

Public Discipline

These summaries are provided by the Office of Lawyer Regulation (OLR), an agency of the Wisconsin Supreme Court. The OLR assists the court in supervising the practice of law and protecting the public from misconduct by lawyers. The OLR has offices at 110 E. Main St., Suite 315, Madison, WI 53703; toll-free (877) 315-6941. The full text of items summarized is at www.wicourts.gov/olr.

Public Reprimand of Joseph Voelkner

Joseph Voelkner represented a client, a homeowner, in litigation against a contractor arising out of disputed renovations to the client's home.

Voelkner violated SCR 20:1.3 by failing to diligently pursue the client's counterclaims. Among other things, Voelkner failed to properly plead the counterclaims and, despite multiple opportunities to amend, the court dismissed the counterclaims for lacking sufficient specificity. Voelkner also failed to timely file a motion to dismiss the contractor's lien.

Voelkner violated SCR 20:1.4(b) by failing to explain the consequences of the court's dismissal of the counterclaims as well as the costs and benefits of filing an interlocutory appeal to the extent reasonably necessary to permit the client to make informed decisions. Voelkner also failed to adequately explain his legal strategy to the client, including his decision not to call any trial witnesses and that he would not consider an appeal.

Voelkner also violated SCR 20:1.5(b)(1) by failing to explain the scope of the representation and the basis or rate of the fee and expenses for which the client was responsible before or within a reasonable time after commencing the representation. Voelkner was unable to produce a fee agreement or engagement letter for the representation and failed to provide the client with an invoice for the work performed for nearly three years, despite the client's inquiries. The bill Voelkner provided to the client was for almost \$33,000 and stated it was due within 30 days.

A Wisconsin Supreme Court-appointed referee approved the parties' reprimand

agreement, including stipulated facts and proposed violations, and issued a public reprimand pursuant to SCR 22.09(3).

The ABA Standards for Imposing Lawyer Sanctions were considered in support of the proposed public reprimand. In aggravation, Voelkner had a prior disciplinary history and substantial experience practicing law, and the client was harmed insofar as pleading errors resulted in dismissal of counterclaims. In mitigation, Voelkner had no dishonest or selfish motive and cooperated with the Office of Lawyer Regulation (OLR) investigation.

Voelkner was privately reprimanded in 2020 for violating SCR 20:1.1 and SCR 20:5.3(a) and (b).

Disciplinary Proceeding Against Paul A. Strouse

On Feb. 27, 2024, the Wisconsin Supreme Court revoked the law license of Paul A. Strouse, Milwaukee, effective April 2, 2024. The court also ordered Strouse to pay the \$2,456.45 cost of the disciplinary proceeding. *Disciplinary Proceedings Against Strouse*, 2024 WI 10.

The revocation of Strouse's license was based on nine counts of misconduct related to representation of two clients, use of another lawyer's notary stamp, misrepresentations to a court, and association with an individual whose law license has been revoked.

Strouse violated SCR 20:8.4(c) by retaining another lawyer's notary stamp without the other lawyer's permission; using the notary stamp to affix the other lawyer's notary seal to documents without the other lawyer's authorization or knowledge; affixing or causing nonlawyer

staff to affix the other lawyer's signature to documents as the notary without the other lawyer's authorization or knowledge; misrepresenting to the other lawyer that Strouse did not have possession of his notary stamp; and failing to disclose to the United States Trustee all the affidavits that Strouse filed with false notarizations in the Bankruptcy Court.

Strouse violated 11 U.S.C. § 526(a)(2) and SCR 20:3.4(c) by filing or causing his nonlawyer staff to file at least 18 affidavits with the Bankruptcy Court containing false statements that each affidavit had been sworn before the other lawyer and that the other lawyer had affixed the other lawyer's notary stamp and signature.

Strouse violated SCR 20:3.3(a)(1) by making misrepresentations to the Bankruptcy Court regarding his use of the other lawyer's notary stamp and documents Strouse had filed with the court.

Strouse violated SCR 20:1.3 by failing to act with reasonable diligence and promptness in furtherance of a client's interests related to the client's Title VII claims.

Strouse violated SCR 20:1.1 by failing to provide competent representation to the client, including by failing to take reasonable steps before filing a notice of voluntary dismissal to research and understand the effect a voluntary dismissal could have on the client's Title VII claims.

Strouse violated SCR 20:1.16(a)(2) by failing to file a motion to withdraw from representation of the client when Strouse's personal and health concerns were impairing his ability to represent the client.

Strouse violated SCR 20:8.4(a), via SCR 22.26(2) or SCR 20:5.5(a)(2), by assisting, facilitating, or allowing a revoked or suspended lawyer to practice law or perform law-work activities at a time when that lawyer's license to practice law was suspended or revoked.

Strouse violated SCR 20:1.4(a)(4) by failing to respond to a client's reasonable requests for information.

Strouse violated SCR 20:1.16(a)(2) by failing to timely file a motion to with-

draw from representation of the client if Strouse's mental or physical condition materially impaired his ability to represent the client.

Strouse's disciplinary history consists of three public reprimands (in 2010, 2011, and 2015) and a suspension, *Disciplinary Proc. Against Strouse*, 2015 WI 83, 364 Wis. 2d 314, 868 N.W.2d 163.

Public Reprimand of J. Alberto Quiroga

J. Alberto Quiroga represented a client in a divorce and in obtaining a domestic abuse restraining order against the client's former spouse.

As of November 2019, Quiroga was holding \$66,480.03 in trust for the benefit of the client and the client's former spouse. In January 2020, he received an additional \$113,262.10 to be held in trust.

In February 2020, Quiroga told the spouse's newly hired divorce counsel that Quiroga was holding \$66,480.03, but Quiroga did not disclose the \$113,262.10 or that he had made disbursements from the trust funds to pay the client's attorney fees.

In July 2020, the spouse's divorce counsel twice requested an updated accounting. Quiroga's accounting revealed that between November 2019 and June 2020, Quiroga had withdrawn \$8,995 from trust for the client's attorney fees.

On Oct. 28, 2022, the court awarded \$2,500 to the spouse 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 \$2,500 within 90 days. He paid it on Feb. 1, 2023.

Quiroga violated SCR 20:1.15(e)(3) by directing his firm to disburse money to pay legal fees owed by the client from trust funds in which the spouse and the client both claimed an ownership interest.

Quiroga violated SCR 20:8.4(c) by failing to disclose to the spouse's divorce counsel in February 2020 that he had made disbursements from the trust funds.

On June 26, 2020, an injunction was entered against the spouse, prohibiting the spouse from being within two blocks of the client's residence.

On June 29, Quiroga emailed the spouse's divorce counsel and the spouse's injunction counsel a proposed map of the prohibited area (the client's map). Quiroga never submitted the client's map to the court.

Between June 30 and July 8, the spouse's lawyers requested changes to the client's map. On July 1, the injunction counsel told Quiroga that if he wouldn't agree to changes, the injunction counsel would request a hearing, which the injunction counsel did on July 8.

On July 11, the client provided the client's map to the police.

On July 14, after the judge declined to schedule a hearing, the judge's clerk sent Quiroga and the injunction counsel a map showing the geographical restriction "as ordered by the judge" (the court's map). The court's map was filed in the injunction case, bearing the notation "BY ORDER OF THE COURT" and the judge's signature. Quiroga received electronic notice of the

filing but did not provide the court's map to the client.

On July 21, the spouse was arrested based on a call from the client and the client's map. The spouse and the injunction counsel gave police the court's map, and injunction counsel confirmed it was the valid, court-ordered map. When police spoke to Quiroga, he was "very persistent" and insisted that the client's map was the valid, court-approved map. After police officers confirmed the validity of the court's map with the clerk of court, the spouse was released from jail.

By representing to police officers that the client's map accurately outlined the geographical areas from which the spouse was restricted, Quiroga violated SCR 20:8.4(c).

Quiroga had no prior discipline. **WL**

BUSINESS LITIGATION

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Non-Compete Agreements • Contract Disputes
Fraud and Misrepresentation • Trade Secrets/Customer Lists
Dealership Terminations • Injunction Hearings

CASE OF THE MONTH



Cohen v. Adena Health System, No. 2:23-cv-021452024, 2024 WL 1804990 (S.D. Ohio April 25, 2024). Adena Health System is a non-profit regional healthcare system. Plaintiffs are physicians employed by Adena Medical Group, LLC. The Complaint alleges that throughout the relevant time period, Adena (collectively) has held a dominant position in the market for health care services in the Primary Adena Market Area. Among the alleged unlawful actions taken by Adena to protect its dominant position are: working to stop or delay its potential competitors from securing real estate; selectively enforcing restrictive covenants outlined in Physician Employment Agreements, such as non-competition restrictions and restrictions on the solicitation of patients and employees, requiring physicians to refer patients needing additional care only to other Adena physicians unless there is no Adena physician offering the necessary services; and providing Adena employees different coverage for out-of-network expenses if they "go to" Adena as compared to other providers who Adena perceives as competitors. When the individual doctors resigned, Adena immediately terminated them, resulting in their losing the ability to communicate with their patients. Immediately after terminating the doctors, Adena filed suit against them in state court for breach of their employment agreements. The doctors asserted several counterclaims, including a federal antitrust claim. The state court dismissed the antitrust counterclaim without prejudice for lack of subject matter jurisdiction. The doctors refilled in federal court. Antitrust standing and Article III standing are not one and the same, and courts "not only may but must reject claims under Rule 12(b)(6) when antitrust standing is missing." A plaintiff must (1) prove an antitrust injury, and (2) demonstrate that they are the proper party to bring the antitrust suit. Antitrust injury is injury of the type the antitrust laws were intended to prevent. Antitrust laws "were enacted for 'the protection of competition not competitors.'" A plaintiff alleging antitrust injury must allege injury to a relevant market, not just injury to the plaintiff. "[A] plaintiff must put forth factual allegations plausibly suggesting that there has been an adverse effect on prices, output, or quality of goods in the relevant market as a result of the challenged actions." Doctors as competitors did not eradicate competition between Adena and other doctors in the area nor did it prevent patients from choosing from non-Adena doctors during the restriction period. And even if antitrust injury, there are "at least two more easily imagined efficient enforcers ... patients and the government."

ROBERT B. CORRIS, S.C.

414.272.8000 • Fax: 414.755.7050 • Email: rcorris@corrislaw.com
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