

# 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](http://www.wicourts.gov/olr).

## Medical Incapacity Proceedings Against David V. Penn

On Aug. 25, 2023, the Wisconsin Supreme Court entered an order addressing a petition by the Office of Lawyer Regulation (OLR) requesting that David V. Penn be found to have a medical incapacity and that his license to practice law be suspended indefinitely. *In re Med. Incapacity Proc. Against Penn*, 2023 WI 63.

The court adopted and approved a stipulation between the OLR and Penn, wherein Penn admitted that he has a medical incapacity that substantially prevents him from performing the duties of an attorney to acceptable professional standards and agreed to the indefinite suspension of his license to practice law.

## Disciplinary Proceedings Against William H. Green

On June 27, 2023, the supreme court suspended the law license of William H. Green, Brown Deer, for two years, commencing the date of the order. In addition, the court ordered Green to pay restitution to two clients for unearned fees he failed to refund, comply with two bankruptcy court fee-disgorgement orders, and pay the \$707 cost of the disciplinary proceeding. *Disciplinary Proc. Against Green*, 2023 WI 55.

Green failed to participate in the disciplinary proceeding. He was declared in default. The allegations of the complaint were thus deemed established and the 24 counts of misconduct proved. Green's misconduct occurred across his representation of

six clients. In four cases, which were bankruptcy petitions, Green neglected the cases. He also failed to communicate with several clients and did not respond to various court orders, including two orders to disgorge fees. The other two representations involved a stepparent-adoption and termination-of-parental-rights matter and a divorce and juvenile matter. Green accepted \$4,000 in fees for the stepparent adoption but did not work in the case and did not respond to the client's telephone inquiries. The court ordered Green to make restitution of the \$4,000. For the divorce and juvenile case, Green withdrew soon after taking on the representation but failed to return the client's file.

In all the matters underlying the disciplinary proceeding, Green failed to respond to the OLR, resulting in the automatic suspension of his license to practice law for failure to cooperate, which continued through the entry of the suspension order. The court determined a two-year license suspension was appropriate "to impress on Attorney Green the seriousness of his extensive misconduct and deter other attorneys from engaging in similar misconduct in the future."

Green's prior discipline consisted of a 2014 private reprimand for similar misconduct – neglect, failure to communicate, and mishandling of fees in a bankruptcy – and a 2016 public reprimand for three client matters involving incompetence, lack of diligence, and failure to comply with trust account rules.

## Disciplinary Proceedings Against Brian T. Stevens

On June 27, 2023, the supreme court suspended the law license of Brian T. Stevens, Green Bay, for 60 days, commencing Aug. 8, 2023. In addition, the court ordered Stevens to pay restitution of \$4,500 to a third party and the \$8,366.07 cost of the disciplinary proceeding. *Disciplinary Proc. Against Stevens*, 2023 WI 56.

Stevens' misconduct arose out of his representation of a man, R.K., in a personal-injury claim beginning in 2013. While the claim was pending, R.K. asked an acquaintance, W.B., to loan him \$4,000. R.K. promised to repay W.B. \$4,500 if he received sufficient funds from his settlement. Stevens prepared a promissory note that R.K. and W.B. signed in July 2014, stating the following: "If settlement funds sufficient to may [sic] repayment are received, such payment shall be through trust fund disbursement by Attorney Brian Stevens." The claim settled, and Stevens received funds in payment of the settlement in September 2016.

Stevens did not notify W.B. of his receipt of the funds as required by SCR 20:1.15(e). After making various disbursements, including to himself for fees and reimbursement of funds he loaned to R.K. during the representation, Stevens held the remaining funds in his client trust account, including the portion belonging to W.B., for several years.

In April 2018, Stevens withdrew \$3,800 from the trust account to pay his own bills or expenses and \$700 to refund money to a client who did not have funds in the account. This conduct violated SCR 20:1.15(b)(1), which requires that client funds be held in trust, and SCR 20:8.4(c), which prohibits dishonest conduct. In June 2018, Stevens returned \$4,500 to the trust account using his own funds. Stevens thus violated SCR 20:1.15(b)(3) by commingling his own funds in the trust account.

In January 2020, R.K. filed a grievance. Stevens, in response to the grievance, disbursed to R.K. the \$4,500 that belonged to W.B., after making minimal and unsuccessful efforts to find contact information for W.B., in the hope that doing so would “fix things.” W.B. never received any of the funds owed to her. While investigating the grievance, the OLR determined that Stevens had not kept complete trust account records as required by SCR 20:1.15(g).

The court imposed a 60-day suspension, stating it was “a reasonable next step in the progressive discipline process, and one that is readily supported by precedent.” Stevens received a private reprimand in 2020 for lack of diligence and failure to communicate. Along with orders to pay restitution and costs, the court ordered Stevens to comply with several conditions, including that he attend seven hours of continuing legal education on trust account and law practice management, identify a lawyer

to monitor his practice for two years, and furnish quarterly reports to the OLR of activities in his trust account for two years.

### Disciplinary Proceedings Against Jeffrey L. Murrell

On Aug. 23, 2023, the supreme court entered an order addressing a petition by the OLR requesting that Jeffrey L. Murrell, Milwaukee, be found to have a medical incapacity and that conditions be imposed on his continued practice of law. *Disciplinary Proc. Against Murrell*, 2023 WI 62.

The court adopted and approved a stipulation between the OLR and Murrell, wherein Murrell acknowledged that he has a medical incapacity that at times substantially prevents him from performing the duties of an attorney to acceptable professional standards and agreed to the imposition of conditions on his practice of law. The court imposed the recommended conditions, which

require Murrell to 1) enter a contract to participate in the Wisconsin Lawyers Assistance Program (WisLAP) monitoring program for three years; 2) obtain follow-up care with his mental health providers as recommended by WisLAP; 3) immediately self-report to the OLR any police contact, arrests, or criminal charges; and 4) arrange payment of \$6,500 to the Wisconsin Lawyers' Fund for Client Protection for a payment the fund made to reimburse a family who hired Murrell to represent their son.

The court's order also states that the OLR can request the immediate summary suspension of Murrell's license if he fails to comply with the monitoring condition. If Murrell fails to comply with the other three conditions, the order allows the OLR to seek an order to show cause why Murrell's license should not be summarily suspended. **WL**

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# Private Discipline

The Wisconsin Supreme Court permits the Office of Lawyer Regulation (OLR) to publish, for educational purposes, a summary of facts and professional conduct rule violations in matters in which the OLR imposed private reprimands. The summaries do not disclose information identifying the reprimanded attorneys. The summaries of selected private reprimands are printed to help attorneys avoid similar misconduct problems.

## Criminal Act Reflecting Adversely on Fitness to Practice

### Violation of SCR 20:8.4(b)

While driving, an attorney was stopped by a state trooper because the attorney's car was swerving across lanes of traffic. During the stop, the trooper noticed that the attorney seemed "emotional" and "expressive," spoke with slurred speech, and had delayed reactions. The attorney eventually admitted to having smoked marijuana earlier in the day and having marijuana in the vehicle. A law enforcement officer found marijuana on the attorney's person and marijuana products and paraphernalia in the vehicle. The attorney was convicted of possession of THC and first-offense operating while intoxicated (OWI) for operating a motor vehicle while under the influence of THC. The court ordered the attorney to pay fines and costs for the possession-of-THC conviction.

By engaging in conduct leading to a conviction of possession of THC and first-offense OWI for operating a motor vehicle while under the influence of THC, the attorney violated SCR 20:8.4(b). The attorney had no prior discipline.

## Lack of Competence, Lack of Diligence, and Failure to Communicate

### Violations of SCR 20:1.1, SCR 20:1.3, and SCR 20:1.4(a)(2)

A criminal defense attorney filed a no-merit report with the court of appeals. The client filed a response. The attorney failed to timely comply

with the court's order directing the attorney to file a supplemental no-merit report or motion to dismiss the appeal, in violation of SCR 20:1.3. The court then issued another, similar order, to which the attorney responded by filing a "Voluntary Dismissal of No-Merit Report." The attorney failed to obtain the client's response before filing the voluntary dismissal document, in violation of SCR 20:1.1. The court dismissed the appeal and extended the deadline for filing a postconviction motion or notice of appeal under Wis. Stat. section 809.30(2)(h).

The attorney then filed a motion in the circuit court seeking relief under Wis. Stat. sections 974.06 and 805.15, which was inappropriate because the attorney could have timely filed a postconviction motion or notice of appeal under Wis. Stat. section 809.30(2)(h). This violated SCR 20:1.1. The attorney also failed to advise the client which issues he intended to present before filing the motion that could result in waiving issues on appeal, in violation of SCR 20:1.4(a)(2). The circuit court denied the Wis. Stat. sections 974.06 and 805.15 motion.

The attorney next filed a "Notice of Intent to Appeal Postconviction Decision" in the circuit court, citing Wis. Stat. section 809.30, rather than a notice of appeal under Wis. Stat. section 809.10. This violated SCR 20:1.1. This error resulted in the document being wrongly docketed as a "Notice of Intent" pursuant to Wis. Stat. section 809.30(2) and not initiating an appeal.

The State Public Defender no longer makes appellate appointments to the attorney and appointed successor counsel for the client. The attorney had no prior discipline.

## Diligence, Communication, and Responsibilities Regarding Nonlawyer Assistance

### Violations of SCR 20:1.3, SCR 20:1.4(a)(3) and (4) and (b), and SCR 20:5.3(a) and (b)

An attorney agreed to represent spouses in several immigration matters. The attorney timely filed the wife's applications to extend her visa and for adjustment of status with the U.S. Citizenship and Immigration Services (USCIS). Thereafter, the attorney failed to monitor the status of the wife's application for adjustment of status, assist the clients with communicating with the USCIS, timely communicate with the clients, meet with the clients before the wife's USCIS interview, and ensure that the attorney's staff provided the wife with documents the USCIS directed the wife to bring to her interview. When the clients could not reach the attorney, the clients contacted the USCIS directly.

By failing to monitor the status of the wife's application for adjustment of status and by failing to assist the clients with providing requested information and documents to the USCIS, the attorney violated SCR 20:1.3.

By failing to respond to the clients' reasonable requests for information, the attorney violated SCR 20:1.4(a)(4).

By failing to communicate with the clients about the wife's application for adjustment of status, including by failing to accurately advise the clients about when the wife should obtain the medical exam required for form I-693 and by failing to send the clients a copy of the notice that the wife's form I-693 was delinquent or otherwise communicate with the clients about the delinquent form I-693, the attorney violated SCR 20:1.4(a)(3).

By failing to meet or communicate

with the clients before the wife's USCIS interview, the attorney violated SCR 20:1.4(b).

By failing to supervise nonlawyer staff and by failing to have in place policies or procedures for nonlawyer staff that ensured that information was timely provided to the clients and that the firm timely responded to the clients' requests for information, the attorney violated SCR 20:5.3(a) and (b).

The attorney has no prior discipline.

As a precondition of the reprimand, the attorney refunded \$4,000 to the clients.

### Criminal Act Reflecting Adversely on Fitness to Practice

#### Violation of SCR 20:8.4(b)

While driving, an attorney was stopped by a sheriff's deputy for making an improper turn. During the stop, the deputy noticed that the attorney had bloodshot eyes and slurred speech and that the attorney's breath emitted an order of intoxicants. The attorney agreed to perform field-sobriety tests and take a preliminary breath test (PBT). The PBT's result was 0.099% BrAC. A blood test was later taken at a local hospital and the result was 0.109 g/100mL.

The attorney was arrested and charged with second-offense operating while intoxicated (OWI) and second-offense operating with a prohibited alcohol concentration (PAC). The attorney was found guilty at a jury trial of second-offense operating with a PAC. The attorney was sentenced to jail time, driver's license revocation for 13 months, and ignition-interlock-device installation for 13 months. The attorney was also ordered to undergo an alcohol assessment and pay a fine and costs. The attorney self-reported the conviction.

By engaging in conduct leading to a misdemeanor conviction of second-offense operating with a PAC, the attorney violated SCR 20:8.4(b). The attorney had no prior discipline.

### Criminal Act Reflecting Adversely on Fitness to Practice

#### Violation of SCR 20:8.4(b)

An attorney was arrested following a disturbance at a party in Arizona. The victim, the owner of the home at which the party took place, reported that the attorney appeared intoxicated and was asked to leave the party. The victim reported observing the attorney reenter the residence and, when the victim attempted to stop the attorney, the attorney reportedly grabbed a ceramic mug and threw it at the victim. The victim reported that the ceramic mug hit the ground next to the victim, who was hit with debris in the foot and ankle area. The victim also alleged that the attorney hit the victim in the face, and the officer noted redness on the victim's forehead. The victim did not need medical attention.

The attorney entered into a six-month diversion agreement, which

included the attorney pleading guilty to the misdemeanor offense of assault knowingly causing physical injury in violation of Ariz. Rev. Stat. section 13-1203 A(1). The court accepted the attorney's guilty plea but withheld adjudication of conviction and sentencing. Upon the attorney's completion of the terms of the diversion agreement, the charges were dismissed and the court did not enter a judgment of conviction. The attorney self-reported the conviction to the OLR.

The attorney violated SCR 20:8.4(b), which states: "It is professional misconduct for a lawyer to [...] commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." The attorney has no prior discipline. **WL**

## BUSINESS LITIGATION

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### CASE OF THE MONTH



***Bissonnette v. LePage Bakeries Park St., LLC***, 49 F.4th 655 (2d Cir. 2022), cert. granted No. 23-51, 2023 WL 6319660 Sept. 29, 2023. The Federal Arbitration Act exempts "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." In *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), the Court held that all employment contracts were not exempted from application of the FAA, only "contracts of employment of transportation workers." Any such transportation worker must at least play a direct and "necessary role in the free flow of goods" across borders. Transportation workers must be actively "engaged in transportation" of those goods across borders via the channels of foreign or interstate commerce. In *Southwest Airlines Co. v. Saxon*, 596 U.S. 450 (2022), the Court held that a ramp supervisor whose work frequently required her to load and unload baggage, airmail, and commercial cargo on and off airplanes that traveled across the country, was "engaged in foreign or interstate commerce," within the meaning of FAA's exemption. "[A]ny class of workers directly involved in transporting goods across state or international borders falls within § 1's exemption." In *Bissonnette*, Plaintiffs, commercial truck drivers, delivered baked goods by truck to stores and restaurants in designated territories within Connecticut. They were hired directly by the bakery company rather than by a trucking company. On rehearing to consider *Saxon*, the Second Circuit held that the plaintiffs were not "transportation workers," even though they drove trucks, because they were in the bakery industry, not a transportation industry. The First and Seventh Circuit have rejected an industry requirement; the Second and Eleventh Circuit have adopted one. Plaintiffs petitioned for a writ of certiorari, which was granted. The question presented in the petition is: To be exempt from the Federal Arbitration Act, must a class of workers that is actively engaged in interstate transportation also be employed by a company in the transportation industry?

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