

STATE OF WISCONSIN

IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST
DANIEL KEY,
ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,

Complainant;

CASE NO. 2020AP 2164-D

DANIEL KEY,

Respondent.

RECEIVED

ORDER TO ANSWER

DEC 29 2020

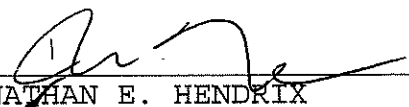
CLERK OF SUPREME COURT
OF WISCONSIN

TO: The Key Law Firm LLC
205 N. Michigan St.
PO Box 59
Prairie du Chien, WI. 53821-0059

YOU ARE HEREBY ORDERED to file with the Clerk of Court, Supreme Court of Wisconsin, Post Office Box 1688, Madison, Wisconsin 53701, and to serve on the counsel for the Office of Lawyer Regulation, at the address below, an Answer to the Complaint of the Office of Lawyer Regulation, within twenty (20) days of the date upon which this Order to Answer and Complaint in this proceeding are served on you, and in the event of your failure to do so, discipline deemed by the Supreme Court to be appropriate will be imposed upon you.

Dated this 7th day of December, 2020.

OFFICE OF LAWYER REGULATION


JONATHAN E. HENDRIX
Assistant Litigation Counsel
State Bar No. 1047173

110 East Main Street #315
P.O. BOX 1648
Madison, WI 53701-1648
Telephone: (608) 266-8334

STATE OF WISCONSIN

IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST DANIEL KEY,
ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,

Complainant;

CASE NO. 2020AB 2164 D

DANIEL KEY,

Respondent.

FILED

DEC 29 2020

COMPLAINT

CLERK OF SUPREME COURT
OF WISCONSIN

NOW COMES the Supreme Court of Wisconsin - Office of
Lawyer Regulation (OLR) by Assistant Litigation Counsel
Jonathan E. Hendrix, and alleges as follows:

1. The OLR was established by the Supreme Court of
Wisconsin and operates pursuant to Supreme Court rules. This
Complaint is filed pursuant to SCR 22.11.

2. Respondent Daniel Key (Key) is an attorney admitted
to the State Bar of Wisconsin on November 6, 2006 (State Bar
ID 1062310). Key's address listed with the State Bar of
Wisconsin is The Key Law Firm LLC, 205 N. Michigan St., PO
Box 59, Prairie du Chien, WI 53821-0059.

3. Key's prior disciplinary history consists of a 2018
private reprimand for attempting to keep a client's pre-

payment litigation expense as a fee in a contingent fee matter. *Private Reprimand* 2018-7.

Regarding Horstman
OLR Matter No. 2017MA1565
(Counts 1-6)

4. As of 2016, Carol Horstman had two adult children, Audra Dawson and Wesley Horstman.

5. On October 21, 2016, Carol Horstman was admitted to a La Crosse hospital with a terminal illness. Her primary asset was a farm in Grant County.

6. In October or early November 2016, Wesley Horstman and his wife Marinda Horstman, went to a scheduled appointment at Key's office to inquire about having him draft a will for Carol Horstman. Key had previously represented their son in an unrelated matter.

7. Key had never previously represented or communicated with Carol Horstman. At that time, he considered Wesley and Marinda Horstman to be his clients.

8. That day, Marinda Horstman called Carol Horstman from Key's office to discuss the drafting. The call was conducted via speakerphone. Wesley Horstman was present during the call, as was Key and his paralegal, Lydia Holt (Holt). Key did not, during this phone call or at any point thereafter, discuss with Carol Horstman the property or

assets she owned, the existence of her daughter (Audra Dawson), or her intentions in making a will.

9. Key was unavailable to meet with Carol Horstman in the coming days. Holt offered to meet Carol Horstman at the hospital on November 3, 2016, and Carol Horstman agreed.

10. On November 3, 2016, Holt met with Carol Horstman for a few hours. Wesley and Marinda Horstman were also present in the hospital during the meeting. Holt drafted a will for Carol Horstman, calling Key a few times during the process. By this time, Key considered Carol Horstman to also be his client, in addition to Wesley and Marinda Horstman.

11. The will left Carol Horstman's entire estate to Wesley Horstman, excluding Audra Dawson. Key had not fully or adequately instructed Holt on how to draft a will, or how to protect and express Carol Horstman's desire to exclude Audra Dawson. Holt learned of Audra Dawson's existence while discussing the will with Carol Horstman, but did not ask why Audra Dawson was omitted from the will. Carol Horstman executed the will that day, November 3, 2016.

12. On November 8, 2016, Carol Horstman died.

13. Key prepared a bill for the drafting of Carol Horstman's will. The bill charged Key's attorney billing rate of \$175 for Holt's work in preparing the will.

14. On December 2, 2016, Wesley Horstman submitted Carol Horstman's will for probate. *In re Estate of Carol Horstman*, Grant County Case No. 2016-PR-120 (probate case).

15. In mid-December of 2016, Marinda Horstman paid Key's bill for drafting Carol Horstman's will.

16. On December 13, 2016, Wesley and Marinda Horstman hired Key to handle the probate case.

17. In late 2016 or early 2017, Audra Dawson objected to the will on the grounds of undue influence. Key continued to represent Wesley and Marinda Horstman through the proceedings.

18. On March 1, 2017, Audra Dawson's lawyer deposed Key. When asked "Have you ever spoken with the decedent?" Key answered "I did not speak with the decedent."

19. Key reiterated during the deposition, "I never met the decedent, never spoke to the decedent," and when asked "You -- you never spoke to the decedent at all?", answered "Once again, that answer's not going to change. I have never spoken to the decedent at all."

20. On March 22, 2018, Judge Robert P. Van De Hey held a hearing on Audra Dawson's motion to reject the will. Key represented Wesley during the hearing, and testified himself as a fact witness.

21. During the hearing, Key testified that he had been present for the late October/early November 2016 call from his office to Carol Horstman.

22. During his testimony, when Audra Dawson's attorney asked him "Have you ever spoken with the decedent," Key answered, "No. I listened to a phone call." Key also testified "I did not speak directly with the decedent."

23. Holt testified at the hearing that she did not recall having any substantive conversations with Carol Horstman about the will before going to the hospital.

24. On March 30, 2018, Judge Van De Hey denied admission of Carol Horstman's will into probate, on the grounds that Wesley and Marinda Horstman exercised undue influence over her.

25. In mid-April of 2018, Wesley Horstman terminated Key's representation.

26. In May of 2018, Wesley Horstman appealed Judge Van De Hey's decision. *In re Estate of Horstman*, Wis. Ct. of App. Case No. 2018AP924.

27. On June 1, 2018, Wesley Horstman filed a grievance with OLR against Key.

28. On August 20, 2018, Key wrote to OLR that he spoke with Carol Horstman during the conference call in his office, contradicting his earlier testimony.

29. On October 8, 2018, Key elaborated, in an email to OLR, that he had spoken directly to Carol Horstman about her health and asked her about her desire for a will.

30. On November 8, 2018, OLR wrote to Key asking for his explanations in several specific aspects of his work for Carol Horstman and Wesley Horstman. One of OLR's requests asked Key to "Please explain why you believed that it was unnecessary to have any substantive discussion with Carol regarding the nature of her assets, her objectives in making a will, and the means by which she could achieve her objectives."

31. On November 29, 2018, Key responded to OLR's letter. His response repeated his assertion that he spoke directly with Carol Horstman, including asking her what sort of will she wanted, contradicting his earlier testimony.

32. On January 3, 2019, Key wrote to OLR, again stating that he talked directly to Carol Horstman, and including an affidavit from Holt describing Key's conversing with Carol Horstman, including his inquiry about what she wanted in the will. The statements in the affidavit contradict Key's earlier testimony.

33. On December 19, 2019, the Court of Appeals upheld the circuit court decision.

34. On January 17, 2020, Wesley Horstman petitioned the Supreme Court of Wisconsin to review the appellate decision. On June 16, 2020, the Supreme Court denied Wesley Horstman's petition for review.

COUNT ONE

35. By failing to take steps to confirm Carol Horstman's testamentary intent, to ascertain the means by which she might achieve that intent and the consequences of her proposed disposition of her property, Key violated SCR 20:1.1.¹

COUNT TWO

36. By failing at the outset of his representation to discuss with Carol Horstman her purpose in making a will and how her objectives - whether that included disinheriting Audra or keeping ownership of the farm in the family or some other objective - could be accomplished, and by failing to discuss with Carol Horstman the likelihood that a will challenge would follow disinheritance of Audra and the steps to take in the event of such a challenge, Key violated SCR 20:1.4(a)(2).²

¹ SCR 20:1.1 provides "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

² SCR 20:1.4(a)(2) provides: "A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished."

COUNT THREE

37. By failing to adequately instruct and supervise his legal assistant in the competent and confidential drafting and execution of legal documents to effectuate Carol Horstman's testamentary intent, Key violated SCR 20:5.3.³

COUNT FOUR

38. By representing Wesley and Marinda Horstman in the probate case contesting the validity of a will prepared by his firm, a proceeding in which he was a necessary fact witness and in which the propriety of his representation of Carol Horstman was at issue, Key violated SCR 20:1.7(a)(2).⁴

COUNT FIVE

39. By charging his own attorney hourly rate for his assistant's time in preparing Carol Horstman's will, Key violated SCR 20:1.5(a).⁵

³ SCR 20:5.3 provides: "With respect to a nonlawyer employed or retained by or associated with a lawyer: (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."

⁴ SCR 20:1.7(a)(2) provides: "Except as provided in par. (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (2) there is a significant risk that the representation of one or more clients will be materially limited by ... a personal interest of the lawyer."

⁵ SCR 20:1.5(a) provides: "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."

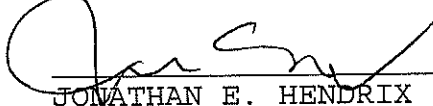
COUNT SIX

40. By misrepresenting to OLR that he discussed Carol Horstman's objectives with her at the outset of the representation, contrary to his sworn testimony in the underlying probate case, and by presenting OLR with an affidavit from his assistant that contained false information about the decedent's interaction with him, that was contrary to the assistant's prior sworn testimony in the probate case, Key violated SCR 22.03(6), enforceable via SCR 20:8.4(f).⁶

WHEREFORE, the Office of Lawyer Regulation asks the Supreme Court of Wisconsin to publicly reprimand Attorney Key; find that Attorney Key violated Supreme Court rules as alleged in this Complaint; and to grant such other and further relief as may be just and equitable, including an award of costs.

Dated this 29th day of December, 2020.

OFFICE OF LAWYER REGULATION


JONATHAN E. HENDRIX

Assistant Litigation Counsel
State Bar No. 1047173

110 East Main Street, Room 315
P.O. Box 1648
Madison, Wisconsin 53701-1648
Telephone: 608-266-8334

⁶ SCR 22.03(6) provides: "In the course of the investigation, the respondent's wilful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct..." SCR 20:8.4(f) "It is professional misconduct for a lawyer to fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by SCR 22.03(6)."