

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST JAMES EDWARD
HAMMIS, ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION

CASE NO. 2014AP²²⁴⁴-D

Complainant;

JAMES EDWARD HAMMIS,

Respondent.

RECEIVED

SEP 25 2014

CLERK OF SUPREME COURT
OF WISCONSIN

COMPLAINT

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 James Edward Hammis (Hammis) is an
attorney admitted to the State Bar of Wisconsin on May 23,
1988. Hammis's address on file with the State Bar of
Wisconsin is Hammis Law Offices LLC, 315 E Main St,
Stoughton, Wisconsin 53589-1724. On information and
belief, Hammis resides and receives mail at 623 West
Street, Stoughton, WI 53589.

3. Hammis's professional disciplinary history in Wisconsin consists of:

- (a) A 2011 four month suspension for ten counts of misconduct regarding two different clients, practicing law while administratively suspended, and failing to cooperate with OLR's investigation. *Disciplinary Proceedings Against Hammis*, 2011 WI 3.
- (b) A disciplinary action against Hammis is pending. *Disciplinary Proceedings Against Hammis*, Wis. Sup Ct. Case No. 2012AP818-D.

Regarding Pro Weld Fabricating (OLR Matter No. 2008MA275)
(Counts 1-2)

4. On December 14, 2005, Kandy J. Goerke filed for divorce from Donald J. Goerke (collectively "the Goerkes"). *Goerke v. Goerke*, Langlade County Case No. 2005-FA-170. The Goerkes owned Pro Weld Fabricating, Inc. (Pro Weld).

5. On November 1, 2006, Hammis contacted Donald Goerke about assisting with operating Pro Weld during the divorce.

6. On November 3, 2006, in the Goerkes' divorce case, Judge Kawalski ordered Pro Weld closed until November 6, 2006, when a receiver would operate it.

7. On November 6, 2006, Judge Kawalski held a hearing regarding Pro Weld. Hammis was present in the courtroom, and identified himself.

8. At that hearing, Hammis told the judge that he had handled "dozens and dozens of these types of situations."

9. On November 7, 2006, Hammis faxed a proposal to act as Pro Weld's receiver to Judge Kawalski and the Goerkes' attorneys.

10. Hammis's November 7, 2006 letter was misleading and failed to disclose relevant facts, including that:

- (a) While he represented that his law firm's "market focus" was \$1-20 million companies, Pro Weld would be its largest client;
- (b) Hammis's Wisconsin and Michigan law licenses were administratively suspended;
- (c) Hammis had never been a court-appointed receiver before;
- (d) In 2005, the operating entity of his manufacturing business, Stainless Tank and Equipment, had made an assignment for the benefit of creditors, and its assets were sold;
- (e) In 2005, he was convicted for misdemeanor reckless endangering; also, a corporate entity he controlled was convicted of a felony, both regarding hazardous materials in Ohio;

- (f) In October of 2005 he filed for personal bankruptcy. In August of 2006, he agreed that a \$600,000 debt was non-dischargeable because it was associated with a false statement;
- (g) Hammis had unsatisfied worker's compensation penalty warrants of over \$92,000, and had failed to make child support payments leading to a finding of contempt.

11. On November 7, 2006, Judge Kawalski appointed Hammis as Pro Weld's Receiver.

12. On December 26, 2006, Hammis wrote to a Pro Weld client that Pro Weld's shareholders had appointed him as "operations manager" of Pro Weld. At that time, Hammis had no authority at Pro Weld beyond the court-appointed receivership.

13. In February of 2008, Judge Kawalski discharged Hammis as Receiver of Pro Weld.

COUNT ONE

14. By soliciting a court appointment as receiver of a corporation in November 2006 using misleading information as to his experience and qualifications and without disclosing relevant facts, Hammis violated former SCR 20:7.1.¹

¹ Former SCR 20:7.1, prior to July 1, 2007, stated in pertinent part:

COUNT TWO

15. By misrepresenting himself as the corporate "operations manager" hired by shareholders to one of Pro Weld's principal customers, Hammis violated SCR 20:8.4(c).²

Leach Matter (OLR Matter No. 2008MA1168)
(Counts 3-6)

16. In 2006, Hammis represented Gecobea M. Leach (Leach) in several criminal cases in Dane County, including *State v. Leach*, Dane County Case Nos. 2005-CM-3433, 2006-CF-265 and 2006-CF-665.

17. On July 31, 2006, Judge Steven D. Ebert sentenced Leach. Hammis's representation ended sometime in 2006 or 2007.

18. On January 25, 2008, the Department of Corrections revoked Leach's probation.

19. On February 21, 2008, Judge Ebert re-sentenced Leach.

(a) 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:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) is likely to create an unjustified expectation about results the lawyer can achieve ...

² SCR 20:8.4(c) provides: "It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

20. On February 27, 2008, Leach hired Hammis to appeal his post-revocation sentences. Leach authorized Hammis to communicate with him through Angela Weaver (Weaver). Hammis did not file a notice of appearance in Leach's cases until January of 2009.

21. Over the next few months, Weaver asked Hammis several times about lifting a no contact order between Weaver and Leach. On April 25, 2008, Hammis wrote to Weaver that he would look into having the order removed.

22. Leach's deadline for filing a notice of appeal or a motion for post-conviction relief was June 6, 2008. Hammis did not file a notice of appeal, move for post-conviction relief or request an extension of time by June 6, 2008.

23. On August 14, 2008, Leach wrote to Hammis, asking him to get the no contact order removed so he could communicate with Weaver. Hammis never took any steps toward having it removed.

24. On October 30, 2008, Leach filed a *pro se* Motion for Reinstatement of Appellate Rights with the Wisconsin Court of Appeals.

25. On October 31, 2008, Hammis wrote to Leach that he had mailed a copy of Leach's original sentencing

transcript to him "a month ago" and the letter had been returned. However, Hammis had actually obtained that transcript within the prior two weeks and had not mailed anything to Leach since June of 2008.

26. On November 25, 2008, the Court of Appeals extended Leach's time to appeal or file a post-conviction motion to January 5, 2009.

27. On January 5, 2009, Hammis filed a Motion for Resentencing in circuit court.

28. On January 7, 2009, Judge Ebert issued a scheduling order, giving Hammis until February 20, 2009 to file a reply brief. On Friday, February 20, 2009, Hammis mailed and faxed his reply brief after the Dane County court system had closed. The Clerk of Circuit Court filed it on February 23, 2009.

29. On January 11, 2009, Leach asked Hammis for information regarding the cost of representation. Hammis did not respond.

30. On May 4, 2009, Judge Ebert denied the Motion for Resentencing. The statutory deadline for filing a Notice of Appeal was May 26, 2009.

31. On July 9, 2009, Hammis filed an untimely Notice of Appeal.

32. On July 16, 2009, the Court ordered Hammis to pay filing fees by July 21, 2009 or the cases would be subject to dismissal. Hammis paid the filing fee for one case on October 12, 2009. The Court of Appeals waived the fees for the other two cases.

33. On October 29, 2009, Hammis filed his appellate brief.

34. On February 8, 2010, the filing deadline, Hammis attempted to file a reply brief. However, the Clerk's office rejected it as being over the statutory word limit. Four days later, Hammis filed the reply brief and requested an extension.

35. On September 23, 2010, the Court of Appeals affirmed Judge Ebert's decision to deny Leach's motion for resentencing.

COUNT THREE

36. By:

- (a) failing to promptly file a notice of his representation of the client;
- (b) failing to file a notice of appeal, a motion for postconviction relief or a timely request for and extension of time by the June 6, 2008, deadline;

- (c) failing to address Leach's request to have a "no contact" order removed so that Leach could communicate with Weaver;
- (d) failing to file a reply brief regarding his motion for resentencing by the February 20, 2009, deadline;
- (e) failing to file a notice of appeal of the order denying the motion for resentencing by the May 26, 2009, deadline; and
- (f) failing to promptly pay required filing fees even after the Court of Appeals order of July 16, 2009, that the appeal could be dismissed if the fee was not paid on time;

Hammis violated SCR 20:1.3.³

COUNT FOUR

37. By failing to respond to his client's request for information on the costs of his representation, Hammis violated SCR 20.1.5(b)(3).⁴

COUNT FIVE

38. By making misrepresentations to his client by letter dated October 31, 2008, Hammis violated SCR 20:8.4(c).

³ SCR 20:1.3 provides: "A lawyer shall act with reasonable diligence and promptness in representing a client."

⁴ SCR 20:1.5(b)(3) provides: "A lawyer shall promptly respond to a client's request for information concerning fees and expenses."

Davis Matter (OLR Matter No. 2011MA550)
(Counts 6-11)

39. In 2010, Bonita Davis was a Recreation Director for the City of Janesville (Janesville).

40. On November 5, 2010, Janesville sent Davis a "Pre-determination Notice of Discharge."

41. On November 8, 2010, Davis met with Hammis regarding her employment with Janesville. Davis paid Hammis \$2,000 as an advanced fee. Davis signed a written fee agreement which allowed Hammis to deposit the fee into his business account. The agreement also required him to send Davis a written accounting of his fees at the end of his representation.

42. During their November 8, 2010 meeting, Hammis told Davis that he would attend any meetings with the City, investigate its allegations, get a copy of a related police report, handle her communications with the City and obtain a "really good" severance package for Davis from the City. Hammis did not adequately explain to Davis any problems that Davis's employment history may cause or reasonably explain to her the unlikelihood under the circumstances of prevailing on discrimination or worker's compensation claims.

43. On December 6, 2010, the City of Janesville terminated Davis's employment. On that day, Davis instructed Hammis to file a discrimination complaint against Janesville. Hammis prepared a complaint but never filed it.

44. Hammis never attempted to obtain a severance package for Davis, challenge her termination, or explain his decisions to not do so.

45. On February 23, 2011, Hammis believed he ceased representing Davis. He never provided her with an accounting.

46. On or about March 21, 2011, Davis filed a grievance with OLR against Hammis.

47. On June 3, 2011, OLR wrote to Hammis, informing him of Davis's grievance and requiring a response by June 27, 2011. Hammis did not respond.

48. On July 14, 2011, OLR wrote another letter to Hammis, requiring a response by July 25, 2011.

49. On July 25, 2011, Hammis responded to OLR. His response indicated that he had time sheets and phone records for his representation of Davis.

50. On September 1, 2011, OLR requested Hammis provide the time sheets, phone records and the

discrimination complaint in his representation of Davis. Hammis failed to provide the requested documents.

COUNT SIX

51. For failing to account to Ms. Davis for her \$2,000 advance fee deposited into his operating account, as required by the alternative fee placement measures of SCR 20:1.15(b)(4m), Hammis violated SCR 20:1.15(b)(4).⁵

COUNT SEVEN

52. By failing to explain matters to his client sufficiently so that she understood and could make informed decisions regarding the representation, Hammis violated SCR 20:1.4(b).⁶

COUNT EIGHT

53. By failing to pursue his client's interest in negotiating considerations in exchange for termination of her employment, Hammis violated SCR 20:1.3.

⁵ 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."

⁶ 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 NINE

54. By failing at any time from December 6, 2010, to February 23, 2011, to file the discrimination complaint he had prepared for his client, Hammis violated SCR 20:1.3.

COUNT TEN

55. By failing to timely respond to OLR's request for a written response to Davis's grievance, Hammis violated SCR 22.03(2)⁷, enforced via SCR 20:8.4(h)⁸.

COUNT ELEVEN

56. By failing to furnish documents requested by OLR, which he previously admitted he possessed, Hammis violated SCR 22.03(6)⁹, enforced via SCR 20:8.4(h).

⁷ SCR 22.03(2) provides: "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."

⁸ 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 22.03(2)"

⁹ 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."

Kowalewski Matter (OLR Matter No. 2011MA1002)
(Counts 12-13)

57. In 2002, Michele Lee Kowalewski filed for divorce from Stephen Kowalewski. *Kowalewski v. Kowalewski*, La Crosse County Case No. 2002-FA-455.

58. On June 30, 2009, Hammis agreed to represent Stephen Kowalewski (Kowalewski) in the divorce case.

59. On November 10, 2010, Judge Elliot M. Levine found Kowalewski in contempt, ordering him to 45 days of jail, commencing December 1, 2010.

60. On November 16, 2010, Hammis agreed with Kowalewski that Hammis would ask the circuit court for a stay so Kowalewski could appeal. Hammis never moved the court for a stay. Hammis never spoke to Kowalewski again.

61. Later in November of 2010, Kowalewski attempted to contact Hammis, but Hammis's business telephone was disconnected. Kowalewski then hired Attorney Richard K. Auerbach to file a motion for stay.

62. In late November 2010, Attorney Auerbach also attempted to contact Hammis via his business telephone number and cell phone, but did not receive any communication from Hammis.

63. On November 29, 2010, Auerbach filed a Motion for Stay for Kowalewski.

64. On January 4, 2011, Hammis moved to withdraw from representing Kowalewski.

65. On June 1, 2011, Kowalewski filed a grievance with OLR against Hammis.

66. On August 3, 2011, OLR informed Hammis of Kowalewski's grievance, requesting a response and the fee agreement, all briefs, motions, pleadings, invoices, and accountings in Hammis's representation of Kowalewski, by August 26, 2011. Hammis did not respond.

67. On September 1, 2011, OLR mailed a second request to Hammis repeating its request, and giving Hammis until September 12, 2011 to respond.

68. On September 16, 2011, Hammis responded to OLR's letters. The only documents he provided were an unsigned fee agreement for Kowalewski, an invoice covering June 2009 through November 17, 2009, and an online CCAP printout of the court record events in the Kowalewski case.

69. On December 7, 2011, Hammis provided additional documents responsive to OLR's request, but not a signed fee agreement.

COUNT TWELVE

70. By failing to give notice to his client that he was terminating the representation, leaving the client facing an order to report to jail within days, Hammis violated SCR 20:1.16(d).¹⁰

COUNT THIRTEEN

71. By not timely responding to OLR's request for a written response to Kowalewski's grievance, and then making only a partial and incomplete response that did not include the documents expressly requested and which was not supplemented until approximately four months after the original OLR request, Hammis violated SCR 22.03(2) and SCR 22.03 (6), enforced via SCR 20:8.4(h).

¹⁰ 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.

Regarding Benson and Trust Account Violations
(OLR Matter No. 2011MA1010)
(Counts 14-27)

Benson Settlement

72. On or about May 5, 2010, Robert Benson (Benson) hired Hammis to represent him in an automobile accident case. They agreed that Benson would receive the first \$4,800 collected, while Hammis would advance all expenses (including the filing fee) and recover anything in excess of \$4,800.

73. On June 14, 2010, Hammis filed a complaint. *Benson v. Patzold, et al.*, Rock County Case No. 10-CV-1306.

74. Hammis negotiated settlements for Benson with two insurance companies, Wilson Mutual Insurance Company (Wilson Mutual) and Progressive Northern Insurance Company (Progressive). Wilson Mutual agreed to pay Benson \$9,125. Progressive agreed to accept \$1,489.82 to settle its subrogation claim.

75. On August 4, 2010, Wilson Mutual mailed Hammis a check for \$9,125 and a release for Benson's signature. Wilson Mutual's cover letter told Hammis to "sign and date the release and return it to [Wilson Mutual] along with a copy of the dismissal before negotiating the draft."

76. In early August of 2010, Hammis asked Benson to lower his share of the settlement to \$4,500. Benson reluctantly agreed.

77. On August 10, 2010, Hammis deposited Wilson Mutual's check for \$9,125 in his trust account at Home Savings Bank ("Home Savings trust account").

78. Hammis never obtained Benson's signature on Wilson Mutual's release or sent a signed release to Wilson Mutual.

79. On or around August 13, 2010, Hammis gave Benson a Home Savings trust account check for \$4,500. Hammis had not sent a check to Progressive for their subrogation interest.

80. By January 27, 2011, the Home Savings trust account's balance was \$479.06. At that time, Hammis had not disbursed \$1,489.82 to Progressive from the account.

81. On February 22, 2011, the Rock County courts dismissed the Benson case with prejudice because although the parties had reported a settlement, no dismissal order was submitted.

82. In June and July of 2011, Wilson Mutual and Progressive filed grievances with OLR against Hammis.

83. On July 21, 2011, OLR requested Hammis respond to the insurers' grievances by August 12, 2011. Hammis did not respond.

84. On August 16, 2011, OLR sent Hammis another letter requiring his response to the insurers' grievances by August 26, 2011.

85. On August 29, 2011, Hammis faxed a response dated August 26, 2011 to OLR. The response referenced attachments, but the fax consisted of only one page.

86. On September 8, 2011, Hammis faxed several documents to OLR, including:

- (a) a Wilson Mutual release, purportedly signed by Benson on August 13, 2010, and notarized by Hammis. [Benson denies signing the release]; and
- (b) an unsigned contingent fee agreement for the Benson case, dated May 5, 2010 setting Hammis's fees at 33% and making Benson responsible for all costs; and
- (c) two letters dated August 4 and August 10, 2010 addressed to Benson and an invoice for his work on the Benson case. [Benson denies receiving these documents]; and

(d) a letter dated August 13, 2010 addressed to Progressive, purportedly transmitting a check for \$1,489.82.

87. Hammis created these August 2010 letters, the invoice, and the unsigned fee agreement after their purported dates.

88. On October 7, 2011, OLR wrote to Hammis informing him that his grievance response was incomplete, and required him to fully respond by October 21, 2011.

89. On November 22, 2011, Hammis responded to OLR's October 7, 2011 letter. Hammis provided some information, but also wrote that he needed more time to confirm that he had paid Progressive, although he wrote that "we have a check number of the payment."

90. On December 6, 2011, Hammis closed the Home Savings trust account which had a balance of \$9.07. Hammis never disbursed \$1,489.82 to Progressive from this trust account.

91. On December 12, 2011, Hammis opened a non-trust business checking account at Blackhawk Community Credit Union (the Blackhawk account). Hammis dated several checks drawn on the Blackhawk account prior to its opening.

92. On December 14, 2011, OLR filed a Motion Requesting Order to Show Cause with the Supreme Court of Wisconsin because of Hammis's noncooperation with OLR's investigation. On December 19, 2011, the Supreme Court ordered Hammis to show cause within 20 days why his license should not be suspended for his willful failure to cooperate with OLR's investigation. *In re OLR Investigation of Hammis*, Wis. Sup. Ct. Case No. 2011XX1459-D.

93. On December 30, 2011, Hammis sent Progressive a "replacement check" for \$1,489.82. Hammis's cover letter represented that he had sent Progressive a check on August 13, 2010. The check was drawn on the Blackhawk account, which had a balance of \$703.03 at that time.

94. Also, on December 30, 2011, Hammis wrote to OLR indicating that Progressive had never deposited the earlier check, enclosing a copy of his letter and check to Progressive of that date.

95. On January 9, 2012, OLR withdrew its Motion for Order to Show Cause, as Hammis's response allowed it to continue with its investigation.

96. On January 20, 2012, Blackhawk refused to honor Hammis's \$1,489.82 check to Progressive because of insufficient funds.

97. On January 24, 2012, the Blackhawk account was closed. During the life of the account, Hammis deposited or attempted to deposit \$21,162.32 and wrote checks or made withdrawals totaling \$34,635.55. Eleven of Hammis's checks from the Blackhawk account, including the one to Progressive, were dishonored because of insufficient funds.

98. On March 15, 2012, OLR wrote to Hammis asking for information, including an explanation of the dishonored check to Progressive, and the check number of his August 13, 2010 check to Progressive. OLR gave Hammis until March 29, 2012 to respond. Hammis did not respond.

99. On April 9, 2012, Hammis faxed OLR a request for an extension until April 14, 2012.

100. On April 17, 2012, Hammis partially responded to OLR's March 15, 2012 letter.

101. On or around May 21, 2012, Hammis sent Progressive a check dated April 17, 2012 for \$1,489.82, drawn on a business account at Associated Bank.

102. In July and August 2013, OLR wrote and then personally served Hammis with requests for certain documents, as well as additional trust account records. Hammis did not timely respond or provide the requested documents.

103. On September 25, 2013, OLR filed another Motion Requesting Order to Show Cause with the Supreme Court of Wisconsin because of Hammis's noncooperation. On September 26, 2013, the Supreme Court ordered to Hammis to show cause why his license should not be temporarily suspended for his willful failure to cooperate with OLR's investigation. *In re OLR Investigation of Hammis*, Wis. Sup. Ct. Case No. 2013XX1251-D.

104. On November 26, 2013, the Supreme Court temporarily suspended Hammis's Wisconsin law license for his failure to cooperate with OLR's investigation.

105. On December 12, 2013, Hammis responded to several of OLR's requests for information.

106. On December 18, 2013, Hammis faxed a supplemental response to OLR and the Clerk of the Supreme Court, including a document purporting to be a signed version of the fee agreement which he previously provided OLR in September of 2011. Benson denies signing it.

107. On December 30, 2013, pursuant to OLR's request as Hammis was responding in the investigation, the Supreme Court reinstated Hammis's law license.

Other Trust Account Violations

108. On October 7, 2010, Hammis transferred \$15,000 from the Home Savings trust account to his wife's checking account. According to his client ledgers, after that transaction, the Home Savings trust account had a shortfall of \$1,589.50. A shortfall remained in the account until its closure.

109. On December 14, 2010, Hammis withdrew \$45,000 from the Home Savings trust account and purchased a cashier's check in that amount.

110. Between July 2010 and December 2011, Hammis deposited \$15,400 of his or his firm's funds into the Home Savings trust account. Hammis's client ledgers do not reflect these deposits.

111. Between July 2010 and February 2011, Hammis made 56 prohibited Internet or telephone transactions totaling \$259,281.22 with his Home Savings trust account.

112. Between July 9, 2010, and February 24, 2011, Hammis did not identify the client or matter on deposit

slips for 19 deposits totaling \$640,745.79 into the Home Savings trust account.

113. On December 6, 2011, Hammis closed the Home Savings trust account, which had a balance of \$9.07.

114. Hammis's client ledgers indicate that \$871.01 for Donn Jacobson and \$1,530.29 for CF Development, Inc should have remained in the Home Savings trust account on December 6, 2011.

115. In addition, Hammis's client ledgers indicate that Hammis disbursed more funds than he had received for four clients, creating negative balances for them in the Home Savings trust account.

COUNT FOURTEEN

116. By converting funds held in trust for a third party to other purposes sometime between August 10, 2010 (the deposit of the Wilson Mutual settlement check in the Benson matter) and January 27, 2011 (a date on which the Home Savings trust account balance was less than the money owed to Progressive in the Benson matter), Hammis violated SCR 20:8.4(c).

COUNT FIFTEEN

117. By receiving funds in trust for a third party, Progressive, and then failing to pay that party for over 20 months, Hammis violated SCR 20:1.15(d) (1) through (3).¹¹

COUNT SIXTEEN

118. By failing to hold in trust the funds he received for the purpose of paying the subrogation claim of Benson's insurer, Hammis violated SCR 20:1.15(b) (1).¹²

COUNT SEVENTEEN

119. By backdating checks on the Blackhawk account to before it was opened, by writing checks drawn on the account when he knew there were not sufficient funds in the account to cover the checks, by writing checks on the account with reckless disregard for the fact that the

¹¹ SCR 20:1.15(d) (1) through (3) provides:

Upon receiving funds or other property ... in which the lawyer has received notice that a 3rd party has an interest identified by a lien, court order, judgment, or contract, the lawyer shall promptly notify the ... 3rd party in writing. Except as stated in this rule or otherwise permitted by law or by agreement with the client, the lawyer shall promptly deliver to the ...3rd party any funds or other property that the ...3rd party is entitled to receive.

¹² SCR 20:1.15 (b) (1) provides:

A lawyer shall hold in trust, separate from the lawyer's own property, that property of ... 3rd parties that is in the lawyer's possession in connection with a representation. All funds of ... 3rd parties paid to a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable trust accounts.

dollar amounts of the checks exceeded the funds deposited and available to cover the checks, so that the December 30, 2011, check to Progressive for its subrogated claim against his client and ten other checks were never honored, Hammis violated SCR 20:8.4(c).

COUNT EIGHTEEN

120. By falsely representing to Progressive that he had sent a check for \$1,489.82 to it on August 13, 2010, Hammis violated SCR 20:8.4(c).

COUNT NINETEEN

121. By:

- (a) Creating a written fee agreement that did not reflect the original terms of the representation, backdating it to when he was hired and implicitly representing it to OLR as the only fee agreement with the client;
- (b) Fabricating, after the fact, two letters purportedly sent to his client on August 4 and 13, 2010, providing the copies to OLR in the course of its investigation and representing them to be true copies of letters actually sent to his client;
- (c) Producing for OLR an insurance claim release form with the falsified signature of his client; and,
- (d) Falsely representing to OLR that he had sent a check for \$1,489.82 to Progressive on August 13, 2010,

Hammis violated SCR 22.03(6) and SCR 20:8.4(h).

COUNT TWENTY

122. By failing to timely answer OLR's request for a response and his subsequent failure to fully and fairly disclose all the facts and circumstances including those concerning Progressive's claim, by his wilful failure to fully answer questions, by failing to furnish requested documents, by repeatedly responding to requests for information by referencing non-existent attachments and by generally failing to provide relevant information, Hammis violated SCR 22.03(2) and (6), and SCR 20:8.4(h).

COUNT TWENTY-ONE

123. By withdrawing \$45,000 from his Trust Account on December 14, 2010, in order to obtain a cashier's check from Home Savings Bank, Hammis violated SCR 20:1.15(e)(4)a.¹³

COUNT TWENTY-TWO

124. By engaging from July 2010 through February 2011 in 56 prohibited Internet and telephone transactions with a combined dollar value of \$259,281.22 to and from his

¹³ SCR 20:1.15(e)(4)a provides: "No disbursement of cash shall be made from a trust account or from a deposit to a trust account, and no check shall be made payable to 'Cash.'"

Home Savings trust account, Hammis violated SCR 20:1.15(e)(4)b. and c.¹⁴

COUNTY TWENTY-THREE

125. By failing to identify the client or matter on every deposit slip for all of the 19 deposits totaling \$640,745.79 made to the Home Savings trust account between July 9, 2010, and February 24, 2011, Hammis violated SCR 20:1.15(f)(1)d.¹⁵

COUNT TWENTY-FOUR

126. By converting funds held in trust for clients to other purposes sometime between July 21, 2010, and December 9, 2011, Hammis violated SCR 20:8.4(c).

COUNT TWENTY-FIVE

127. By falsely representing a document to the Supreme Court as a newly discovered copy of the fee agreement signed by Benson, when the purported signature was a forgery, Hammis violated SCR 20:3.3(a)(1),¹⁶ SCR 22.03(6) and SCR 20:8.4(h).

¹⁴ SCR 20:1.15(e)(4)b. and c. provides: "No deposits or disbursements shall be made to or from a pooled trust account by a telephone transfer of funds ... A lawyer shall not make deposits to or disbursements from a trust account by way of an Internet transaction."

¹⁵ SCR 20:1.15(f)(1)d. provides: "The deposit slip shall identify ... the client or matter associated with each deposit item ..."

¹⁶ SCR 20:3.3(a)(1) provides: "A lawyer shall not knowingly ... make a false statement of fact ... to a tribunal ..."

COUNT TWENTY-SIX

128. By depositing at least \$15,400 of lawyer or law firm funds into the Home Savings trust account between July 2, 2010, and February 24, 2011, which funds far exceeded any amounts reasonably necessary to pay monthly account service charges, and none of which was allocated to any client or matter for which funds were held in trust, Hammis violated SCR 20:1.15(b)(3).¹⁷

COUNT TWENTY-SEVEN

129. By disbursing funds from the Home Savings trust account on at least four occasions that resulted in negative balances on the individual client ledgers recording funds held in trust with respect to four different clients or matters, Hammis violated SCR 20:1.15(f)(1)b.¹⁸

¹⁷ SCR 20:1.15(b)(3) provides: "No funds belonging to the lawyer or law firm, except funds reasonably sufficient to pay monthly account service charges, may be deposited or retained in a trust account."

¹⁸ SCR 20:1.15(f)(1)b provides:

A subsidiary ledger shall be maintained for each client or 3rd party for whom the lawyer receives trust funds that are deposited in an IOLTA account or any other pooled trust account. The lawyer shall record each receipt and disbursement of a client's or 3rd party's funds and the balance following each transaction. A lawyer shall not disburse funds from an IOLTA account or any pooled trust account that would create a negative balance with respect to any individual client or matter.

Erickson Matter (OLR Matter No. 2012MA561)
(Counts 28-32)

130. On May 28, 2010, Mary Voigt (Voigt) hired Hammis to represent her in her role as the Personal Representative in the *Estate of Regina Seymour*, Dane County Case No. 2010-PR-470 (the Seymour Estate).

131. Voigt paid Hammis \$2,000 in advanced fees and signed a written fee agreement. The fee agreement did not authorize Hammis to use the Estate's funds to pay his billings without court approval.

132. On August 30, 2010, a Dane County judge named Ricky Bridges (Bridges) as Special Administrator of the Seymour Estate.

133. On October 4, 2010, Hammis deposited \$150,000 of Seymour Estate funds into his trust account.

134. On October 5, 2010, Hammis transferred \$1,000 of Seymour Estate funds out of his trust account for legal fees.

135. On October 8, 2010, Hammis sent Bridges's attorney a check for \$145,000, representing the Seymour Estate's funds.

136. An invoice for Hammis's representation of Voigt dated February 28, 2011 indicated that Hammis used the \$5,000 as a "reserve fee."

137. Hammis's client ledger indicates that on February 28, 2011, Hammis transferred the remaining \$4,000 of Seymour Estate funds out of his trust account.

138. On November 16, 2011, Voigt died.

139. On December 7, 2011, Diane Erickson (Erickson) was appointed as Special Administrator of Voigt's estate. Erickson hired Attorney Michael Rumpf (Rumpf) to represent her.

140. On December 7, 2011, Rumpf wrote to Hammis, requesting, among other things, that Hammis transfer to Rumpf any Seymour Estate funds that he held in trust, and provide an accounting of those funds.

141. On December 22, 2011, Hammis transferred his Voigt file to Rumpf and signed an order for substitution. Hammis did not provide Rumpf with any billing information, work product, or an accounting of funds.

142. Over the next few months, Rumpf sent Hammis several requests for the entire Voigt file. Hammis often did not substantively respond, and did not give further documents to Rumpf.

143. On February 28, 2012, Erickson filed a grievance against Hammis with OLR.

144. From August through November of 2012, OLR wrote Hammis several letters, including one which was personally served on Hammis, asking him to respond to Erickson's grievance. Hammis did not provide any substantive responses to OLR's letters.

145. On March 13, 2013, OLR moved the Wisconsin Supreme Court for an order that Hammis show cause why his license should not be suspended for failing to cooperate with its investigation of the Erickson and other matters. On March 15, 2013, the Court ordered Hammis to show cause within twenty days why his law license should not be suspended for his wilful failure to cooperate in OLR's investigations. *In re OLR Investigation of Hammis*, Wis. Sup. Ct. Case No. 2013XX337-D.

146. On April 2, 2013, Hammis responded to OLR's information requests regarding the Erickson grievance and other matters.

147. On April 3, 2013, OLR moved to withdraw its motion. The Court dismissed the motion and order the following day.

148. In April and June 2013, OLR wrote and personally served Hammis requesting more information about the \$5,000 Seymour Estate disbursement. Hammis did not respond.

COUNT TWENTY-EIGHT

149. By withdrawing estate funds from his trust account as "reserve fees" to apply to his legal bill, without notice to and consent from his client or other parties with a potential interest in the funds, Hammis violated SCR 20:1.15(b)(1).

COUNT TWENTY-NINE

150. By withdrawing estate funds from his trust account as a "reserve fee" to apply to his legal bill, without notice to and consent from his client or other parties with a potential interest in the funds, Hammis violated SCR 20:1.15(g)(1).¹⁹

¹⁹ SCR 20:1.15(g)(1) provides:

At least 5 business days before the date on which a disbursement is made from a trust account for the purpose of paying fees, with the exception of contingent fees or fees paid pursuant to court order, the lawyer shall transmit to the client in writing all of the following: a. an itemized bill or other accounting showing the services rendered; b. notice of the amount owed and the anticipated date of the withdrawal; and c. a statement of the balance of the client's funds in the lawyer trust account after the withdrawal.

COUNT THIRTY

151. By failing to provide a copy of the entire Voigt file, including billing statements, accountings and work product, to the successor representative of his client in the Seymour Estate matter and her counsel, Hammis violated SCR 20:1.16(d).

COUNT THIRTY-ONE

152. By failing to timely respond to OLR's initial grievance investigation of Erickson's grievance and submitting a response to OLR only after the Supreme Court of Wisconsin issued an Order to Show Cause why his license should not be temporarily suspended for failing to cooperate, Hammis violated SCR 22.03(2).

COUNT THIRTY-TWO

153. By failing to respond to OLR's request for additional information in its investigation of Erickson's grievance, Hammis violated SCR 22.03(6).

Winrich Matter (OLR Matter No. 2012MA1871)
(Counts 33-36)

154. On November 3, 2011, Ralph Winrich (Winrich) hired Hammis to draft a deed and a will.

155. In May of 2012, Hammis drafted the deed. Shortly thereafter, Winrich signed the deed at Hammis's office.

156. In the following months, Hammis was unresponsive to Winrich's phone messages. In mid-2012, Winrich sent Hammis a registered letter asking for information. Hammis did not sign for the letter, and the Post Office returned it to Winrich.

157. On September 5, 2012, Winrich filed a grievance against Hammis with OLR.

158. On October 4, 2012, OLR wrote to Hammis and asked him to provide information by October 29, 2012 about the work he performed for Winrich. Hammis did not respond.

159. On November 28, 2012, OLR personally served Hammis with a letter requiring him to provide information about the Winrich matter within seven days.

160. On December 27, 2012, Hammis faxed a response to OLR in the Winrich grievance matter.

161. Also on December 27, 2012, Hammis emailed Winrich, requesting Winrich and his late wife's social security numbers for a real estate transfer form. This was Hammis's first communication to Winrich in several months. Winrich sent Hammis the information.

162. As of April of 2013, Hammis had not filed Winrich's deed.

163. On May 3, 2013, OLR wrote to Hammis, requiring him to provide further information by May 20, 2013 about his representation of Winrich. Hammis did not respond.

164. On June 4, 2013, OLR served Hammis with a letter requiring his response to OLR's investigative inquiry within seven days. Hammis did not respond.

COUNT THIRTY-THREE

165. By failing to timely file the quit claim deed on his client's behalf, after the deed had been executed and all necessary information had been received, Hammis violated SCR 20:1.3.

COUNT THIRTY-FOUR

166. By failing to respond to his client's inquiries regarding the status of his matter, and by failing to initiate status updates to his client, including his purported need for additional information from the client

before being able to complete the representation, Hammis violated SCR 20:1.4(a) (3) and (4).²⁰

COUNT THIRTY-FIVE

167. By initially failing to timely respond to OLR regarding Winrich's grievance, and doing so only after being personally served, Hammis violated SCR 22.03(2).

COUNT THIRTY-SIX

168. By failing to respond to OLR's request for additional information in its Winrich grievance investigation, Hammis violated SCR 22.03(6).

Graf Matter (OLR Matter No. 2012MA612)
(Counts 37-41)

169. On November 4, 2011, Rhonda J. Graf (Graf) spoke with Hammis about setting up a limited liability company (LLC) and drafting related documents. During this conversation, Hammis told Graf that he could do this work within a week.

170. On November 7, 2011, Graf hired Hammis, signed a fee agreement, and paid him \$400 to set up the LLC.

171. In November and December of 2011, Graf sent Hammis several emails asking for updates on drafting the

²⁰ SCR 20:1.4(a) (3) & (4) provides: "A lawyer shall . . . (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests by the client for information."

LLC documents. Hammis responded occasionally to Graf's communications, but never provided an update.

172. On December 22, 2011, Graf emailed Hammis, terminating Hammis's representation and requesting he refund her fees. Hammis did not respond.

173. On December 27, 2011, Graf emailed Hammis another request for return of the fees.

174. On January 4, 2012, Hammis emailed Graf, stating that he had "submitted the file and the instruction to my bookkeeper to remit refund of your advanced fee per your request." Hammis never refunded Graf's fee.

175. As of January 4, 2012, Hammis had not provided Graf with a draft of any documents or work on her behalf.

176. In March of 2012, Graf filed a grievance against Hammis with OLR.

177. On April 2, 2012, Graf sued Hammis in small claims court, seeking damages based on his failure to return her fees. *Graf v. Hammis Law Office*, Dane County Case No. 2012-SC-2971.

178. On April 30, 2012, Hammis represented that his notary commission was valid when he notarized a document submitted in *Graf v. Hammis Law Office*. Hammis had not

been a licensed notary since January 20, 2011, when the Secretary of State revoked his notary commission.

179. On July 13, 2012, Hammis sent OLR a response to Graf's grievance. As part of that response, Hammis sent an "Operating Agreement" and "Contribution Agreement" for "Exterior Designs, LLC" (the Agreements). He also submitted a case log which represented he drafted the Agreements on December 1, 2011. However, on information and belief, Hammis did not draft the Agreements until after Graf filed her grievance with OLR.

180. On April 18, 2013, Graf obtained a judgment against Hammis in *Graf v. Hammis Law Office*.

COUNT THIRTY-SEVEN

181. Having been hired on November 7, 2011 to prepare LLC documents for Rhonda Graf, and at that time creating the expectation that the work could be completed in a matter of days or a week, by failing to produce the LLC documents and provide them to Graf as of December 22 and 27, 2011, when Graf provided email notice of the termination of representation and requested the return of her advanced fee in the matter, Hammis violated SCR 20:1.3.

COUNT THIRTY-EIGHT

182. By failing to respond to multiple email inquiries from Graf in December 2011, in which Graf sought updates concerning the status of the LLC work, Hammis violated SCR 20:1.4(a)(4).

COUNT THIRTY-NINE

183. Having failed to produce the LLC papers and provide them to Graf as of the December 22 and 27, 2011 termination emails, in which Graf sought a refund, and having stated in a January 4, 2012 email to Graf, "I have submitted the file and the instruction to my bookkeeper to remit refund of your advanced fee per your request," by thereafter failing to refund Graf, Hammis violated SCR 20:1.16(d).

COUNT FORTY

184. By notarizing an affidavit of mailing in a Dane County small claims action with the declaration that his notary commission was permanent, when his notary commission was in fact revoked, thereby violating Wis.

Stat. § 137.01(2), Hammis violated SCR 20:8.4(c) and SCR 20:8.4(f).²¹

COUNT FORTY-ONE

185. Having made no mention of preparing any documents related to Graf's desired LLC in response to Graf's multiple emails, and likewise failing to mention any such purported document preparation when informing Graf on January 4, 2012 that he had instructed his bookkeeper to refund Graf's advance fee payment, by then sending OLR documents relating to an LLC, purportedly drafted on or about December 1, 2011, offered to OLR to support his claim of compensable drafting services, when Hammis had not prepared those documents prior to Graf's termination of representation or as of January 4, 2012 when he promised Graf a refund, Hammis violated SCR 22.03(6), via SCR 20:8.4(h).

²¹ 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."

Diane M. Matter (OLR Matter No. 2012MA2004)
(Counts 42-43)

186. In 2008, Diane M. hired Hammis to represent her in a criminal matter. Hammis subsequently represented Diane M. in other matters.

187. On September 28, 2012, Diane M. filed a grievance against Hammis with OLR.

188. On December 19, 2012, OLR wrote to Hammis, requesting he respond to Diane M.'s grievance by January 9, 2013. Hammis did not respond.

189. On February 20, 2013, OLR personally served Hammis with a written request for information regarding Diane M.'s grievance, due within seven days. Hammis did not respond.

190. On March 13, 2013, OLR moved the Wisconsin Supreme Court for an order that Hammis show cause why his license should not be suspended for failing to cooperate with its investigation of Diane M.'s grievance and other matters. On March 15, 2013, the Court ordered Hammis to show cause within twenty days why his license should not be suspended for his wilful failure to cooperate in OLR's investigations. *In re OLR Investigation of Hammis*, Wis. Sup. Ct. Case No. 2013XX337-D.

191. On March 20, 2013, Hammis responded to OLR's information requests regarding the Diane M. grievance. On April 3, 2013, OLR moved to withdraw its motion. The Court dismissed the motion and order the following day.

192. On October 23, 2013, OLR wrote to Hammis requesting further information regarding Hammis's representation of Diane M. Hammis never responded.

COUNT FORTY-TWO

193. By initially failing to timely respond to OLR's investigation of Diane M.'s grievance and submitting a response only after the Supreme Court of Wisconsin issued an Order to Show Cause why his license should not be temporarily suspended for failing to cooperate, Hammis violated SCR 22.03(2), enforced via SCR 20:8.4(h).

COUNT FORTY-THREE

194. By failing to respond to OLR letter dated October 23, 2013 requesting further investigative information, Hammis violated SCR 22.03(6), enforced via SCR 20:8.4(h).

Teigen Matter (OLR Matter No. 2012MA2213)
(Counts 44-46)

195. On August 9, 2012, Gary Teigen (Teigen) hired Hammis to obtain title to an automobile and gave him several original documents. Teigen paid Hammis \$500 in fees.

196. Over the next few months, Hammis did not respond to Teigen's communications, except for sending Teigen one email on October 26, 2012.

197. In late October of 2012, Teigen tried to visit Hammis's office, but it was locked and closed. Teigen hired another attorney who also was unable to contact Hammis.

198. On November 7, 2012, Teigen filed a grievance against Hammis with OLR.

199. On December 19, 2012, OLR wrote to Hammis requesting a response to Teigen's grievance. Hammis did not respond.

200. On February 20, 2013, OLR personally served Hammis with a letter requiring his response to the Teigen grievance within ten days. Hammis did not respond.

201. On March 13, 2013, OLR moved the Wisconsin Supreme Court for an order that Hammis show cause why his

license should not be suspended for failing to cooperate with its investigation of the Teigen and other matters. On March 15, 2013, the Court ordered Hammis to show cause within twenty days why his law license should not be suspended for his wilful failure to cooperate in OLR's investigations. *In re OLR Investigation of Hammis*, Wis. Sup. Ct. Case No. 2013XX337-D.

202. On March 21, 2013, Hammis responded to OLR's information requests regarding the Teigen grievance.

203. In late March of 2013, Hammis returned Teigen's original documents and \$500 to him.

204. On April 3, 2013, OLR moved to withdraw its motion. The Court dismissed the motion and order the following day.

COUNT FORTY-FOUR

205. By failing to return his client's original documents and return his unearned fee for approximately five months after the representation ended, Hammis violated SCR 20:1.16(d).

COUNT FORTY-FIVE

206. By initially failing to timely respond to OLR's investigation of Teigen's grievance, submitting a response only after the Supreme Court of Wisconsin issued an Order

to Show Cause why his license should not be temporarily suspended for failing to cooperate, Hammis violated SCR 22.03(2).

Regarding Michigan Licensure
(Count 46)

207. Hammis was admitted to the State Bar of Michigan. His Michigan law license has been suspended for non-payment of dues since February 15, 2001.

208. From 2008 through at least 2012, Hammis represented himself as an "experienced business and general practice attorney representing businesses and individuals in the State of Wisconsin and Michigan" in emails to Angela Weaver, Wilson Mutual, Bonita Davis, Rhonda J. Graf, and Attorney Michael Rumpf.

COUNT FORTY-SIX

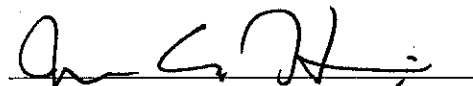
209. By representing himself as authorized to practice law and to represent clients in the State of Michigan in emails to Angela Weaver, Wilson Mutual, Bonita Davis, Rhonda J. Graf and/or Attorney Michael Rumpf, although his Michigan law license had been continuously

suspended since February 15, 2001, Hammis violated SCR 20:7.1.²²

WHEREFORE, the Office of Lawyer Regulation asks the Wisconsin Supreme Court to find Attorney James Edward Hammis violated Supreme Court Rules as alleged in this Complaint; to revoke Hammis's license to practice law in Wisconsin; to order Hammis to pay \$400 in restitution to Rhonda Graf; and to grant such other and further relief as may be just and equitable, including an award of costs.

Dated this 25th day of September, 2014.

OFFICE OF LAWYER REGULATION



JONATHAN E. HENDRIX
Assistant Litigation Counsel
State Bar No. 1047173

²² SCR 20:7.1 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:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or

(c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or

(d) contains any paid testimonial about, or paid endorsement of, the lawyer without identifying the fact that payment has been made or, if the testimonial or endorsement is not made by an actual client, without identifying that fact."

110 East Main Street, Room 315
Madison, Wisconsin 53703
Telephone: 608-266-8334