

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST THOMAS J.  
MCCLURE, ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,

CASE NO. 2013AP <sup>2140</sup>-D

Complainant;

THOMAS J. MCCLURE,

Respondent.

**RECEIVED**

SEP 26 2013

**COMPLAINT**

CLERK OF SUPREME COURT  
OF WISCONSIN

NOW COMES the Wisconsin Supreme Court - Office of Lawyer Regulation ("OLR"), by its retained counsel, Anne MacArthur, and alleges as follows:

1. OLR was established by the Wisconsin Supreme Court and operates pursuant to Supreme Court Rules. This complaint is filed pursuant to SCR 22.11.

2. Thomas J. McClure ("McClure") is an attorney admitted to the practice of law in Wisconsin on December 16, 1980, State Bar ID 1016923. McClure's office address listed with the State Bar of Wisconsin is Attorney Thomas J. McClure, LLC, 15 Crossroads Court, Delafield, Wisconsin 53018-2035.

**Matter of Jerome Jankowski**

3. In or about May 2007, Jerome Jankowski ("Jankowski") hired McClure to represent him regarding a claim for personal injuries resulting from a motor vehicle accident.

4. On May 30, 2008, in a mediation agreement signed by Jankowski and McClure, Jankowski agreed to settle his claim against Curtis Lesniewski, the driver of the other vehicle, and Progressive Northern Insurance Company for \$79,000.

5. The May 30, 2008 mediation agreement stated:

Progressive agrees to pay Mr. Jankowski a total of \$79,000 inclusive of all costs, disbursements, and attorney fees for damages, whether compensatory, liquidated and/or punitive. All payments shall be made no later than 6/6/08. The plaintiffs shall pay any outstanding subrogation liens, and any unpaid medical expenses from the settlement proceeds.

6. In a June 10, 2008 settlement statement to Jankowski, McClure specified that the McClure Law Offices' attorney fees/costs were \$26,333.07; the attorney costs, including a partial waiver of \$72.67, were 747.80; the outstanding medical billings were \$41,919.13; and the net settlement recovery to Jankowski was \$10,000.

7. In McClure's June 10, 2008 settlement statement to Jankowski, the outstanding medical billings were itemized as follows:

Merton Fire Dept	\$ 275.00
Lake Country Emerg. Phys.	\$ 507.00
Radiology Waukesha, SC	\$ 1,171.00
Wauk.Mem.Hosp	\$ 1,939.17
Oconomowoc Mem.Hosp.	\$11,070.05
Wauk. Family Practice	\$ 181.00
Wauk. Health Care	\$ 506.00
Aurora Med. Ctr-Hartford	\$ 5,770.71
Lake Country Emerg.Phys.	\$ 607.00
Summit Anesthesiology	\$ 1,400.00

Aurora Med Group	\$ 8,621.00
P.T. Plus Phys Therapy	\$ 9,871.20

8. On June 10, 2008, Jankowski received a net settlement proceeds check from McClure in the amount of \$10,000.

9. On June 10, 2008, McClure made payments with trust account checks on behalf of Jankowski to the following medical providers: Lake Country Emergency Physicians, \$1,115; Federated Adjustment Company (Waukesha Family Practice), \$181; Summit Anesthesiology, \$1,400; and PT Plus, \$9,871.20. The June 10, 2008 disbursements for medical payments totaled \$12,567.20.

10. On June 11, 2008, McClure still held in trust \$29,351.93 of Jankowski's settlement funds owed to medical providers.

11. On July 17, 2008, McClure made two in-person cash withdrawals totaling \$2,335, which resulted in McClure's trust account balance dipping below \$29,351.93 to \$28,262.29.

12. On July 18, 2008, McClure made an in-person cash withdrawal in the amount of \$1,100 and two checks cleared his account.

13. The two checks that cleared McClure's trust account on July 18, 2008 were: (a) trust account check number 122 dated May 28, 2008 in the amount of \$3,904.06, which appeared to be a medical lien payment on behalf of another client; and (b) trust account check number 137 dated July 17, 2008, a net settlement

proceeds payment to another client in the amount of \$5,000.

14. On July 18, 2008, McClure's trust account balance was \$18,258.23, when he should have been holding at least \$29,351.93 of Jankowski's settlement funds that were still to be held in trust to pay medical providers. Therefore, \$11,093.70 was unaccounted for in McClure's trust account and used for his own personal use and/or disbursed to third parties.

15. On August 26, 2008, McClure made a payment to Aurora Health Care on behalf of Jankowski with trust account check number 143 in the amount of \$7,213.39.

16. On August 27, 2008, after trust account check number 143 cleared, McClure should have been holding in trust \$22,138.54 of Jankowski's settlement funds that were owed to medical providers, but instead McClure's trust account balance was only \$585.12.

17. On June 26, 2009, more than a year after Jankowski's settlement, McClure made a payment on behalf of Jankowski to Aurora Medical Group with trust account check number 179 in the amount of \$7,352.90.

18. On July 1, 2009, after trust account check number 179 cleared, McClure should have been holding in trust \$14,785.64 of Jankowski's settlement funds that were owed to medical providers, but instead his trust account balance was \$5,421.53.

19. On January 15, 2010, more than a year and a half after

the settlement, McClure made a payment to ANEX, S.C. on behalf of Jankowski with trust account check number 209 in the amount of \$800. The memo section of the check appeared to note that this payment was for a Dr. Robert V. Purtock.

20. On January 20, 2010, after trust account check number 209 cleared, McClure should have been holding in trust \$13,985.64 of Jankowski's settlement funds that were owed to medical providers, but instead his trust account balance was only \$560.10.

21. In a July 2, 2010 letter to McClure, Jankowski stated:

As I mentioned on the phone, I have several accounts from the accident (dated 5 May 2007) that are still showing as unpaid on my credit report. Since the accident was SETTLED on 10 June 2008, and all bills were to be paid in 10 business days, I foolishly trusted your integrity that these were no longer on record. As I also mentioned, Laurie and I are trying to buy a house, and these unpaid balances are negatively affecting our good name, credit rating and credit score.

22. In a July 10, 2010 letter to Jankowski, McClure stated:

Thank you for bringing this to my attention. I appreciate your good faith in allowing me to rectify what is apparently was a complete dropped ball administratively. I cannot find the items you detailed were ever closed out properly. I apologize for these upsetting events. I will take care of all matters that could affect you as soon as possible.

and further stated:

Thank you for your civility in allowing me to resolve all matters in the most expedient manner to avoid further harm to our families.

23. On July 16, 2010, more than two years after the settlement, McClure made a payment to OAC on behalf of Jankowski with trust account check number 212 in the amount of \$1,171. The memo section of the check appears to note that this payment was for Waukesha Radiology Service, S.C.

24. On July 20, 2010, after trust account check number 212 cleared, McClure should have been holding in trust \$12,814.64 of Jankowski's settlement funds that were owed to medical providers, but instead his trust account balance was \$4,858.26.

25. On July 19, 2010, McClure made a payment to Waukesha Health Care on behalf of Jankowski with trust account check number 213 in the amount of \$506.

26. On July 23, 2010, after trust account check number 213 cleared, McClure should have been holding in trust \$12,308.64 of Jankowski's settlement funds that were owed to medical providers, but instead his trust account balance was \$2,625.76.

27. On July 21, 2010, Jankowski filed a grievance against McClure with OLR alleging that McClure had failed to pay the medical providers from the settlement funds McClure was purportedly holding in trust.

28. On July 30, 2010, McClure made a payment to Waukesha

Memorial Hospital with trust account check number 214 in the amount of \$1,658.

29. In a July 30, 2010 letter to Jankowski, McClure stated:

I have disbursed and am almost finished closing out all matters, with the exception of Waukesha Memorial Hospital which will be completed next week. At that time I will have accumulated the required additional interest monies out of my pocket, and then along with the original amounts already on file, will close those out as well.

I should have all the payment proofs end of next week and will forward same then. Only when all is closed can I obtain those.

30. On August 11, 2010, McClure made a payment to Oconomowoc Memorial Hospital on behalf of Jankowski with trust account check number 229 in the amount of \$2,249.69.

31. On October 19, 2010, McClure made another payment to Oconomowoc Memorial Hospital on behalf of Jankowski with a trust account check number 232 in the amount of \$9,803.91.

32. On October 18, 2010, McClure had deposited a check into his trust account in the amount of \$5,000 that appeared to be from a client named Albers.

33. On October 20, 2010, after trust account check number 232 cleared, McClure's trust account balance was \$2,257.82.

34. Therefore, without the \$5,000 from McClure's other client's deposit there would not have been sufficient funds to cover trust account check number 232.

35. On February 25, 2011, McClure made a payment to the Merton Fire Department on behalf of Jankowski with trust account check number 239 in the amount of \$275. This was the final medical provider payment made by McClure on behalf of Jankowski.

36. The total of all medical payments made by McClure on behalf of Jankowski was \$43,597.09.

37. Although McClure made payments to medical providers on behalf of Jankowski totaling \$43,597.09, the total amount of the medical bills itemized in McClure's June 10, 2008 settlement statement was only \$41,919.13.<sup>1</sup>

38. In McClure's response to Jankowski's grievance, McClure's attorney stated to OLR:

The grievant, Jerome Jankowski, was involved in an automobile accident in 2007. He retained Atty. McClure to pursue a claim for his injuries. In June of 2008, Mr. McClure negotiated a settlement of Mr. Jankowski's claim with Progressive Ins. Co., the insurer for the other driver. The settlement amount was \$79,000.

and further stated:

Mr. McClure has had no support staff since approximately 2005. He has therefore been solely responsible for all administrative duties for his firm. Unfortunately, he became overwhelmed attempting to balance the demands of doing professional quality legal work for his clients, which received top priority, and attending to the everyday details of running an office. The latter suffered from the conflicting demands on his time, and as a consequence, his accounting

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<sup>1</sup>OLR is unsure why there was a discrepancy, but presumes the increased amount of \$1,677.96 that McClure paid to the medical providers was due to late fees, penalties or interest.



records are in disarray and his trust accounting was neglected.

39. In his response to the Jankowski grievance, McClure admitted that over \$15,500 of payments to medical providers on behalf of Jankowski were not made until more than two years after the settlement.

40. In response to the question why McClure failed to distribute Jankowski's settlement funds in a timely fashion, McClure's attorney stated:

Mr. Jankowski and a number of providers were paid promptly - within two weeks of receipt of the settlement check and as soon as Atty. McClure had put together the Settlement Statement detailing the allocation of the settlement proceeds. As noted above, however, other bills went unpaid for some time, with the final payments not being made until this year. As noted above, Atty. McClure has paid all outstanding bills related to Mr. Jankowski's accident, albeit belatedly, but he accepts that there is no excuse for the delay in payment.

It is no justification for the delay, but as admitted previously, Atty. McClure's trust accounting was neglected. Compounding the problem was the fact that during this time period, Mr. McClure was the subject of Wisconsin Department of Revenue tax warrants, and in an effort to protect income from seizure, he ill-advisedly started placing all money received by his office in his trust account, withdrawing money from time to time to pay expenses. This practice he appreciates involved an impermissible commingling of his own property with other trust assets and a violation of SCR 20:1.15(j)(3) regarding cash withdrawals from a trust account. Unfortunately, his failure to keep proper trust account records meant that before long he was unable to reconstruct whose money was whose.

41. McClure did not actually pay off all outstanding bills until his final payment to the Merton Fire Department on February 25, 2011.

42. McClure admitted he did not keep an individual client ledger for Jankowski.

43. McClure further admitted he did not keep a trust account transaction register during the period of time from Jankowski's settlement until at least two years later.

44. McClure's June 25, 2008 Waukesha State Bank trust account statement showed that a June 2, 2008 deposit in the amount of \$79,000, and the total balance of McClure's trust account after the deposit was \$101,087.16.

45. As of August 28, 2008, McClure's trust account balance should have reflected the \$22,138.54 of unpaid medical bills from Jankowski's settlement funds, but instead McClure's trust account balance on that day was \$410.12.

46. From June 2, 2008 to August 28, 2008, McClure made sixty-seven in-person cash withdrawals from his trust account totaling \$107,498.73.

47. Subsequent to August 28, 2008, McClure's trust account balance did not exceed \$22,138.54 until May 27, 2009.

48. On June 8, 2009, McClure's trust account balance once again dipped below \$22,138.54 to \$15,725.69.

49. In McClure's response to a January 10, 2011 OLR letter requesting additional information, his attorney stated:

I'm not able to provide you with much clarification as to why some of the entities were not paid in June of 2008. Mr. McClure simply does not remember. He does not recall any issues regarding the amount of bills, or efforts to negotiate compromises, so the probable explanation is that he failed to stay on top of the file (he recalls being extremely busy with litigation during that time period and that his office administration was in disarray).

50. In McClure's response to the question of what prompted him to pay Aurora Health Care in August 2008, his attorney stated to OLR:

Atty. McClure recalls making the payment, and verifying the accuracy of the amount, but he's not sure what prompted it. He may have simply returned to the file, after having set it aside, or he may have received a follow-up call from Aurora.

51. In OLR's January 10, 2011 letter to McClure, OLR asked: "Explain in more detail why you failed to pay the remaining persons owed money from Mr. Jankowski's settlement between August 2008 and October 2010."

52. In McClure's response, McClure's attorney stated:

As discussed in my previous letter, as a result of his own fault (including poor bookkeeping and improper deposits of his own money) Atty. McClure's trust records had become unreliable. Worse, it is apparent from the bank statements (as you suggest in your comment in the preceding request) that by at least the end of August 2008 his trust account was out of balance, and the amounts on deposit were insufficient to cover the

remaining medical provider bills in Mr. Jankowski's case.

Unfortunately, at this point Mr. McClure didn't have the wherewithal to restore the account to its proper balance, except as he would earn fees in other cases. His reaction to the situation at the time was to block from his mind the specifics of his trust problems and, in order to deal with the stress of the mess he had created, resolve to straighten matters out and get the account in order out of future revenues. As noted in my previous letter, Mr. Jankowski was promptly paid his share of settlement funds at the time of the settlement, and eventually all of the medical providers were paid. But the fact remains that a number of medical providers were not promptly paid, which harmed both the providers and, to the extent that it subjected him to dunning notices or affected his credit rating, Mr. Jankowski himself. Mr. McClure is extremely remorseful about this failure, the seriousness of which he fully acknowledges.

53. In McClure's September 28, 2012 response to OLR's August 28, 2012 letter requesting additional information, his attorney stated that there has been no settlement of any claims Jankowski may have against McClure.

COUNT ONE

54. By failing to inform Jankowski that he had not promptly paid the medical providers from the settlement funds, and having paid one of the medical providers more than a year after the settlement, and again failing to inform Jankowski that he had not paid several medical providers, McClure violated SCR

20:1.4 (a) (3)<sup>2</sup>.

COUNT TWO

55. By failing to hold in trust the funds owed to numerous medical providers from the settlement, McClure violated SCR 20:1.15 (b) (1)<sup>3</sup>.

COUNT THREE

56. By commingling his own funds with Jankowski's settlement funds in his trust account, McClure violated SCR 20:1.15 (b) (3)<sup>4</sup>.

COUNT FOUR

57. By failing to promptly deliver funds to numerous medical providers, including six medical providers that did not receive their funds for more than two years after the settlement, McClure violated SCR 20:1.15 (d) (1)<sup>5</sup>.

COUNT FIVE

58. By failing to maintain a subsidiary individual client ledger for Jankowski, McClure violated SCR 20:1.15 (f) (1)b<sup>6</sup>.

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<sup>2</sup> SCR 20:1.4(a)(3) provides: "A lawyer shall keep the client reasonably informed about the status of the matter."

<sup>3</sup> SCR 20:1.15(b)(1) provides: "A lawyer shall hold in trust, separate from the lawyer's own property, that property of clients and 3rd parties that is in the lawyer's possession in connection with a representation. All funds of clients and 3rd parties paid to a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable trust accounts."

<sup>4</sup> SCR 20:1.15(b)(3) provides: "No funds belonging to the lawyer or law firm, except funds reasonably sufficient to pay monthly account service charges, may be deposited or retained in a trust account."

<sup>5</sup> SCR 20:1.15(d)(1) provides: "Upon receiving funds or other property in which a client has an interest, or in which the lawyer has received notice that a 3rd party has an interest identified by a lien, court order, judgment, or contract, the lawyer shall promptly notify the client or 3rd party in writing. Except as stated in this rule or otherwise permitted by law or by agreement with the client, the lawyer shall promptly deliver to the client or 3rd party any funds or other property that the client or 3rd party is entitled to receive."

<sup>6</sup> SCR 20:1.15(f)(1)b provides: "A subsidiary ledger shall be maintained for each client or 3rd party for whom the lawyer receives trust funds that are deposited in an IOLTA account or any other pooled trust account. The lawyer

COUNT SIX

59. By converting Jankowski's settlement funds, which were owed to numerous medical providers, for his own personal use and/or delivering the funds to his other clients or third parties, McClure violated SCR 20:8.4(c)<sup>7</sup>.

OLR Inquiry

60. On January 7, 2011, OLR initiated an inquiry after observing several irregularities in McClure's trust account statements that were brought to light during OLR's investigation in the Jankowski matter.

61. In the Jankowski grievance matter, McClure provided OLR with his Waukesha State Bank trust account statements for account number 10737169 ("trust account") which covered the period of time from May 23, 2008 to October 25, 2010.

62. McClure's trust account bank statements show he made at least 670 in-person cash withdrawals from his trust account from May 23, 2008 to October 25, 2010.

63. McClure's January 6, 2009 trust account check number 161 made payable to Ashley Eberle in the amount of \$3000 was returned for insufficient funds.

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shall record each receipt and disbursement of a client's or 3rd party's funds and the balance following each transaction. A lawyer shall not disburse funds from an IOLTA account or any pooled trust account that would create a negative balance with respect to any individual client or matter."

<sup>7</sup> SCR 20:8.4(c) provides: "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

64. The language "Net client recovery IN FULL" appeared in the memo section of check number 161.

65. In a January 12, 2011 letter, OLR provided McClure with written notice of its new formal investigation and of his duty to cooperate with the investigation.

66. In McClure's response to OLR's inquiry, McClure's attorney stated that McClure opened a new business account in 2008 because he changed his firm to a limited liability company.

67. McClure's attorney stated that on February 8, 2008, McClure opened account number 10737169 which was entitled "special trust."

68. McClure's attorney further stated that McClure was unsure how his old trust account should be closed, therefore he left his old trust account open, but began making trust deposits in account 10737169.

69. McClure failed to set up account 10737169 as an IOLTA account.

70. McClure stated he used general business income to pay the fees and charges associated with the trust account.

71. In OLR's January 12, 2011 letter to McClure, OLR requested:

If you were not maintaining records related to the activity in your trust account, explain what steps, if any, you were taking to attempt to determine, prior to disbursing or withdrawing funds from the trust account, that you held

sufficient funds in trust for a particular client matter to cover the client-related disbursement or sufficient of your own funds to cover your personal withdrawals.

72. McClure's attorney's February 21, 2011 response to OLR included the following statements:

- (a) McClure would receive and review the monthly bank statements and, in between statements, would check the account balance with the bank on a periodic basis;
- (b) As the sole owner of the law firm, Mr. McClure did not take a prescribed salary. Rather, he would pay himself at irregular intervals as receipts allowed. Because he was using the trust account as the general deposit account for the firm, withdrawals were made from account 10737169 both to pay law firm expenses and as income to him in lieu of a salary or set draw. Payment of personal expenses would be made out of that income;
- (c) Since, misguidedly, Mr. McClure used the trust account as the deposit account for all money coming into the firm, including fees that should have gone into the business account, he did receive income derived from his law practice in the form of withdrawals from the trust account, as discussed above, and undoubtedly some of that income ultimately was spent on Christmas gifts, birthday presents, etc. Other than that, in August of 2008 he loaned \$4,400 to one of his sons and with that money purchased a used automobile for him. The funds for that loan came from the trust account.
- (d) McClure started commingling his and his firm's funds in his trust account in approximately June 2006.
- (e) Mr. McClure's initial in-person conference with our firm was on November 4, 2010, at which time we explained the relevant trust account rule to him. All commingling ceased as of that date.



(f) McClure had not filed his 2008 and 2009 federal and state tax returns, but that McClure anticipated filing the tax returns within 60 days.

73. Also in the February 21, 2011 response, with respect to collection efforts by the Internal Revenue Service ("IRS") and the Wisconsin Department of Revenue ("DOR") and McClure's tax problems, McClure's attorney stated:

As of February 4, 2011, Mr. McClure's obligation to the State of Wisconsin was estimated by the Department of Revenue to be \$116,666.83, which included estimated taxes, interest and penalties. The estimates of income by the DOR were based on prior years' income and are higher than actual, so the final amounts owed are expected to be significantly less. His current obligation (business and personal) to the IRS is approximately \$270,250.

With respect to collection efforts, these have consisted of tax warrants filed by the State, letters sent by the IRS, and telephone calls from the IRS representative. No formal collection efforts have been commenced.

74. In McClure's attorney's October 3, 2012 response to an August 28, 2012 OLR letter requesting additional information, his attorney stated that he did not have a current estimate of McClure's tax liability and the status of collection efforts remained the same.

75. As of October 3, 2012, McClure had still not filed his federal and state tax returns for years 2008 and 2009, and had also not filed his tax returns for the 2010 tax year.

76. McClure stated he had obtained an extension for the 2011 tax year and stated he had a tax advisor working on his tax problems.

77. In McClure's December 6, 2010 response to the Jankowski grievance, McClure's attorney stated:

Mr. McClure has had no support staff since approximately 2005. He has therefore been solely responsible for all administrative duties for his firm. Unfortunately, he became overwhelmed attempting to balance the demands of doing professional quality legal work for his clients, which received top priority, and attending to the everyday details of running an office. The latter suffered from the conflicting demands on his time, and as a consequence, his accounting records are in disarray and his trust accounting was neglected.

and further stated:

It is no justification for the delay, but as admitted previously, Atty. McClure's trust accounting was neglected. Compounding the problem was the fact that during this time period, Mr. McClure was the subject of Wisconsin Department of Revenue tax warrants, and in an effort to protect income from seizure, he ill-advisedly started placing all money received by his office in his trust account, withdrawing money from time to time to pay expenses. This practice he appreciates involved an impermissible commingling of his own property with other trust assets and violation of SCR 20:1.15(j)(3) regarding cash withdrawals from a trust account. Unfortunately, his failure to keep proper trust account records meant that before long he was unable to reconstruct whose money was whose.

78. In McClure's February 4, 2011 response to an OLR January 10, 2011 letter in the Jankowski grievance, McClure's

attorney stated:

As discussed in my previous letter, as a result of his own fault (including poor bookkeeping and improper deposits of his own money) Atty. McClure's trust records had become unreliable. Worse, it is apparent from the bank statements (as you suggest in your comment in the preceding request) that by at least the end of August 2008 his trust account was out of balance, and the amounts on deposit were insufficient to cover the remaining medical provider bills in Mr. Jankowski's case.

Unfortunately, at this point Mr. McClure didn't have the wherewithal to restore the account to its proper balance, except as he would earn fees in other cases. His reaction to the situation at the time was to block from his mind the specifics of his trust problems and, in order to deal with the stress of the mess he had created, resolve to straighten matters out and get the account in order out of future revenues.

79. In McClure's October 3, 2012 response to OLR's August 28, 2012 letter, with respect to whether McClure maintained individual client ledgers as required by SCR 20:1.15(f)(1)b during the period of time from June 2008 to October 2010, McClure's attorney stated:

Atty. McClure's accounting consisted of keeping carbon copies of trust account checks with his trust account checkbook and making photocopies of checks written and received and keeping those copies in the individual client files. Additionally, most of the trust funds were from personal injury settlements which, upon receipt, would prompt Atty. McClure to have a settlement statement prepared with an accounting of who was owed what. The client would come in, sign off on the statement, and receive a copy.

80. In McClure's December 6, 2010 response to the

Jafnkowskid grievance, McClure's attorney stated that McClure had not maintained a transaction register for the trust account from June 10, 2008 until at least October 19, 2010.

81. In McClure's October 3, 2012 response to OLR's August 28, 2012 letter, McClure's attorney stated McClure did not prepare and retain reconciliation reports, as required by SCR 20:1.15(f)(1)g, during the period of time from June 2008 to October 2010.

82. McClure certified on his state bar certificates for the years 2008, 2009 and 2010 that he had complied with each of the record-keeping requirements set forth in SCR 20:1.15(f) and (j)(5), when in fact he was not compliant with the record-keeping requirements.

83. In McClure's October 3, 2012 response to OLR's August 28, 2012 letter, McClure's attorney stated that McClure had not filed his state and federal tax returns for the years of 2008, 2009, and 2010.

84. McClure did not file an overdraft notification agreement with OLR for his trust account.

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COUNT SEVEN

85. By failing to hold in trust his clients' funds, separate from his own personal funds, McClure violated SCR 20:1.15(b)(1).

COUNT EIGHT

86. By commingling his own funds with the funds of clients and third-parties in his trust account for at least four years, McClure violated SCR 20:1.15(b)(3).

COUNT NINE

87. By making at least 670 in-person cash withdrawals from his trust account, McClure violated SCR 20:1.15(e)(4)a<sup>8</sup>.

COUNT TEN

88. Having his trust account check number 161 returned for insufficient funds, and therefore disbursing the funds from his trust account without the funds being available for disbursement, McClure violated SCR 20:1.15(e)(5)(a)<sup>9</sup>.

COUNT ELEVEN

89. By failing to maintain a transaction register for his trust account, McClure violated SCR 20:1.15(f)(1)a<sup>10</sup>.

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<sup>8</sup> SCR 20:1.15(e)(4)a provides: "No disbursement of cash shall be made from a trust account or from a deposit to a trust account, and no check shall be made payable to 'Cash'."

<sup>9</sup> SCR 20:1.15(e)(5)(a) provides: "A lawyer shall not disburse funds from any trust account unless the deposit from which those funds will be disbursed has cleared, and the funds are available for disbursement"

<sup>10</sup> SCR 20:1.15(f)(1)a provides: "Complete records of a trust account that is a draft account shall include a transaction register; individual client ledgers for IOLTA accounts and other pooled trust accounts; a ledger for account fees and charges, if law firm funds are held in the account pursuant to sub. (b) (3); deposit records; disbursement records; monthly statements; and reconciliation reports, subject to all of the following:

- a. Transaction register. The transaction register shall contain a chronological record of all account transactions, and shall include all of the following:
  1. the date, source, and amount of all deposits;
  2. the date, check or transaction number, payee and amount of all disbursements, whether by check, wire transfer, or other means;
  3. the date and amount of every other deposit or deduction of whatever nature;
  4. the identity of the client for whom funds were deposited or disbursed; and
  5. the balance in the account after each transaction."

COUNT TWELVE

90. By failing to maintain individual client ledgers for his clients, McClure violated SCR 20:1.15(f)(1)b.

COUNT THIRTEEN

91. By failing to prepare and retain a printed reconciliation report on a regular and periodic basis not less frequently than every 30 days, McClure violated SCR 20:1.15(f)(1)g<sup>11</sup>.

COUNT FOURTEEN

92. By failing to file an overdraft notification agreement with OLR for his trust account, McClure violated SCR 20:1.15(h)(8)<sup>12</sup>.

COUNT FIFTEEN

93. By filing false certificates with the State Bar of Wisconsin in which he certified that he had complied with each of the record-keeping requirements, McClure violated SCR 20:1.15(i)(4)<sup>13</sup>.

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<sup>11</sup> SCR 20:1.15(f)(1)g provides: "For each trust account, the lawyer shall prepare and retain a printed reconciliation report on a regular and periodic basis not less frequently than every 30 days."

<sup>12</sup> SCR 20:1.15(h)(8) provides: "Every lawyer practicing or admitted to practice in Wisconsin shall comply with the reporting and production requirements of this subsection, including filing of an overdraft notification agreement for each IOLTA account, each draft-type trust account and each draft-type fiduciary account that is not subject to an alternative protection under sub. (j)(9)."

<sup>13</sup> SCR 20:1.15(i)(4) provides: "The filing of a false certificate is unprofessional conduct and is grounds for disciplinary action."

COUNT SIXTEEN

94. By placing all monies received by his office into his trust account in an effort to protect income from seizure at a time when he was the subject of Wisconsin Department of Revenue tax warrants, McClure violated SCR 20:8.4(c).

COUNT SEVENTEEN

95. By failing to timely file his state and federal tax returns for the years of 2008, 2009, and 2010, McClure violated SCR 20:8.4(f)<sup>14</sup>.

Matter of Joshua J. Kamin and Mary Kamin

96. Joshua Kamin was charged with Child Abuse-Intentionally Cause Harm, a class H felony; Battery, a class A misdemeanor; and Disorderly Conduct, a class B misdemeanor in State of Wisconsin v. Joshua Kamin, Kenosha County Case No. 2011CF000546, filed June 10, 2011.

97. On June 13, 2011, McClure sent an electronic response via a "legalmatch" website to Mary Kamin, Joshua Kamin's mother, stating in part:

You are in trouble but help is available. When you are on probation you are on a short chain. They are about to yank your chain[.] You cannot afford anger or further violations but here you are in deep trouble. I can help. I am a respected former prosecutor now 20 years private practice criminal defense helping hundreds of people throughout southeast Wisconsin. SEE my

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<sup>14</sup> SCR 20:8.4(f) provides: "It is professional misconduct for a lawyer to violate a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of lawyers."

credentials at mcclurelawoffices online. I offer a free consultation, convenient evening and weekend appointments and a simple up front flat fee. You need counsel to avoid extended incarceration and revocation.

98. In his June 13, 2011 electronic response under the heading of *Additional Response Information*, McClure stated:

Fee Information:

Consultation: I am willing to offer an initial consultation of 30 minutes for free.

Flat Fee: The total fee that I would charge for this case is \$2,500, pending more information from you. The entire fee payment is due when I take your case. Standard flat fee for domestic violence and felony child abuse charge.

Expenses The following will be charged separately.

99. On June 16, 2011, Mary Kamin hired McClure to represent her son and paid McClure a flat fee of \$2,500, which McClure deposited directly into his business account.

100. There is no documentary evidence of a written fee agreement between McClure and Mary and Joshua Kamin.

101. Joshua Kamin obtained successor counsel, whose appearance was entered September 8, 2011.

102. On September 13, 2011, Mary and Joshua Kamin filed a grievance against McClure with OLR alleging various concerns



about McClure's representation of Joshua Kamin.

103. In the September 8, 2011 grievance, Mary Kamin stated, "Attorney McClure informed me after I hired him that it would cost me an additional \$2,500.00 if my son's case went to trial."

104. In his June 13, 2011 electronic response to Mary Kamin, apparently via the legalmatch website, McClure did not mention that the \$2,500 flat fee did not cover a trial, and that if the case went to trial there would be an additional \$2,500 fee.

#### COUNT EIGHTEEN

105. By failing to have a written fee agreement communicating the requisite information for his representation of Joshua Kamin, McClure violated SCR 20:1.5(b)(1) and (2)<sup>15</sup>.

#### COUNT NINETEEN

106. By depositing Joshua Kamin's unearned advanced fee payment directly into his business bank account, without acting in a manner indicating an intention to use the alternative fee placement measures stated in SCR 20:1.15(b)(4m), McClure violated SCR 20:1.15(b)(4)<sup>16</sup>.

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<sup>15</sup> SCR 20:1.5(b)(1) and (2) provide: "(1) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate as in the past. If it is reasonably foreseeable that the total cost of representation to the client, including attorney's fees, will be \$1000 or less, the communication may be oral or in writing. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client; and (2) If the total cost of representation to the client, including attorney's fees, is more than \$1000, the purpose and effect of any retainer or advance fee that is paid to the lawyer shall be communicated in writing."

<sup>16</sup> SCR 20:1.15(b)(4) provides: "Except as provided in par. (4m), unearned fees and advanced payments of fees shall be held in trust until earned by the lawyer, and withdrawn pursuant to sub. (g)..."

COUNT TWENTY

107. By informing his new client that he would charge her an additional fee for taking the matter to trial which was double the amount he said he would charge to handle the engagement, McClure violated SCR 20:8.4(c).

Matter of Carlos R. Galvan, Jr.

108. On February 12, 2010, McClure sent an electronic response via the "legalmatch" website to a member of Carlos R. Galvan, Jr.'s (Galvan) family, stating in part:

This is serious, as the custody situation demonstrates. Serious attorney help is needed. Preferably what is needed, is the credibility of a former prosecutor, the skill of a trial attorney and the experience of 20 years private practice criminal defense. Fortunately, those are my credentials. SEE my credentials at mcclurelawoffices online. I am available immediately and do not charge for the initial consultation. I practice in this court regularly and am a respected former Rock County Asst. DA. The attorney is critical for this type of case. You are fortunate to have someone available to fit the exact profile you need.

109. In the February 12, 2010 same communication, McClure stated:

Fee Information:

Consultation: I am willing to offer an initial consultation of 30 minutes for free.

Flat Fee: The total fee that I would charge for this case is \$2,500. The entire fee payment is due when I take

your case. Standard flat fee  
for felony drugs.

Expenses

The following will be charged  
separately.

110. On or about February 24, 2010, Galvan hired McClure to represent him on charges of possession of THC (2nd+ Offense), a class I felony; Manufacture/Deliver THC, a class F felony; and Maintain Drug Trafficking Place, a class I felony in *State of Wisconsin v. Carlos R. Galvan, Jr.*, Rock County Case No. 2010CF000061 and *State of Wisconsin v. Carlos R. Galvan, Jr.*, Rock County Case No. 2010CF000037.

111. McClure was also hired to represent Galvan in a revocation case in *State of Wisconsin v. Carlos Ramirez Galvan, Jr.*, Rock County Case No. 2001CF003534.

112. On February 23, 2010, Galvan's mother Beatriz Galvan paid McClure \$2,000 as a partial payment of the \$2,500 flat fee.

113. On April 2, 2010, Galvan's brother David Galvan paid McClure the final \$500 of the \$2,500 flat fee.

114. On March 26, 2012, over a year after McClure's representation of Galvan concluded, Galvan filed a grievance against McClure with OLR alleging various concerns regarding McClure's representation of Galvan.

115. As part of his response to the grievance, McClure provided OLR with a copy of his entire file regarding his representation of Galvan.

116. The file contained no documentary evidence of a written fee agreement beyond the electronic communication referenced above in paragraphs 108 and 109.

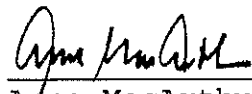
COUNT TWENTY-ONE

117. By failing to have a written fee agreement communicating the requisite information for his representation of Galvan, McClure violated SCR 20:1.5(b)(1) and (2).

WHEREFORE, the Office of Lawyer Regulation asks that Respondent, Thomas J. McClure, be found in violation of the Supreme Court Rules as alleged in connection with this complaint, that McClure's license to practice law in the State of Wisconsin be suspended for a period of two (2) years, and that the Court grant such other and further relief as may be just and equitable, including an award of costs.

Dated this 26<sup>th</sup> day of September, 2013.

OFFICE OF LAWYER REGULATION



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