

**CALUMET COUNTY
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**Office of Lawyer Regulation
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RE: Self Report of Attorney Ken Kratz

I serve as the Calumet County District Attorney, and have held this position since 1992. I was a prosecutor in LaCrosse before that, and have approximately 25 years of prosecution experience. I have never been the subject of Attorney discipline by OLR (or previously BAPR). I not only prosecute all cases in my county, but am often asked to handle complex high profile special prosecutions in the state (e.g. State v. Steven Avery) due to my years of trial experience.

Personally, I am separated from my wife of 9 years, and divorce proceedings are imminent. Several weeks ago, I was involved in the prosecution of a domestic abuse case for Calumet County, and had the opportunity to meet the case victim, 25-year-old S.V. We had two uneventful professional meetings in October, 2009, and S.V. took the opportunity to "confer" with me on October 20th. During that meeting, I perceived some flirtation by S.V., and believed this single woman to be quite interesting. The meeting concluded without incident.

Text Messages

During the meeting, we had discussed contact in the short term, and phone numbers were exchanged. I sent S.V. a "text message" on her cell phone, expressing that it was nice talking and inviting S.V. to contact me should she wish. [The full content of the text messages from 10/20/09 to 10/22/09 are included as Exhibit #1].

Over the next 2 days, several text messages were exchanged between S.V. and me. I sent 30 messages, while S.V. sent 23 messages. As prosecutor in the case, I suspected that personal contact with a crime victim, while the case was pending, could be problematic. In fact, during the course of our discussion of whether a more personal friendship would develop, I made it clear that it would only be AFTER the prosecution was concluded.

I made it clear that any attempt at developing a personal friendship would be up to HER, and that when the case was over, if we wished to meet for a drink she should contact me. I concluded the messages by noting that if she did not wish to do so, "I will respect your desire to be left alone."

No messages or personal communication occurred after 10/22. No personal contact ever occurred with S.V., other than in a professional setting.

Criminal Investigation

For whatever reason, S.V. (with the advice of her mother and friend), reported the series of text messages to the Kaukauna Police Department, which is where the young woman then resided. They forwarded the matter to the Wisconsin Department of Justice, Division of Criminal Investigation, who interviewed the woman, and completed their inquiry.

On November 2, 2009, DCI determined that there was NO criminal activity involved, and notified management at the Department of Justice of their findings [see Exhibit #2]. During my brief interview with DCI, I had expressed surprise in the complaint, and offered to personally apologize to the young woman for any misunderstanding or stress I may have caused. She and I were informed of the non-criminal nature of this matter, and no further action has been pursued.

Steps to Avoid Potential Conflict

Immediately upon being notified of S.V.'s discomfort, I engaged in a discussion with Roy Korte, Director of the Criminal Litigation Division, and Kevin Potter, Administrator of the Division of Legal Services, both with the Wisconsin Department of Justice. We agreed that to avoid any future conflict or potential ethical concerns, prosecution of the case would immediately be transferred to DOJ, and I would have no further connection with the matter. I submitted an order to the court, and a special prosecutor was immediately assigned.

Crime Victims Rights

The fact that S.V. was a crime victim, and had expressed an uneasy feeling in reflecting back upon our personal communication, has been particularly disturbing for me. Since 1998, I have served as Chairman of the Wisconsin Crime Victims Rights Board (CVRB), a statutorily created body designed to ensure the rights of crime victims in this state. This Board performs investigations into victim complaints, and if necessary, presides over hearings against District Attorneys, Judges, Police Officers, and other Victim Service Providers. We issue findings of fact, conclusions of law, and if warranted, a remedy for the victims rights violation. We remain the only body of its kind in the United States that sanctions criminal justice participants for violations. I have had the honor to preside over ever meeting and hearing of the CVRB since my appointment in 1998.

Before that, I was actively involved in drafting the legislation that created specific victims rights in this state (1997 Act 181) and was presented with the pen used to sign this bill into law in recognition of my efforts by then Governor Thompson. As Chairman of the CVRB, I have presented many training sessions at local and national victims rights events, and have been recognized by the Wisconsin Attorney General for my career of advocacy for crime victims. Without modesty, I suspect my career has demonstrated that I have been the most zealous advocate of crime victims rights of any prosecutor in Wisconsin.

Naturally, a complaint from a crime victim about my professional conduct has been personally and professionally disconcerting.

Chapter 950 Violation?

Chapter 950 of the Wisconsin Statutes lists those specific rights that each crime victim is entitled to receive, and the procedure for enforcement of those rights. The right to receive notice of rights; the right to confer with the prosecution; the right to timely disposition of a case; the right to notice of hearings; the right to provide an impact statement at the time of sentencing; the right to dispositional information; and the right to be protected during participation in the process are all guaranteed by this law.

S.V. received all applicable notices, conferred with the prosecution, and otherwise enjoyed all rights that each crime victim is entitled. No violation of Chapter 950 has been identified. If there were a violation, Section 950.10 directs that complaint to the CVRB is the sole remedy for any such violation. No complaint is contemplated in this case, to my knowledge.

SCR Violation?

There are three areas of concern that I have identified regarding my inquiry of a personal relationship with a current crime victim (notwithstanding the condition that any relationship would be deferred until the conclusion of the criminal case).

1. Personal conflict (SCR 20:1.7(a)(2))---If the representation of my client (the State of Wisconsin) was materially limited by a personal interest of the lawyer (my hope to develop a personal relationship with a victim/witness of the case sometime in the future). This rule is easily applied if I had not removed myself from prosecution authority of the case immediately. A prosecutor could be viewed as treating a defendant more harshly (to curry favor with the victim); treating the defendant more leniently (to resolve the case in an expedited fashion, to allow the pursuit of the relationship); or otherwise having a general disinterest in the prosecution, in favor of attention paid to the victim.

As indicated, this violation never came to fruition, based upon my removal from the case without any official action having taken place after the communication with the victim. The special prosecutor will make whatever prosecution decisions, without regard for any potential future relationships, and therefore NO conflict materialized.

2. Sexual relations with a client (SCR 20:1.8(j)(2))---If sexual relations occurred during the course of the representation, it could be argued that while representing an "organization" (the State), a lawyer should not have sexual relations with a constituent of the organization (a victim or witness to the case).

As no sexual relations occurred (in fact no contact of any kind), this provision does not apply. Clearly, the prohibition against sexual relations does not extend to text messages.

3. General misconduct (SCR 20:8.4(i))---If a lawyer harasses another on the basis of sex in connection with the lawyer's professional activities, a violation could be present.

Although sexual harassment is usually a product of an employment relationship, this rule extends the prohibition to an attorney and other person (party, victim, witness) involved in the case. The theory, of course, is that the unwanted sexual advances of one person (usually an authority figure) on another (usually a subordinate) is general misconduct, and is of the type which should not be tolerated in any profession.

Sexual harassment is not an action for which criminal penalties apply; although violation of harassment injunctions are. In those instances, of course, notice is required to the respondent of the undesired behavior (usually accomplished by means of the injunction itself), and then continued violations of those stated desires give rise to a violation. Similarly in the employment setting, violation of any sexual harassment code requires the conduct be unwanted by the recipient, as evidenced by some words or correspondence demonstrating that desire.

Here, S.V. not only engaged in voluntary communication with me (sending 23 text messages herself), but NEVER suggested any communication was undesired. No vulgarity was ever used. No overt sexual activity was ever suggested. Other than a possible future relationship, nothing other than a friendship was contemplated. Moreover, the clear condition that it was HER decision whether any communication existed in the future, and if not desired, that decision would be RESPECTED by me demonstrates nothing more than a series of flirtations with this woman. Under no theory of sexual harassment does this course of communication apply.

Why Self Report?

As indicated, I truly believe that no violation of SCR 20 is present despite my lapse in professional judgment. Obviously, I in no way suggest or confess a violation. As a 25 year prosecutor, former President of the Wisconsin District Attorneys Association, and my life-long work ensuring the rights of crime victims, I am embarrassed and ashamed at my behavior. I hold myself to a higher standard than those minimally required by the professional rules. I have remained scrupulously honest in the performance of my duties, and despite involvement in perhaps the highest profile case in Wisconsin history (Avery), I remain proud of my professional demeanor at all times.

Crime victims come to the criminal justice process with a variety of needs---sometimes for attention; sometimes for mental health referrals; sometimes for zealous advocacy. But in all instances, they are entitled to be treated with fairness, dignity and respect. Given the vulnerability that S.V. may have been suffering from, she had a right to that treatment from me, of all prosecutors in the state. I violated that trust, and carry personal and professional remorse for those failings.

Self Imposed Disposition

Recognizing that my leadership role as Chairman of the Wisconsin Crime Victims Rights Board requires me to regularly sit in judgment of DA's, judges, officers, and others, I believe I have fallen short in my qualification to hold that position. Yesterday, December 3, 2009, I announced

my resignation as Chairman of the CVRB [see Exhibit #3]. In addressing the members of the Board, I candidly described my communication with this crime victim, and resigned under a cloud of shame and humiliation. Given my life work for the rights of victims, this was the most severe reminder I could provide myself for my recent lapse in judgment.

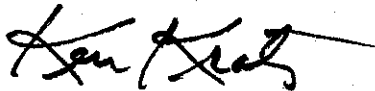
From the time I learned of the complaint, I have involved myself in private psychotherapy, with Linda Schwallie, professional therapist and President of Wisconsin's Association of Family Therapists. Ms. Schwallie has particular insight into matters of professional ethics, and we are working together to answer why a career prosecutor, with a spotless record and sterling reputation, would risk his professional esteem on such disrespectful communication with a crime victim. Therapy has already provided some insight into those factors that contribute to such actions. This treatment will continue until Ms. Schwallie believes it is no longer required.

Conclusion

Thank you for taking the time to consider this summary of behavior. Again, I am confident that no violation of the rules of professional conduct will be found. I am proud of my work not only as a prosecutor, but as advocate for crime victims. I intend to continue my pursuit of justice on behalf of the citizens of Calumet County.

Should you require further information to address this matter, please feel free to contact me.

Sincerely yours,



Kenneth R. Kratz
District Attorney