

Exh

STATE OF WISCONSIN

IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST DAVID V. MOSS,
ATTORNEY AT LAW.

CODE 30912

OFFICE OF LAWYER REGULATION,

NO. 2013AP 2088-D

Complainant;

DAVID V. MOSS,

Respondent.

RECEIVED

SEP 19 2013

COMPLAINT

CLERK OF SUPREME COURT
OF WISCONSIN

NOW COMES the Wisconsin Supreme Court - Office of
Lawyer Regulation (OLR) by Assistant Litigation Counsel
Julie M. Spoke, and alleges as follows:

1. The 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. Respondent David V. Moss (Moss) is an attorney who
was admitted to the State Bar of Wisconsin on July 9, 2009.
Moss previously practiced law in Galesville, Wisconsin.
The most recent address furnished by Moss to the State Bar
of Wisconsin is 18135 S. Christine Court, Oregon City,
Oregon 97045-9606. Moss's Wisconsin law license is

currently suspended for his failure to cooperate with OLR grievance investigations, failure to pay Wisconsin state bar dues, and noncompliance with trust account certification requirements.

Hayter Grievance
(Counts 1 through 5)

3. In August 2011, Summer Hayter and her then-husband, Joshua Hayter (Hayters), hired Moss to represent them in a joint Chapter 7 bankruptcy. Moss charged them a \$1,000 flat fee.

4. On October 21, 2011, Ms. Hayter paid Moss \$250. On or around October 25, 2011, Mr. Hayter paid Moss \$750 cash.

5. Between September 2011 and January 2012, Ms. Hayter called Moss more than 40 times. Moss failed to return her calls.

6. On January 18, 2012, Ms. Hayter's divorce attorney sent a letter to the divorce judge regarding Ms. Hayter's repeated attempts to contact Moss. The attorney copied Moss on the letter requesting that he contact Ms. Hayter so that the bankruptcy petition could be filed and the Hayters could proceed with their divorce.

7. In late January 2012, Moss called Ms. Hayter. In early February 2012, Ms. Hayter signed the bankruptcy

petition. Ms. Hayter then had Mr. Hayter sign the petition and returned it to Moss's Galesville office. The petition was never filed.

8. On February 27, 2012, Moss sent a letter to Ms. Hayter enclosing the Hayters' file. Moss terminated the representation allegedly due to his inability to contact Mr. Hayter. Moss informed Ms. Hayter that he was closing his office and moving to Oregon.

9. Despite not filing the bankruptcy petition, Moss informed Ms. Hayter he had performed 10 hours on her case at \$150/hour. Moss failed to return any of the Hayters' flat fee.

10. On April 28, 2012, Moss sent a letter to OLR stating that he would not respond to any grievances. Moss enclosed his State Bar of Wisconsin membership card to serve as his resignation from the State Bar of Wisconsin.

11. On May 25, 2012, OLR wrote to Moss informing him that voluntary resignation is governed by SCR 10.03(7) and that OLR would continue to notify him of any grievance filed against him.

12. On June 6, 2012, OLR notified Moss of the Hayter grievance and requested a written response by June 29, 2012. Moss failed to respond.

13. On October 2, 2012, OLR filed with the Supreme Court of Wisconsin a *Notice of Motion and Motion Requesting Order to Show Cause* as to why Moss's law license should not be temporarily suspended for his willful failure to cooperate with the Hayter grievance, as well as other grievance investigations.

14. On October 3, 2012, the Supreme Court of Wisconsin issued an order requiring Moss to show cause, in writing, within 20 days of the date of the order why OLR's motion should not be granted and his law license should not be temporarily suspended. Moss failed to respond.

15. On November 14, 2012, the Supreme Court of Wisconsin issued an order granting OLR's motion and temporarily suspended Moss's law license.

16. Ms. Hayter filed a claim against Moss with the Wisconsin Lawyers' Fund for Client Protection (the Fund). The Fund approved a claim for \$1,000.

COUNT ONE

17. By failing to initiate bankruptcy proceedings during the six months that he represented the Hayters, Moss violated SCR 20:1.3¹.

COUNT TWO

18. By failing to return Ms. Hayter's numerous calls between September 2011 and January 2012, other than Moss's late January 2012 call to Ms. Hayter, Moss violated SCR 20:1.4(a)(4)².

COUNT THREE

19. In having accepted a \$1,000 flat fee to represent the Hayters in a bankruptcy case and, thereafter, failing to even file a bankruptcy petition while retaining the entire flat fee, Moss violated SCR 20:1.5(a)³.

COUNT FOUR

20. By failing to refund the unearned portion of the flat fee upon termination of representation, when he had not completed the agreed-upon legal services for which he was hired, Moss violated SCR 20:1.16(d)⁴.

¹ SCR 20:1.3 provides: "A lawyer shall act with reasonable diligence and promptness in representing a client."

² SCR 20:1.4(a)(4) provides: "A lawyer shall promptly comply with reasonable requests by the client for information."

³ SCR 20:1.5(a) provides in pertinent part: "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses ..."

⁴ SC 20:1.16(d) provides: "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and

COUNT FIVE

21. By failing to provide a written response to the Hayter grievance, Moss violated SCR 22:03(2) and SCR 22.03(6)⁵, enforced via SCR 20:8.4(h)⁶.

Horst Grievance (Counts 6 through 10)

22. In August 2011, Gene Horst (Horst) hired Moss to represent him in a Chapter 7 bankruptcy. Moss charged him a \$750 flat fee.

23. On August 26, 2011, Horst paid Moss \$250.

24. On October 12, 2011, Moss met with Horst. At that time, Horst paid Moss an additional \$500.

25. Moss scheduled a follow-up meeting with Horst for October 20, 2011. Later, Moss cancelled the meeting.

26. In November and December 2011, Horst left several voice mail messages for Moss. Moss failed to respond.

refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law."

⁵ SCR 22:03(2) and (6) provide: "(2) Upon commencing an investigation, the director shall notify the respondent of the matter being investigated unless in the opinion of the director the investigation of the matter requires otherwise. The respondent shall fully and fairly disclose all facts and circumstances pertaining to the alleged misconduct within 20 days after being served by ordinary mail a request for a written response. The director may allow additional time to respond. Following receipt of the response, the director may conduct further investigation and may compel the respondent to answer questions, furnish documents, and present any information deemed relevant to the investigation. (6) In the course of the investigation, the respondent's willful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance."

⁶ SCR 20:8.4(h) provides in pertinent part: "It is professional misconduct for a lawyer to fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by...SCR 22.03(2), SCR 22.03(6)..."

27. In early January 2012, Moss called Horst to apologize for his lack of communication. Moss asked Horst to call him around January 20, 2012 to schedule another meeting.

28. From January 23, 2012 through February 12, 2012, Horst left Moss several voice mail messages. Moss failed to respond.

29. On or about February 13, 2013, Moss answered a couple of Horst's calls. In the first call, Moss stated that he would be returning Horst's paperwork to him via certified mail and then hung up. In another call, Moss informed Horst he would contact the police if Horst called back and then hung up.

30. On February 13, 2012, Moss sent Horst a letter returning his file. Moss told Horst to cease and desist any and all contact with him. Moss also stated that he had put five hours into his case at \$150/hour and would not be refunding any portion of his flat fee.

31. On April 12, 2012, OLR notified Moss of the Horst grievance and requested a written response by May 4, 2012.

32. On April 28, 2012, Moss sent a letter to OLR stating that he would not respond to any grievances.

33. On October 2, 2012, OLR filed with the Wisconsin Supreme Court a Notice of Motion and Motion Requesting Order to Show Cause as to why Moss's law license should not be temporarily suspended for his willful failure to cooperate with the Horst grievance, as well as other grievance investigations.

34. On October 3, 2012, the Supreme Court of Wisconsin issued an order requiring Moss to show cause, in writing, within 20 days of the date of the order why OLR's motion should not be granted and his law license should not be temporarily suspended. Moss failed to respond.

35. On November 14, 2012, the Supreme Court of Wisconsin issued an order granting OLR's motion and temporarily suspended Moss's law license.

36. Horst filed a claim against Moss with the Fund. The Fund approved a claim for \$750.

COUNT SIX

37. By failing to initiate bankruptcy proceedings during the six months that he represented Horst, Moss violated SCR 20:1.3.

COUNT SEVEN

38. By failing to respond to Horst's numerous voice mail messages in November and December 2011, and again

beginning on January 23, 2012 through February 12, 2012, Moss violated SCR 20:1.4(a)(4).

COUNT EIGHT

39. In having accepted a \$750 flat fee to represent Horst in a bankruptcy case and, thereafter, failing to even file a bankruptcy petition while retaining the entire flat fee, Moss violated SCR 20:1.5(a).

COUNT NINE

40. By failing to refund the unearned portion of the flat fee upon termination of the representation, when he had not completed the agreed upon legal services for which he was hired, Moss violated SCR 20:1.16(d).

COUNT TEN

41. By failing to provide a written response to the Horst grievance, Moss violated SCR 22.03(2) and SCR 22.03(6), enforced via SCR 20:8.4(h).

Jacque Grievance
(Counts 11 through 15)

42. On March 9, 2010, Susan and Jules Jacque (Jacques) hired Moss to represent them in a joint Chapter 7 bankruptcy. Moss charged them a \$1,000 flat fee. The flat fee was to include a \$299 filing fee, credit counseling and debtor education fees, and attorney's fees for filing the bankruptcy.

43. On March 9, 2010, the Jacques paid Moss \$200. Moss accepted payments of \$50 per month thereafter. By June 2011, the Jacques had paid Moss in full.

44. On August 16, 2011, the Jacques sent a letter to Moss asking if he had filed their petition. Moss failed to respond.

45. Moss never filed the Jacques' petition.

46. On February 27, 2012, Moss sent a letter to the Jacques returning their file. Moss terminated his representation and informed them that his office was closing and he was moving to Oregon. Moss stated that he had performed 20 hours on their case at \$150/hour. Moss failed to return any of the Jacques' flat fee.

47. On April 28, 2012, Moss sent a letter to OLR stating that he would not respond to any grievances. Moss enclosed his State Bar of Wisconsin membership card to serve as his resignation from the State Bar of Wisconsin.

48. On May 25, 2012, OLR wrote to Moss informing him that voluntary resignation is governed by SCR 10.03(7) and that OLR would continue to provide him notice of any grievance filed against him.

49. On July 11, 2012, OLR notified Moss of the Jacque grievance and requested a written response by August 3, 2012. Moss failed to respond.

50. On October 2, 2012, OLR filed with the Supreme Court of Wisconsin a *Notice of Motion and Motion Requesting Order to Show Cause* as to why Moss's law license should not be temporarily suspended for his willful failure to cooperate with the Jacque grievance, as well as other grievance investigations.

51. On October 3, 2012, the Supreme Court of Wisconsin issued an order requiring Moss to show cause, in writing, within 20 days of the date of the order why OLR's motion should not be granted and his law license should not be temporarily suspended. Moss failed to respond.

52. On November 14, 2012, the Supreme Court of Wisconsin issued an order granting OLR's motion and temporarily suspended Moss's law license.

53. The Jacques filed a claim against Moss with the Fund. The Fund approved a claim for \$1,000.

COUNT ELEVEN

54. By failing to initiate bankruptcy proceedings during the nine months after which the Jacques had paid his \$1,000 flat fee in full, Moss violated SCR 20:1.3.

COUNT TWELVE

55. By failing to respond to the Jacques' August 16, 2011 letter regarding the status of their case, Moss violated SCR 20:1.4(a)(4).

COUNT THIRTEEN

56. By neither completing the agreed-upon legal services for which he was hired nor paying the \$299 filing fee, credit counseling, and debtor education fees for which he collected a \$1,000 flat fee, Moss violated SCR 20:1.5(a).

COUNT FOURTEEN

57. By failing to refund the unearned portion of the flat fee upon termination of representation, when he had not completed the agreed upon legal services for which he was hired, Moss violated SCR 20:1.16(d).

COUNT FIFTEEN

58. By failing to provide a written response to the Jacque grievance, Moss violated SCR 22.03(2) and SCR 22.03(6), enforced via SCR 20:8.4(h).

Kowalewski Grievance
(Count 16)

59. In August 2011, Stephen Kowalewski (Kowalewski) hired Moss to represent him in a Chapter 7 bankruptcy. Moss charged Kowalewski a \$500 flat fee.

60. On August 30, 2011, Kowalewski paid Moss \$500 in cash.

61. On August 31, 2011, Moss filed Kowalewski's bankruptcy petition.

62. On September 23, 2011, a \$5,600 money judgment was entered against Kowalewski in a post-divorce matter, La Crosse County Case No. 2002FA0455.

63. On October 18, 2011, Kowalewski hired Moss to represent him in the post-divorce matter. Moss agreed to request sanctions through the bankruptcy court for the issuance and enforcement of the money judgment. Moss also agreed to file a Section 1983 lawsuit.

64. Kowalewski signed a fee agreement agreeing to pay Moss \$50 per hour except for trial/arbitration/mediation work which is charged at \$750.00 per trial/arbitration/mediation day. Moss did not charge an advanced fee.

65. Moss failed to request sanctions and failed to file a Section 1983 lawsuit as promised.

66. On January 12, 2012, Moss sent a letter to the judge in the post-divorce matter enclosing a motion to withdraw and stipulated order. On January 13, 2012, the judge authorized Moss's withdrawal.

67. On February 24, 2012, Moss sent Kowalewski a letter notifying him of his withdrawal from the post-divorce matter. Moss informed Kowalewski that the bankruptcy matter was completed, except one amendment needed to be filed, and Kowalewski needed to pay the filing fee. Moss also informed Kowalewski that he was closing his office and moving to the West Coast.

68. As to the issue of sanctions, Moss provided in his letter:

You question about "filing sanctions" is not really an accurate phrase. You basically have two choices: (1) we can file an adversarial proceeding while still in Bankruptcy asking the court to void the Judgment, tax lien, etc. or (2) you can wait until the bankruptcy is discharged, and then make a motion in State court to vacate the judgment.

If you want to file an Adversarial Proceeding, I require a \$1,500.00 retainer prior to filing. This is the standard operating procedure in BKs and APs are not part of a basic bankruptcy. They are lined out on the basic filing fee agreement that is filed with the court and would be subject to a separate fee agreement.

69. Kowalewski paid the filing fee and on March 23, 2012, his bankruptcy was discharged.

70. On April 28, 2012, Moss sent a letter to OLR stating that he would not respond to any grievances. Moss enclosed his State Bar of Wisconsin membership card to serve as his resignation from the State Bar of Wisconsin.

71. On May 25, 2012, OLR wrote to Moss informing him that voluntary resignation is governed by SCR 10.03(7) and that OLR would continue to provide him notice of any grievance filed against him.

72. On June 6, 2012, OLR notified Moss of the Kowalewski grievance and requested a written response by June 29, 2012. Moss failed to respond.

73. On October 2, 2012, OLR filed with the Supreme Court of Wisconsin a *Notice of Motion and Motion Requesting Order to Show Cause* as to why Moss's law license should not be temporarily suspended for his willful failure to cooperate with the Kowalewski grievance, as well as other grievance investigations.

74. On October 3, 2012, the Supreme Court of Wisconsin issued an order requiring Moss to show cause, in writing, within 20 days of the date of the order why OLR's motion should not be granted and his law license should not be temporarily suspended. Moss failed to respond.

75. On November 14, 2012, the Supreme Court of Wisconsin issued an order granting OLR's motion and temporarily suspended Moss's law license.

COUNT SIXTEEN

76. By failing to provide a written response to the Kowalewski grievance, Moss violated SCR 22.03(2) and SCR 22.03(6), enforced via SCR 20:8.4(h).

Lam Grievance (Counts 17 through 19)

77. In February 2010, Sammy Lam (Lam) hired Moss to represent him in a joint Chapter 7 bankruptcy. Moss charged Lam a \$1,600 flat fee. The flat fee was to include the filing fee, the costs of credit counseling and debtor education, the cost of a combined credit report, and attorney's fees for filing the bankruptcy. The fee did not include representation in adversary proceedings. Lam paid Moss the \$1,600 flat fee.

78. On September 15, 2010, Lam purged a bench warrant, issued as a result of an order for contempt in Trempealeau County Case No. 2009SC0384, by posting a \$1,000 bond.

79. On September 30, 2010, Moss filed the bankruptcy petition. Moss also represented Lam in two adversary proceedings.

80. As a result of an adversary proceeding filed by Moss in January 2011, the \$1,000 was returned to Moss as a preference.

81. In February 2011, Moss informed Lam that he would hold the \$1,000 in trust until the bankruptcy was resolved.

82. In the beginning of February 2011, Lam attempted to contact Moss regarding the status of his bankruptcy and the \$1,000 preference. Moss failed to return Lam's phone calls.

83. The order discharging debtors was filed on February 22, 2011.

84. In an email to OLR dated June 9, 2011, Moss admitted that there were at least two telephone messages from Lam that he did not return. Moss agreed that there was no secondary agreement for Moss's representation in the adversary proceedings, which was his fault. Moss stated that he spoke with Lam, apologized, and informed him he would be mailing the \$1,000 to him by certified mail.

85. The bankruptcy was closed on December 5, 2011.

86. On July 1, 2011, pursuant to SCR 22.02(6)(b) and SCR 22.10(4), Moss entered into a diversion agreement with OLR related to the Lam grievance. Moss breached the conditions of the diversion agreement when he failed to

provide verification of attendance at six (6) CLE/EPR credit hours of instruction to OLR by July 1, 2012.

87. On August 8, 2012, OLR's Director notified Moss that he was terminating the diversion agreement, pursuant to SCR 22.10(7), and referring the matter to investigation.

88. On April 28, 2012, Moss sent a letter to OLR stating that he would not respond to any grievances. Moss enclosed his State Bar of Wisconsin membership card to serve as his resignation from the State Bar of Wisconsin.

89. On May 25, 2012, OLR wrote to Moss informing him that voluntary resignation is governed by SCR 10.03(7) and that OLR would continue to notify him of any grievance filed against him.

90. On August 21, 2012, OLR notified Moss of a formal investigation, due to his breach of the conditions set forth in his diversion agreement, related to the Lam grievance and requested a written response by September 13, 2012. Moss failed to respond.

91. On October 2, 2012, OLR filed with the Supreme Court of Wisconsin a *Notice of Motion and Motion Requesting Order to Show Cause* as to why Moss's law license should not be temporarily suspended for his willful failure to

cooperate with the Lam grievance, as well as other grievance investigations.

92. On October 3, 2012, the Supreme Court of Wisconsin issued an order requiring Moss to show cause, in writing, within 20 days of the date of the order why OLR's motion should not be granted and his law license should not be temporarily suspended. Moss failed to respond.

93. On November 14, 2012, the Supreme Court of Wisconsin issued an order granting OLR's motion and temporarily suspended Moss's law license.

COUNT SEVENTEEN

94. By failing to return messages from Lam inquiring into the status of his bankruptcy and the \$1,000 preference, Moss violated SCR 20:1.4(a)(4).

COUNT EIGHTEEN

95. In failing to provide a written response to the Lam grievance, Moss violated SCR 22.03(2) and SCR 22.03(6), enforced via SCR 20:8.4(h).

Lambert Grievance (Counts 19 through 23)

96. On March 7, 2011, Charity and Scott Lambert (Lamberts) hired Moss to represent them in a joint Chapter 7 bankruptcy. Moss charged them a \$1,400 flat fee, which

included the \$299 filing fee, credit counseling and debtor education fees, and attorney's fees for filing the bankruptcy.

97. On that same date, the Lamberts informed Moss that Mr. Lambert's wages were being garnished as a result of a money judgment totaling \$2,327.90 entered against the Lamberts on November 3, 2010, in Trempealeau County Case No. 2010SC0574. Moss agreed to take his flat fee from the previously garnished wages and return the leftover funds to the Lamberts.

98. Moss agreed to negotiate with the Lamberts' mortgage lender in an attempt to lower their interest rate as a part of the representation.

99. On March 16, 2011, Moss filed the petition. On May 27, 2011, Moss filed a reaffirmation agreement regarding the Lamberts' mortgage.

100. On May 30, 2011, Moss filed an adversary proceeding to collect Mr. Lambert's garnished wages. As a part of the proceeding, the entire preference payment was returned to Moss. Moss failed to account for and return any of the leftover funds to the Lamberts.

101. On September 28, 2011, Moss filed a revocation of the reaffirmation agreement, filed May 27, 2011.

102. Moss failed to inform the Lamberts of the status or results of his purported negotiations with their mortgage lender.

103. On November 17, 2011, the order discharging debtors was filed.

104. In February 2012, Moss stopped communicating with the Lamberts and failed to return their phone calls.

105. Moss failed to inform the Lamberts that he was terminating his representation and/or closing his law office and moving to Oregon. He failed to return their client file.

106. On June 12, 2012, the mortgage lender notified the Lamberts that they had breached their agreement to pay their mortgage since March 1, 2010, and they owed \$38,728.70 due by July 12, 2012.

107. On April 28, 2012, Moss sent a letter to OLR stating that he would not respond to any grievances. Moss enclosed his State Bar of Wisconsin membership card to serve as his resignation from the State Bar of Wisconsin.

108. On May 25, 2012, OLR wrote to Moss informing him that voluntary resignation is governed by SCR 10.03(7) and that OLR would continue to provide him notice of any grievance filed against him.

109. On August 21, 2012, OLR notified Moss of the Lambert grievance and requested a written response by September 13, 2012. Moss failed to respond.

110. On October 2, 2012, OLR filed with the Supreme Court of Wisconsin a *Notice of Motion and Motion Requesting Order to Show Cause* as to why Moss's law license should not be temporarily suspended for his willful failure to cooperate with the Lambert grievance, as well as other grievance investigations.

111. On October 3, 2012, the Supreme Court of Wisconsin issued an order requiring Moss to show cause, in writing, within 20 days of the date of the order why OLR's motion should not be granted and his law license should not be temporarily suspended. Moss failed to respond.

112. On November 14, 2012, the Supreme Court of Wisconsin issued an order granting OLR's motion and temporarily suspended Moss's law license.

COUNT NINETEEN

113. By failing to inform the Lamberts of case developments such as the nature, extent, and outcome of his

purported negotiations with the Lamberts' mortgage lender, Moss violated SCR 20:1.4(a)(3)⁷.

COUNT TWENTY

114. Beginning in February 2012, by failing to respond to phone inquiries and messages from the Lamberts, Moss violated SCR 20:1.4(a)(4).

COUNT TWENTY-ONE

115. In having recouped a preference payment and by failing to deliver any portion to which the Lamberts were entitled, and by failing to account to the Lamberts regarding the amount of funds recouped, the portion (if any) to which the Lamberts were entitled, and the portion (if any) that he intended to apply toward expenses and/or attorney's fees, Moss violated SCR 20:1.15(d)(1) and SCR 20:1.15(d)(2)⁸.

COUNT TWENTY-TWO

116. By closing his law office and thereby effectively terminating his representation of the Lamberts, by failing to notify the Lamberts of his office closure, by failing to

⁷ SCR 20:1.4(a)(3) provides in pertinent part: "A lawyer shall keep the client reasonably informed about the status of the matter ..."

⁸ SCR 20:1.15(d)(1) and (2) provide: "(1) 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. (2) Upon final distribution of any trust property or upon request by the client or a 3rd party having an

provide the Lamberts with contact information and case materials, and by otherwise failing to take steps to protect the Lamberts' interests upon termination of representation, Moss violated SCR 20:1.16(d).

COUNT TWENTY-THREE

117. By failing to provide a written response to the Lambert grievance, Moss violated SCR 22.03(2) and SCR 22.03(6), enforced via SCR 20:8.4(h).

Qualley Grievance
(Counts 24 through 29)

118. On August 4, 2011, Kelli and James Qualley (Qualleys) hired Moss to represent them in a joint Chapter 7 bankruptcy. Moss charged them a \$1,500 flat fee. He did not have the Qualleys sign a written fee agreement.

119. On August 4, 2011, the Qualleys paid Moss \$300.

120. On February 3, 2012, after missing several scheduled meetings with the Qualleys, Moss met with them. He informed the Qualleys that he was closing his law office and moving to Oregon. Moss agreed to continue representing them after he moved to Oregon. Moss assured the Qualleys that he would file the petition after March 1, 2012. The Qualleys paid Moss \$600.

ownership interest in the property, the lawyer shall promptly render a full written accounting regarding the property."

121. Moss agreed to meet with Mrs. Qualley before he moved so he could return her original check stubs and she could pay him the remaining fee. On February 26, 2012, Mrs. Qualley emailed Moss asking him when they could meet. Moss failed to respond.

122. On March 12, 2012, concerned that Moss would not proceed with the bankruptcy without the remainder of the fee, Mrs. Qualley mailed \$300 to Moss's Oregon address.

123. In March 2012, Moss failed to respond to Mrs. Qualley's numerous emails.

124. In late March 2012, Mrs. Qualley spoke with Moss who assured her he would file the petition.

125. On April 1, 2012, Mrs. Qualley emailed Moss, who stated he would file the petition that week.

126. On April 4, 2012, Mrs. Qualley emailed Moss requesting that he contact her. Moss responded that he was doing what he could and would get a draft to her before he filed the petition.

127. Moss failed to file the petition.

128. In April, 2012, Moss failed to respond to Mrs. Qualley's numerous emails. On April 16, 2012, Mrs. Qualley terminated the representation via email and requested that Moss return her client file and \$800 for unearned fees.

129. The Qualleys retained new counsel, who wrote to Moss on April 25, 2012, requesting that he promptly provide, "all documents, information, communications received from, or provided to the Qualleys, and refund the Qualleys' \$1200 flat fee."

130. On April 28, 2012, Moss wrote a letter to the Qualleys enclosing the Qualleys' file. Moss did not refund any of the Qualleys' flat fee.

131. On May 20, 2012, the Qualleys' attorney sent Moss a follow-up letter asking that he promptly send a copy of the Qualleys' fee agreement, all itemized bills, and a statement as to when and how those bills were provided to the Qualleys. Moss failed to respond.

132. On April 28, 2012, Moss sent a letter to OLR stating that he would not respond to any grievances. Moss enclosed his State Bar of Wisconsin membership card to serve as his resignation from the State Bar of Wisconsin.

133. On May 25, 2012, OLR wrote to Moss informing him that voluntary resignation is governed by SCR 10.03(7) and that OLR would continue to provide him notice of any grievance filed against him.

134. On August 9, 2012, OLR notified Moss of the Qualley grievance and requested a written response by September 3, 2012. Moss failed to respond.

135. On October 2, 2012, OLR filed with the Supreme Court of Wisconsin a *Notice of Motion and Motion Requesting Order to Show Cause* as to why Moss's law license should not be temporarily suspended for his willful failure to cooperate with the Qualley grievance, as well as other grievance investigations.

136. On October 3, 2012, the Supreme Court of Wisconsin issued an order requiring Moss to show cause, in writing, within 20 days of the date of the order why OLR's motion should not be granted and his law license should not be temporarily suspended. Moss failed to respond.

137. On November 14, 2012, the Supreme Court of Wisconsin issued an order granting OLR's motion and temporarily suspended Moss's law license.

138. The Qualleys filed a claim against Moss with the Fund. The Fund approved a claim for \$1,200.

COUNT TWENTY-FOUR

139. By missing several scheduled meetings with the Qualleys without notifying them that he would be unable to attend, Moss violated SCR 20:1.3.

COUNT TWENTY-FIVE

140. By failing to respond to Ms. Qualley's numerous emails sent in February, March, and April 2012, except emails sent on April 2 and April 4, 2012, in which he indicated that he would (but never did) file the petition that week, Moss violated SCR 20:1.4(a)(4).

COUNT TWENTY-SIX

141. In having accepted \$1,200 to represent the Qualleys in a bankruptcy case and, thereafter, failing to even file a bankruptcy petition while retaining the entire amount, Moss violated SCR 20:1.5(a).

COUNT TWENTY-SEVEN

142. In having accepted \$1,200 to represent the Qualleys in a bankruptcy case, with the expectation that the total flat fee would be \$1,500, and by failing to enter into a formal written fee agreement with the Qualleys, Moss

violated SCR 20:1.5(b)(1) and (2)⁹.

COUNT TWENTY-EIGHT

143. By failing to refund the unearned portion of the flat fee upon termination of representation when he had not completed the agreed-upon legal services for which he was hired, Moss violated SCR 20:1.16(d).

COUNT TWENTY-NINE

144. By failing to provide a written response to the Qualley grievance, Moss violated SCR 22.03(2) and SCR 22.03(6), enforced via SCR 20:8.4(h).

Stolpa Grievance
(Counts 30 through 35)

145. In September 2010, Kim Stolpa (Stolpa) and her then-husband, Glen Gibbons (Gibbons), hired Moss to represent them in a joint Chapter 7 bankruptcy. Moss charged them a \$1,500 flat fee. Moss did not have them sign a written fee agreement. Ms. Stolpa and Mr. Gibbons paid Moss \$1,500 in cash.

⁹ 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 \$1,000 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 to the client in writing. (2) If the total cost of representation to the client, including attorney’s fees, is more than \$1,000, the purpose and effect of any retainer or advance fee that is paid to the lawyer shall be communicated in writing.”

146. Despite agreeing to do so, Moss failed to contact Ms. Stolpa's and Mr. Gibbons' mortgage lender in an attempt to negotiate a reaffirmation agreement.

147. From September 2010 through August 2011, Moss failed to return most of Mr. Gibbons' and Ms. Stolpa's phone calls concerning the status of their bankruptcy. When Moss did respond, he made excuses as to why he failed to file the petition.

148. In February 2011, the mortgage lender filed a foreclosure action. A default judgment was granted in April 2011.

149. In June 2011, Mr. Gibbons and Ms. Stolpa filed for divorce.

150. On August 19, 2011, Moss filed the bankruptcy petition.

151. In October 2011, Moss had Mr. Gibbons sign three reaffirmation agreements, which were filed in December 2011. Moss informed Mr. Gibbons that Ms. Stolpa needed to sign a reaffirmation agreement for her motorcycle, but Moss failed to take any further action regarding the motorcycle.

152. From October 2011 through March 2012, Moss failed to return Ms. Stolpa's numerous phone calls.

153. The divorce was finalized in December 2011.

154. In February 2012, Mr. Gibbons and Ms. Stolpa met with Moss at his Galesville law office. During the meeting they saw a handgun in Moss's lap and in his hand as he was sitting behind his desk. Moss informed them he was carrying the handgun for protection from people who were hounding him and from clients who stalked and harassed him.

155. In March 2012, Moss again met with Mr. Gibbons and Ms. Stolpa. Ms. Stolpa signed a reaffirmation agreement for her motorcycle. Moss failed to file the reaffirmation agreement.

156. Throughout the representation, Moss either cancelled or failed to appear at several scheduled meetings.

157. On April 28, 2012, Moss sent a letter to Mr. Gibbons and Ms. Stolpa enclosing his motion to withdraw from the bankruptcy. Moss informed them that he highly recommended that they hire another attorney to complete the bankruptcy given the amount of money at issue. Moss failed to return their entire file.

158. On May 4, 2012, Moss filed a motion to withdraw from the bankruptcy. On May 9, 2012, the court issued an order granting the motion and granting Mr. Gibbons and Ms.

Stolpa an extension to file their financial management course certifications until June 15, 2012.

159. The order discharging debtors was filed on June 15, 2012.

160. On April 28, 2012, Moss sent a letter to OLR stating that he would not respond to any grievances. Moss enclosed his State Bar of Wisconsin membership card to serve as his resignation from the State Bar of Wisconsin.

161. On May 25, 2012, OLR wrote to Moss informing him that voluntary resignation is governed by SCR 10.03(7) and that OLR would continue to provide him notice of any grievance filed against him.

162. On June 6, 2012, OLR provided Moss notice of the Stolpa grievance and requested a written response by June 29, 2012. Moss failed to respond.

163. On October 2, 2012, OLR filed with the Supreme Court of Wisconsin a *Notice of Motion and Motion Requesting Order to Show Cause* as to why Moss's law license should not be temporarily suspended for his willful failure to cooperate with the Stolpa grievance, as well as other grievance investigations.

164. On October 3, 2012, the Supreme Court of Wisconsin issued an order requiring Moss to show cause, in writing,

within 20 days of the date of the order why OLR's motion should not be granted and his law license should not be temporarily suspended. Moss failed to respond.

165. On November 14, 2012, the Supreme Court of Wisconsin issued an order granting OLR's motion and temporarily suspended Moss's law license.

COUNT THIRTY

166. By failing to file the bankruptcy petition for approximately 11 months after he was paid, by failing to ever file a reaffirmation agreement for Ms. Stolpa's motorcycle, and by failing to contact their mortgage lender to attempt to negotiate a reaffirmation agreement, Moss violated SCR 20:1.3.

COUNT THIRTY-ONE

167. By failing to inform Ms. Stolpa and Mr. Gibbons of case developments such as the nature, extent, and outcome of his purported negotiations with the mortgage lender, Moss violated SCR 20:1.4(a)(3).

COUNT THIRTY-TWO

168. By failing to return his clients' phone calls between September 2010 and August 2011 and, again, between October 2011 and March 2012, Moss violated SCR 20:1.4(a)(4).

COUNT THIRTY-THREE

169. In having accepted \$1,500 to represent Ms. Stolpa and Mr. Gibbons in a bankruptcy case and in failing to enter into a formal written fee agreement with them, Moss violated SCR 20:1.5(b)(1) and (2).

COUNT THIRTY-FOUR

170. By having a handgun visible on his lap and in his hand during a meeting with his clients, Moss violated SCR 20:8.4(g)¹⁰.

COUNT THIRTY-FIVE

171. By failing to provide a written response to the Stolpa grievance, Moss violated SCR 22.03(2) and SCR 22.03(6), enforced via SCR 20:8.4(h).

WHEREFORE, the Office of Lawyer Regulation asks that Attorney David V. Moss be found in violation of the Supreme Court Rules as alleged in connection with Counts One through Thirty-five of this Complaint; that the Court suspend David V. Moss's Wisconsin law license for nine (9) months; that the Court order restitution to the Wisconsin Lawyers' Fund for Client Protection as follows:

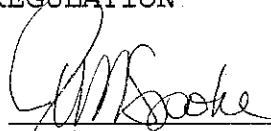
¹⁰ SCR 20:8.4(g) provides: "It is professional misconduct for a lawyer to violate the attorney's oath."

- \$750 attributable to Horst
- \$1,000 attributable to Ms. Hayter
- \$1,000 attributable to the Jacques
- \$1,200 attributable to the Qualleys

and that the Supreme Court of Wisconsin order such other and further relief as may be just and equitable, including an award of costs.

Dated this 19 day of September, 2013.

OFFICE OF LAWYER REGULATION



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