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SUPREME COURT OF WISCONSIN
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Public Reprimand With Consent

2024-OLR- 05

Joseph Voelkner
Attorney at Law

Joseph Voelkner ("Voelkner") was admitted to the practice of law in Wisconsin on January 10, 2001 (State Bar ID no. 1037175). Voelkner's State Bar address of record is 602 N. 6th Street, Sheboygan WI, 53081-4613. His law license is active and in good standing.

Fee agreement(s) and billing:

In March 2016, Denise J. Daley ("Daley") retained Voelkner to represent her in a dispute with Scott Thiel Builders ("Thiel"), who renovated her home pursuant to a contract dated January 12, 2015. Voelkner states his firm's regular rate for civil litigation in 2016 was \$200.00/hour and their regular practice is to use engagement letters in all matters expected to exceed \$1,000.00. Daley states Voelkner told her his rate was \$150.00/hour and that she was never provided anything in writing describing the scope of work to be performed and rate of billing. Voelkner was unable to locate an engagement letter for this file but he disputes having told her his rate was \$150/hour.

From March 2016 to January 2019, Daley states she regularly inquired about the status of her fee bill. On January 7, 2019, Voelkner sent Daley her first bill for services between March 10, 2016 and December 13, 2018, for a total of \$32,547.25. Nearly all of Voelkner's fees were billed at \$225.00/hour. The bill advises that payment is due within 30 days of the invoice.

The lien on Daley's home:

In April 2016, Thiel sent Daley a Notice of Intent to file a lien against her home. Shortly thereafter, Daley sent Voelkner an email expressing concerns about the potential lien. In May 2016, Thiel filed a home improvement lien on Daley's home asserting the contract giving rise to the claim was the original January 12, 2015 contract. Thiel did not dispute the original contract had not been paid and the lien did not reference Thiel's claim orders for additional work allegedly requested by Daley.

Beginning in September 2016, Daley asked Voelkner for his recommendations to challenge the validity of the lien. In January 2017 and again in May 2017, Daley asked Voelkner if the validity of the lien could be reviewed by the court. On November 15, 2017, Voelkner sent Daley an email discussing options to potentially release the lien, however, no action regarding the lien was taken at this time. In December 2018 and again in January 2019, Daley states Voelkner told her he would file a motion to remove the lien on her property.

In January 2020, Voelkner filed a motion for Partial Summary Judgment. The court granted the motion on March 31, 2020, dismissing Thiel's breach of contract claim and Thiel's Foreclosure of Lien Claim.

Voelkner's pleading of Daley's counterclaims:

On November 3, 2016, Thiel filed a civil action against Daley in Sheboygan County ("the case"), Case No. 16CV0601.

On November 15, 2016, Voelkner filed an Answer and Affirmative Defense in the case which contained a series of counterclaims. Voelkner's first cause of action involved ATCP Code Chapter 110 regarding Home Improvement Practices; the second cause of action was for 'Slander of Title'; the third cause of action was for 'Property Damage and Consequential Damages'; the

fourth cause of action was for 'Theft by Contractor'; the fifth cause of action was for 'Breach of Contract'; and the sixth cause of action was for 'Punitive Damages'.

On August 31, 2017, Voelkner filed an Amended Answer. On September 20, 2017, Thiel filed a motion to dismiss Voelkner's counterclaims. On October 24, 2017, Thiel filed a memorandum in support of the motion to dismiss. On November 3, 2017, Voelkner filed second amended counterclaims. On November 7, 2017, Thiel filed a motion to dismiss the second amended counterclaims. On November 13, 2017, the court heard the motion and granted Voelkner leave to file revised pleadings.

At the November 13, 2017 motion hearing, Judge Persick clarified what the court expected from the amended counterclaims, saying:

And when I look at the defendant's Second Amended Counterclaim in comparison, starting at paragraph 8, the first cause of action, there are no facts alleged there at all to establish how these violations of the ATCP code occurred...it's not obvious from the face of the pleadings. And I do think you need to indicate what specifically the violation is.... if I look at the third cause of action, again, there's no – there are no facts listed whatsoever about what work was faulty.

Persick then explains the fourth cause of action is deficient saying:

I don't know that that is enough because I can't tell from that pleading what was paid by the defendant, when it was paid, what they're claiming the plaintiff didn't pay.

Persick states, regarding the fifth cause of action:

... it's the same thing... If I look at paragraph 30, there's some content about what they're saying was violated but there aren't facts to back that up.... And for at least some of these causes of action, there are no facts at all. And for some of them they're so ambiguous that I can't – well, there still aren't many facts, and they're so ambiguous that I can't tell what it's actually based upon.

Persick also explicitly addressed that Voelkner already had multiple opportunities to correct the counterclaims, saying:

I understand the plaintiff's point here about how this has been going on for a long time, and there's already been an opportunity to file an amended claim.... it would be appropriate to allow the defendants one more opportunity to clarify their counterclaim.

December 12, 2017, Voelkner filed the third amended counterclaims.

On December 16, 2017, Thiel filed a motion to dismiss the third amended counterclaims. Thiel's motion to dismiss and memorandum in support noted that the allegations in the ATCP section did not match the corresponding Administrative Code Sections (e.g., in multiple paragraphs, the alleged behavior or facts did not apply to the code section referenced, there were duplicate allegations or code references, etc.).

On March 27, 2018, Voelkner filed a letter with the court addressing the errors in the third amended counterclaims, which he alleges he did not discover until March 25, 2018. Voelkner asserts he discovered the error while preparing for the upcoming hearing. The letter explained the errors were "clerical," "technical defects," and "honest error." Voelkner included with the letter a "corrected" version of the counterclaims. Voelkner suggested the court address the sections of Thiel's motion to dismiss that were not affected by the claimed errors and schedule another date to address the remaining sections. Voelkner did not make a motion to the court for leave to file fourth amended counterclaims. Voelkner asserts he did not believe such a motion was necessary.

At a hearing on April 16, 2018, Judge Persick told Voelkner that she thought the other parties were right to assert that his March 27, 2018 submission should not be considered because he had no permission to file a fourth amended counterclaim and his filing was outside of time limits. Voelkner replied that the draft was "not being submitted as anything other than proof of the error."

On April 23, 2018, at a motion hearing, Judge Persick dismissed all of Voelkner's counterclaims, providing "...you have to allege some facts, and the allegations are so vague and so conclusory that it is difficult to know what's being alleged.... It's just so vague that they're not – they can't possibly be on notice."

On April 24, 2018, Voelkner emailed Daley a letter that told her all six of their causes of action were dismissed, that the judge demonstrated “rank incompetence,” and they “will be forced to pursue” an interlocutory appeal. Voelkner did not inform Daley of the consequences of the dismissal on her overall case. Voelkner also did not explain to Daley the relative chances of success of an interlocutory or permissive appeal, the likely attorney’s fees incurred with the appeal, the comparative benefits and drawbacks of waiting for a traditional appeal, and whether he would file an appeal at the conclusion of the case.

At a June 4, 2018 telephone status conference, Voelkner informed the court he was going to appeal. On August 8, 2018 the petition for leave to appeal was filed, initiating 2018AP001494 in the Court of Appeals District 2. On September 4, 2018, the petition for leave to appeal was denied by the appellate court. Voelkner did not inform Daley of the denial until December 2018.

By not communicating in writing the scope of the representation and the basis or rate of the fee, Attorney Voelkner violated SCR 20:1.5(b)(1) which states that, “the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation.”

By failing to properly plead Daley’s counterclaims; by failing to identify material errors in the third amended counterclaims, and by not timely filing a motion to dismiss the lien, Attorney Voelkner violated SCR 20:1.3 which states, “A lawyer shall act with reasonable diligence and promptness in representing a client.”

By failing to accurately inform Daley the consequences of the judge’s dismissal of her counterclaims and the costs and benefits of filing an interlocutory appeal, Attorney Voelkner

violated SCR 20:1.4(b) which states, "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

Attorney Voelkner has one previous private reprimand, SCR 20:1.1 – Competence, issued in 2020.

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

Dated this 5th day of April, _____.

SUPREME COURT OF WISCONSIN

A handwritten signature in cursive script, reading "Sue E. Bosch", written over a horizontal line.

Referee