

In the Matter of Disciplinary Proceedings
Against John R. Maynard, Attorney at Law:

OFFICE OF LAWYER REGULATION,

Case No. 2013AP 2362 -D

Complainant,

-v-

Case Code: 30912

JOHN R. MAYNARD,

Respondent.

RECEIVED

OCT 25 2013

COMPLAINT

CLERK OF SUPREME COURT
OF WISCONSIN

Now comes the Office of Lawyer Regulation of the Supreme Court of Wisconsin (OLR),
by its undersigned retained counsel, and alleges as follows:

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

2. John R. Maynard (Maynard) was admitted to the practice of law in Wisconsin on
August 28, 1973 (State Bar No. 1011039). The most recent address furnished by Maynard to the
State Bar of Wisconsin is 809 E. Lake Forest Ave., Milwaukee, Wisconsin 53217.

WISCONSIN DISCIPLINE

3. On December 29, 2009, the Court suspended Maynard's license to practice law
for ninety days, effective February 1, 2010, for failing to notify his former law firm of payments
for legal services that he received and deposited in his personal account, and for making false
and misleading communications when he failed to identify his "of counsel" status when he used

law firm stationery and when he represented on a postal application that he was a principal of the law firm. *In re Disciplinary Proceedings Against Maynard*, 2009 WI 106, 322 Wis. 2d 53, 776 N.W.2d 583.

4. On January 31, 2011, Maynard was reinstated from his disciplinary suspension. However, his Wisconsin law license was not restored to good standing until May 2, 2011, due to existing administrative suspensions of his license caused by his non-compliance with continuing legal education (CLE) requirements and failure to pay State Bar of Wisconsin dues.

5. On September 1, 2011, the Court temporarily suspended Maynard's license to practice law for his willful failure to respond or cooperate in an OLR grievance investigation involving the conduct that is the subject of this complaint. *OLR v. Maynard*, 2011XX773-D. The temporary suspension remains in effect.

6. In addition to the temporary disciplinary suspension, Maynard's license to practice law is currently administratively suspended for failure to pay State Bar dues, failure to file a trust account certification, and non-compliance with CLE requirements.

7. In summary, except for the period from May 2 through August 31, 2011, Maynard's license to practice law in Wisconsin has been under disciplinary and/or administrative suspension from February 1, 2010 to the present.

CALIFORNIA DISCIPLINE

8. Maynard was admitted to the California bar in March 1973. His license to practice law in California was suspended for ninety days (from August 21 through November 19, 2011) as reciprocal discipline to his ninety day suspension in Wisconsin. *In re John Ralph Maynard*,

No. S193063 (Cal. Jul. 22, 2011). On April 29, 2012, Maynard's California license was inactivated for having failed to comply with his obligations while he was suspended. On October 15, 2012, he was suspended for his failure to take and pass the Multistate Professional Responsibility Examination by August 21, 2012, which was a condition of reinstatement. Ultimately, Maynard was disbarred from California for his non-compliance, effective August 16, 2013. *In re John Ralph Maynard*, No. S210625 (Cal. Jul. 17, 2013).

POST-SUSPENSION ORDER CONDUCT

9. Between the time the Wisconsin suspension order was issued on December 29, 2009, and its February 1, 2010, effective date, Maynard was in practice as a partner in Maynard, Schmitt & Associates, W62 N248 Washington Avenue, Suite 205, Cedarburg WI 53012. The only other attorney at Maynard, Schmitt & Associates was Maynard's then-partner, Mark S. Schmitt (Schmitt). Their firm employed no secretary and no one else worked with them.

10. As of February 1, 2010, Maynard was attorney of record in seven cases pending in the courts and he was performing legal services for other clients:

a. *In the Estate of Phouvieng Thammavongsa*, Case No. 2006-PR-98 (Milw. Co. Cir Ct.). Maynard represented Ammata Thammavongsa in the matter. He appeared at a show cause hearing on October 16, 2007, concerning the failure to close the estate. On November 5, 2007, he agreed to be personal representative, but was subsequently unable to obtain a bond. Maynard appeared at a series of hearings concerning the failure to close the estate on February 19, March 18, June 17 and December 16, 2008, and June 16 and September 15, 2009. The latter hearing was adjourned to a later date, but Maynard failed to appear. Maynard never withdrew and the case was still pending as of February 1, 2010.

b. *Kiz Toys, Inc.* In 2007, the newly created corporation, Kiz Toys, Inc., was registered in Georgia. The CEO was introduced to Maynard through Schmitt. On or about April 1, 2007, Maynard entered into an agreement to act as general counsel to the corporation in exchange for shares of corporate stock. The

corporation was headquartered in Georgia. Maynard was providing legal services to Kiz Toys in the months leading up to his February 1, 2010, license suspension. Among other things, this included reviewing changes to the corporate by-laws, and the preparation of papers associated with the corporate board's November 2009 decision to effectively become a Delaware corporation by creating a Delaware corporation by the same name and then merging with it. The Delaware corporation papers were filed on November 20, 2009. In January 2010, Maynard advised Kiz Toys regarding problems with the stock ledger and certificates for the Georgia corporation, and offered to put together some minutes for annual meetings of directors and shareholders for 2008 and 2009 since no such minutes existed for 2007 through 2009. Maynard did not terminate his representation of Kiz Toys prior to February 1, 2010.

c. *M&I Marshall & Ilsley Bank v. Heckel, et al.*, 2009AP1200 (Wis. Ct. App.). During July 2008, Maynard began representing Richard D. Heckel, Robert D. Heckel II, and seven other named defendants in *M&I Marshall & Ilsley Bank v. Heckel, et al.*, Case No. 2008-CV-806 (Marathon Co. Cir. Ct.). Summary judgment was granted against Richard D. Heckel and Robert D. Heckel II, and Maynard represented them on appeal. Maynard filed the appellants' brief and appendix on September 18, 2009. In a letter dated November 3, 2009, he advised the court of appeals that he would not be filing a reply brief. The appeal was still pending on February 1, 2010, and Maynard never withdrew.

d. *ProStar, Inc. v. Stamness, et al.*, Case No. 2009-CV-992 (Sauk Co. Cir. Ct.). Maynard represented ProStar, Inc. from the commencement of the action. Maynard signed the summons and complaint and, three months later and just two weeks before his disciplinary suspension went into effect, he also signed the answer to a defendant's counterclaim. The case was still pending on February 1, 2010, and Maynard had not withdrawn. Maynard remained attorney of record in the court record until Attorney Lindsey King appeared for ProStar, Inc. at a motion hearing on September 3, 2010.

e. *Burkart v. Floral Expressions by Ron*, Case No. 2009-SC-954 (Ozaukee Co. Cir. Ct.). Maynard represented Floral Expressions by Ron and appeared at the December 2, 2009, pretrial conference. As of February 1, 2010, the case was still pending, a trial was scheduled for February 15, 2010, and Maynard never withdrew.

f. *In the Estate of Martha I. Feyrer*, Case No. 2009-PR-1807 (Milw. Co. Cir. Ct.). Maynard commenced the action and was attorney of record for the personal representative, Mary Jane Frankfurth, daughter of the decedent. The case was still pending on February 1, 2010, and Maynard never withdrew.

g. *Petrolon, Inc. v. Badger Sheet Metal Works*, Case No. 2010-CV-34 (Brown Co. Cir. Ct.). Maynard commenced this action for Petrolon in January 2010. The case was still pending on February 1, 2010, and Maynard had not withdrawn.

h. *Paul Hallgren*. During January 2010, Maynard was drafting Articles of Organization for his client, Paul Hallgren, who wanted to establish his construction business as a limited liability company.

11. On January 29, 2010, Maynard wrote to Greg Koller of ProStar. As required by SCR 22.26(1)(a), the letter was sent by certified mail and stated that Maynard was being suspended from the practice of law for ninety days and he would be unable to act as ProStar's attorney during that period. But rather than advising ProStar to seek legal advice of its choice elsewhere, as required by SCR 22.26(1)(b), Maynard wrote, in part:

This should not adversely affect you. The only two matters currently pending – the Poloplatz and Spring Into Motion litigation – are being handled by my partner, Mark Schmitt. Mark is an experienced litigator, while I am not. As an alternative, you can seek legal services elsewhere regarding these two matters.

If additional items come up over the next 90 days, you should also contact Mark.

12. The January 29, 2010, letter to Greg Koller of ProStar was the only letter notifying a client of his suspension that John Maynard produced for OLR, despite OLR's requests for information on, and copies of, all such letters.

13. On February 1, 2010, the suspension of Maynard's license to practice law in Wisconsin became effective. On or about that date, ProStar terminated its relationship with John Maynard.

14. Notwithstanding the suspension order of December 29, 2009, at no time on or before February 1, 2010, did Maynard provide a written notification of the suspension of his license to practice law in Wisconsin to any of the clients, courts or opposing counsel in any of the matters listed in paragraph 10 of this complaint, except to client ProStar.

15. Maynard continued to act as general counsel for Kiz Toys following the suspension of his license to practice law in Wisconsin. On February 3, 2010, Kiz Toys inquired of Maynard about the status of several ongoing tasks that he was handling for the corporation, including reporting Kiz Toys' status as a Delaware corporation to Georgia and South Carolina and providing Kiz Toys with the original Delaware articles of incorporation, corporate minutes, minutes book, stock certificates, and corporate stock register.

16. On February 4, 2010, lacking any notice of Maynard's suspension, Attorney Robert Sweeney sent Maynard the defendant's first set of discovery requests in *Petrolon v. Badger Sheet Metal Works*. No response was ever made on behalf of the plaintiffs.

17. On February 8, 2010, Maynard attended a meeting at the offices of Kiz Toys in Alpharetta, Georgia. Contemporaneous written notes of the meeting were made. Chris Moreau, the CEO/CFO of Kiz Toys, discussed Maynard's revisions to the engagement agreement with him. The revised agreement was to be sent out for signature by both Maynard and Schmitt. Maynard agreed to make daily updates until he finished a number of tasks, including: (a) reviewing the final version of the by-laws; (b) completing and returning the corporate merger documents to be filed in Georgia and Delaware; (c) dissolving the Georgia corporation; (d) finalizing the foreign corporation applications for Georgia and South Carolina; (e) finishing the Private Placement Memorandum (PPM) needed to describe the company to potential investors;

and, (f) preparing language for a restriction notification language to be stamped on the back of stock certificates. At the meeting, Maynard provided some previously unreviewed corporate minutes, the articles of merger, a corporation records book, Delaware stock certificates plus a medical reimbursement plan document that needed signatures.

18. Maynard has never been licensed to practice law in Georgia.

19. On or about February 8, 2010, Kiz Toys asked Maynard to contact Source 5 Payroll, Inc., of Atlanta, Georgia, to attempt to resolve a dispute. Kiz Toys had apparently failed to fund its payroll of June 5, 2009, and Source 5 Payroll was out-of-pocket for the shortfall and wanted payment.

20. On February 10, 2010, Sandra Gualtieri of Kiz Toys e-mailed Maynard about finalizing a list of things to finish.

21. Shortly afterwards, also on February 10, 2010, Kiz Toys faxed Maynard a copy of a revised Legal Services Agreement. This agreement was subsequently signed by both Maynard and Mark Schmitt and returned to Kiz Toys. The agreement continued to award Maynard, Schmitt & Associates shares in Kiz Toys as compensation.

22. Because Maynard failed to notify the Sauk County Circuit Court of his suspension from the practice of law, on February 10, 2010, the court sent Maynard a notice of hearing for a telephone scheduling conference in *ProStar v. Stamness*.

23. On February 11, 2010, Maynard sent an e-mail to Sandra Gualtieri at Kiz Toys. He attached corporate minutes and a legend for the back of the stock certificates. He also promised to deliver the “merger stuff” and the PPM “in a while.”

24. On February 12, 2010, Maynard spoke by telephone with Ms. Gualtieri. During the conversation, Maynard advised that he and Schmitt were reviewing the revised Legal Services Agreement. Maynard also promised to provide the corrected merger document and the revised PPM that day. Maynard also stated that he was attempting to reach Attorney LoRusso, the lawyer representing Source 5 Payroll, but had not spoken with him yet. In a subsequent e-mail to Maynard and others memorializing the conversation, Ms. Gualtieri noted that Maynard had promised on February 8, 2010, to file papers with the Georgia Secretary of State as quickly as possible to record the change of Kiz Toys from a Georgia corporation to a Delaware corporation. She also noted that Maynard had promised to file foreign corporation applications to cover the operations of Kiz Toys in Georgia and South Carolina.

25. On February 15, 2010, Maynard appeared at the court trial in *Burkart v. Floral Expressions by Ron*. Maynard cross-examined and re-cross-examined the plaintiff, Suzette Burkart. He also performed the direct and re-direct examinations of the owner of Floral Expressions by Ron, Ron Reel. At the conclusion of the trial that day, Ozaukee County Circuit Court Judge Paul Malloy ruled in favor of the plaintiff and transmitted a copy of the judgment to Maynard in his capacity as counsel for the defendant.

26. On or about February 17, 2010, Schmitt prepared a draft e-mail to Attorney LoRusso regarding the dispute between Source 5 Payroll and Kiz Toys. On February 17, 2010, Schmitt sent Maynard a copy of the draft e-mail, apparently for Maynard's use.

27. On February 15, 2010, Maynard spoke by telephone with Attorney LoRusso. Maynard represented himself as an attorney and stated that he represented Kiz Toys as the corporation's General Counsel. Maynard advised that he was located in Wisconsin.

28. Attorney LoRusso subsequently checked Maynard's license status and learned that his license was under disciplinary suspension. However, based on information he received from the State Bar of Wisconsin about a "general counsel exception" for practicing in Wisconsin, Attorney LoRusso initially believed it was appropriate to continue speaking with Maynard.

29. On February 18, 2010, a paralegal with the LoRusso Law Firm e-mailed Maynard and asked him to "please confirm that you are handling this matter as counsel for Kiz Toys."

30. On February 18, 2010, OLR wrote to Maynard concerning the effects of his suspension. The letter was sent in care of Maynard's counsel in the disciplinary proceedings, Attorney Nathaniel Cade. In addition to enclosing copies of SCR 22.26 and 22.28, the letter included the following cautions:

You must avoid holding yourself out to the public as an attorney in any respect. This includes use of stationary, checks, office signs, website or other computer listings identifying you as an attorney, telephone listing renewals or any misrepresentation to the effect that you are validly-licensed to act as an attorney.

You must avoid placing yourself in situations where members of the public or legal profession might construe that you are continuing to practice law. Any conduct you undertake involving the practice of law may constitute a violation of Wis. Stat. § 757.30.

31. By e-mail dated February 19, 2010, Attorney Cade advised OLR that Maynard requested that OLR continue to communicate with Maynard through Attorney Cade.

32. On or about February 19, 2010, both Maynard and Schmitt signed the revised Legal Services Agreement with Kiz Toys. Each identified himself as a partner in Maynard Schmitt & Associates, LLP. The agreement was then faxed back to Kiz Toys on February 19, 2010.

33. The Legal Services Agreement with Kiz Toys expressly identified Maynard Schmitt & Associates, LLP, as “the Firm,” and recited in part:

This will confirm that the Clients have asked the Firm to assist them in connection with all of their legal matters. The Firm will be happy to assist Clients with these matters....

* * *

The Firm is representing the Clients....

* * *

The Firm’s fees will be paid in shares of Kiz Toys, Inc. Issued to the Firm. ... If Kiz Toys, Inc. becomes a public company or is sold, the Firm will charge the company for those services at its standard hourly rates.

34. During an exchange of e-mails between Ms. Gualtieri of Kiz Toys and Maynard on February 19 and 20, 2010, Maynard promised that he would provide her with the PPM he was preparing and the merger document by February 21, 2010.

35. On February 22, 2010, Ms. Gualtieri wrote to Maynard reminding him that he had promised to send the PPM to her that day “as is.” She also noted that she had returned the draft merger document to him for corrections. Ms. Gualtieri reminded Maynard that he had promised to file the necessary paperwork with Georgia and South Carolina to register Kiz Toys as a foreign corporation and to change Kiz Toys from a Georgia to a Delaware corporation in the records of the Georgia Secretary of State. Ms. Gualtieri asked for a status report on those tasks.

36. On February 23, 2010, Maynard replied to Ms. Gualtieri:

As I explained previously, Mark and I are holding off on all work until our out of pocket expenses have been paid.

I am, however, making an exception for the PPM since Chris will need it to raise money from investors.

Here it is in its current state. Final to you tomorrow.

37. On February 22, 2010, Maynard again spoke by telephone with Attorney LoRusso concerning the dispute between Kiz Toys and Source 5 Payroll.

38. On February 24, 2010, Kiz Toys sent both Maynard and Schmitt copies of an agreement with Macy's and a copy of a default notice with a demand for payment of \$305,000 by February 25, 2010. Kiz Toys asked that Macy's be contacted and arrangements made for Kiz Toys to pay by a later date, since the company was unable to pay at that time.

39. On February 24, 2010, Maynard executed a sworn affidavit asserting that we was in compliance with SCR 22.26(1)(e) (SCR 22.26(1)(e) Affidavit). Maynard claimed to have undertaken steps to close his law practice, specifically including, "My name has been removed from my law firm's stationary." Maynard's affidavit did not list by name any client with pending matters as of February 1, 2010. Maynard identified as actions pending on that date before courts or administrative agencies only *ProStar v Stamness* and *ProStar, Inc. v. Spring Into Motion*, the latter which he described as, "A suit to be filed next month by someone other than me." Maynard's affidavit further represented, "There are no other matters pending before any court or administrative agency." Aside from *ProStar*, Maynard's affidavit did not disclose his representation as of February 1, 2010, of any of the other clients set forth in the paragraph 10 of this complaint.

40. On February 25, 2010, Maynard spoke with Attorney Rachelle Stern of Macy's, Inc. He documented their conversation in an e-mail to her, promising payment from the anticipated future sale of stock in Kiz Toys.

41. On February 26, 2010, OLR received a facsimile from Schmitt, conveying Maynard's executed SCR 22.26(1)(e) Affidavit.

42. On March 1, 2010, Maynard provided Kiz Toys with his draft of Articles of Merger. Also on March 1, 2010, Maynard spoke again by telephone with Attorney LoRusso concerning the dispute between Kiz Toys and Source 5 Payroll. Maynard stated that he would extend a written offer on behalf of Kiz Toys.

43. On or about March 3, 2010, Maynard provided Kiz Toys with his draft of the PPM and a corrected merger document. Ms. Gualtieri acknowledged receipt of both and asked, "Now, if you would please help Kiz to get our secretary of state legalities straightened out."

44. On March 4, 2010, Kiz Toys consulted Maynard concerning a complaint from a note holder asserting that if his note was not paid off by March 11, 2010, Kiz Toys would be in default. Maynard also provided a revised PPM to Kiz Toys that day.

45. On March 5 and 6, 2010, Kiz Toys consulted Maynard concerning the handling of some anticipated employee terminations, including the stock options held by those employees. Maynard provided a Severance Agreement and legal advice to Ms. Gualtieri.

46. On March 6, 2010, Ms. Gualtieri asked Maynard where things stood on changing the status of the corporation in Georgia to a foreign corporation and correcting the foreign corporation filing in South Carolina to indicate Kiz Toys was a Delaware, rather than a Georgia, corporation. Maynard responded on March 8, 2010, that he would need the signed Articles of Merger before he could proceed. An electronic copy of the signed Articles was sent by Kiz Toys to Maynard on March 8, 2010, and again on March 10, 2010.

47. On March 9, 2010, Maynard and Attorney LoRusso spoke again by telephone regarding the Kiz Toys / Source 5 Payroll matter. Attorney LoRusso mentioned that he had not received any correspondence from Maynard. Maynard promised to send the promised written offer by e-mail.

48. On March 15, 2010, the Articles of Merger prepared by Maynard, which merged the Georgia and Delaware corporations both named Kiz Toys, Inc., were filed with the Georgia Secretary of State. The Articles filed in Georgia include a statement:

This instrument was drafted by and should be returned to:

John R. Maynard, Esq.
Maynard, Schmitt & Associates, LLP
W62 N248 Washington Avenue
Suite 205
Cedarburg, WI 53012
414-840-2818

49. Maynard failed to appear on March 16, 2010, at the rescheduled order to show cause hearing concerning the failure to close the estate in *In the Estate of Phouvieng Thammavongsa*.

50. On March 19, 2010, Maynard advised Kiz Toys that he had sent the Articles of Merger to the Georgia Secretary of State on March 12, 2010.

51. On March 22, 2010, Maynard sent a fax to Attorney LoRusso in the Kiz Toys / Source 5 Payroll matter. The attachment appeared to be a draft of an e-mail to "lorussolawfirm.com" which stated, "I have not heard back from you on Kiz Toy's offer to make an immediate payment of \$6,920.84 in full and final payment on this matter."

52. Maynard's fax cover sheet to Attorney LoRusso was dated March 22, 2010. It included a message reading, "This is coming by Fax since I can't get through on your E-mail." The fax cover sheet was on letterhead for Maynard Schmitt & Associates, LLP.

53. By e-mail dated March 31, 2010, Kiz Toys terminated the services of Maynard and Schmitt, effective April 1, 2010. Maynard responded to the notice of termination by noting that Schmitt was owed \$2,000 and that he was owed about \$500. He requested the immediate issue of stock in Kiz Toys as their compensation. Kiz Toys issued 400,000 shares of stock, in accord with the terms of the Legal Services Agreement.

54. On April 6, 2010, the Court of Appeals sent out a "Notice of Submission on Briefs" in *M&I Marshall & Ilsley Bank v. Heckel*. The Notice was mailed to Maynard, of Maynard, Schmitt & Associates, LLP, as counsel for the Heckels.

55. On April 12, 2010, Maynard mailed a second payment towards costs of his disciplinary proceedings to OLR. The envelope bore a return address label reading:

John Maynard
Maynard Schmitt And Assoc
W62N248 Washington Ave # 205
Cedarburg WI 53012

56. On April 13, 2010, still lacking any notice of Maynard's suspension, Attorney Sweeney copied Maynard with the defendant's motion for summary judgment and cover letter to Judge Mark Warpinski in *Petrolon v. Badger Sheet Metal Works*. An alternative basis for the motion, as described by Attorney Sweeney in his cover letter, was that the plaintiff failed to respond to the discovery requests, including requests for admission, previously sent to Maynard as opposing counsel. Attorney Sweeney asserted that the admissions were therefore all deemed admitted and were dispositive of all issues in the case. The motion was filed with the court on

April 15, 2010. It was the only summary judgment motion filed in the case.

57. On April 13, 2010, the case of *In the Estate of Phouvieng Thammavongsa* was ordered administratively closed for lack of a personal representative.

58. On April 20, 2010, the Court of Appeals sent its opinion and order in *M&I Marshall & Ilsley Bank v. Heckel* to Maynard, of Maynard, Schmitt & Associates, LLP, as counsel for the Heckels.

59. On April 30, 2010, Schmitt signed an amended complaint in *ProStar v. Stamness*. The amended complaint was filed with the court on May 3, 2010.

60. On May 3, 2010, Maynard wrote a letter to OLR Litigation Counsel William Weigel. The letter was written on Maynard Schmitt & Associates, LLP letterhead, and was mailed in an envelope with a return address label stating, in part, "John Maynard / Maynard Schmitt And Assoc." The text of his letter provided:

I have now completed my 90 day period of suspension, without incident.

Accordingly, I intend to resume the full-time practice of law this week.

Unless you disagree with my intentions, there is no reason to respond to this letter.

61. Maynard had previously directed that all communication from OLR concerning the disciplinary action be directed to his attorney, Nathaniel Cade. Attorney Weigel responded to Maynard's May 3, 2010, letter by calling Attorney Cade on May 5, 2010, and advising that Maynard's license was still suspended until further order of the Supreme Court.

62. On May 10, 2010, Maynard sent another payment, his third, towards the costs of his disciplinary action to OLR. He used letterhead for Maynard Schmitt & Associates, LLP, for his transmittal letter.

63. On May 14, 2010, Attorney Sweeney filed his brief in support of the defendant's motion for summary judgment in *Petrolon v. Badger Sheet Metal Works*. Attorney Sweeney noted in his cover letter that he was providing the materials to the plaintiff, "[b]y a copy of this letter and enclosures to opposing counsel, Attorney John Maynard."

64. Attorney Sweeney attempted to telephone Maynard on or about May 14, 2010, before he filed his brief. Attorney Sweeney discovered that Maynard's telephone was disconnected. Attorney Sweeney consulted the State Bar of Wisconsin website in an effort to locate Maynard, and learned that Maynard's license to practice was suspended.

65. On May 18, 2010, Attorney Sweeney received a voice message from Maynard in which Maynard claimed that he was withdrawing as counsel for the plaintiff in *Petrolon v. Badger Sheet Metal Works*, and therefore, the scheduling conference set for May 20, 2010, could be taken off the calendar. Maynard implicitly admitted at the time that he also called the Brown County Circuit Court to take the conference off the calendar and to try to schedule a motion to withdraw as counsel. Months later, after being confronted by OLR Litigation Counsel about apparently practicing law while suspended, Maynard also admitted to making such calls, as well as sending e-mails and a letter.

66. By letter dated May 18, 2010, Attorney Sweeney wrote to Judge Warpinski informing him of the discovery that Maynard's license was suspended, and of the call concerning taking the scheduling conference off the calendar. Attorney Sweeney wrote of the lack of required notice of the license suspension and the resulting waste of the court's time. He expressed his dissatisfaction that his client was forced to defend what Attorney Sweeney described as a frivolous claim and his concern that the case might languish on the court's

calendar. As a secondary concern, he noted, "I do not know how suspended counsel can telephone the Court and remove Scheduling Conferences from the Court's calendar or schedule a Motion to Withdraw as Counsel."

67. Maynard responded to Attorney Sweeney's letter with a letter to Judge Warpinski dated May 19, 2010. His letter was on Maynard Schmitt & Associates, LLP letterhead. In that letter, Maynard asserted that statements made by Attorney Sweeney were "false and misleading."

Maynard wrote, in part:

In his next personal attack, Atty Sweeney points out that I failed to notify the Court of my suspension. While it is true that I inadvertently failed to make the notification, this is probably because I had no reason to take action before the Court during the 90 day period of my suspension. If something would have come up, I either would have made the appropriate notification or it would have been handled by my law partner.

Finally, Atty Sweeney alleges that as a suspended attorney, I called the Court to remove a Scheduling Conference from the docket and to schedule a Motion to Withdraw as Counsel. But apparently Atty Sweeney doesn't study an attorney's records on the internet in any detail before he attempts to use them to his advantage. Any number of sites would have told him that I was suspended for 90 days commencing on February 1, 2010. Thus my suspension was over when I called the Court regarding these two items.

68. Meanwhile OLR Litigation Counsel William Weigel followed up his earlier telephone call to Maynard's attorney, Nathaniel Cade, with a letter dated May 19, 2010, which provides, in part:

You informed me in February that Mr. Maynard requested that OLR continue to communicate to him only through you. I am enclosing a copy of Mr. Maynard's 5/3/10 letter. That letter precipitated our 5/5/10 telephone conversation. We discussed that Mr. Maynard's license would remain suspended pending a specific Supreme Court reinstatement order, which itself would not issue unless and until SCR 22.28(2) was satisfied.

69. On May 20, 2010, Judge Warpinski wrote to Attorney Sweeney and Maynard to cancel the scheduling conference in *Petrolon v. Badger Sheet Metal Works*. Judge Warpinski stated that he had been advised that Maynard had been suspended for 90 days from February 1, 2010, and must pay the costs of the suspension proceedings before he would be eligible for reinstatement. Judge Warpinski also stated that he was suspending the briefing schedule on the defendant's motion for summary judgment until he knew with some certainty whether Maynard could continue to represent the plaintiff.

70. On May 25, 2010, Judge Warpinski wrote to the Clerk of Supreme Court and enclosed a copy of Maynard's May 19, 2010, letter, which indicated that his suspension had concluded. Judge Warpinski requested confirmation whether Maynard had, in fact, been reinstated. Judge Warpinski was subsequently advised that the suspension was still in effect.

71. On May 26, 2010, Attorney Sweeney responded to Maynard's May 19, 2010, letter to Judge Warpinski. Among other things, Attorney Sweeney quoted the provisions of SCR 22.26(1)(c), (2) and (3), and informed Judge Warpinski that staff at Sweeney & Associates had contacted OLR on May 25, 2010, and had been advised that Maynard's suspension was still in effect.

72. On May 26, 2010, the Court of Appeals sent its remittitur in *M&I Marshall & Ilsley Bank v. Heckel* to Maynard, of Maynard, Schmitt & Associates, LLP, as counsel for the Heckels.

73. On May 28, 2010, Schmitt mailed a "Stipulation for Substitution of Signature" in *ProStar v. Stamness* to the Sauk County Clerk of Courts for filing. The cover letter was written on Maynard Schmitt & Associates, LLP letterhead. The Stipulation was signed by both Schmitt

and Maynard. They agreed to substitute Maynard's name for Schmitt's on the amended complaint. The Stipulation was filed in the court record.

74. According to an August 3, 2010, affidavit by Maynard filed September 3, 2010, in *ProStar v. Stamness* (ProStar Affidavit), Maynard purportedly discovered on or about June 1, 2010, that Schmitt's office was abandoned and allegedly found indications that Schmitt had left the state.

75. On June 2, 2010, Maynard wrote to Judge Warpinski regarding *Petrolon v. Badger Sheet Metal Works*. His letter was on Maynard Schmitt & Associates, LLP letterhead and Maynard included his State Bar number with his signature. Maynard wrote, "I called OLR early this week, to learn – much to my surprise – that indeed I was still suspended from the practice of law." Maynard also represented to Judge Warpinski:

I was under the impression that when the period of suspension was up, I was free to resume the practice of law. To be on the safe side in this matter, however, I wrote to OLR telling them of what I planned to do. But, I received no response.

The required paperwork to seek reinstatement will be filed tomorrow, Friday, June 3. I am told that the process usually takes less than a week. This should allow me to timely file my Summary Judgment Brief due in this matter on June 14, which Brief will address Atty Sweeney's allegation that there was no basis, in law or fact, for filing this suit. If there will be a delay in my reinstatement, I will so inform the Court.

76. Simultaneously, in an apparent effort to satisfy the requirements of SCR 22.28(2), of which Maynard had been reminded by OLR Litigation Counsel, Maynard executed an affidavit, dated June 2, 2010. Maynard faxed it to Attorney Cade, who immediately scanned it and forwarded it to OLR as an e-mail attachment. Maynard's fax cover sheet was on letterhead for Maynard Schmitt & Associates, LLP. In his affidavit, Maynard admitted to not fully

complying with the suspension of his license to practice law, but only as follows:

4. Having never before been suspended or subject to disciplinary proceedings, I was unfamiliar with SCR 22.28. It was my belief that reinstatement was automatic when the 90 days was up. I sent a letter to OLR on May 3 so stating.

5. Following the letter to OLR, I wrote two letters to Judge Warpinski in a Brown County matter, Case No. 10 CV 34, which letters defended against two letters sent to the Court by another lawyer who claimed that my suspension continued after the 90 day period had expired. In this same matter, I also filed a Motion to Withdraw as Counsel and asked the Court to remove a Scheduling Conference from its schedule accordingly. I subsequently withdrew my Motion to withdraw.

77. On June 3, 2010, the Clerk of Supreme Court replied to Judge Warpinski's inquiry as to the status of Maynard's license to practice law. The Clerk confirmed that Maynard remained suspended, notwithstanding the passage of 90 days since February 1, 2010.

78. On June 4, 2010, OLR wrote to Maynard's attorney, Nathaniel Cade, with questions about whether Maynard had fully complied with all the terms and conditions of the order of suspension.

79. On June 11, 2010, Maynard wrote to Judge Warpinski regarding *Petrolon v. Badger Sheet Metal Works*. The letterhead on Maynard's letter did not identify him as an attorney or as being associated with a law firm, although it did use the street address of the Maynard Schmitt & Associates firm. Maynard advised the judge:

My suspension from the practice of law remains in effect even though the 90 day suspension period has long since expired. Thus I will not be able to file my responding party brief due on June 14.

I have no idea how long this will go on. Rather than delay this matter any further, I have brought in new counsel who will file a brief within the next 10 days.

80. The letter did not address Judge Warpinski's suspension of the briefing schedule. Maynard later represented to OLR that the "new counsel" he referred to in his June 11, 2010, letter "was my law partner, Mark Schmitt." In any event, no response brief was filed.

81. On June 23, 2010, OLR Litigation Counsel wrote directly to Maynard, with the permission of Attorney Cade, who was also copied, and requested that Maynard address the issues of whether he: (a) failed to give required written notice of his suspension to courts and clients, (b) failed to list a pending matter(s) in his SCR 22.26 Affidavit, and (c) resumed the practice of law while still suspended. Maynard did not respond to that correspondence for more than four months.

82. Meanwhile, Maynard told ProStar that he was still licensed in California and that his suspension in Wisconsin did not affect his ability to practice in California. On June 28, 2010, Maynard filed a "Statement and Designation by Foreign Corporation" with the State of California Office of the Secretary of State, indicating that ProStar would do business in California as "Athletic Surfaces." Maynard signed the Statement as "John R. Maynard, Asst. Secretary." Maynard also supplied his own office address, "W62 N248 Washington Ave Ste 205, Cedarburg WI 53012," as the entity's address, as reflected in the California Secretary of State's online database of businesses.

83. On June 29, 2010, Attorney Sweeney wrote to Judge Warpinski inquiring as to the status of his motion for summary judgment in *Petrolon v. Badger Sheet Metal Works*. Attorney Sweeney sent a copy of the letter to Maynard.

84. On July 8, 2010, Judge Warpinski wrote to Maynard stating, "We have yet to hear from the replacement counsel on the above-captioned matter. Please advise immediately as to that attorney's name." There is no record of a reply from Maynard to the court. Maynard never replied.

85. On July 23, 2010, Judge Warpinski wrote to Attorney Sweeney and asked what action his client was requesting in the *Petrolon v. Badger Sheet Metal Works* case, "inasmuch as this Court has not received any papers from opposing counsel regarding your motion."

86. On August 3, 2010, Maynard executed the ProStar Affidavit, which was filed with the court in *ProStar v. Stamness* on September 3, 2010. Although still suspended, Maynard titled the document "Affidavit of Attorney John Maynard." In the ProStar Affidavit, he asserted that:

1. Your affiant was originally retained by the Plaintiffs in the above captioned case to represent them in an action against the above named defendants.

2. On or around February 1, 2010, your affiant turned his file regarding the above captioned matter over to his law partner, Mark Schmidt *[sic]* and Mark Schmidt *[sic]* agreed to represent the plaintiffs.

3. On or around March 5, 2010, your affiant was served, via facsimile, with Defendants Gary and Deanna Stamness' First Set of Discovery Devices. Your affiant immediately provided those to Attorney Mark Schmidt *[sic]* who was representing the Plaintiffs.

4. On or around June 1, 2010, your affiant discovered that Attorney Mark Schmidt's *[sic]* office was abandoned.

* * *

7. Your affiant is unable to represent the Plaintiffs in this case. On or around July 9, 2010, your affiant contacted Attorney Thomas Frenn of Petrie & Stocking, S.C. to inquire if he would be interested in representing the Plaintiffs in this case....

87. Maynard did not explain in the ProStar Affidavit why he was unable to represent ProStar. He referred to and attached to his affidavit a redacted copy of a letter he stated he found in Schmitt's office, allegedly addressed to a client of Schmitt indicating that Schmitt intended to leave Wisconsin.

88. On August 6, 2010, Attorney Sweeney responded to Judge Warpinski's July 23, 2010, letter inquiring of the requested relief in *Petrolon v. Badger Sheet Metal Works*. Attorney Sweeney requested that judgment be entered in favor of the defendant, plus an award of taxable costs, disbursements and reasonable attorney's fees, awarded jointly and severally against the plaintiff and Maynard personally, because the matter was frivolous, pursuant to WIS. STAT. § 802.05.

89. On August 9, 2010, Judge Warpinski executed an Order for Judgment and a Judgment dismissing the *Petrolon v. Badger Sheet Metal Works* matter with prejudice, finding the matter frivolous and awarding costs, disbursements and reasonable attorney's fees, jointly and severally against the plaintiff and Maynard personally, in the amount of \$6,157.28. Judgment was entered on August 10, 2010.

90. On September 14, 2010, Maynard signed Articles of Amendment for Absolute Automation Systems, Inc., for the purpose of changing the corporation's name to "The Industrial Controls Company, Inc." The Articles were filed the next day with the Wisconsin Department of Financial Institutions. In signing the papers, Maynard used the title "Asst. Secretary." Timothy Thorn, the managing partner of the corporation, later advised OLR that the company had been a client of Maynard's for several years. However, according to Mr. Thorn, when Maynard signed the name-change documents he was "acting as an Assistant Secretary" and did not charge the

company for the service. Maynard represented to OLR that the Articles of Amendment had been prepared by Schmitt. However, the document itself states that it was drafted by Maynard. Maynard asserted to OLR during the course of its investigation that this activity was, “[t]he closest I came to practicing law after my suspension.”

91. Schmitt’s license to practice law was suspended on October 31, 2010, for non-payment of bar dues and failure to file a trust account certification. He has not been reinstated since.

92. By letter dated November 1, 2010, Maynard represented to OLR that he did not practice law “in Wisconsin” between February 1, 2010 and the date of his letter. He wrote: “I have not initiated any laws suits [*sic*], have not filed pleadings and have not attended hearings in any courtroom. Nor have I undertaken work for clients.”

93. Maynard described the only exceptions to that representation as “nothing more than a couple of phone calls and e-mails,” plus his letter to Judge Warpinski dated June 11, 2010. Maynard stated that activity occurred because he believed he was free to resume his practice after 90 days. He stated: “I notified OLR that I was going to do just that. Since I was immediately cut off, I accomplished very little.”

94. Concerning the *Petrolon v. Badger Sheet Metal Works* matter and his failure to give notice of his suspension, Maynard wrote in his November 1, 2010, letter:

As to the Brown County Petrolon case, I filed suit on January 6, 2010, almost a month before my suspension began. Initially, there was no need to notify the Court since nothing was scheduled to occur, and since nothing did occur, during the 90 day initial suspension period.

On April 15, opposing counsel moved for Summary Judgment. His brief was filed on May 14. My brief was due on June 14. I wrote the court a letter on June 11...informing the Court that another attorney was taking

over. That attorney was my law partner, Mark Schmitt. Mark informed me, however, that our case had a fatal flaw that could not be overcome. Our client was so informed.

My client was aware of my suspension since he received copies of all relevant correspondence.

95. Concerning *ProStar v. Stamness*, Maynard wrote that he had “assigned this matter to Mark Schmitt.” Maynard then offered his explanation of the stipulation to substitute his signature on the amended complaint:

Mark said he would like to make some improvements to my original Complaint filed on October 16. Accordingly, he filed an amended Complaint on May 3. A month later Mark asked if he could substitute my signature for his on the Amended Complaint. I agreed only when Mark assured me that the Amended Complaint had been filed before February 1, the effective date of my suspension, an assurance I did not check on. While the sequence of events means I could be said to have filed a Court pleading while I was suspended, little came of it since new counsel (brought in when Mark left) filed their own version of an Amended Complaint.

96. On November 4, 2010, OLR sent Attorney Cade and Maynard a copy of OLR’s recommendation concerning the reinstatement of Maynard.

97. On November 9, 2010, Maynard sent copies of his memorandum opposing a motion for summary judgment and a supporting affidavit to the Ozaukee County Clerk of Courts for filing in *Cornerstone Community Bank v. Schmitt and Maynard*, Case No. 10-CV-431 (Ozaukee Co. Cir. Ct.). Although Maynard was a party to the action and signed the memorandum as “John R. Maynard (ProSe),” his cover letter was on letterhead stating, “John R. Maynard Attorney at Law.”

98. On January 14, 2011, a pre-trial conference occurred in *In the Estate of Martha I. Feyrer*. At the time, the law licenses of both Maynard and Schmitt were suspended. Maynard appeared at the pre-trial conference. The description of the pre-trial conference in the CCAP court record events included the following:

Appearances by: Attorney John Maynard Attorney Mark S. Schmitt.
Based upon this Pretrial conference, it is Ordered that the Objection is GRANTED and the claim is DISALLOWED. Attorney Maynard is to file affidavit of service of his objection. Upon filing, the Objection is GRANTED.

99. On January 28, 2011, OLR discovered that the November 4, 2010, memorandum concerning the reinstatement of Maynard had not been sent to the Clerk of Supreme Court. OLR immediately alerted the Acting Clerk of the Supreme Court to the error and submitted the OLR's memorandum of November 4, 2010. On January 31, 2011, the Supreme Court of Wisconsin issued an order reinstating Maynard from the disciplinary suspension only. The order expressly noted that Maynard's license was also suspended on June 8, 2010, for non-compliance with CLE requirements. Therefore, the actual reinstatement of his license to practice law in Wisconsin depended upon his first complying with current CLE requirements.

100. On February 18, 2011, OLR wrote to Maynard to inform him that OLR had initiated a formal investigation of his possible violations of SCR 22.26. OLR requested a response to the allegations.

101. By letter dated March 4, 2011, and telephone conversations on February 22 and March 7, 2011, Mary Jane Frankfurth, the personal representative in *In the Estate of Martha I. Feyrer*, informed OLR that Maynard had never advised her about his license suspension before early 2011. Maynard had spoken with her sometime between February 25 and March 4, 2011,

and represented to her during that conversation that he had previously told her about his suspension. Ms. Frankfurth had no recollection of him previously doing that. She stated that she did not know what, if anything, he did concerning the Estate during the period that (as she later learned) he was suspended, except that they spoke sometimes by telephone and he would handle going to the courthouse. He told her she did not need to make appearances. CCAP court record events prior to March 4, 2011, showed a pre-trial conference set for July 20, 2010, at which no one appeared, and a pre-trial conference on January 14, 2011, at which both Maynard and Schmitt appeared. Ms. Frankfurth also told OLR staff she understood that Maynard was going to return the Estate file to her, but he did not do so.

102. In a letter dated March 10, 2011, Attorney Thomas Frenn responded to an OLR query on behalf of ProStar. Attorney Frenn stated that in late 2009 Maynard and Schmitt had been assisting ProStar in various matters, and that the relationship with Maynard was terminated upon the receipt of a certified letter and phone call from him on or about February 1, 2010. However, Attorney Frenn also acknowledged in a March 1, 2011, letter that subsequent to Maynard's suspension, Maynard attempted to register a new corporation in California for ProStar.

103. Maynard responded to the February 18, 2011, OLR inquiry by e-mail and attached letter dated March 18, 2011. He noted that much of what was in that letter had been in his letter of November 1, 2010, to OLR Litigation Counsel, William Weigel. Maynard stated, "I don't see anything in this earlier letter that I would change now." In the letter of March 18, 2011, Maynard stated he had "referred" the *Petrolon v. Badger Sheet Metal Works* case to his partner, Schmitt, on April 18, 2010. Maynard also stated:

The only other case I had pending was the *ProStar v. Stamness* case in Sauk County. This case was being handled exclusively by Mark Schmitt. ... I had turned this case over to him almost at its inception. My only subsequent involvement was on May 28, 2010, when I allowed my signature to be substituted for Mark's on his Amended Complaint, after he assured me that the Amended Complaint had been filed before February 1, 2010.

104. Maynard also wrote in his March 18, 2011, letter that opposing counsel in the *Petrolon v. Badger Sheet Metal Works* case informed the court of Maynard's suspension by letter dated May 18, 2010. Maynard claimed that his letter of June 11, 2010, to the court "reiterated" his suspension. Maynard asserted, "it is not clear that such notice is required under SCR 22.26(1)(c) if the Court was already aware of my suspension." Maynard also asserted that he was not required to notify the Sauk County Circuit Court or opposing counsel of his suspension because Schmitt, not he, was handling the *ProStar v. Stamness* case before that court. Maynard wrote:

For example, Mark rather than I attended the Scheduling Order conference call which occurred on March 29, 2010. The same call also so notified opposing counsel of Mark's involvement....

105. In his March 18, 2011, letter to OLR, Maynard also wrote:

The closest I came to practicing law after my suspension was on September 14, 2010. On that date, acting as an officer of Absolute Automation Systems, Inc., I signed Articles of Amendment, which had been prepared by attorney Mark Schmitt, which changed the name of the corporation to The Industrial Controls Company, Inc.

106. Maynard's March 18, 2011, letter also addressed some of the documentation OLR had included with its February 18, 2011, inquiry, including Maynard's June 11, 2010, letter to Judge Warpinski regarding the *Petrolon v. Badger Sheet Metal Works* case. Maynard described some of his communications with the Court regarding the case as follows:

I had told the Judge (or perhaps his clerk) that I had a 90 day suspension commencing 2-1-10 which would delay my responsive brief to a Motion for Summary Judgment. The letter of June 11 was necessary since, with the 90 days having expired, the Judge would expect my brief promptly.

107. On April 11, 2011, Maynard sent a check to OLR towards payment of the costs of the disciplinary proceedings. His cover letter was on letterhead providing, "John R. Maynard Attorney At Law." By letter of April 18, 2011, OLR reminded Maynard that he was not permitted to identify himself as an attorney while he was suspended.

108. On May 2, 2011, Maynard's license to practice law in Wisconsin was administratively reinstated after he paid his bar dues.

109. Meanwhile, OLR noted discrepancies between Maynard's March 18, 2011, responses and information received from other sources. By letter dated May 4, 2011, OLR asked Maynard to provide more information and answer specific questions by May 18, 2011.

110. On May 13, 2011, Maynard signed a "Petition to Voluntarily Surrender a Wisconsin License." In his petition, Maynard represented, "I am an...active...licensed attorney in good standing in Wisconsin and have no grievances pending against me."

111. On May 18, 2011, OLR advised the Assistant Deputy Clerk of the Supreme Court of Wisconsin that, contrary to Maynard's representation, he was the subject of a pending OLR investigation. On May 23, 2011, the Court ordered Maynard's petition for voluntary resignation held in abeyance.

112. Maynard failed to respond to OLR's letter of May 4, 2011. OLR sent Maynard another letter on May 24, 2011, reminding of his duty to cooperate with the investigation and enclosing a copy of the May 4, 2011, letter. The May 24, 2011, letter required a written response from Maynard to the May 4, 2011, letter to be postmarked by June 3, 2011. Maynard never

responded to OLR's letters of May 4 or 24, 2011.

113. On July 6, 2011, OLR filed a notice of motion, motion and supporting affidavit for an order to show cause as to why Maynard's license to practice law should not be temporarily suspended, pursuant to SCR 22.03(4), for his willful failure to respond or cooperate in an OLR investigation. *OLR v. Maynard*, 2011XX773-D. An error in the caption was corrected by filing an amended notice and motion the next day.

114. On July 12, 2011, the Court issued the requested order to show cause to Maynard. Maynard never filed a response.

115. On August 16, 2011, OLR wrote to the Court to recommend that Maynard's petition for voluntary resignation be denied, and that the Court temporarily suspend his license to practice law pursuant to SCR 22.03(4) and SCR 22.21.

116. On August 24, 2011, the Supreme Court of Wisconsin ordered Maynard to show cause why his petition to resign should not be dismissed.

117. *In the Estate of Martha I. Feyrer* was closed on June 23, 2011, following receipt of the personal representative's closing statement.

118. On September 1, 2011, the Court temporarily suspended Maynard's license to practice law for his willful failure to respond or cooperate with the OLR's investigation of his conduct while suspended. The temporary suspension remains in effect.

119. On September 21, 2011, Maynard's petition to voluntarily surrender his Wisconsin license to practice law was ordered dismissed.

120. On October 13, 2011, Maynard paid the remaining balance due towards the costs of his 2009 Wisconsin disciplinary proceedings.

COUNT I

121. By failing to give timely written notice of the suspension of his license to practice law, and consequent inability to continue as counsel, to each of his clients, to each of the courts before which a client's legal action was pending, and to each other party's counsel in those actions, by failing to advise each of this clients, in writing, to seek legal counsel elsewhere, and by failing to provide an affidavit listing all clients in all pending matters and listing all matters pending before any court or administrative agency, **Maynard violated SCR 20:8.4(f)¹ and SCR 22.26(1).²**

¹ **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."

² **SCR 22.26(1)** provides, "On or before the effective date of license suspension or revocation, an attorney whose license is suspended or revoked shall do all of the following:

(a) Notify by certified mail all clients being represented in pending matters of the suspension or revocation and of the attorney's consequent inability to act as an attorney following the effective date of the suspension or revocation.

(b) Advise the clients to seek legal advice of their choice elsewhere.

(c) Promptly provide written notification to the court or administrative agency and the attorney for each party in a matter pending before a court or administrative agency of the suspension or revocation and of the attorney's consequent inability to act as an attorney following the effective date of the suspension or revocation. The notice shall identify the successor attorney of the attorney's client or, if there is none at the time notice is given, shall state the client's place of residence.

(d) Within the first 15 days after the effective date of suspension or revocation, make all arrangements for the temporary or permanent closing or winding up of the attorney's practice. The attorney may assist in having others take over clients' work in progress.

(e) Within 25 days after the effective date of suspension or revocation, file with the director an affidavit showing all of the following:

(i) Full compliance with the provisions of the suspension or revocation order and with the rules and procedures regarding the closing of the attorney's practice.

(ii) A list of all jurisdictions, including state, federal and administrative bodies, before which the attorney is admitted to practice.

(iii) A list of clients in all pending matters and a list of all matters pending before any court or administrative agency, together with the case number of each matter.

(f) Maintain records of the various steps taken under this rule in order that, in any subsequent proceeding instituted by or against the attorney, proof of compliance with the rule and with the suspension or revocation order is available."

COUNT II

122. By swearing in a SCR 22.26(1)(e) affidavit that his name had been removed from the law firm's stationary and that there were no pending court matters not identified in his affidavit, and by omitting the names of clients with pending legal matters, when he knew all of that information to be inaccurate and/or incomplete, **Maynard violated SCR 20:8.4(c).**³

COUNT III

123. By continuing to practice law in Wisconsin after February 1, 2010, when the Supreme Court of Wisconsin ordered his license suspended, **Maynard violated SCR 20:8.4(f), SCR 22.26(2),⁴ and SCR 20:5.5(a)(1).**⁵

COUNT IV

124. By knowingly making a false statement to the court in the *Petrolon v. Badger Sheet Metal Works* matter that his license had already been reinstated, and, in a subsequent letter to the same court, by omitting relevant facts and creating the false impression that OLR had consented to his resumption of the practice of law, **Maynard violated SCR 20:3.3(a)(1)⁶ and SCR 20:8.4(c).**

³ **SCR 20:8.4(c) provides**, "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

⁴ **SCR 22.26(2) provides**, "An attorney whose license to practice law is suspended or revoked or who is suspended from the practice of law may not engage in this state in the practice of law or in any law work activity customarily done by law students, law clerks, or other paralegal personnel, except that the attorney may engage in law related work in this state for a commercial employer itself not engaged in the practice of law."

⁵ **SCR 20:5.5(a)(1) provides**, "A lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction except that a lawyer admitted to practice in Wisconsin does not violate this rule by conduct in another jurisdiction that is permitted in Wisconsin under SCR 20:5.5 (c) and (d) for lawyers not admitted in Wisconsin."

⁶ **SCR 20:3.3(a)(1) provides**, "A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

COUNT V

125. By repeated use of firm letterhead while he was suspended and multiple other false or misleading communications that he was an attorney permitted to practice law in Wisconsin during his suspension, **Maynard violated SCR 20:7.1(a)**⁷ and **SCR 20:7.5(a)**.⁸

COUNT VI

126. By misrepresenting himself to counsel for another party as an attorney while he was suspended, by making conflicting representations about whether he or his partner drafted the Articles of Amendment for Absolute Automation Systems, Inc., by dishonestly claiming lack of knowledge of SCR 22.28, by making selective and incomplete factual representations to create a false impression about OLR's position on his practice of law during May 2010, by deceitfully stating in a letter to OLR that while suspended he had not undertaken work for clients, or filed or attended hearings in any courtroom, by misrepresenting on his "Petition to Voluntarily Surrender a Wisconsin License," that there were no grievances pending against him, **Maynard violated SCR 20:8.4(c)**.

⁷ **SCR 20:7.1(a)** provides, "A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading."

⁸ **SCR 20:7.5(a)** provides, "A lawyer shall not use a firm name, letterhead or other professional designation that violates SCR 20:7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of SCR 20:7.1."

COUNT VII

127. By serving as general counsel for a corporation in Georgia, meeting with corporate management personnel in Georgia to discuss legal issues, giving legal advice to management personnel of the corporation located in Georgia, providing legal documents he prepared to the Georgia corporation and by representing the corporation to others, all without being duly licensed as an attorney in Georgia, **Maynard violated SCR 20:5.5(a)(1).**

COUNT VIII

128. By failing to fully and fairly disclose all facts and circumstances pertaining to the alleged misconduct, by failing to answer questions and produce documents and information requested by OLR by generally failing to provide relevant information, and by providing incomplete information and information containing misrepresentations, **Maynard violated SCR 22.03(2)⁹ and SCR 22.03(6),¹⁰ enforced via SCR 20:8.4(h).¹¹**

⁹ **SCR 22.03(2) provides**, “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.”

¹⁰ **SCR 22.03(6) provides**, “In the course of the investigation, the respondent’s wilful 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.”

¹¹ **SCR 20:8.4(h) provides**, “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 21.15(4), SCR 22.001(9)(b), SCR 22.03(2), SCR 22.03(6), or SCR 22.04(1).”

COUNT IX

129. By filing a complaint in *Petrolon v. Badger Sheet Metal Works* that violated WIS. STAT. § 802.05(2), as subsequently determined by a court, **Maynard violated SCR 20:3.1(a)**.¹²

WHEREFORE, OLR respectfully requests that Maynard be found in violation of the Supreme Court Rules as alleged in the nine (9) counts of this complaint, and that the Court suspend Maynard's license to practice law for one (1) year and order such other and further relief as may be just and equitable, including an award of costs.

Dated this 24th day of October, 2013.

OFFICE OF LAWYER REGULATION

By 

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¹² **SCR 20:3.1(a)** provides, "In representing a client, a lawyer shall not:

(1) knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law;

(2) knowingly advance a factual position unless there is a basis for doing so that is not frivolous; or

(3) file a suit, assert a position, conduct a defense, delay a trial or take other action on behalf of the client when the lawyer knows or when it is obvious that such an action would serve merely to harass or maliciously injure another."