

STATE OF WISCONSIN

IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST ROBERT PAUL
D'ARRUDA, ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,

CASE NO. 2014AP 340 -D

Complainant;

ROBERT PAUL D'ARRUDA,

Respondent.

RECEIVED

FEB 12 2014

COMPLAINT

CLERK OF SUPREME COURT
OF WISCONSIN

NOW COMES the Wisconsin Supreme Court - Office of
Lawyer Regulation (OLR) by Assistant Litigation Counsel
Jonathan E. Hendrix, 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 Robert Paul D'Arruda (D'Arruda) is an
attorney admitted to the State Bar of Wisconsin on May 24,
1993. D'Arruda's address on file with the State Bar of
Wisconsin is 5310 West Bluemound Road, Milwaukee, Wisconsin
53208-3010.

Regarding Nebel

1. In 2011, Stephen Nebel (Nebel) hired D'Arruda to represent him in a criminal misdemeanor case in Waukesha County.

2. In late 2011, D'Arruda attended several court dates. On March 19, 2012, D'Arruda attended the scheduling conference. The trial was set for August of 2012.

3. D'Arruda's last communication with Nebel was on May 12, 2012. In May and June of 2012, Nebel attempted to contact D'Arruda several times, sending him seven text messages. D'Arruda did not respond.

4. In August 2012, Nebel hired Attorney Michelle Tjader to represent him. Nebel attempted to contact D'Arruda and obtain his file, but was unable to do so.

5. Attorney Tjader left D'Arruda a phone message, and both faxed and mailed a substitution of counsel form to D'Arruda, who did not respond.

6. On August 16, 2012, the court held a status conference in Nebel's case. D'Arruda did not attend the conference, but did call the clerk to inform the court that he was in trial in Milwaukee County. At that time, D'Arruda learned that Nebel had hired new counsel. The court granted Nebel's motion for substitution.

7. On August 29, 2012, Nebel filed a grievance with OLR against D'Arruda.

8. On September 25, 2012, OLR notified D'Arruda by mail that he was required to respond to Nebel's grievance by October 18, 2012. D'Arruda did not respond.

9. On October 26, 2012, OLR sent a second notice to D'Arruda via certified mail. This notice required a response by November 5, 2012. On October 29, 2012, the letter was delivered to D'Arruda's office. D'Arruda did not respond.

10. On November 19, 2012, OLR personally served D'Arruda with a third notice, requiring his response within five days of service.

11. On November 27, 2012, OLR received D'Arruda's response to Nebel's grievance.

COUNT ONE

12. By failing to respond to Nebel's inquiries beginning in May of 2012 through August of 2012, thereby failing to promptly comply with his client's reasonable requests for information, D'Arruda violated SCR 20:1.4(a)(4).¹

¹ SCR 20:1.4(a)(4) provides: "A lawyer shall promptly comply with reasonable requests by the client for information."

COUNT TWO

13. By failing to sign a substitution request and promptly surrender Nebel's file to successor counsel, D'Arruda violated SCR 20:1.16(d).²

COUNT THREE

14. By failing to provide OLR his written response to Nebel's grievance within twenty days after being served with a request for response by ordinary mail, and thereafter failing to provide a written response until being personally served with notice by OLR, D'Arruda failed to cooperate with an OLR investigation as required by SCR 22.03(2), enforceable via SCR 20:8.4(h).³

Regarding Williams

15. On October 18, 2011, a probation agent took Otis J. Williams (Williams) into custody on suspicion of manufacturing and delivering heroin, and other parole violations.

² SCR 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 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."

³ 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)."

16. On October 25, 2011, Williams hired D'Arruda to represent him in a probation revocation proceeding and against potential criminal charges. In both fee agreements, D'Arruda agreed to provide Williams with a written accounting of all fees.

17. On November 1, 2011, the Brown County District Attorney's office filed a criminal complaint against Williams for manufacturing and delivering heroin.

18. In early 2012, D'Arruda represented Williams in the probation revocation matter. By March of 2012, D'Arruda had exhausted Williams' administrative appeals and concluded his representation in the administrative proceeding.

19. On March 18, 2012, Williams wrote to D'Arruda asking for copies of the fee agreements and an itemized accounting.

20. On March 26, 2012, D'Arruda responded to Williams' letter, enclosing copies of the fee agreements and stating a balance due of \$2,813.25.

21. On May 29, 2012, the court held a final status conference in Williams' criminal case. After Williams left the courtroom, the State dismissed the case against

Williams. D'Arruda did not notify Williams of the dismissal.

22. On May 30, 2012, the State filed a new case against Williams, adding a second charge. D'Arruda did not intend to represent Williams in the new case. Williams learned of the dismissal and new case when he was in court for an initial appearance in the new criminal case.

23. After the dismissal, Williams and his family members tried to contact D'Arruda for information, advice, and an accounting. D'Arruda never responded.

24. In June of 2012, Williams hired Attorney Jennifer Gaecke (Gaecke) to represent him in the criminal case. Gaecke requested Williams' file from D'Arruda, leaving him messages and sending him a letter on June 6, 2012. D'Arruda never turned over Williams' file.

25. On September 28, 2012, Williams filed a grievance with OLR against D'Arruda.

26. On November 9, 2012, OLR notified D'Arruda of Williams' grievance and invited him to respond. D'Arruda did not respond.

27. On November 30, 2012, OLR notified D'Arruda by mail that he was required to respond to Williams' grievance by December 27, 2012. D'Arruda did not respond.

28. On January 2, 2013, OLR sent D'Arruda a second request via certified mail, with a deadline of January 14, 2013 for his response. The letter was delivered to D'Arruda's office on January 4, 2013. D'Arruda did not respond.

29. On January 29, 2013, OLR personally served D'Arruda with a third notice, requiring his response within seven days of service.

30. On February 5, 2013, D'Arruda faxed OLR a response.

31. D'Arruda did not send Williams an accounting or required notices regarding fee disputes for either case.

COUNT FOUR

32. By failing to communicate with Williams after May 29, 2012 and to respond to Williams' requests for information, D'Arruda violated SCR 20:1.4(a)(3)⁴ and (4). In addition, by failing to explain to Williams what had occurred with the dismissal and reissuing of charges and that he no longer intended to represent him, D'Arruda violated SCR 20:1.4(b)⁵.

⁴ SCR 20:1.4(a)(3) provides: "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

⁵ SCR 20:1.4(b) provides: "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

COUNT FIVE

33. By failing to provide Williams final accountings and the other required notices for both the revocation matter and the criminal case, D'Arruda violated SCR 20:1.15(b) (4m)b.⁶

COUNT SIX

34. By failing to notify Williams that he wished to terminate the representation and by failing to turn over Williams' file and refund unearned fees, D'Arruda violated SCR 20:1.16(d).

COUNT SEVEN

35. By failing to provide OLR his written response to Williams' grievance within twenty days after being served with a request for response by ordinary mail, and thereafter failing to provide a written response until

⁶ SCR 20:1.15(b)(4m)b provides: "A lawyer who accepts advanced payments of fees may deposit the funds in the lawyer's business account, provided that review of the lawyer's fee by a court of competent jurisdiction is available in the proceeding to which the fee relates, or provided that the lawyer complies with each of the following requirements: Upon termination of the representation, the lawyer shall deliver to the client in writing all of the following: 1. a final accounting, or an accounting from the date of the lawyer's most recent statement to the end of the representation, regarding the client's advanced fee payment with a refund of any unearned advanced fees; 2. notice that, if the client disputes the amount of the fee and wants that dispute to be submitted to binding arbitration, the client must provide written notice of the dispute to the lawyer within 30 days of the mailing of the accounting; and 3. notice that, if the lawyer is unable to resolve the dispute to the satisfaction of the client within 30 days after receiving notice of the dispute from the client, the lawyer shall submit the dispute to binding arbitration."

being personally served with notice by OLR, D'Arruda violated SCR 22.03(2)⁷, enforceable via SCR 20:8.4(h).

Regarding William C.

36. On March 2, 2012, OLR received a written grievance from William C. against D'Arruda.

37. On March 5, 2012, OLR notified D'Arruda of William C.'s grievance and invited him to respond. D'Arruda did not respond.

38. On April 19, 2012, OLR notified D'Arruda by mail that he was required to respond to William C.'s grievance by May 28, 2012. D'Arruda did not respond.

39. On May 22, 2012, OLR personally served D'Arruda with a second notice, requiring his response within seven days of service.

40. On May 31, 2013, D'Arruda faxed OLR a response.

41. OLR eventually determined it had insufficient evidence to pursue misconduct counts directly related to D'Arruda's representation of William C.

⁷ 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."

COUNT EIGHT

42. By failing to provide OLR his written response to William C.'s grievance within twenty days after being mailed a request for response, and then failing to respond until being personally served with notice by OLR, D'Arruda failed to cooperate with an OLR investigation as required by SCR 22.03(2), which constitutes professional misconduct pursuant to SCR 20:8.4(h).

Regarding Augustus A. Sr. and Augustus A. Jr.

43. On April 5, 2013, OLR received a written grievance from Augustus A. Sr. and Augustus A. Jr. against D'Arruda concerning his representation of Augustus A. Jr.

44. On April 18, 2013, OLR notified D'Arruda of Augustus A. Sr. and Augustus A. Jr.'s grievance and invited him to respond. D'Arruda did not respond.

45. On May 3, 2013, OLR notified D'Arruda by mail that he was required to respond to Augustus A. Sr. and Augustus A. Jr.'s grievance by May 28, 2013. D'Arruda did not respond.

46. On June 19, 2013, OLR personally served D'Arruda with a second notice, requiring his response within seven days of service.

47. On July 9, 2013, OLR's investigator left D'Arruda a voicemail indicating that OLR's Director had authorized the filing of a SCR 22.03(4) motion based on D'Arruda's non-cooperation. On July 10, 2013, D'Arruda faxed OLR a response.

48. OLR eventually determined it had insufficient evidence to pursue misconduct counts directly related to D'Arruda's representation of Augustus A. Jr.

COUNT NINE

49. By failing to provide OLR his written response to Augustus A. and Augustus A.'s grievance within twenty days after being mailed a request for response, and then failing to respond until being personally served with notice by OLR, D'Arruda failed to cooperate with an OLR investigation as required by SCR 22.03(2), enforceable via SCR 20:8.4(h).

Regarding Spartacus O.

50. On February 27, 2013, OLR received a written grievance from Spartacus O. against D'Arruda.

51. On April 18, 2013, OLR notified D'Arruda of Spartacus O.'s grievance and invited him to respond. D'Arruda did not respond.

52. On May 3, 2013, OLR notified D'Arruda by mail that he was required to respond to Spartacus O.'s grievance by May 28, 2013. D'Arruda did not respond.

53. On June 19, 2013, OLR personally served D'Arruda with a second notice, requiring his response within seven days of service.

54. On July 9, 2013, OLR's investigator left D'Arruda a voicemail indicating that OLR's Director had authorized the filing of a SCR 22.03(4) motion based on D'Arruda's non-cooperation. On July 10, 2013, D'Arruda faxed OLR a response.

55. OLR eventually determined it had insufficient evidence to pursue misconduct counts directly related to D'Arruda's representation of Spartacus O.

COUNT TEN

56. By failing to provide OLR his written response to Spartacus O.'s grievance within twenty days after being mailed a request for response, and then failing to respond until being personally served with notice by OLR, D'Arruda failed to cooperate with an OLR investigation as required by SCR 22.03(2), enforceable via SCR 20:8.4(h).

WHEREFORE, the Office of Lawyer Regulation asks the Wisconsin Supreme Court to find Attorney Robert Paul D'Arruda violated Supreme Court Rules as alleged in this Complaint; to suspend D'Arruda's license to practice law in Wisconsin for 60 days; and to grant such other and further relief as may be just and equitable, including an award of costs.

Dated this 10th day of February, 2014.

OFFICE OF LAWYER REGULATION



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