

SUPREME COURT OF WISCONSIN  
OFFICE OF LAWYER REGULATION

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Public Reprimand With Consent

2024-OLR-04

J. Alberto Quiroga  
Attorney at Law

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J. Alberto Quiroga was admitted to the practice of law in Wisconsin on June 18, 2001, State Bar No. 1037987.

From March 26, 2019, until August 18, 2020, Quiroga represented A.W. in her divorce from E.W. He also represented A.W. in obtaining a domestic abuse restraining order against E.W.

Conduct Related to Handling of Funds Held in Trust

At a May 14, 2019, temporary order hearing in the divorce matter, the parties agreed that Quiroga would hold the funds from the sale of a property owned by A.W. and E.W. in trust.

In November 2019, Quiroga left his employment at one law firm and started his employment at another law firm. At the time, he was holding \$66,480.03 in trust for the benefit of A.W. and E.W. He transferred the entirety of those funds into his new firm's trust account.

In January 2020, a second property owned by A.W. and E.W. was sold. In a January 17, 2019, email exchange between Quiroga, E.W., and the real estate agent, Quiroga stated that \$6700 from the proceeds of the sale would go to E.W. for reimbursement for the roof repair he had paid for and "[t]he entirety of the remaining balance will to to (sic) the trust fund while waiting for the divorce to finalize."

On January 31, 2020, the remaining proceeds from the sale of the second property, totaling \$113,262.10, were deposited into Quiroga's firm's trust account.

In February 2020, E.W. hired an attorney to represent him in his divorce.

In a February 26, 2020, email, Quiroga told E.W.'s attorney that he (Quiroga) was holding \$66,480.03 in trust from the sale of the couple's first property. That amount did not reflect the previous month's deposit of the proceeds from the sale of the second property, nor did it reflect disbursements Quiroga had made from the trust account in November 2019, December 2019, and January 2020 to pay attorney's fees owed to him by A.W.

On July 24, 2020, and again on July 26, 2020, E.W.'s attorney requested an updated accounting of the funds Quiroga was holding in trust for A.W. and E.W. The accounting revealed that between November 26, 2019, and June 29, 2020, Quiroga made withdrawals totaling \$8,995 from the trust funds to pay attorney's fees owed to him by A.W.

In a July 28, 2020, email, E.W.'s attorney asked Quiroga under which statute he was, "allowed to apply funds held, in trust, for both parties, to your fees incurred to represent on part (sic) – absent a court order?"

Quiroga responded that paying his fees out of the trust funds was allowed by statute and offered to cut a check to E.W.'s attorney's firm for outstanding fees owed by E.W. Specifically, Quiroga cited Wis. Stat. 767.117(1)(b). That statute prohibits, "encumbering, concealing, damaging, destroying, transferring of otherwise disposing of property owned by either or both of the parties, without the consent of the other party or an order of the court, except in the usual course of business, in order to secure necessities, or in order to pay reasonable costs and expense of the action, including attorney fees." E.W.'s attorney responded saying, "I think this is different from a joint account. It is money you are holding for both of them."

On July 29, 2020, Quiroga filed a Motion to Amend Temporary Order. Quiroga sought to amend the temporary order to allow for a disbursal of \$15,000 to each party, with A.W.'s disbursal

being offset by the amount of trust account funds that had been paid to Quiroga to cover her legal fees.

That same day, A.W. sent an email to Quiroga and another attorney at Quiroga's firm which stated, "This is an email confirming that the \$8995 draw from [Quiroga's firm's trust account] is being applied to my current billed balance for attorneys (sic) fees. This payment is taking from my portion of the marital assets." While Quiroga asserts he was not "personally party" to any of the discussions leading to the drafting of the email, he infers that A.W. spoke to an attorney about the conflict surrounding the fees, "given that the email is worded as though a lawyer assisted in composing it." Quiroga surmised A.W. may have spoken to A.W.s boyfriend's attorney. Quiroga's billing records reflect that the attorney at his firm spoke to A.W.'s boyfriend's attorney the day the email was drafted. In testimony regarding the email, A.W. said she drafted the email but that, "We wanted to clarify it wasn't being taken from [E.W.'s] portion."

In an affidavit accompanying the motion, Quiroga averred that he paid the fees out of the trust account pursuant to Wis. Stat. 767.117(1)(b). He further elaborated stating, "Upon information and belief both [A.W.] and [E.W.] are authorized, upon request, to draw from the trust to pay for attorney fees in this family law matter. ... My client has authorized me to pay her fees out of her portion of the trust funds as allowed by statute."

On July 31, 2020, E.W.'s attorney filed a motion to return the disbursed funds to trust and to transfer the entirety of the trust funds to his (E.W.'s attorney's) firm. In his affidavit filed in support of the motion, E.W. averred that he did not approve of the withdrawals being made at the time they were made and did not approve of them now. In his supporting affidavit, E.W.'s attorney averred that he had "insisted on return of the funds, and that the replenished trust funds be turned

over to hold at my firm's trust account." Despite E.W.'s counsel's request, none of the funds had been replenished.

Quiroga did not personally receive the funds that were taken from trust. Rather, they were deposited into his firm's account. Because he was not in control of the funds, he was not in a position to return the funds to the trust account.

On August 18, 2020, Quiroga withdrew from representing A.W. because a disagreement had developed between him and his client. He was replaced by another attorney.

On September 21, 2020, Rock County Circuit Court Judge Derrick A. Grubb was assigned judge in the divorce matter.

On October 13, 2020, a hearing was held before Judge Grubb on both pending motions. In the meantime, the remaining trust funds had been transferred to the law firm of the guardian ad litem in the matter.

At the conclusion of the October 13, 2020, hearing, the judge stated, "I think that the findings should be clear, that it appears to me that there was a violation of [SCR 20:1.15(e)(3)]." Pursuant to SCR 20:1.15(e)(3), when a client and another person claim ownership interest in trust property identified by a lien, court order, judgment, or contract, the lawyer shall hold that property in trust until there is an accounting and severance of the interests. If a dispute arises regarding the division of the property, the lawyer shall hold the disputed portion in trust until the dispute is resolved. The judge further stated that he didn't believe Wis. Stat. 767.117(1)(b) contemplated trust accounts.

The judge ordered the guardian ad litem to disburse \$8,995 to E.W's attorney's trust account for the benefit of E.W. The judge also invoked the court's equitable authority to impose sanctions and gave E.W's attorney until October 15, 2020, to submit a statement of fees associated

with pursuing motion to be considered in imposing sanctions. A.W.'s counsel was given until October 19, 2020, to respond.

On October 19, 2020, Quiroga filed a motion to vacate the court's decision of October 13, 2020. A hearing was noticed for November 20, 2020.

At the November 20, 2020 hearing, the judge stated he would not address the motion to vacate and motion for sanctions until the divorce had been concluded, as advancing the underlying case was his priority.

By letter dated December 10, 2020, Quiroga was notified that OLR had opened an investigation into this matter.

A hearing on the motion to vacate and motion for sanctions was finally held on October 28, 2022. At that hearing, Quiroga dropped the motion to vacate because the equalization payment had been made and the issue of any violation of the Supreme Court Rules was before OLR. Thus, the only issue left was sanction.

During the hearing, A.W. testified that she understood that both parties had to agree to any disbursement of trust funds and that she had not authorized Quiroga to release the \$8,995 to pay her fees. She further testified that she sent her July 28, 2020, email after she discovered there was "a debate or conversation happening between the lawyers on July 28<sup>th</sup>", so I sent it after I found out there was a discussion."

Quiroga testified that he believed he had E.W.'s permission to disburse the funds because, in July 2019, a year before E.W. hired an attorney, Quiroga spoke to E.W. and suggested E.W. hire his own counsel, to which he alleged E.W. had responded, "Why, we're both paying you?" Quiroga identified no other facts supporting his conclusion that E.W. authorized his disbursement of funds.

On October 28, 2022, the judge awarded \$2500 to E.W. as a sanction for Quiroga's "conduct in taking the money out of the trust account without a joint agreement of the parties at the time." Quiroga was ordered to pay the funds to E.W.'s attorney within 90 days.

Quiroga paid the funds on February 1, 2023.

#### Conduct Related to Injunction

On June 26, 2020, an injunction was entered against E.W. As part of the injunction, E.W. was not allowed to be within two city blocks of A.W.'s residence located in Middleton, WI. E.W. was represented in the matter by a second attorney.

On June 29, 2020, Quiroga emailed both of E.W.'s attorneys a proposed map highlighting what he and his client considered to be a boundary of two city blocks around A.W.'s residence. Quiroga never submitted the map to the court. The map had been created by A.W.

On June 30, 2020, E.W.'s divorce attorney responded to Quiroga, copying E.W.'s second attorney and informed Quiroga that he needed to talk to E.W. but he (E.W.'s divorce attorney) understood that E.W. needed to be able to drive on certain roads and visit certain business, which the proposed map would prohibit him from doing. The email ended by asking, "Is that OK with you?"

That same day, Quiroga responded to both of E.W.'s attorneys asking, "Can you explain why he needs to drive in these areas?"

On July 1, 2020, E.W.'s second attorney sent Quiroga and E.W.'s divorce attorney an email stating that E.W. needed to be able to drive on certain roads for commuting purposes and to visit certain stores. The attorney explained that she had raised these issues with the judge at a hearing on a related matter and had been told that if the parties couldn't come to an agreement, she should

file a letter requesting a hearing to clarify the boundaries. She asked Quiroga to let her know if he wouldn't agree to the changes and she would file a letter with the court.

On July 8, 2020, E.W.'s second attorney filed a letter with the court asking for a hearing on the issue of setting the boundaries. She noted she had reached out to Quiroga several times and they could not come to an agreement as to the meaning of "two blocks."

On July 11, 2020, A.W. provided the map proposed by Quiroga to the Middleton Police Department in connection to a report of a suspicious person, who turned out to be E.W. No arrest was made in connection to that incident.

On July 13, 2020, the judge's clerk emailed E.W.'s second attorney and Quiroga asking which of two addresses was applicable to the injunction; the judge had both a Madison address and a Middleton address. The clerk also informed counsel that the judge declined to schedule a hearing on the matter of setting the physical boundaries related to the injunction.

A minute later, Quiroga responded that the Middleton address was applicable.

On July 14, 2020, the judge's clerk sent Quiroga and E.W.'s second attorney a map showing the outlines of the geographical restriction "as ordered by the judge." The email stated, "Please see the attached google map that outlines the geographical restriction determined and ordered by Judge Hyland. [E.W.] may travel on [certain streets] but not within the city blocks indicated."

That same day, the map sent by the judge was filed in the injunction case. The map contained the statement BY ORDER OF THE COURT and was signed by the judge. Quiroga received electronic notice of the filing. Quiroga did not provide a copy of the court-approved map to A.W.

On July 21, 2020, based on a call from A.W. and the boundaries on the proposed map A.W. had previously provided to Middleton Police Department, E.W. was arrested on suspicion of a violation of the injunction.

When he was arrested, E.W. had a copy of the court-ordered map with him. A detective with the Middleton Police Department spoke to E.W.'s second attorney, who informed the detective that the map E.W. had – which was not the map proposed by Quiroga and provided to the Middleton Police Department by A.W. – was the valid, court-ordered map. E.W.'s second attorney then emailed the valid, court-ordered map to the detective.

The detective also spoke to Quiroga, who was “very persistent” in asserting that the map provided to the Middleton Police Department by A.W. was the court-approved map. During her conversation with Quiroga, the detective informed Quiroga that the map E.W.'s second attorney had emailed to the detective encompassed a smaller area than the one A.W. had provided. Quiroga insisted that the map A.W. had provided was the valid map.

The detective then contacted the clerk of courts, who clarified that the map provided by E.W.'s second attorney was the valid, court-ordered map. E.W. was released from jail immediately, where he had been held for approximately five hours.

In a letter to the judge dated July 21, 2020, and filed on July 22, 2020, Quiroga acknowledged his awareness of the July 14, 2020, map sent by the judge's assistant but stated that the map bore, “no signature by the Court or any indication that it had been incorporated in the injunction ....” Quiroga asked that the court schedule a hearing “to settle the matter of the injunction borders ....” The court declined to schedule a hearing.



### Violations

By directing his firm to disburse money to pay legal fees owed to to his firm by A.W. from trust funds the firm was holding to which A.W. and E.W. both claimed an ownership interest, Quiroga violated SCR 20:1.15(e)(3), which states, “When the lawyer and another person or the client and another person claim ownership interest in trust property identified by a lien, court order, judgment, or contract, the lawyer shall hold that property in trust until there is an accounting and severance of the interests. If a dispute arises regarding the division of the property, the lawyer shall hold the disputed portion in trust until the dispute is resolved. Disputes between the lawyer and a client are subject to the provisions of sub. (g)(2).”

By failing to disclose to E.W.’s divorce attorney in February 2020 that he had made disbursements from the trust funds he was holding, Quiroga violated SCR 20:8.4(c), which states, “It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” SCR 20:1.0(h) defines misrepresentation as, “communication of an untruth, either knowingly or with reckless disregard, whether by statement or omission, which if accepted would lead another to believe a condition exists that does not actually exist.

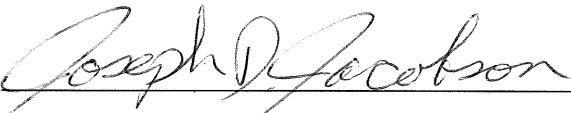
By representing to the detective that the map A.W. had provided the police accurately outlined the geographical areas from which E.W. was restricted, Quiroga violated SCR 20:8.4(c), which states, “It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” SCR 20:1.0(h) defines misrepresentation as, “communication of an untruth, either knowingly or with reckless disregard, whether by statement or omission, which if accepted would lead another to believe a condition exists that does not actually exist.

Attorney Quiroga has no prior discipline.

In accordance with SCR 22.09(3), Attorney Quiroga is hereby publicly reprimanded.

Dated this 23<sup>d</sup> day of March, 2024.

SUPREME COURT OF WISCONSIN

  
Referee Joseph Jacobson