The Supreme Court of South Carolina

In the Matter of David F. Wood, Deceased.

Appellate Case No. 2017-002313

ORDER

The Office of Disciplinary Counsel (ODC) has filed a petition advising the Court that David F. Wood, Esquire, passed away on November 1, 2017, and requesting the appointment of the Receiver, Peyre T. Lumpkin, to protect the interests of Mr. Wood's clients pursuant to Rule 31 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). The petition is granted.

IT IS ORDERED that Mr. Lumpkin is hereby appointed to assume responsibility for Mr. Wood's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) maintained by Mr. Wood. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of Mr. Wood's clients. Mr. Lumpkin may make disbursements from Mr. Wood's trust account(s), escrow account(s), operating account(s), and any other law office account(s) maintained by Mr. Wood that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of Mr. Wood, shall serve as notice to the bank or other financial institution that Peyre T. Lumpkin, Esquire, has been duly appointed by this Court.

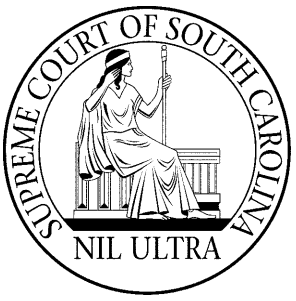
Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Peyre T. Lumpkin, Esquire, has been duly appointed by this Court and has the authority to receive Mr. Wood's mail and the authority to direct that Mr. Wood's mail be delivered to Mr. Lumpkin’s office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

s/ Donald W. Beatty C.J.
FOR THE COURT

Columbia, South Carolina

November 13, 2017



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OF

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AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 43
November 15, 2017
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Peggy D. Conits, Respondent,

v.

Spiro E. Conits, Petitioner.

Appellate Case No. 2016-001961

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Greenville County
David G. Guyton, Family Court Judge

Opinion No. 27749
Submitted October 24, 2017 – Filed November 15, 2017

REVERSED AND REMANDED

Kenneth C. Porter, Porter & Rosenfeld, and David Alan Wilson, of The Law Offices of David A. Wilson, LLC, both of Greenville, for Petitioner.

Timothy E. Madden, Nelson Mullins Riley & Scarborough, LLP, of Greenville, for Respondent.

PER CURIAM: Spiro E. Conits filed a petition for a writ of certiorari to review the decision of the court of appeals in *Conits v. Conits*, 417 S.C. 127, 789 S.E.2d 51 (Ct. App. 2016). We grant the petition, dispense with further briefing, reverse the decision, and remand to the court of appeals.

Peggy D. Conits and her husband Spiro litigated many issues in their divorce action in family court, but we address only one—the size and value of a farm Spiro owns in Greece. Spiro appealed the family court's ruling on this issue, but the court of appeals found the issue was not preserved for appellate review. The court of appeals understood Spiro to argue on appeal the farm "does not exist," but that at trial he "made no arguments as to the existence of the . . . farm." 417 S.C. at 137, 789 S.E.2d at 56. We find Spiro made the same argument on appeal he made at trial. The issue is preserved.

The facts of this case are set forth in detail in the court of appeals' opinion. 417 S.C. at 133-36, 789 S.E.2d at 54-56. At trial, the parties presented conflicting evidence about the size and value of the farm in Greece. Spiro admitted he owns a one-half interest in a three-acre farm with a fair market value of $43,750. Peggy claimed the farm is thirty acres with a fair market value of $1,420,200. As the court of appeals observed, "the parties argued about its value and whether the property was three or thirty acres." 417 S.C. at 137, 789 S.E.2d at 56

The family court found the farm is thirty acres and assigned it a value of $1,420,000. Spiro filed a motion to alter or amend the judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. He argued—among other things—Peggy "completely misrepresented or misunderstood [Spiro's] ownership interests in real estate in Greece and the court erred in adopting such misrepresentation as fact without evidentiary support." Spiro specifically argued he "does not own a thirty-acre farm in Greece" and "[his] interest in [the three-acre . . . farm] is worth between $20,000 and $21,875." The family court denied the motion.

On appeal to the court of appeals, Spiro admitted he owns a three-acre farm in Greece and claimed he does not own a thirty-acre farm. Appellant's Br. 12. Spiro argued in his brief to the court of appeals,

> At trial, [Spiro] clarified and corrected his ownership in the various properties in Greece and confirmed his ownership in a three-acre . . . farm as opposed to a thirty-acre farm. He testified at trial that he only owns three acres in Greece. [Spiro] simply does not own a thirty-acre farm in Greece.

Id. Spiro then argued in his brief there is "no support for [Peggy's] 'opinion' as to the value of the farm" and the family court's ruling "should be removed in its entirety and replaced with findings of fact and conclusions of law regarding the three-acre . . . farm." Appellant's Br. 15.

The words Spiro used to make his argument concerning the size and value of the farm in Greece changed from the family court to his Rule 59(e) motion to his brief at the court of appeals. In fact, Spiro confused the true issue when he described it in his brief to the court of appeals as, "Should the Family Court Include in the Marital Estate an Asset That Does Not Even Exist," and repeatedly and emphatically argued that "no such asset even exists." Considering Spiro's arguments practically, however, we clearly see that his argument was the same at each stage of these proceedings—he does not own a thirty-acre farm in Greece; he owns a three-acre farm; and it is not worth anything near what Peggy claims or the family court found. *See Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011) ("We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner."). When Spiro argued in his Rule 59(e) motion and wrote in his brief to the court of appeals that he "does not own a thirty-acre farm in Greece," he did not argue there was no farm. Rather, he argued the farm he admitted he owns is not thirty acres, and is not worth $1,420,000.

The issue raised at the court of appeals is precisely the same one Spiro raised to the family court at trial and in his Rule 59(e) motion. The family court ruled on the issue, and thus it is preserved. *See Herron*, 395 S.C. at 465, 719 S.E.2d at 642 (stating "issue preservation requires that an issue be raised to and ruled upon by the trial judge").

Accordingly, we **REVERSE** the court of appeals' ruling that the issue concerning the size and value of the farm in Greece is not preserved for appellate review. We **REMAND** to the court of appeals to rule on the merits of the issue and to consider any other issues that arise as a result of its ruling.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Henry H. Taylor, Respondent.

Appellate Case No. 2017-001913

Opinion No. 27750
Submitted November 2, 2017 – Filed November 15, 2017

PUBLIC REPRIMAND

Lesley M. Coggiola, Disciplinary Counsel, and William C. Campbell, Senior Assistant Disciplinary Counsel, of Columbia, for Office of Disciplinary Counsel.

J. Steedley Bogan, Bogan Law Firm, of Columbia for Respondent.

PER CURIAM: In this attorney disciplinary matter, the Office of Disciplinary Counsel and Respondent have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, Respondent admits misconduct and consents to the imposition of a confidential admonition or public reprimand. We accept the Agreement and issue a public reprimand. The facts, as set forth in the Agreement, are as follows.

Facts and Law

Police Chief (Chief) worked a motor vehicle accident with significant injuries and developed a relationship with the victim's family (Family). Chief suggested the Family contact Respondent for representation. Respondent maintains there was

never any initial agreement between himself, Chief, or any third party for the payment of a referral fee. Respondent learned of the Family's potential case through the brother (Brother) of his long-standing business partner (Partner). Respondent told Brother he could not approach the Family directly. He believes Brother conveyed this information to Chief, who then recommended Respondent to the Family. After obtaining a favorable settlement for the Family, Respondent charged Family a fee below the prevailing rate. After the case, Partner approached Respondent, asking him to pay Brother and Chief for the referral. Respondent wrote two checks, one for $48,500 and one for $20,000, from his personal account. He initially characterized the checks as loans to Partner, although now he admits the payments were for Chief's efforts in putting him in contact with the Family.

Respondent admits his conduct violated Rule 5.4 (except under limited circumstances, a lawyer or law firm shall not share legal fees with a nonlawyer) and Rule 8.4(e) (it is professional misconduct to engage in conduct that is prejudicial to the administration of justice) of the Rules of Professional Conduct contained in Rule 407, SCACR.

Respondent admits these violations constitute grounds for discipline under Rule 7(a), RLDE, Rule 413, SCACR (it is a ground for discipline for a lawyer to violate the Rules of Professional Conduct).

Conclusion

We find Respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement and publicly reprimand Respondent for his misconduct.

Respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct within thirty (30) days of the date of this order. Furthermore, Lawyer shall complete the Legal Ethics and Practice Program Ethics School within six (6) months of the date of this order.

PUBLIC REPRIMAND.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Ray A. Lord, Respondent.

Appellate Case No. 2017-001218

Opinion No. 27751
Submitted October 26, 2017 – Filed November 15, 2017

PUBLIC REPRIMAND

Lesley M. Coggiola, Disciplinary Counsel, of Columbia, for Office of Disciplinary Counsel.

J. Steedley Bogan, Bogan Law Firm, of Columbia for Respondent.

PER CURIAM: In this attorney disciplinary matter, the Office of Disciplinary Counsel and Respondent have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, Respondent admits misconduct and consents to the imposition of a confidential admonition or public reprimand. We accept the Agreement and issue a public reprimand. The facts, as set forth in the Agreement, are as follows.

Direct Solicitation Letters

To market his legal services, Respondent sent direct mail solicitation letters to potential clients who received traffic tickets. A recipient of one of the letters filed a complaint with the Commission on Lawyer Conduct. In response to the

complaint in this matter, Respondent acknowledged the following violations of the Rules of Professional Conduct in his solicitation letters:

1. Respondent used the tagline "attorneys at law" on his law firm letterhead. The tagline was misleading because Respondent is a solo practitioner.

2. Respondent claimed that he has "28 years experience both as a lawyer and former law enforcement officer" in his solicitation materials. Respondent acknowledges the claim was misleading because he has only been a lawyer and former law enforcement officer for sixteen years. Respondent's intention was to relay that he has twenty-eight years total experience as a law enforcement officer and as a lawyer combined.

3. Respondent used the telephone number (844) FIXTICKET. Use of the phoneword is the equivalent of a nickname, tradename, or moniker and is likely to create unjustified expectations or an implication that he can achieve results by unethical means. Furthermore, the phoneword is a moniker that implies an ability to obtain a certain result.

4. Respondent stated in his solicitation letters that he learned about the recipient's traffic ticket from "court records." Respondent's identification of the source of his information was not sufficiently specific.

Website

Respondent's solicitation letter specifically referred the recipient to the website of Respondent's law firm. On his website, he claimed he has "unique insight into the South Carolina traffic laws that many other lawyers simply do not have." Respondent admits this claim cannot be factually substantiated.

Online Lawyer Profile

The solicitation letter specifically referred the recipient to Respondent's profile on www.avvo.com ("AVVO"), a legal marketing website. AVVO creates profiles for attorneys without their consent, knowledge, or participation, then invites them to

"claim" their profiles and participate in a variety of AVVO marketing activities, including "ratings," peer endorsements, client testimonials, and online contact with prospective clients. Respondent claimed his AVVO profile and used the website to market his legal services. Accordingly, Respondent is responsible for its content and is ethically required to ensure his profile complies with the Rules of Professional Conduct. In connection with a prior disciplinary investigation in 2012, which is described below, Respondent agreed to add a disclosure regarding endorsements, testimonials, and reports of past results to his AVVO profile. This disclosure was required to be "clear and conspicuous." However, at the time Respondent added his disclosure in 2012, "clear and conspicuous" disclosures were not specifically defined. In July 2014, specific requirements for clear and conspicuous disclosures were added to the Rules of Professional Conduct. Respondent admits he did not revise his 2012 disclosure to conform with the new standards.

Response to Negative Review

In 2012, the Office of Disciplinary Counsel (ODC) investigated an anonymous complaint alleging Respondent improperly responded to a negative review by a client on AVVO. The negative review, which included the client's first name, stated:

> [Respondent] works very closely with the Columbia area police departments, and knows many people in this system personally. After asking numerous times to retrieve a patrol car surveillance video due to overzealous police officers throwing me to the asphalt in handcuffs. (sic) He denied the video being of any help and ignored my requests. He in fact told me it was best to apologize to the officers even though I was not violent towards them in any way and did very little in reducing my violation and fine. What a waste of time and money. I honestly believe he was working with the officers, (his recent co-workers) the whole time.

Respondent's response, which was publicly accessible, stated the following:

> Here is the other side of the story. This client was charged with offenses that could have resulted in over a year in prison. I was able to negotiate with the prosecutor no jail time and no probation and a dismissal of the most serious charge and this was simply the best result possible. Of course, I try very hard to get all charges dismissed,

> but that is simply not realistic for some cases and I tell all clients that I cannot and do not guarantee any specific result. It's funny how this client had no complaint with me 6 months ago when he was facing prison time and he left the courtroom a free man only having to pay a simple fine and now 6 months later is complaining. You can (sic) make everybody happy. The vast majority (over 95%) of my clients are very satisfied with my representation, but some people, no matter what you do, are always going to find something to nit-pick on. The fact that the video was never provided means nothing as it was not required for a conviction and the client could have easily have been convicted by the testimony of the 4 cops who were there and if we had gone to trial and lost, he would have been sitting in prison right now instead of being free. I never ignored my client's requests. The facts differ greatly from my former client's recollection and the recollection of several witnesses who were at the scene. This is just an ungrateful former client who now wants to "blame his lawyer" because of what "he" did. This is typical of a very young person who has a lot of growing up to do. To my former client: Do me a favor. The next time you are arrested, call a public defender and see what happens and after you sit in jail for 3 months they might get around to sending you a form letter. Good luck.

In April 2013, an Investigative Panel issued a confidential admonition to Respondent because the response disclosed information related to the representation of the client and negatively characterized public defenders.

In reviewing Respondent's AVVO profile in connection with the investigation of the current complaint, ODC discovered Respondent had not removed the offending post after receiving the admonition. Respondent never removed the offending post after receiving the admonition, which he admits he should have done.

Rules of Professional Conduct

Respondent admits his conduct violated the following Rules of Professional Conduct contained in Rule 407, SCACR: Rule 1.6 (a lawyer shall not reveal information relating to the representation of a client without client's informed consent); Rule 7.1 (a lawyer shall not make false, misleading or deceptive communications about the lawyer or the lawyer's services); Rule 7.1(a) (a communication violates the Rules of Professional Conduct if it contains a material misrepresentation of fact or omits a fact necessary to make a statement not

materially misleading); Rule 7.1(b) (a communication violates the Rules of Professional Conduct if it is likely to create an unjustified expectation about results the lawyer can achieve or implies the lawyer can achieve results by unethical means); Rule 7.1(c) (a communication violates the Rules of Professional Conduct if it compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated); Rule 7.1(d) (a communication violates the Rules of Professional Conduct if it contains a testimonial or endorsement and does not clearly and conspicuously state that any result the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate similar results can be obtained for other clients); Rule 7.1(e) (a communication violates the Rules of Professional Conduct if it contains a nickname, moniker, or trade name that implies an ability to obtain results in a matter); Rule 7.2(i) (any disclosures or disclaimers regarding communications sent for advertising purposes must be of sufficient size to be clearly legible and prominently placed so as to be conspicuous to the viewer; if the advertising statement is made on a website or online profile, the disclaimer must appear on the same page as the statement requiring the disclosure or disclaimer); Rule 7.3(g) (any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member shall disclose how the lawyer obtained the information prompting the communication); Rule 7.5(a) (lawyer shall not use a firm name that is false or misleading); and Rule 7.5(d) (lawyers may state or imply that they practice in a partnership only when that is the fact).

Respondent also admits his conduct violated the Lawyer's Oath, Rule 402(h)(3), SCACR (a lawyer will maintain the dignity of the legal system).

Respondent admits these violations constitute grounds for discipline under Rule 7(a), RLDE, Rule 413, SCACR (it is a ground for discipline for a lawyer to violate the Rules of Professional Conduct).

Conclusion

We find Respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement and publicly reprimand Respondent for his misconduct.

PUBLIC REPRIMAND.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.