

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST GERALD BOYLE, CASE CODE 30912
ATTORNEY AT LAW.

OFFICE OF LAWYER REGULATION,

CASE NO.

14 ap 492 D

Complainant;

GERALD BOYLE,

Respondent.

RECEIVED

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COMPLAINT

CLERK OF SUPREME COURT
OF WISCONSIN

NOW COMES the Wisconsin Supreme Court - Office of
Lawyer Regulation (OLR) by Retained Counsel, Attorney
Robert G. Krohn, 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. Attorney Gerald Boyle (Boyle) is a Wisconsin
attorney (Member Number 1008395) whose office address is
2051 W. Wisconsin Avenue, Milwaukee, Wisconsin 53233.
Boyle was admitted to practice law in Wisconsin on June
4, 1962.

3. Boyle's disciplinary history is as follows:

(a) *Private Reprimand* 2002-09. Boyle was
reprimanded for violating SCR 20:1.3, SCR
20:1.4(b), and SCR 20:1.16(d) for failing to
act diligently with respect to a criminal
defendant's request for post-conviction

relief, by failing to explain matters to the client so that the client could make informed decisions about the representation, and by failing to return the client's file.

(b) *Private Reprimand 2009-10.* Boyle was reprimanded because when assigned associate attorneys working for Boyle failed to take any meaningful action on multiple cases, and after Boyle became aware of significant problems in the representations, Boyle failed to take remedial action on the cases, in violation of former SCR 20:5.1(a), former SCR 20:5.1(b), SCR 20:1.3, SCR 20:1.4(a) and SCR 20:1.16(d).

(c) *Private Reprimand 2012-23.* Boyle was reprimanded in a client matter for violating SCR 20:1.5(b)(1) and (b)(2) for failing to prepare a written fee agreement and failing to explain the purpose and effect of any advanced fee received.

PETERSEN MATTER

4. David Petersen (Petersen) of Waukesha is a Beatles fan. From April 2007, through July 2008, Petersen began collecting John Lennon memorabilia.

5. From a Kihei, Hawaii gallery called Celebrities Galleries, Petersen purchased 14 "original" drawings by John Lennon, a signed photo, and a Neumann Condenser Microphone that Lennon purportedly used while recording the *Imagine* album. Petersen paid \$191,580 for this portion of his collection. The gallery certified all of the items as authentic.

6. Petersen also purchased 13 "original" drawings by John Lennon at the American Royal Arts gallery in Boca Raton, Florida. Petersen spent \$95,287.50 for the drawings, all of which the gallery guaranteed as authentic.

7. In addition, Petersen purchased another "original" John Lennon drawing and a handwritten letter sold by the Gotta Have Rock & Roll/Gotta Have It Gallery in New York. Petersen paid \$21,464 for these items, both of which were certified as authentic.

8. In 2008 and early 2009, following investigations into his various purchases from the galleries, including obtaining a forensic expert report, Petersen discovered that most if not all of the purchased sketches, the microphone, and other items were counterfeit.

9. Petersen initially took steps on his own to recover his money. With regard to the fake microphone, Petersen ultimately collected the sum he had paid for the microphone, including the cost of a custom display cabinet (\$60,295).

10. In November 2009, Petersen sought legal representation from Boyle as to the purchases.

Fee Issues (Counts 1 and 2)

11. Boyle told Petersen that he would represent him in seeking damages against the selling galleries (Gotta Have Rock and Roll/Gotta Have It - New York, New York; Celebrities Galleries - Kihei, Hawaii; and American Royal Arts - Boca Raton, Florida). Boyle initially told Peterson he would handle the case for a flat fee of \$25,000.

12. Boyle did not prepare a written fee agreement, nor did Boyle communicate in writing the purpose and effect of any advanced fees received from Petersen.

13. On November 19, 2009, Petersen charged \$10,000 to his credit card in partial payment of Boyle's \$25,000 advanced fee.

14. Boyle did not deposit the \$10,000.00 advanced fee into his client trust account. He instead deposited the funds into his firm's operating account.

15. Ultimately, Boyle told Petersen that he would need more than \$25,000 to handle the case(s) against all three galleries.

16. On January 6, 2010, Boyle asked Petersen to send \$35,000 immediately and told Petersen that he would need another \$35,000 in about six weeks.

17. Petersen agreed to the proposal and, on that same day (January 6, 2010), sent Boyle a cashier's check for \$35,000.

18. Boyle did not deposit the \$35,000 fee into his client trust account and instead deposited the funds into his firm's operating account.

19. Boyle did not prepare a new written fee agreement modifying his original agreement with Petersen (also unwritten), nor did Boyle communicate in writing to Petersen any changes in the basis or rate of the fee. Boyle furthermore did not explain in writing the "purpose and effect" of the \$35,000 advanced fee.

20. Almost exactly one year later, on January 7, 2011, Petersen paid Boyle another \$20,000 in the matter.

21. Boyle did not deposit the \$20,000 into his trust account but instead deposited the fee into his firm's operating account.

22. As to the payment of \$20,000, again there was no written fee agreement.

23. As to each advanced payment of fees from Petersen (\$10,000, \$35,000, and \$20,000), there is no evidence that Boyle intended to utilize the alternative fee placement permitted by SCR 20:1.15(b) (4m).

24. As to each payment of fees (\$10,000, \$35,000, and \$20,000), Boyle failed to communicate in writing the scope of the representation, the basis or rate of the fee, the purpose and effect of any advanced fee or retainer and, as to the last two payments, he made changes to the fee agreement without a writing confirming the details of such changes.

COUNT ONE

25. By accepting advanced fees in the amount of \$10,000, \$35,000, and \$20,000 in anticipation of providing legal representation to Petersen, and by failing to deposit those funds into his trust account, instead depositing the money into his law firm operating account, **Boyle violated SCR 20:1.15(b) (4)¹.**

¹SCR 20:1.15(b)(4) provides: "Unearned fees and cost advances. Except as provided in par. (4m), unearned fees and advanced payments of fees shall be held in trust until earned by the lawyer, and withdrawn pursuant to sub. (g). Funds advanced by a client or 3rd party for payment of costs shall be held in trust until the costs are incurred."

COUNT TWO

26. By accepting fees from Petersen in the amount of \$10,000, \$35,000, and \$20,000, by failing to communicate in writing the scope of the representation, the basis or rate of the fee, and the purpose and effect of an advanced fee or retainer, and, in addition, by making changes to the fee agreement on multiple occasions without the benefit of a writing, Boyle, in each instance, violated SCR 20:1.5(b)(1) and (b)(2)².

Legal Representation - (Counts 3, 4, and 5)

27. Initially, Boyle prepared three letters to send to the galleries. The letters identified the issues associated with the counterfeit memorabilia and

²SCR 20:1.5(b)(1) and (b)(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, except before or within a reasonable time after commencing the representation when the lawyer will charge a regularly represented client on the same basis or rate as in the past. If it is reasonably foreseeable that the total cost of representation to the client, including attorney's fees, will be \$1000 or less, the communication may be oral or in writing. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.

(2) If the total cost of representation to the client, including attorney's fees, is more than \$1000, the purpose and effect of any retainer or advance fee that is paid to the lawyer shall be communicated in writing."

invited discussion from the galleries. Boyle sent the letters to the gallery principals on December 10, 2009.

28. Petersen continued his own investigative efforts regarding the galleries and communicated with experts in the field. He also reviewed information contained in lawsuits brought by other artists and collectors against the same galleries. Further, Petersen spoke to the FBI about what appeared to be an ongoing fraud in the memorabilia industry. For example, a forensic laboratory had confirmed through an ink analysis that the drawing by John Lennon sold by Gotta Have Rock and Roll/Gotta Have It was an indisputable forgery. On a regular basis, Petersen shared information he obtained with Boyle.

29. On January 14, 2010, Boyle wrote letters to Gotta Have Rock and Roll/Gotta Have It gallery in New York and to Celebrities Galleries in Hawaii and noted that he had not received any response from them. He asked for the names of their respective law firms and the existence of any insurance coverage.

30. In an email dated February 11, 2010, a Gotta Have Rock and Roll/Gotta Have It gallery representative

responded to Boyle's January 14, 2010, letter, stating that they believed the John Lennon drawing it sold to Petersen was 100% authentic but otherwise agreed to "work with" Boyle to resolve the matter.

31. The only meaningful action Boyle took with respect to Gotta Have Rock and Roll/Gotta Have It gallery (New York) was to write his two letters dated December 10, 2009, and January 14, 2010.

32. In late 2009 and early 2010, Petersen frequently questioned Boyle about when he was going to file a lawsuit against the three galleries. Boyle promised he would file the lawsuits but did not immediately do so.

33. Frustrated by Boyle's lack of activity on the case, Petersen terminated Boyle's representation in a letter to Boyle dated May 8, 2010. Boyle contacted Petersen and promised to handle the case more aggressively and to bring in another attorney to assist in the case, Attorney Chris Lowe. Boyle further promised to file suit against the New York gallery. Petersen agreed to the new arrangement.

34. In May and June 2010, Boyle met with a forensic expert and with Attorney Lowe to discuss potential lawsuits against one or more of the three galleries. Boyle's strategy was to file suit against Celebrities Galleries (Hawaii) first and use the discovery obtained in that lawsuit to pursue the other galleries.

35. Petersen believed Boyle would be filing suit against the New York gallery.

36. Potential causes of action on behalf of Petersen existed under the Wisconsin Deceptive Trade Practices Act (DTPA) [(Wis. Stat. § 100.18(11)(b)(3)]. The DTPA is a statute designed to compensate individuals for all pecuniary losses caused by a deceptive practice. In addition, the Act shifts the expenses of bringing the action to the seller, including costs and attorney's fees. In essence, the DTPA is a strict liability statute with strategic advantages for a plaintiff seeking to recover from a seller who sells fraudulent memorabilia by means of false authentication. A three-year statute of limitations applied under the DTPA. At

all times material, Boyle was aware of the DTPA and its statute of limitations.

37. In June 2010, Boyle informed Petersen that the DTPA statute of limitations had expired as to five items sold by the American Royal Arts, Corporation (Florida) and five items sold by Celebrities Galleries (Hawaii). This represented 10 items out of the 30 total items purchased by Petersen.

38. On June 23, 2010, Petersen sent Boyle an email and noted that the statute of limitations would expire for "additional items" on July 3, 2010.

39. On July 2, 2010, Boyle filed a lawsuit in the United States District Court for the Eastern District of Wisconsin on behalf of Petersen against Celebrities Galleries (Hawaii) and their owners for selling counterfeit memorabilia to Petersen. The causes of action set forth in the complaint included misrepresentations under Wis. Stat. § 118 (deceptive trade practices).

40. Boyle did not file a lawsuit against the American Royal Arts gallery in Florida or the Gotta Have Rock and Roll/Gotta Have It gallery in New York.

41. After filing the lawsuit against Celebrities Galleries, Boyle requested that Petersen obtain print copies of all his long distance phone records for the years 2007, 2008, 2009, and 2010. Such records could have been critical in asserting personal jurisdiction over the out of state galleries.

42. Petersen learned that the long distance phone records could only be obtained by a subpoena and informed Boyle of such a requirement in an email dated July 8, 2010. Petersen specifically asked Boyle to request a subpoena. Boyle did not respond to Petersen's request.

43. On July 15, 2010, and July 24, 2010, Petersen sent Boyle emails asking about the status of obtaining a subpoena for the long-distance telephone records. Boyle did not respond to Petersen's inquiries.

44. After Boyle filed the federal suit against Celebrities Galleries and other parties, Petersen began discussing resolution of his claims with American Royal Arts. Petersen learned that American Royal Arts was going out of business and had filed a Voluntary Assignment for the Benefit of Creditors.

45. Boyle, in consultation with Petersen, associated with Florida Attorney Michael Doddo to assist Petersen in making a claim with the Administrator handling creditor claims against American Royal Arts.

46. Petersen researched information regarding American Royal Arts and provided it to Attorney Doddo for use in the liquidation matter.

47. After receipt of service of the lawsuit, an attorney on behalf of Celebrities Galleries contacted Boyle. On August 5, 2010, Boyle forwarded to that attorney a forensic report as well as another email demonstrating the potential fraud.

48. On August 20, 2010, Petersen wrote Boyle and inquired as to why he had not filed suit against Gotta Have Rock and Roll/Gotta Have It gallery in New York.

49. Petersen continued to seek information on the issue of the subpoena of his long-distance records. Boyle's partner, Attorney Bridget Boyle, emailed Petersen on August 18, 2010, and indicated that she was in the process of preparing the subpoena but needed additional information.

50. The federal court litigation stalled largely due to insurance coverage issues that were raised by various defendants.

51. In March of 2011, Petersen renewed his efforts to have Boyle subpoena telephone records from his telephone carrier. Despite multiple promises to subpoena the records, Attorney Bridget Boyle did not do so.

52. On July 15, 2011, working in conjunction with Attorney Doddo, Petersen settled his claims with American Royal Arts.

53. In February 2012, Petersen settled his dispute with Gotta Have Rock and Roll/Gotta Have It. Petersen arranged the settlement without Boyle's involvement. Although Petersen recovered the cost of his purchase, he was unable to recover attorney's fees or other costs.

54. On February 1, 2012, in the federal lawsuit, the Court issued a decision and order granting summary judgment to one of the insurance providers, finding no insurance coverage for the claims against the Hawaii gallery.

55. During this time, Petersen became more frustrated with Boyle and sent multiple emails seeking information about his case. Boyle responded minimally to these requests. Various meetings Petersen attempted to arrange with Boyle were cancelled, and many telephone calls Petersen made to Boyle were not returned.

56. On April 12, 2012, Petersen filed a grievance with OLR against Boyle.

57. On May 21, 2012, Petersen hired Attorney Andrew Frank (Frank) to complete the litigation against the Hawaii gallery. On September 13, 2012, Frank settled the case. The settlement recouped Petersen's costs in buying the disputed items from the Hawaii gallery but did not recoup any attorney's fees or costs incurred by Petersen.

COUNT THREE

58. By failing to respond to Petersen's multiple requests for information regarding the subpoena for telephone records, **Boyle violated SCR 20:1.4(a) (4)³**.

³SCR 20:1.4(a) (4) provides: "(a) A lawyer shall: (4) promptly comply with reasonable requests by the client for information; and."

COUNT FOUR

59. By failing to file a lawsuit prior to the expiration of the statute of limitations under the DTPA for multiple fraudulent sketches purchased by Petersen, and, in addition, by failing to take meaningful action on behalf of Petersen to recover from the Gotta Have Rock and Roll/Gotta Have It gallery in New York, **Boyle violated SCR 20:1.3⁴.**

COUNT FIVE

60. By allowing the statute of limitations under the DTPA to expire for certain fraudulent sketches purchased by Petersen, therefore foreclosing the possibility of Petersen recovering attorney's fees incurred in recouping his losses for those purchases, **Boyle failed to provide competent representation to Petersen, in violation of SCR 20:1.1⁵.**

⁴ SCR 20:1.3 provides: "A lawyer shall act with reasonable diligence and promptness in representing a client."

⁵SCR 20:1.1 provides: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

GRINTJES MATTER

61. On October 26, 2011, Robert Grintjes (Grintjes) was charged with nine felony counts, including drug trafficking and illegal firearms possession. *State of Wisconsin v. Robert T. Grintjes*, Waukesha County Circuit Court Case No. 2011CF1079.

62. Grintjes contacted the Boyle firm (Boyle, Boyle & Boyle) and, on November 2, 2011, paid the firm \$9,500 to represent him in the criminal case. On November 3, 2011, Boyle deposited the \$9,500 received from Grintjes into his firm's operating account.

63. On November 7, 2011, Attorney Richard Wells (Wells), of counsel to the Boyle firm, appeared with Grintjes at the arraignment at which time Grintjes entered a not guilty plea.

64. While the criminal case was pending, the State of Wisconsin filed a civil forfeiture action against Grintjes, and multiple vehicles were seized by law enforcement during their search of a storage unit and Grintjes' home. See *State of Wisconsin v. Robert T. Grintjes et. al.*, Waukesha County Circuit Court Case No. 2011CV3966.

65. On the same day that the State filed a civil forfeiture action, November 23, 2011, Grintjes paid Boyle another \$9,500, after which the total advanced fee paid by Grintjes was \$19,000.

66. On November 25, 2011, Boyle deposited Grintjes' second payment of \$9,500 into his firm operating account.

67. Boyle prepared a written fee agreement dated November 29, 2011, which indicated that the initial retainer fee was nonrefundable. Grintjes signed the fee agreement on December 2, 2011.

68. On April 10, 2012, in the criminal case Grintjes pled guilty to two felony counts and was sentenced.

69. On July 11, 2012, Wells filed a Notice of Intent to Pursue Post-conviction Relief. On August 3, 2011, Wells withdrew from representing Grintjes in the criminal matter.

70. On October 16, 2012, Wells negotiated a settlement of the civil forfeiture proceeding pursuant to a stipulation.

71. Grintjes filed a grievance with OLR in the matter. The only professional misconduct violation OLR's investigator revealed was a potential violation of trust account rules.

72. At the conclusion of OLR's investigation, Boyle indicated that he acted in good faith and would amend his standard fee agreement in the future to comply with the rules.

COUNT SIX

73. Upon receipt of payments of \$9,500 from Grintjes on November 3, 2011 and another \$9,500 from Grintjes on November 23, 2011, paid in anticipation of Boyle providing legal representation to Grintjes, by failing to deposit those funds into his trust account, instead depositing the money into his law firm operating account, **Boyle violated SCR 20:1.15(b) (4).**

WHEREFORE, the Office of Lawyer Regulation asks that Attorney Gerald Boyle be found in violation of the Supreme Court Rules as alleged in connection with Counts

One through Six of this complaint, that the Court suspend Boyle's license to practice law in Wisconsin for a period of sixty (60) days, and order such other relief as may be just and equitable, including assessing the costs of the proceedings.

Dated this 3rd day of March, 2014.

OFFICE OF LAWYER REGULATION



ROBERT G. KROHN

State Bar No. 1013612

24 North Henry Street
P.O. Box 151
Edgerton, Rock County, WI 53534
(608) 884-3391