

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

CASE CODE: 30912

OFFICE OF LAWYER REGULATION,

COMPLAINANT;

CASE NO. 2020AP2164-D

DANIEL KEY,

RESPONDENT.

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW respondent Daniel M. Key, by and through his undersigned counsel, The Key Law Firm, LLC, and in his Answers to Complaint, Office of Lawyer Regulation, states to the Court as follows:

ANSWERS

1. Answering Paragraph 1 of the OLR Complaint, upon information and belief, ADMIT.
2. Answering Paragraph 2 of the OLR Complaint, ADMIT.
3. Answering Paragraph 3 of the OLR Complaint, ADMIT.
4. Answering Paragraph 4 of the OLR Complaint, upon information and belief, ADMIT.
5. Answering Paragraph 5 of the OLR Complaint, ADMIT.
6. Answering Paragraph 6 of the OLR Complaint, ADMIT.
7. Answering Paragraph 7 of the OLR Complaint, ADMIT in part; DENY in part in that Key did not consider Carol Horstman to be a client until he talked to her.
8. Answering Paragraph 8 of the OLR Complaint, DENY the phone call took place several days later at a second meeting after attorney Key told Wesley and Marinda Horstman it would be necessary to schedule a time with the hospital to speak with Carol Horstman about putting her Will together. Carol Horstman stated she did not want an estate plan, she wanted a simple will, and all she had was her farm. She said she was dying. She said she needed a will done quickly.

9. Answering Paragraph 9 of the OLR Complaint, ADMIT in part; DENY in part. Carol said time was of the essence. Carol asked to have her Will done on Thursday, November 3, 2016. Key told Carol he had a conflict and could not be there in person. Key told Carol he could send his legal assistant to fill out the Will and he would be available by phone. Key told it might be cheaper to hire a La Crosse attorney. Carol agreed to have Holt meet her.
10. Answering Paragraph 10 of the OLR Complaint, ADMIT in part; DENY in part. Holt filled in the blanks on the State Bar form for Simple Will's with the information provided to her by Carol Horstman. Holt called Key 3 times to assist in drafting of the Will. Key considered Wesley and Marinda as client's consequent to prior unrelated dealings with the Horstman family and considered Carol Horstman the sole client in the matter of drafting her Will. Further, Carol said she was afraid Audra would sell the farm for money and people "didn't need to know her dirty laundry."
11. Answering Paragraph 11 of the OLR Complaint, ADMIT in part; DENY in part. Holt had adequate instructions and more than enough experience to fill in the blanks on a State Bar Form for a Simple Will; Key participated by phone in the drafting of the Will. Respondent holds Complainant to the proof of showing why he or anyone else was required to find out why a Testator has made a personal decision to include or exclude a party in a Will. Respondent holds Complainant to the proof that Holt was incapable of performing the tasks required of her as a legal assistant aiding an attorney in the formation of Carol Horstman's Will, or that it is necessary to name every family member and person not a beneficiary of a Will. Further, Carol Horstman stated why she did not want Audra to be a beneficiary.
12. Answering Paragraph 12 of the OLR Complaint, ADMIT.
13. Answering Paragraph 13 of the OLR Complaint, ADMIT in part, DENY in part. Billing reflected costs associated with sending Holt to La Crosse, Wisconsin essentially for the day to assist in the drafting of the Will as well as the time Key spent in its preparation and review.
14. Answering Paragraph 14 of the OLR Complaint, ADMIT.
15. Answering Paragraph 15 of the OLR Complaint, ADMIT.
16. Answering Paragraph 16 of the OLR Complaint, ADMIT.
17. Answering Paragraph 17 of the OLR Complaint, ADMIT.

18. Answering Paragraph 18 of the OLR Complaint, ADMIT.
19. Answering Paragraph 19 of the OLR Complaint, ADMIT.
20. Answering Paragraph 20 of the OLR Complaint, ADMIT.
21. Answering Paragraph 21 of the OLR Complaint, ADMIT.
22. Answering Paragraph 22 of the OLR Complaint, ADMIT.
23. Answering Paragraph 23 of the OLR Complaint, ADMIT.
24. Answering Paragraph 24 of the OLR Complaint, ADMIT.
25. Answering Paragraph 25 of the OLR Complaint, ADMIT.
26. Answering Paragraph 26 of the OLR Complaint, ADMIT.
27. Answering Paragraph 27 of the OLR Complaint, ADMIT.
28. Answering Paragraph 28 of the OLR Complaint, ADMIT in part, DENY in part that Key's earlier testimony is contradicted by anything he has presented to OLR. Respondent holds Complainant to the proof.
29. Answering Paragraph 29 of the OLR Complaint, ADMIT.
30. Answering Paragraph 30 of the OLR Complaint, ADMIT.
31. Answering Paragraph 31 of the OLR Complaint, ADMIT.
32. Answering Paragraph 32 of the OLR Complaint, ADMIT in part, and DENY in part that the statements in Holt's affidavit contradict Key's earlier testimony. Respondent holds Complainant to the proof.
33. Answering Paragraph 33 of the OLR Complaint, ADMIT.
34. Answering Paragraph 34 of the OLR Complaint, ADMIT.
35. Answering Paragraph 35 of the OLR Complaint DENY; Respondent holds Complainant to the proof he violated SCR 20:1.1.
36. Answering Paragraph 36 of the OLR Complaint DENY; Respondent holds Complainant to the proof he violated SCR 20:1.4(a)(2).
37. Answering Paragraph 37 of the OLR Complaint DENY; Respondent holds Complainant to the proof he violated SCR 20:5.3.
38. Answering Paragraph 38 of the OLR Complaint DENY; Respondent holds Complainant to the proof he violated SCR 20:1.7(a)(2).
39. Answering Paragraph 39 of the OLR Complaint DENY; Respondent holds Complainant to the proof he violated SCR 20:1.5(a).
40. Answering Paragraph 40 of the OLR Complaint DENY; Respondent holds Complainant to the proof he violated SCR 22:03.(6) (2) - SCR 20:8.4(f)

AFFIRMATIVE DEFENSES

As separate and affirmative defenses, Respondent, Daniel M. Key, hereby states and allege to the Court as follows:

1. The Complaint fails to state a claim supporting a finding of a violation of the Supreme Court Rules of Conduct in one, several, or all of the Counts alleged.
2. The Complaint fails to state a claim supported by law.
3. The Complainant fails to set forth the elements required for drafting a Simple Will under the circumstances described herein.
4. The Complainant fails to set forth the standard required for determining the rate of billing under the circumstances described herein.
5. The Complainant fails to set forth the standard for adequately instructing a legal assistant to effectuate a Simple Will.
6. The Complainant ignores the Circuit Court's ruling permitting, and the law applicable to, Respondent's representation of Wesley and Marinda Horstman and Carol Horstman under the circumstances described herein and fails to set forth a punishable violation.
7. The actions alleged in the Complaint are remote in time, prosecution will prejudice Respondent and the interests of justice, and should be dismissed under the legal theories of laches, equitable estoppel, timeliness, and should be dismissed.
8. The Complainant's allegations of misrepresentation to OLR have no basis in fact and are without merit.
9. Respondent has been prejudiced by Complainant's unreasonable delay in filing the subject Complaint and the allegations contained therein should be barred for timeliness under the legal theories of laches, equitable estoppel, and timeliness.

WHEREFORE, Defendant demands judgment as follows:

1. Dismissal of Plaintiff's claims in their entirety with prejudice;
2. For reasonable costs and attorney's fees;
3. For such other and further relief as the court may deem just and equitable.

Dated: February 16, 2021.

THE KEY LAW FIRM, LLC

By: 

Daniel M. Key SBN: 1062310
205 North Michigan Street
P.O. Box 59
Prairie du Chien, Wisconsin 53821
Phone: (608) 326-4050
Fax: (608) 380-1192
Attorneys for Defendant

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