

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST MARK S.
TISHBERG, ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,

CASE NO. 2013AP²²³⁰-D

Complainant;

MARK S. TISHBERG,

Respondent.

RECEIVED

OCT 07 2013

COMPLAINT

CLERK OF SUPREME COURT
OF WISCONSIN

NOW COMES the Wisconsin Supreme Court - Office of
Lawyer Regulation (OLR), by its retained counsel, William F.
Bedker, and alleges as follows:

General Allegations -- Applicable to All Counts

1. OLR was established by the Wisconsin Supreme
Court and operates pursuant to Supreme Court Rules. This
complaint is filed pursuant to SCR 22.11.

2. Mark S. Tishberg (Tishberg) is an attorney
admitted to the practice of law in Wisconsin in 1990,
State Bar ID 1017412. The most recent address Tishberg
furnished to the State Bar of Wisconsin is 788 N.
Jefferson, Suite 710, Milwaukee, WI 53202-3739.

Grievance of Dellosso

3. At some point in time prior to January 4, 2002, Joseph Dellosso (Dellosso) hired Tishberg to represent him with regard to an injury Dellosso allegedly suffered on January 19, 2001, while a passenger on a United Airlines flight.

4. Pursuant to Wis. Stats. § 893.54(1), Dellosso's claim was subject to a three-year statute of limitations, which expired on January 19, 2004.

5. On January 13, 2004, Tishberg formally filed a civil complaint against United Airlines Inc. (UAI) and United States Aviation Underwriting Inc. (USAUI) in Waukesha County, Case Number 2004 CV 113, seeking damages on behalf of Dellosso [and Dellosso's wife] relating to the alleged injury of January 19, 2001.

6. In accordance with Wis. Stats. § 801.02(1), Tishberg was required to ensure that service of an authenticated copy of the summons and complaint was made upon UAI and upon USAUI within 90 days of January 13, 2004.

7. Computing time pursuant to Wis. Stats. § 990.001(4)(a), the 90-day deadline to serve UAI and USAUI

with an authenticated copy of the summons and complaint was April 12, 2004.

8. Tishberg failed to effect service of process on UAI until April 16, 2004.

9. Tishberg failed to effect service of process on USAUI.

10. Because Tishberg failed to obtain service of process over USAUI and failed to obtain service of process over UAI until more than 90 days after he had filed the complaint in 2004 CV 113, the court lacked jurisdiction over either defendant.

11. On July 16, 2004, counsel for UAI and USAUI filed a motion to dismiss the complaint in 2004 CV 113 for lack of personal jurisdiction.

12. The motion to dismiss was heard on September 27, 2004, and the court granted the motion on October 8, 2004.

13. Because the statute of limitations for Dellossos' claim expired on January 19, 2004, it was too late for Tishberg to refile the complaint; the court's dismissal of Dellossos' case was with prejudice.

14. Tishberg did not tell Dellosso or Dellosso's wife that he had failed to effectuate service of process on UAI or USAUI until some point in time after Dellosso

had filed a grievance with OLR against Tishberg on June 5, 2010.

15. Tishberg did not tell Dellosso or Dellosso's wife that the defendants had filed a motion to dismiss until some point in time after Dellosso had filed a grievance with OLR against Tishberg.

16. Tishberg did not tell Dellosso or Dellosso's wife that the motion to dismiss was going to be heard on September 27, 2004.

17. Tishberg did not tell Dellosso or Dellosso's wife that the motion to dismiss was granted with prejudice and their claim was forever barred, until some point in time after Dellosso had filed a grievance with OLR against Tishberg.

18. Between October 2004 and March 2010, Tishberg represented to Dellosso that he was negotiating a settlement with UAI and USAUI.

19. In November 2009, Tishberg represented to Dellosso that Tishberg could settle Dellosso's case for \$12,000.

20. In February or March of 2010, Tishberg represented to Dellosso that Tishberg could settle Dellosso's case for \$12,000.

21. In March 2010 Tishberg anticipated receiving a check from another client who owed Tishberg several thousands of dollars, and Tishberg intended to use this money to pay Dellosso \$12,000 so as to prevent Dellosso from finding out that case 2004 CV 113 was actually dismissed. In this same time frame, Tishberg represented to Dellosso that Tishberg would probably have the money to Dellosso "shortly."

22. To support the representations [as alleged *supra* at ¶¶18-21] that he had previously made to Dellosso, in July 2010 Tishberg created and sent a written release to Dellosso purporting to cause the Dellossos to release their claims against UAI and USAUI in exchange for a settlement of \$12,000.

23. Tishberg did not finally admit to Dellosso that case 2004 CV 113 had been dismissed due to Tishberg's error until after Dellosso had filed a grievance against Tishberg with OLR in June 2010.

24. Dellosso denied that he entered into a written fee agreement with Tishberg documenting that Tishberg was representing Dellosso on a contingent fee basis.

25. On September 3, 2010, Tishberg asserted to OLR that he had entered into a written fee agreement with

Dellosso; however, Tishberg did not produce or provide a copy of the fee agreement to OLR.

COUNT ONE - Scope of Representation and Communication

26. By failing to advise Mr. and Mrs. Dellosso that:

(a) he had failed to effect service of process on the defendants UAI and USAUI within 90 days as required by statute; and

(b) the defendants had filed a motion to dismiss Case No. 2004 CV 113; and

(c) on October 8, 2004 Case No. 2004 CV 113 had been dismissed with prejudice;

and with regard to each such matter, by failing to explain to Mr. and Mrs. Dellosso the ramifications of these developments so that Mr. and Mrs. Dellosso could make informed decisions regarding the representation, Tishberg violated former SCR 20:1.2(a)¹ [in effect prior to July 1, 2007] and SCR 20:1.4(b).²

¹ Former SCR 20:1.2(a) provides: "(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall inform a client of all offers of settlement and abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case or any proceeding that could result in deprivation of liberty, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

² SCR 20:1.4(b) provides: "(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

COUNT TWO - Diligence

27. By failing to take the steps necessary to timely file and serve the Dellossos' action, Tishberg violated SCR 20:1.3.³

COUNT THREE - Communication

28. By failing between 2004 and September 2010 to:
(i) promptly respond to Mr. Dellosso's reasonable requests for information; and (ii) provide accurate information to Mr. Dellosso regarding the status of his case, Tishberg violated former SCR 20:1.4(a)⁴ and SCR 20:1.4(a)(3)&(4).

COUNT FOUR - Fees

³ SCR 20:1.3 provides: "A lawyer shall act with reasonable diligence and promptness in representing a client."

⁴ SCR 20:1.4(a) provides in pertinent part: "(a) A lawyer shall: (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; "

29. By failing to enter into a written fee agreement with Mr. & Mrs. Dellosso, Tishberg violated SCR 20:1.5(c)⁵

COUNT FIVE - Misconduct under 8(c)

30. By engaging in a course of conduct to:

(a) hide from Mr. Dellosso that Case No. 2004CV113 had been dismissed in October 2004; and

(b) deceive Mr. Dellosso at various times between 2004 and September 2010 into believing that Mr. Dellosso might obtain or had obtained a settlement of his claims from one or more of the defendants named in Case No. 2004 CV 113,

Tishberg violated SCR 20:8.4(c)⁶

⁵ SCR 20:1.5(c) provides in pertinent part: "A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and if there is a recovery, showing the remittance to the client and the method of its determination."

⁶ SCR 20:8.4(c) provides in pertinent part: "It is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

WHEREFORE, the Office of Lawyer Regulation asks that Respondent, Mark S. Tishberg, be found in violation of the Supreme Court Rules as alleged in connection with this complaint, that Tishberg's license to practice law in Wisconsin be suspended for a period of 90 (90) days, and that the Court grant such other and further relief as may be just and equitable, including an award of costs.

Dated this 7 day of October, 2013.

OFFICE OF LAWYER REGULATION

William F. Bedker

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