

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand with Consent

2018-OLR-3

John Schellpfeffer
Attorney at Law

Respondent, Attorney John Schellpfeffer of Merrill Wisconsin, is an attorney licensed in the State of Wisconsin since September, 1992.

Beginning in March, 2016 until December, 2016, Respondent represented a client in multiple matters, including divorce proceedings, a paternity case, and two Child in Need of Protection and/or Services (“CHIPS”) cases.

Respondent prepared a “flat-fee” fee agreement for his client and requested a \$5,000 flat fee to handle the multiple cases. The fee agreement stated, “[t]he amounts paid is not refundable for any reason.” Respondent later charged his client an additional \$1,000 due to the “complexity” of the cases. A review of Respondent’s client file shows that he did not prepare any of the notices required pursuant to former SCR 20:1.15(b)(4m). Respondent admits that he did not provide any of the required notices to his client.

Soon after the representation began, Respondent began sending sexually charged messages and “memes” to his client through his phone and Facebook messaging. For instance, Respondent told his client that he was available, “sooo . . . I’m going to be looking for fun. Was wondering the same of you.” Respondent followed up this comment with the following joke: “What did the Easter egg say to the boiling water? It’s gonna take a while to get me hard. I just got laid by some chick.” Respondent noted in another message that he has a new love in his life

(referring to his motorcycle), that her name was “Harley” and that she likes to be “ridden hard.” In one message seeking to arrange a meeting with his client, Respondent stated that she “should meet him at five” for an appointment and that “wanna see you when you’re all dolled up” In another message in which Respondent was trying to arrange an appointment, he said to his client, “Wear something sexy tho.”

The bulk of Respondent’s messages to his client were work-related. Nonetheless, Respondent accompanied his work related messages with additional sexual memes, personal comments, and repeated requests that the client meet with him. In one message, Respondent invited his client, who had terminated the relationship, to meet him for drinks, even though the client was under court orders not to consume alcohol.

Respondent admits the wrongfulness of his conduct.

By sending sexually suggestive and flirtatious messages to his client, Respondent engaged in a concurrent conflict of interest, in violation of SCR 20:1.7(a), which provides, “(a) Except as provided in par. (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: . . . (2) there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer.

By failing to withdraw from the representation after sending sexually suggestive and flirtatious messages to his client, all during his representation of her in multiple family law matters, thereby creating a concurrent conflict of interest with his client, Respondent violated SCR 20:1.16(a)(1), which provides, in relevant part, “Except as stated in par. (c), a lawyer shall not represent a client, or when representation has commenced, shall withdraw from the

representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law”

By sending sexually suggestive and flirtatious messages to his client, Respondent violated a Supreme Court decision regulating the conduct of lawyers, contrary to SCR 20:8.4(f), which provides, “It is professional misconduct for a lawyer to : . . . (f) violate a statute, supreme court rule supreme court order or supreme court decision regulating the conduct of lawyers. . . .”

A Supreme Court decision with potential application is *Disciplinary Proceedings against Gibson*, 124 Wis. 2d 466, 369 N.W. 2d 695 (1985), wherein the Court stated in part:

We reiterate our determination in *Heilprin* that the public must not be subjected to unsolicited sexual conduct by attorneys in the context of an attorney-client relationship. Frequently, the client is in some difficulty, and as a result, is particularly vulnerable to improper advances made by the attorney . . . The attorney stands in a fiduciary relationship with the client . . . By making unsolicited sexual advances to a client, an attorney perverts the very essence of the lawyer-client relationship. Such egregious conduct most certainly warrants discipline.

By sending sexually suggestive and flirtatious messages to his client, all during his representation of her in multiple family law matters, Respondent harassed his client on the basis of her sex, in violation of SCR 20:8.4(i), which provides, “It is professional misconduct for a lawyer to: . . . (i) harass a person on the basis of sex”

By sending sexually suggestive and flirtatious messages to his client, all during his representation of her in multiple family law matters, Respondent engaged in offensive conduct in violation of SCR 20:8.4(g) and SCR 40.15. Pursuant to SCR 20:8.4(g), “It is professional misconduct to: . . . violate the attorney’s oath. “ SCR 40:15, the attorney’s oath, states in pertinent part, “I will abstain from all offensive personality.”

By failing to hold advanced fees in trust until earned, with no evidence that he intended to utilize the alternative protection for advanced fees provisions of former SCR 20:1.15(b)(4m),

