

IN THE MATTER OF COMPLAINT
AGAINST THE BROWN COUNTY
DISTRICT ATTORNEY'S OFFICE,

Case No. 2210-016

Respondent.

FINAL DECISION

1. The Crime Victims Rights Board finds that the complainant SB¹ has shown by clear and convincing evidence that the respondent Brown County District Attorney's Office ("DA's Office") violated SB's victim rights to information about the status of the investigation and to a speedy disposition of the case.

BOARD PROCEDURE

2. SB, through her daughter, ED, filed a complaint with the Board on October 16, 2022.

3. Upon receipt of the complaint, the Board contacted the Department of Justice, Office of Crime Victim Services, Victim Resource Center (VRC), which verified that the substance of the complaint had been

¹ This decision uses the initials of the victim and others to protect the victim's privacy.

presented to the VRC and that the VRC had completed its action under Wis. Stat. § 950.08(3). *See* Wis. Admin. Code CVRB § 1.05(1), (4).

4. The Board gave a copy of the complaint to the DA's Office and invited it to answer the complaint. *See* Wis. Admin. Code CVRB § 1.05(5). The DA's Office did not file a response before the Board reviewed the complaint for probable cause.

5. At a meeting on March 15, 2023, the Board found probable cause that SB's victim rights had been violated. *See* Wis. Admin. Code CVRB § 1.05(6).

6. The Board notified the parties and the VRC of its conclusions through the issuance of a written probable cause determination. *See* Wis. Admin. Code CVRB § 1.05(8).

PROBABLE CAUSE DETERMINATION

7. The Board found probable cause that the DA's Office violated SB's right to information about the outcome of the case; her right to a speedy disposition of the case; and her right to be treated with dignity, respect, courtesy, sensitivity, and fairness.

INVESTIGATION

8. The Board requested additional information from the parties regarding the allegations on which probable cause was found.

9. The DA's office submitted a written response to the allegations in the complaint, file notes, and other documents; ED provided a copy of SB's power of attorney agreement; and Attorney Dana Roth provided her retainer agreement for SB's civil case.

HEARING REQUEST

10. On June 19, 2023, along with its written response to the complaint, the DA's Office submitted a request for an evidentiary hearing, as permitted by Wis. Admin. Code CVRB § 1.07(1).

11. The Board finds that an evidentiary hearing is unnecessary because the Board has all the information it needs to resolve any material factual disputes and issue a final decision on the complaint.

FINDINGS OF FACT

12. The Board's evidentiary standard for resolving disputed factual questions is the "[c]lear and convincing evidence" standard. "Clear and convincing evidence" means evidence which satisfies and convinces the Board, because of its greater weight, that a violation occurred." Wis. Admin. Code CVRB § 1.07(7).

13. The burden of proof is on the complainant. This burden of proof is very important and can be the deciding factor in the Board's resolution of factual disputes. Where the evidence on a particular factual question is equally believable or plausible, the effect of the burden of proof is that the Board must

find that the complainant failed to prove the point by clear and convincing evidence.

14. The Board finds the following facts.

15. SB is 99 years old, has only three years of education, and does not read, write, or speak English well.

16. SB's son, NB, allegedly stole a large amount of money from SB.

17. SB retained Attorney Roth to assist her in this matter.

18. In August 2021, Attorney Roth had SB sign a power of attorney agreement, assigning SB's daughter, ED, as her agent for finances and property.

19. In August 2021, SB, through Attorney Roth, filed a police report with the Green Bay Police Department, alleging that SB was the victim of elder abuse, financial exploitation, theft, and fraud perpetrated by NB.

20. The Green Bay Police Department referred the case to the DA's Office on September 23, 2021.

21. Assistant District Attorney Aaron Linssen was assigned to review the case and determine charges. He found probable cause to support the charges but wanted to seek additional information to bolster the case before filing a complaint.

22. Attorney Roth, on behalf of SB, contacted Attorney Linssen to ask that the DA's Office file charges as soon as possible so that a petition to freeze NB's assets could be filed.

23. On September 24, 2021, the DA's Office filed a criminal complaint, charging NB with stealing a large amount of money from SB. The DA's Office also filed a petition to freeze NB's assets.

24. On September 27, 2021, the Brown County Circuit Court granted the petition to freeze NB's assets, and NB posted bond.

25. On September 28, 2021, Attorney Roth filed a letter, notifying the court that she represented SB and seeking electronic notification of all documents filed.

26. Attorney Linssen was under the impression that Attorney Roth represented SB and he, therefore, directed his communications to her.

27. The victim assistance specialists from the DA's Office, however, directed their communications to ED. They provided notification of hearings, explained the proceedings, and responded to ED's requests for information.

28. On October 5, 2021, the court held a hearing and amended the order to freeze NB's assets. Attorney Roth was present at this hearing, representing SB.

29. The preliminary hearing was initially scheduled for October 12, 2021, but the defense requested several adjournments.

30. The preliminary hearing was ultimately held on November 29, 2021. The court found no probable cause and dismissed the charges against NB.

31. The DA's Office discussed the case internally and decided not to appeal but, instead, to request additional investigation to support the charges and potentially refile at a later date.

32. On December 6, 2021, Attorney Roth contacted Attorney Linssen because she had seen on the electronic court record that the charges against NB had been dismissed. Attorney Linssen informed Attorney Roth that same day that the case had been dismissed for lack of probable cause and that he would call her later. Attorney Linssen placed several calls to Attorney Roth's office over the next few days, but the attorneys were unable to connect.

33. On January 4, 2022, ED sent a fax to the DA's Office, complaining about the lack of communication. That same day, Attorney Linssen reached out to Attorney Roth by phone. She was unaware of the complaint. Attorney Linssen gave her a full update on the reasons for the dismissal and the plan to seek additional information to attempt to prosecute in the future. Attorney Linssen indicated that he was willing to meet with SB, but Attorney Roth said that was not necessary.

34. On January 6, 2022, District Attorney David Lasee sent an email to ED, responding to her complaint and indicating that ED should speak with

Attorney Roth because Attorney Linssen had updated her on the status of the case.

35. Starting in February 2022, ED sent a series of emails to the DA's Office. The victim assistance specialists responded, in consultation with Attorney Linssen.

36. On March 23, 2022, Attorney Linssen sent an email to ED, explaining that the charges against NB had been dismissed and that the DA's Office was seeking further investigation to potentially file charges in the future. He said he would be happy to schedule a time to speak with SB further, but that he could not discuss the matter further with anyone but SB, her attorney, or her legal guardian.

37. On April 15, 2022, Attorney Linssen met with SB, Attorney Roth, and ED. A victim assistance specialist was present. An interpreter was also present but was generally not needed as SB appeared to understand the discussion. Attorney Linssen provided an update on the status of the case and indicated that his intent was to continue the investigation and potentially file charges again in the future. Attorney Roth indicated that she had recently filed a civil case on behalf of SB to recover the funds NB allegedly stole. Much of the discussion at the meeting centered around the distinction between the civil and criminal cases, recovering funds, and guardianship issues.

38. In late May and June 2022, ED sent a series of emails to the DA's Office, seeking an update on the status of the case.

39. Attorney Linssen responded with a letter dated August 5, 2022. He explained that the case was still under investigation and that the DA's Office had not yet made a decision about charging. He indicated that he would notify ED and SB when a decision was made and offered to confer with them upon request. That was the last communication Attorney Linssen had with ED.

40. NB died on August 7, 2022.

41. ED filed a complaint against Attorney Linssen with the Office of Lawyer Regulation (OLR) on November 15, 2022. Attorney Linssen waited to close the case against NB until the OLR complaint was resolved to avoid any implication that the closure was punitive. Attorney Linssen was cleared of any ethical violations on January 19, 2023. He then closed the case against NB.

VICTIM RIGHTS AT ISSUE

42. **Right to information about the status of the investigation and the outcome of the case.** A crime victim has a right to receive, “[u]pon request, . . . reasonable and timely information about the status of the investigation and the outcome of the case.” Wis. Const. art. I, § 9m(2)(o); *see also* Wis. Stat. § 950.04(1v)(zm) (A crime victim also has the right to “request information from a district attorney concerning the disposition of a case involving a crime of which he or she was a victim, as provided under

s. 971.095(6).”); Wis. Stat. § 971.095(5) (“If a person is charged with committing a crime and the charge against the person is subsequently dismissed, the district attorney shall make a reasonable attempt to inform all of the victims of the crime with which the person was charged that the charge has been dismissed.”); Wis. Stat. § 971.095(6) (“A district attorney shall make a reasonable attempt to provide information concerning the disposition of a case involving a crime to any victim of the crime who requests the information.”).

43. **Right to a speedy disposition of the case.** A crime victim has a right to “a speedy disposition of the case in which they are involved as a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.” Wis. Stat. § 950.04(1v)(k); *see also* Wis. Const. art. I, § 9m(2)(c), (d).

44. **Right to be treated with dignity, respect, courtesy, sensitivity, and fairness.** Under the Wisconsin Constitution, a crime victim has a right to “be treated with dignity, respect, courtesy, sensitivity, and fairness.” Wis. Const. art. I, § 9m(2)(a). The parallel statutory provision provides that a crime victim has a right to “be treated with fairness, dignity, and respect for his or her privacy by public officials, employees, or agencies.” Wis. Stat. § 950.04(1v)(ag). This right “does not impair the right or duty of a public official or employee to conduct his or her official duties reasonably and in good faith.” Wis. Stat. § 950.04(1v)(ag).

CONCLUSIONS OF LAW

45. The Board concludes that SB is a crime victim because she reported that she was the victim of theft, conduct prohibited by state law and punishable by a fine or imprisonment or both. *See* Wis. Stat. §§ 939.12, 950.02(1m), (4). ED, as SB's family member, is also a crime victim to the extent SB is physically and emotionally unable to exercise her victim rights. *See* Wis. Stat. § 950.02(4)(a)1., 3.; *see also* Wis. Const. art. I, § 9m(1)(a)1., 2.

46. The Board concludes that the DA's Office is a public agency subject to the authority of the Board. *See* Wis. Stat. § 950.09(2)(a).

47. The Board concludes that none of the allegations in the complaint occurred outside the three-year limitations period. *See* Wis. Admin. Code CVRB § 1.04(5).

48. The Board concludes that the allegations in the complaint implicate SB's victim rights and that the DA's Office violated those rights as explained below.

Right to information about the status of the investigation and the outcome of the case.

49. There is no dispute that the DA's Office did not provide information about the status of the case to SB, ED, or Attorney Roth from April to August 2022. During that time, the DA's Office received several emails from ED and knew that it could communicate with her, or with Attorney Roth or

SB, about the status of the case. The Board concludes that the DA's Office's lack of communication during those four months violated SB's right to information about the status of the investigation. *See* Wis. Const. art. I, § 9m(2)(o).

50. The Board finds that the DA's Office did not, however, violate SB's right to information about the outcome of the case. The court dismissed the charges against NB on November 29, 2021. One week later, Attorney Roth, on behalf of SB, contacted Attorney Linssen to ask why the charges were dismissed. Linssen responded and provided information that same day.

51. While prosecutors are required to provide information about the outcome of a case, they have no control over whether and when victims *independently* learn about the outcome. Here, SB learned about the dismissal before the DA's Office had an opportunity to provide that information. On these facts, the Board concludes that the DA's Office did not violate SB's right to information about the outcome of the case. *See* Wis. Const. art. I, § 9m(2)(o); Wis. Stat. §§ 950.04(1v)(zm), 971.095(5), (6).

Right to a speedy disposition of the case.

52. In analyzing an alleged violation of the right to a speedy disposition, the Board (1) identifies each delay, (2) determines the cause of the delay, (3) determines whether the delay was reasonable, and (4) if the delay

was unreasonable, determines whether the delay was attributable to the respondent.

53. The Board identifies a delay between November 2021, when the charges against NB were dismissed, and January 2023, when the DA's Office closed the case. The DA's Office says that the investigation was ongoing until August 7, 2022, when NB died. Then, on November 15, 2022, ED filed an OLR complaint, and the DA's Office again delayed closing the case until that complaint was resolved on January 19, 2023. These delays were attributable to the DA's Office, and it has no reasonable explanation for why the investigation continued for many months or why it kept the case open after NB died. These delays were especially concerning given the victim's advanced age. The Board concludes that the DA's Office violated SB's right a speedy disposition of the case. *See* Wis. Stat. § 950.04(1v)(k); Wis. Const. art. I, § 9m(2)(c), (d).

Right to be treated with dignity, respect, courtesy, sensitivity, and fairness.

54. SB alleges that when she met with Attorney Linssen on April 15, 2022, he was dismissive and gave her contradictory information about the status of the investigation. Neither Attorney Roth's description, nor the DA's Office's contemporaneous notes, corroborate SB's characterization of the meeting. Attorney Linssen provided an update on the status of the case and

was clear that the investigation was ongoing and that charges could be filed in the future. The Board finds that the DA's Office did not violate SB's right to dignity, respect, courtesy, sensitivity, and fairness. *See* Wis. Const. art. I, § 9m(2)(a); Wis. Stat. § 950.04(1v)(ag).

ORDER

Based on the foregoing, it is hereby ORDERED:

1. That the complainant has shown by clear and convincing evidence that the respondent violated her rights as a crime victim.
2. That the Board sanctions the respondent with a private reprimand which will be sent under separate cover. *See Wis. Stat. § 950.09(2).*
3. That this is a final, appealable order of the Board, and as such makes final and appealable any previous non-final orders of the Board.
4. That judicial review of this final decision is governed by Wis. Stat. §§ 227.52–.59. *See Wis. Admin. Code CVRB § 1.10.*
5. That a copy of this final decision shall be provided to all parties in this proceeding and in accordance with Wis. Admin. Code CVRB § 1.05(8), as identified in the “Service List” below.

Dated this 27th day of October 2023.



Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

SB

[street address withheld]

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