two prior and unrelated private reprimands, imposed in 2009 and in 2011.

