

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

VICTOR N. MELNICHUK,

Defendant.

AMENDED
SCHEDULING ORDER

05-CR-175-C

Defendant's attorney, Christopher T. Van Wagner, sent several letters to the court indicating that he intended to file a motion to postpone the March 20, 2006 trial date; as of this morning, March 9 he had yet to file such a motion. With the final pretrial conference scheduled for March 10, 2006, the court was unable to wait any longer for such a motion and decided to reschedule the trial *sua sponte*. The court first checked with the government to see if it wanted to object; the government decided not to oppose an extension. Upon receiving the government's letter to this effect, on March 9, 2006 Attorney Van Wagner telephoned the court to report that he had been in the process of preparing his formal motion for a continuance and that he had not yet prepared his submissions for final pretrial conference, which had been due a day earlier on March 8, 2006. Attorney Van Wagner had neither sought nor obtained court permission to file untimely submissions; apparently, he was relying on his "letters of intent" to rescue him from his blown deadlines.

Attorney Van Wagner has dodged a scheduling bullet out of the court's concern over ineffective representation of the defendant and for no other reason. The court set a firm schedule, with input from both attorneys, leading to a March 20, 2006 trial date, 13½ weeks after arraignment. Attorney Van Wagner, as a former AUSA in this district and as a frequent litigator as a private attorney, knows how seriously this court takes its schedules. Yet 84 days into the calendar, Attorney Van Wagner had not yet found the time actually to file a motion asking for a continuance. What was his plan if the court had proceeded as scheduled and had held the final pretrial conference tomorrow?

Attorney Van Wagner's letters explain that he has been busy and he has been sick. Illness cannot be helped, but the court should be apprised sooner than eleven days before trial if illness has prevented an attorney from fulfilling his obligations to his client. Further, after the illness has passed, being too busy even to file a motion for a continuance is not an excuse. SCR 20:1.3 requires a lawyer to act with reasonable diligence and promptness in representing his client. The Comment to the rule provides that "A lawyer's workload should be controlled so that each matter can be handled adequately." Clearly that has not been the case here. Regrettably, Attorney Van Wagner has a penchant for not meeting deadlines: he has asked for extensions, continuances or *nunc pro tunc* acceptance of late filings in over a dozen cases, a disproportionately high number for a court this small.¹ In *United States v. Eric Meyer*, 96-CR-10-S-2, Attorney Van Wagner, without prior notice to the court, essentially

¹ See cases Nos. 91-CR-108-C, 92-CR-9-S, 92-CR-120-C, 95-CR-16-C, 95-C-49-C, 96-CR-62-S, 96-CR-65-C, 96-CR-78-C, 96-C-487-C, 99-CR-17-C, 99-CR-107-C, 00-CR-60-S and 04-CR-84-S.

stopped representing his client because he was busy preparing a case in the Eastern District that had been scheduled after *Meyer*. See Dec. 4, 1998 order, dkt. 249.

How different is *Meyer* from this case, in which Attorney Van Wagner has missed his submission deadlines and now counts on the good graces of the court to rescue him from his own negligence?² These are not the traits of a defense attorney qualified to practice in this court. That said, this court will impose no sanction at this time against Attorney Van Wagner beyond entry of this order and the court's assurance to him that similar conduct in the future will result in sanctions that will ensure general and specific deterrence.

It is ORDERED that:

(1) The March 10, 2006 final pretrial conference is postponed to April 21, 2006 at 1:00 p.m. Submissions are due not later than April 19, 2006.

(2) The final hearing is moved to April 25, 2006 at 3:00 p.m.

(2) Jury selection and trial are moved to May 1, 2006 at 9:00 a.m.

Entered this 9th day of March, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

² To his credit in this case, Attorney Van Wagner filed and vigorously pursued a reasonable motion to suppress evidence.