

STATE OF WISCONSIN

IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

CASE CODE 30912

JOSEPH SOMMERS, ATTORNEY AT LAW.

OFFICE OF LAWYER REGULATION,

CASE NO. 2014AP 2290 D

Complainant;

JOSEPH SOMMERS,

Respondent.

**RECEIVED**

**SEP 30 2014**

**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 Joseph Sommers (Sommers) is a  
Wisconsin attorney (Member ID 1020248), licensed to  
practice law in Wisconsin on September 3, 1992.  
Sommers' law license is currently suspended.  
Sommers' address as listed with the State Bar of  
Wisconsin is Sommers Law Office, P.O. Box 244, Oregon,  
WI 53575-0244. However, on information and belief  
Sommers' residential and mailing address is 350 Veldor  
Street, Oregon, WI 53575-1421.

3. Sommers' disciplinary history consists of:

(a) a 30 day suspension of his license to practice law in Wisconsin imposed by the Supreme Court of Wisconsin, effective May 7, 2012. *Disciplinary Proceedings Against Sommers*, 2012 WI 33. The Supreme Court found that Sommers committed misconduct by engaging in behavior that disrupted a tribunal and making false statements concerning the integrity of the trial judge; violating the attorney's oath; and making extrajudicial statements regarding the trial that had a substantial likelihood of materially prejudicing the proceeding.

(b) a public reprimand imposed by the Supreme Court of Wisconsin, on August 5, 2014. *Disciplinary Proceedings Against Sommers*, 2014 WI 103. The Supreme Court found Sommers committed misconduct by making impermissible ex parte communications with a judge or other official by publishing or allowing to be published on his web page extrajudicial statements that he knew or reasonably should have known would have a substantial likelihood of materially prejudicing an adjudicative proceeding in a matter; and by publishing a press release on a web site, he violated the Attorney's Oath by failing to maintain the respect due to courts of justice and judicial officers.

**Regarding DePaoli  
(OLR Matter No. 2013MA296)  
Counts 1-3**

4. On June 9, 2010, a Shawano County jury convicted Ronald DePaoli (DePaoli) of criminal behavior. DePaoli was sentenced to 20 years in prison and ten years of extended supervision, *State of Wisconsin vs. Ronald S. DePaoli*, Shawano County Case No. 2009CF254.

5. DePaoli filed a post-conviction motion that the trial court denied on January 5, 2012. He then contacted Sommers and asked him to review his file and provide an opinion regarding his appellate options. Sommers charged a non-refundable fee of \$2,500 for his review, with the understanding that if DePaoli hired Sommers to represent him in his appeal, the fee would be incorporated into a new fee agreement.

6. Sommers did not prepare a written fee agreement detailing the nature and scope of his work on behalf of DePaoli, or otherwise communicate in writing the purpose and effect of any retainer or advance fee received from DePaoli.

7. Sommers deposited the \$2,500 advanced fee into his own operating/business account or personal account and not into a client trust account.

8. Sommers reviewed DePaoli's file and relevant transcripts. On February 16, 2012, he sent DePaoli a letter and discussed in detail what appellate issues Sommers deemed worthy of appellate consideration.

9. After Sommers completed his review of DePaoli's case, Sommers indicated that he was leaving the practice of law as of May 7, 2012.

10. DePaoli filed a grievance with OLR against Sommers on February 8, 2013, claiming that Sommers violated the terms of his engagement and asking for a refund of his fee.

11. DePaoli obtained appellate counsel from the State Public Defender's Office. The Court of Appeals affirmed the trial court's judgment and order.

12. On April 23, 2013, OLR sent Sommers a notice of formal investigation asking Sommers to respond to the allegations raised by DePaoli and to provide information demonstrating how he accounted for the \$2,500 fee.

13. Sommers failed to respond to OLR's April 23, 2013, letter.

14. On May 28, 2013, OLR sent Sommers a second letter via first class mail and certified mail. The letter reminded Sommers of his duty to cooperate with OLR's investigation and requested a response by no later than June 7, 2013.

15. The certified letter could not be delivered and was returned to OLR. The post office did not return the May 28, 2013, letter that was sent via first class mail.

16. Sommers did not respond to OLR's May 28, 2013, letter.

17. On June 27, 2013, OLR prepared a third letter to Sommers, enclosing a copy of the notice of formal investigation dated April 23, 2013, as well as the May 28, 2013 letter. OLR's June 27, 2013 letter directed Sommers' attention to his obligations to respond to OLR's inquiries.

18. A process server unsuccessfully tried to serve this June 27, 2013, letter. Sommers was avoiding service.

19. OLR filed a *Notice of Motion and Motion Requesting Order to Show Cause* asking the Supreme Court of Wisconsin to issue an order requiring Sommers to show cause why his license to practice law should not be suspended for his willful failure to cooperate in an OLR investigation.

20. On August 20, 2013, the Supreme Court ordered Sommers to show cause within 20 days why his license should not be temporarily suspended for his willful failure to cooperate in an OLR investigation.

21. Sommers did not respond to the Supreme Court's order.

22. On October 21, 2013, the Supreme Court issued an order temporarily suspending Sommers from his practice of law for his failure to cooperate in OLR's investigation. *OLR v. Sommers*, Wis. Sup. Ct. Case No. 2013XX1076-D.

23. To date, Sommers has not provided a response to OLR's inquiries regarding DePaoli's grievance.

#### COUNT ONE

24. By accepting a \$2,500 fee from DePaoli in anticipation of providing future legal services and failing to communicate in writing the scope of the representation, the basis or rate of the fee, and the purpose and effect of any advanced fee or retainer, **Sommers violated SCR 20:1.5(b) (1) and (b) (2).**<sup>1</sup>

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<sup>1</sup>SCR 20:1.5(b)(1) and (b)(2) provides: "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

COUNT TWO

25. By failing to deposit DePaoli \$2,500 advance fee payment into his trust account, in the absence of any evidence that he intended to utilize the alternative fee placement permitted by Supreme Court Rules, **Sommers violated SCR 20:1.15(b) (4)**.<sup>2</sup>

COUNT THREE

26. By failing to provide relevant information to OLR's in attempt to investigate DePaoli grievance, **Sommers violated SCR 22.03(2) and SCR 22.03(6), enforceable via SCR 20:8.4(h)**.<sup>3</sup>

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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."

<sup>2</sup>SCR 20:1.15(b)(4) provides: "Except as provided in par. (4m), unearned fees and advanced payments of fees shall be held in trust until earned by the lawyer, and withdrawn pursuant to sub. (g). Funds advanced by a client or 3rd party for payment of costs shall be held in trust until the costs are incurred."

<sup>3</sup>SCR 22.03(2), SCR 22.03(6), and SCR 20:8.4(h) provides: "(2) Upon commencing an investigation, the director shall notify the respondent of the matter being investigated unless in the opinion of the director the investigation of the matter requires otherwise. The respondent shall fully and fairly disclose all facts and circumstances pertaining to the alleged misconduct within 20 days after being served by ordinary mail a request for a written response. The director may allow additional time to respond. Following receipt of the response, the director may conduct further investigation and may compel the respondent to answer questions, furnish documents, and present any information deemed relevant to the investigation.

(6) In the course of the investigation, the respondent's 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.

(20:8.4(h) 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)."

**Regarding Michael Long**  
**(OLR Matter No. 2013MA1850)**  
**Counts 4-5**

27. On November 7, 2006, a St. Croix County jury convicted Michael Long (Long) of criminal behavior, *State of Wisconsin vs. Michael Long*, St. Croix County Case No. 2005CF266.

28. Long was sentenced to life imprisonment without parole, along with a concurrent sentence of three years imprisonment and three years of extended supervision.

29. Following his conviction, Long hired Sommers as appellate counsel. Sommers filed a notice of appeal and argued there was insufficient evidence to support Long's conviction and that the trial court had incorrectly applied the persistent repeater penalty. The Court of Appeals rejected Long's argument and affirmed the judgments. Sommers then petitioned the Supreme Court of Wisconsin for review of the Court of Appeals' decision. The Supreme Court found that the trial court had incorrectly applied the persistent repeater enhancement to Long's sentence and remanded the



case to the trial court for resentencing, *State of Wisconsin v. Michael Long*, 2009 WI 36, 317 Wis. 2d 92, 765 N.W.2d 557.

30. On October 14, 2009, the trial court resentenced Long to 15 years confinement and 20 years extended supervision along with 2 years confinement and 5 years extended supervision.

31. Sommers withdrew from his representation of Long shortly after the resentencing, and another attorney substituted as Long's appellate counsel.

32. On September 20, 2013, Long filed a grievance with OLR against Sommers claiming that Sommers had refused to return his case file or documents, that he wrote to Sommers twice and Sommers failed to respond to his requests, and that he wished to file certain motions but could not do so without his case file.

33. On November 18, 2013, OLR sent Sommers a notice of formal investigation asking Sommers to respond to the allegations raised by Long. In addition, OLR specifically requested Sommers provide a copy of Long's file.

34. Sommers failed to respond to OLR's November 18, 2013, letter.

35. On December 30, 2013, OLR sent Sommers a second letter, via first class mail and certified mail, reminding Sommers of his duty to cooperate with OLR's investigation and requesting a response no later than January 9, 2014. The certified mailing was returned to OLR as unclaimed. The post office did not return the letter sent via first class mail.

36. Sommers did not respond to OLR's December 30, 2013 letter.

37. On February 25, 2014, OLR prepared a third letter to Sommers, enclosing a copy of the notice of formal investigation as well as OLR's December 30, 2013 letter. OLR's February 25, 2014 letter directed Sommers to respond within seven days.

38. A process server unsuccessfully tried to personally serve Sommers with OLR's letters of November 18, 2013, December 30, 2013, and February 25, 2014. Sommers was avoiding service.

39. To date, Sommers has not provided a response to OLR's inquiries regarding Long's grievance.

COUNT FOUR

40. By failing to surrender his file in a timely fashion after multiple written requests by Long, **Sommers violated SCR 20:1.16(d)**.<sup>4</sup>

COUNT FIVE

41. By failing to provide relevant information to OLR's attempt to investigate Long's grievance, including failing to provide Long's file, **Sommers violated SCR 22.03(2) and SCR 22.03(6), enforceable via SCR 20:8.4(h)**.

**WHEREFORE**, the Office of Lawyer Regulation asks that Attorney Joseph Sommers be found in violation of the Supreme Court Rules as alleged in connection with Counts One through Five of this complaint, that Sommers be publicly reprimanded, and that the Court order such other and further relief as may be just and equitable,

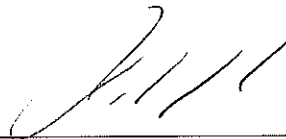
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<sup>4</sup>SCR 20:1.16(d) provides: "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of 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."

including assessing the costs of the proceedings against  
Sommers.

Dated this 29<sup>th</sup> day of September, 2014.

OFFICE OF LAWYER REGULATION



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