

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS
AGAINST PHILLIP J. RAMTHUN,
ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,
Complainant;

CASE NO. 2014AP 2476-D

PHILLIP J. RAMTHUN,
Respondent.

RECEIVED

OCT 22 2014

COMPLAINT

CLERK OF SUPREME COURT
OF WISCONSIN

NOW COMES the Wisconsin Supreme Court - Office of Lawyer Regulation (OLR), by Assistant Litigation Counsel, Sheryl St. Ores, and alleges as follows:

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

2. Respondent, Attorney Phillip J. Ramthun (Ramthun), is a Wisconsin attorney (State Bar No. 1018329) admitted to practice law in 1978. Ramthun's office address is currently listed with the Wisconsin State Bar as 10701 W. North Ave., Ste. 203, Milwaukee, Wisconsin 53226-2314.

3. Ramthun has not received discipline for misconduct in a formal disciplinary proceeding initiated by the filing of a disciplinary complaint. However, on April 17, 2014, Ramthun's Wisconsin law license was temporarily suspended by the Supreme Court of Wisconsin for his willful failure to cooperate in two OLR investigations. (OLR Matter Nos. 2013MA1398 and 2013MA1510). *Office of Lawyer Regulation v. Phillip Ramthun*, Case No. 2014XX246-D. Ramthun's license was reinstated on June 12, 2014.

**Regarding Gallagher
Counts 1 - 4
OLR Matter No. 2011MA1661**

4. On April 14, 2003, Alison Gallagher (Gallagher) stopped working at A.G. Edwards' company due to disability.

5. On March 16, 2004, Gallagher's A.G. Edwards company payments of long term disability benefits through the Unum company (Unum policy) were terminated.

6. On June 2, 2004, Gallagher's initial request for review of the termination of disability benefits was denied.

7. After the June 2, 2004 denial, Gallagher hired Attorney Jerome Fox to file a Request for Reassessment with Unum.

8. On March 23, 2005, Gallagher hired Ramthun as successor counsel to appeal the benefits denial.

9. By letter dated December 28, 2006, Unum sent a Reassessment Information Form Packet to Gallagher with a deadline return date of March 8, 2007.

10. Ramthun did not request an extension of time from Unum to send in the Reassessment forms.

11. On April 23, 2007, Unum wrote to Ramthun denying Gallagher's Request for Reassessment due to the failure to timely file forms.

12. The April 23, 2007 Unum letter indicates it received Gallagher's forms from Ramthun on April 16, 2007, approximately 40 days after the March 8, 2007 deadline.

13. Upon receipt of Unum's April 23, 2007 letter, Ramthun informed Gallagher of the Request for Reassessment denial.

14. In June 2007, Ramthun obtained a copy of the Unum policy.

15. Ramthun determined the Request for Reassessment denial was the final administrative step before a civil suit could be filed.

16. On January 16, 2009, Ramthun filed a Complaint on behalf of Gallagher. *Alison Gallagher v. UNUM*, Case

No. 2:09-CV-00069, U.S. District Court, Eastern District of Wisconsin (District Court Case).

17. On July 30, 2009, Unum filed a Motion to Dismiss and Brief in Support in the District Court Case, stating the Complaint failed to state a claim because the claim was barred by the applicable limitations period.

18. Ramthun failed to file a response to Unum's July 30, 2009 Motion to Dismiss.

19. On February 22, 2010, the Court filed its decision and order in the District Court Case granting Unum's July 30, 2009 Motion to Dismiss dismissing the case with prejudice ruling Gallagher's case was time-barred.

20. The February 22, 2010 District Court Case decision and order stated:

Plaintiff has not responded with any argument regarding the calculation of the limitations period. Therefore, viewing the policy terms and record in the light most favorable to the plaintiff, she had four years and 90 days after the alleged onset of disability (elimination period + one year + three year contractual limitations period). Plaintiff had an alleged onset date of April 14, 2003, and was paid benefits through March 16, 2004. The elimination period was July 13, 2003, and the additional year gave her until July 13, 2004. It is true that the "manner in which the policy sets the limitations period is better suited to the initial claim decision than it is to claims that are granted and subsequently terminated ..."
Abena v. Metropolitan Life Ins. Co., 544 F.3d

880, 884 (7th Cir. 2008). Nevertheless, plaintiff still had three years from the July 13, 2004, date to file this suit. Because she did not file until January 16, 2009, this suit is time barred.

21. In January 2010, Ramthun began calling the District Court.

22. Sometime in April 2010, Ramthun was informed the Gallagher case was dismissed.

23. After April 2010, Ramthun requested a copy of the decision from the District Court and received a copy of the decision several weeks later, at which time, the deadlines for appeal/reconsideration had passed.

24. In a May 26, 2010 letter, Ramthun first informed Gallagher of the dismissal of the District Court Case stating, in part:

When I contacted the court to see what the delay was, they told me a decision has already been issued, they told me the suit was dismissed. I assumed it was on the basis of the main issue we argued about - whether or not there was enough evidence to uphold Unum's denial...

You can imagine my shock and horror when I received it and saw that it was rendered February 22, 2010!! In addition, the decision says we never responded, which is blatantly untrue...

I tried to straighten this out before my vacation the week of May 24 through May 31 but could not get anywhere. When I get back, I will get to it immediately.

25. Ramthun's May 26, 2010 letter is the last communication by Ramthun to Gallagher.

26. In an April 23, 2012 written response to OLR investigative inquiries, Ramthun stated:

It is correct that I failed to notify Ms. Gallagher of the February 22, 2010 Dismissal until May 26, 2012 letter (attached). From July 2009 to May 2010, I responded to each Motion and waited the Court's decision on them. Then as indicated therein, I also attempted to contact the Court to see what the status was; finally they simply told me it was dismissed. I believed at that time it had been denied based on Federal Circuit Court legal level of review of UNUM's internal review system and the amount of medical documentation that could be considered (that which was presented at the time of the initial denial).

27. In a July 3, 2012 letter to OLR, Ramthun admitted he does not have a specific recollection of the exact dates on which he contacted the Court.

28. In his July 3, 2012 letter to OLR, Ramthun admitted that after obtaining a copy of Gallagher's Unum policy on or around June 14, 2007, he calculated the three year limitations period began to run on April 23, 2007, "the last day on which the internal administrative remedies were exhausted."

29. Ramthun admitted to OLR "...the reply brief was never filed..." in the District Court Case.

30. In response to Gallagher's allegation that Ramthun's May 26, 2010 letter informing her the case had been dismissed was her last communication from him, Ramthun stated to OLR he discussed the February 22, 2010 dismissal with Gallagher by phone following his late May 2010 vacation, but after several subsequent unreturned calls to Gallagher, he closed his client file on the matter.

31. Ramthun rarely took Gallagher's calls or returned her voice-mail messages.

32. Ramthun admitted to OLR there were occasional communication issues.

33. Attorney Michael P. Stupar, Stupar & Schuster, S.C., agreed to review the dismissal of the District Court Case.

34. Ramthun failed to respond to Attorney Stupar's letters dated October 25, 2010 and May 9, 2011 which requested a copy of the Gallagher client file.

35. Ramthun received the following communications from Attorney Thomas M. Bartell, Jr., partner of Attorney Stupar, said communications requesting a copy of Gallagher's file regarding the Unum policy:

- A letter dated July 9, 2013, sent via certified and first-class mail to Ramthun's then-address on file with the State Bar (the

return receipt was signed on 07/11/13 by Ramthun's legal assistant, Mary O'Connell);

- An email dated July 22, 2013, sent to Ramthun's email address on file with the State Bar; and

- A letter dated October 28, 2013, sent via certified and first-class mail to Ramthun's current address on file with the State Bar (the return receipt was signed on 10/30/13 by Ramthun's legal assistant, Mary O'Connell).

36. In July 2013, Ramthun sent Attorney Bartell an email indicating Ramthun would provide the file shortly.

37. On November 8, 2013, Ramthun told an associate at Attorney Bartell's office that Ramthun would send the file within one week.

38. As of December 17, 2013, Ramthun had not sent Stupar & Schuster, S.C. a copy of Gallagher's file.

Count 1

39. By failing to file suit against Unum within the limitations period, **Ramthun violated SCR 20:1.1.**¹

Count 2

40. By failing to periodically review the status of Gallagher's case (No. 2:09-CV-00069) from July 2009 to May 2010, **Ramthun violated SCR 20:1.3.**²

¹ SCR 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."

² SCR 20:1.3 provides: "A lawyer shall act with reasonable diligence and promptness in representing a client."

Count 3

41. By failing to communicate the February 22, 2010 dismissal of Gallagher's case (No. 2:09-CV-00069) to Gallagher until sending a letter dated May 26, 2010, by which time the deadlines for appeal/reconsideration had passed, **Ramthun violated SCR 20:1.4(a)(3).**³

Count 4

42. By failing to forward a copy of Gallagher's file regarding her Unum policy to Attorney Stupar's law office, **Ramthun violated SCR 20:1.16(d).**⁴

**Regarding Williams
Counts 5 - 8
OLR Matter No. 2012MA673**

43. In mid-2008, Kimberley Williams (Williams) hired Ramthun to represent her in two separate personal injury actions: a June 25, 2008 slip and fall (slip and fall case) and a July 21, 2008 auto accident (auto accident case).

44. On June 24, 2011, Ramthun filed a slip and fall case. *Kimberley Williams v. Miller Builders Inc., et al.*, Milwaukee County Case No. 2011CV010239

³ SCR 20:1.4(a)(3) provides: "A lawyer shall keep the client reasonably informed about the status of the matter."

⁴ 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."

45. On July 21, 2011, Ramthun filed an auto accident case. *Kimberly Williams v. Annette Leggett et. al.*, Milwaukee County Case No. 2011CV011661

46. In August 2011, Ramthun gave the process server the auto accident case and the slip and fall case documents on the same day.

47. Ramthun did not provide the process server specific instructions as to service of either of the two cases by a certain date.

48. After October 2011, Ramthun failed to return Williams' calls.

49. On October 27, 2011, opposing counsel filed a Motion to Dismiss in the slip and fall case.

50. In December 2011, the parties entered into a Stipulation to dismiss the slip and fall case with prejudice and without costs.

51. Prior to filing the December 2011 Stipulation, Ramthun did not inform Williams of the Motion to Dismiss or of his agreement to dismiss the case by stipulation.

52. On January 4, 2012, the stipulation and order for dismissal of the slip and fall case was filed.

53. By letter dated February 17, 2012, Ramthun informed Williams that her slip and fall case had been dismissed, stating as follows:

Regretfully, I must inform you that your case has been dismissed. We properly filed the action fully intended to serve it within the time limit for such service.

Unfortunately, due to an office error, it was not served in time. When the insurance company answered, they raised that fact. The judge then dismissed the case without prejudice, meaning you no longer have a cause of action against them.

54. In a November 6, 2012 written response to OLR's investigative inquiries, Ramthun informed OLR a mistake had been made in the service of process regarding the slip and fall case and stated:

The fall case (2011CV10239) and the automobile accident case (2011CV11661) were both timely filed according to the Statute of Limitations. However, the process server was given the two suits at the same time, but because of the fall occurring earlier; it was served twelve days late.

It was not until responsive pleadings were made by the Defendants in 2011CV10239 (the fall case) that I recognized the error, which as indicated earlier, resulted in the dismissal of the case. I communicated this error to Ms. Williams via the letter of 2-17-2012, giving her my [malpractice] insurance information.

55. In a December 17, 2013 response to OLR, as to the slip and fall case, Ramthun stated:

I timely filed it and presented the process server with the pleadings to be served, which were subsequently served late.

Count 5

56. While having filed the slip and fall lawsuit (Milwaukee County Case No. 2011CV010239) two days before the claim would have been time-barred under the applicable statute of limitations, by thereafter failing to take appropriate steps to assure timely service of the lawsuit, instead providing papers to the process server approximately one month after suit was commenced and without specific instructions regarding the date by which service must be accomplished, resulting in untimely service and a lack of personal jurisdiction over the defendant, **Ramthun violated SCR 20:1.1 and SCR 20:1.3.**

Count 6

57. By failing to inform Williams of the October 27, 2011 Motion to Dismiss filed by the defendant in Milwaukee County Case No. 2011CV010239, **Ramthun violated SCR 20:1.4(a) (3).**

Count 7

58. By failing to consult with Williams prior to stipulating to the dismissal of Milwaukee County Case

No. 2011CV010239, **Ramthun violated SCR 20:1.2(a)⁵ and SCR 20:1.4(a)(2)⁶**

Count 8

59. By failing to inform Williams of the January 4, 2012 dismissal of Milwaukee County Case No. 2011CV010239 until sending correspondence to Williams dated February 17, 2012, and at that time failing to inform Williams that the dismissal was a stipulated disposition, **Ramthun violated SCR 20:1.4(a)(3)**.

**Regarding Kanzelberger
Counts 9 - 15
OLR Matter No. 2012MA1668**

60. On April 24, 2009, Ma Moua (Moua) was involved in an automobile accident in Sheboygan.

61. From June 5 to September 16, 2009, Moua received chiropractic and physical therapy treatment from The Healing Arts Treatment Center (Healing Arts) for her accident-related injuries (totaling \$4,616).

62. Jamie Kanzelberger (Kanzelberger) is the bookkeeper at Healing Arts.

⁵ **SCR 20:1.2(a) provides in pertinent part:** "Subject to pars. (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by SCR 20:1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter..."

⁶ **SCR 20:1.4(a)(2) provides:** "A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished."

63. On June 9, 2009, Attorney Steven C. Gabert, (Gabert) Moua's personal injury attorney, signed a patient records and physician's lien with Healing Arts.

64. In mid-December 2010, Ramthun became successor counsel to Gabert.

65. On December 8, 2010, in a telephone call between Kanzelberger and Ramthun, Ramthun agreed to honor Healing Arts' lien and pay Moua's outstanding bills.

66. As of April 24, 2012, Ramthun failed to pay Healing Arts.

67. On April 24, 2012, Ramthun filed suit on behalf of Moua. *Ma Moua v. Gordon Vogel, et. al.*, Sheboygan County Case No. 2012CV000364.

68. On May 13, 2012, Kanzelberger received a phone call from Kemper Insurance requesting verification of the amount owed to Healing Arts and a certified billing.

69. On May 14, 2012, Kanzelberger faxed a certified billing to Kemper Insurance.

70. Kanzelberger stated on May 14, 2012 that a representative from Kemper Insurance assured her the balance due to Healing Arts would be paid in full to Ramthun's client trust account.

71. On May 22, 2012, Ramthun deposited a Kemper Insurance check for \$4,616, representing Medical

Payments Coverage funds covering Healing Arts' billings, into his client trust account.

72. In June 2012, Ramthun received several phone calls from Kanzelberger requesting payment of \$4,616.

73. Ramthun received a July 30, 2012, letter from Kanzelberger requesting payment, said letter stating:

On May 11th, 2012 Joyce from Kemper Specialty contacted me regarding Ma Moua's balance. I confirmed the balance of \$4616.00 for Chiropractic and Physical Therapy charges at our clinic. I also faxed the same letter to you stating the balance due on May 14th, 2012. She mailed the check to you in full.

You contacted me 2 weeks after that, to ask that when you sent the balance in full, could Ma come back to our facility. I said of course. You told me I would have the check within the week. We are now almost 3 months out. I have documented over 20 phone calls to you in the last 6 weeks with no response.

My other concern is for Ma. She asked to come back for services, and has not been in yet. I do not want anyone to not get the care they need due to non payment on an account from 3 years ago when the money is there.

I would like a phone call to update me on the status of my payment. I know that Ma has been to your office to sign off of [sic] everything. If I don't hear from you within 1 business week, I will have no choice but to contact our attorney.

74. As of January 25, 2013, Ramthun had not responded to the July 30, 2012 letter.

75. In a March 13, 2013 investigative letter to Ramthun, OLR requested copies of specific documents pertaining to his client trust account, including his transaction register showing all account transactions in his client trust account for the period of April 2012 through June 2012; his individual client ledger for Moua showing each receipt and disbursement pertaining to Moua's representation and the balance following each transaction; and his monthly statements for his client trust account for the period of April 2012 through June 2012, including all deposit and disbursement records, all due no later than March 27, 2013.

76. On March 20, 2013, 10 months after Ramthun deposited the Kemper Insurance check into his client trust account, Ramthun sent a letter to Kanzelberger in which he enclosed his client trust account check no. 10647 for \$4,616, said letter copied to OLR.

77. On April 2, 2013, OLR sent an investigative letter to Ramthun, advising him his March 20, 2013 letter to Kanzelberger did not suffice as production of the documentation requested in OLR's March 13, 2013 letter, with OLR extending Ramthun's supplemental response deadline to April 10, 2013.

78. On April 16, 2013, OLR received Ramthun's response dated April 10, 2013, said letter enclosing monthly statements for the period of April 2012 through June 2012 and his "transaction record," with Ramthun stating:

We do not keep individual client registers, but do keep a list of disbursements, which we also enclosed. Further, we do not require deposits or down payments, we pay for the expenses and get reimbursed through settlement/judgments.

79. Ramthun's April 16, 2013 list of disbursements/transaction record sent to OLR is not a client trust account transaction register.

80. Associated Bank records pertaining to Ramthun's client trust account for the period of April 2012 through March 2013 show that following Ramthun's May 22, 2012 deposit of \$10,530 and until his balance fell below the Kemper Insurance check amount, Ramthun disbursed \$5,500 to himself and transferred \$4,000 via the Internet into his Associated Bank operating account (---873), as follows:

- 05/22/12 \$10,530 Trust account deposit
(\$5,914/Giese and \$4,616/Moua)
Trust Bal. \$12,148.62
- 05/22/12 \$1,000 Internet transfer to account -
-----873
Trust Bal. \$11,148.62

- 05/25/12 check #10613 for \$2,000 payable to Ramthun re Giese
Trust Bal. \$9,148.62
- 06/06/12 check #10614 for \$3,500 payable to Ramthun re Johnson
Trust Bal. \$5,648.62
- 06/14/12 \$1,000 Internet transfer to account -
-----873
Trust Bal. \$4,648.62
- 06/21/12 \$2,000 Internet transfer to account --
-----873
Trust Bal. \$2,648.62

81. The only two checks written from Ramthun's client trust account following his May 22, 2012 deposit of \$10,530 and until his balance fell below the Kemper Insurance check amount were made payable to himself and did not pertain to Moua.

82. From May 2012 through March 2013, Ramthun made 16 disbursements via the internet (totaling \$15,760.47) from his client trust account into his operating account (-----873).

83. In an April 19, 2013 investigative letter to Ramthun, OLR advised him that he failed to provide copies of all deposit slips pertaining to his client trust account for the period of April 2012 through June 2012, requested additional information, and set a

response deadline of May 3, 2013. Ramthun failed to respond.

84. On May 14, 2013, OLR reminded Ramthun of his duty to cooperate and advised him of the consequences in the event of a failure to respond, and further, OLR requested that Ramthun provide a written response postmarked no later than May 24, 2013. Kathryn Fay, who upon information and belief is an agent authorized to receive mail for Ramthun, signed the return receipt on May 15, 2013. Ramthun did not respond.

85. On June 19, 2013, based on Ramthun's non-cooperation in this and another matter, OLR filed in the Supreme Court of Wisconsin a *Notice of Motion and Motion Requesting Order to Show Cause* as to why Ramthun's license should not be temporarily suspended for his willful failure to cooperate in OLR's investigations.

86. On June 20, 2013, the Supreme Court of Wisconsin issued an order requiring Ramthun to show cause, in writing, within 20 days of the date of the order why OLR's motion should not be granted and his license should not be temporarily suspended.

87. On July 9, 2013, OLR received Ramthun's motion response and affidavit via facsimile.

88. On July 12, 2013, OLR sent a letter to Ramthun, acknowledging receipt of his July 9, 2013 motion response, and advising his July 9, 2013 motion response did not sufficiently answer OLR's April 19, 2013 letter, and further advising Ramthun to send the additional information no later than July 19, 2013.

89. On July 12, 2013, OLR filed its *Interim Report* with the Court suggesting it hold the temporary suspension motion in abeyance until July 19, 2013.

90. Ramthun failed to provide the additional information requested in OLR's July 12, 2013 letter by July 19, 2013 and on July 19, 2013 OLR filed its *Interim Report* with the Court continuing its request for a temporary suspension of Ramthun's license.

91. On July 22, 2013, the Supreme Court of Wisconsin issued an order requiring Ramthun to respond to OLR's July 19, 2013 *Interim Report* on or before August 1, 2013.

92. On August 5, 2013, OLR received a copy of Ramthun's July 30, 2013 letter and all enclosures, addressed to the Supreme Court Clerk.

93. On August 5, 2013, OLR filed its *Continued Request for Temporary Suspension* based upon Ramthun's failure to provide in his July 30, 2013 letter the

additional information requested in OLR's July 12, 2013 letter.

94. On August 7, 2013, the Supreme Court of Wisconsin issued an order "that within 10 days of the date of this order, the OLR must inform the court whether, in light of Attorney Ramthun's August 2, 2013 letter, the OLR continues to seek a temporary suspension of Attorney Ramthun's license."

95. On August 9, 2013, OLR received a copy of Ramthun's August 2, 2013 letter and all enclosures, which, sufficiently answered OLR's July 12, 2013 letter.

96. In his November 6, 2012 response to OLR, Ramthun stated he had not forwarded payment to Healing Arts because he was "awaiting a response from the insurance company to try to settle the whole matter."

97. In his January 25, 2013 response to OLR, Ramthun stated he had not forwarded payment to Healing Arts because he had "failed to inform [his] secretary to process the payment which [he] was going to ask Ms. Kanzelberger for either a reduction or at least a partial payment pending resolution of the case."

98. At no time did Ramthun inquire of Ms. Kanzelberger as to a reduction or partial payment.

99. Ramthun submitted his November 6, 2012 response to OLR and his January 25, 2013 response to OLR after he had spent at least a portion of the insurance check funds on matters unrelated to Ms. Moua's case.

100. Ramthun's Associated Bank client trust account records show that he converted at least a portion of the Kemper Insurance check funds and therefore was unable to forward payment to Kanzelberger at Healing Arts.

Count 9

101. By allowing his client trust account balance to fall below the Kemper Insurance check amount in June 2012, when he did not deliver payment due to Healing Arts until March 2013, **Ramthun violated SCR 20:1.15(b)(1).**⁷

Count 10

102. By failing to promptly notify Healing Arts in writing upon receipt of payment from Kemper Insurance, and by failing to promptly deliver to Healing Arts the payment that it was entitled to receive, **Ramthun violated SCR 20:1.15(d)(1).**⁸

⁷ SCR 20:1.15(b)(1) provides: "A lawyer shall hold in trust, separate from the lawyer's own property, that property of clients and 3rd parties that is in the lawyer's possession in connection with a representation. All funds of clients and 3rd parties paid to a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable trust accounts."

⁸ SCR 20:1.15(d)(1) provides: "Upon receiving funds or other property in which a client has an interest, or 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 client or 3rd party in writing."

Count 11

103. By failing to maintain a transaction register and individual client ledgers, **Ramthun violated SCR 20:1.15(f)(1)a. and b.**⁹

Count 12

104. By failing to provide a supplemental response, which was initially due no later than May 3, 2013, until August 9, 2013, and only after receiving one letter by first-class mail, one letter by first-class mail and certified mail/return receipt, and the Wisconsin Supreme Court issuing an order requiring Ramthun to show cause why OLR's motion should not be granted and his law license should not be temporarily suspended, **Ramthun violated SCR 22.03(6)**¹⁰, enforceable via **SCR 20:8.4(h)**.¹¹

Except as stated in this rule or otherwise permitted by law or by agreement with the client, the lawyer shall promptly deliver to the client or 3rd party any funds or other property that the client or 3rd party is entitled to receive."

⁹ **SCR 20:1.15(f)(1)a and b provide:** "a. Transaction register. The transaction register shall contain a chronological record of all account transactions, and shall include: 1) the date, source, and amount of all deposits; 2) the date, check or transaction number, payee and amount of all disbursements, whether by check, wire transfer, or other means; 3) the date and amount of every other deposit or deduction of whatever nature; 4) the identity of the client for whom funds were deposited or disbursed; and 5) the balance in the account after each transaction. b. Individual client ledgers. A subsidiary ledger shall be maintained for each client or 3rd party for whom the lawyer receives trust funds that are deposited into an IOLTA account or 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."

¹⁰ **SCR 22.03(6) provides:** "In the course of the investigation, the respondent's willful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance."

¹¹ **SCR 20:8.4(h) provides:** "It is professional misconduct for a lawyer to fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by...SCR 22.03(6)..."

Count 13

105. By converting the Kemper Specialty insurance check funds to his own use, **Ramthun violated SCR 20:8.4(c)**.¹²

Count 14

106. By making 16 disbursements from his client trust account via web transfer, totaling \$15,760.47 from May 2012 through March 2013, **Ramthun violated SCR 20:1.15(e)(4)c**¹³.

Count 15

107. By misrepresenting to OLR why he failed to immediately forward payment to Kanzelberger at Healing Arts, **Ramthun violated SCR 22.03(6), enforceable via SCR 20:8.4(h)**.

Regarding Juan C.

Count 16

OLR Matter No. 2012MA2190

108. In or about January 2012, Juan C. hired Ramthun to represent him in a personal injury action.

109. OLR wrote to Ramthun informing him of Juan C.'s grievance wherein Juan C. requested documents from

¹² SCR 20:8.4(c) provides: "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

¹³ SCR 20:1.15(e)(4)c provides: "A lawyer shall not make deposits to or disbursements from a trust account by way of an Internet transaction."

Ramthun which Juan C. alleges Ramthun did not provide. Ramthun responded.

110. On March 13, 2013, OLR sent a letter to Ramthun, acknowledging receipt of his February 26, 2013 response, and requesting a supplemental response from Ramthun postmarked no later than March 25, 2013, including a copy of Juan C.'s client file, specifically the fee agreement, the demand letter, and specific documentation. Ramthun failed to respond.

111. In correspondence dated April 1, 2013, OLR reminded Ramthun of his duty to cooperate and advised him of the consequences in the event of a failure to respond to OLR, requesting Ramthun provide a written response to OLR's March 13, 2013 investigation letter postmarked no later than April 11, 2013. On April 3, 2013, Kathryn Fay, who upon information and belief is an agent authorized to receive mail for Ramthun, signed the return receipt. Ramthun failed to respond.

112. On April 24, 2013, Ramthun was personally served at his then-law office located at 2100 North Mayfair Road, Suite 102, Milwaukee, Wisconsin 53226-2239 with OLR's April 18, 2013 cover letter which enclosed a copy of OLR's previous letters sent to Ramthun on March 13, 2013 and April 1, 2013. OLR's April 18, 2013 cover

letter stated that to avoid a SCR 22.03(4) motion, Ramthun's written response to OLR's March 13, 2013 letter had to be filed with OLR within seven days from the date the letter was served.

113. On May 1, 2013, OLR received Ramthun's April 30, 2013 facsimile.

Count 16

114. By failing to provide a supplemental response to OLR's March 13, 2013 letter, which was initially due no later than March 25, 2013, until May 1, 2013, **Ramthun violated SCR 22.03(6), enforceable via SCR 20:8.4(h).**

Regarding EZ Self Storage

Count 17 - 18

OLR Matter No. 2013MA356

115. EZ Self Storage Mini Warehouses (EZ Self Storage) is located in West Allis, Wisconsin.

116. Ramthun maintained storage units at EZ Self Storage.

117. Ramthun's storage unit contained closed client files.

118. EZ Self Storage sent two identical letters dated December 3 and 4, 2012 to Ramthun, the latter of which was sent via USPS certificate of mailing, from Kim Papelbon (Papelbon), manager of the West Allis EZ Self Storage facility, addressed to Ramthun at his then-law

office located at 2100 North Mayfair Road, Suite 102 in Milwaukee.

119. The December 3 and 4, 2012 letters stated:

You are in default on your payment for the storage unit space #2110&2144. The following items are subject to lien: banker boxes with documents and other misc. items. You are locked out of the premises. Your lock has been cut for inventory and your unit has been locked over. Please contact us at the above address within 15 days and pay your bill as follows. Failure to do so will result in a public sale being held at 11108 W. Lapham St., West Allis, WI 53214 on **January 12th, 2013 at 10:00 a.m.**

120. The December 3 and 4, 2012 letters included an itemization showing monthly rent amounts, late fees, an advertising cost, an auction fee, a statement that as of December 4, 2012, Ramthun owed \$748, and further stated:

You may avoid this procedure by promptly contacting our office at (414-258-0900) and making payment arrangements. This must be paid IN FULL no later than the public sale date & time scheduled. Payment must be made by cash, cc or certified funds, if payment is made less than 15 days to the public sale. Partial Payments will not stop the public sale.

121. On January 12, 2013, a public sale was conducted on the contents in Ramthun's storage unit nos. 2110 and 2144 at EZ Self Storage.

122. There were no interested buyers at the January 12, 2013 public sale.

123. EZ Self Storage gave Ramthun additional time to remove the approximately 400 banker's boxes containing his clients' personal and confidential files from the facility.

124. On March 18, 2013, OLR provided Ramthun with written notice of its formal investigation of the EZ Storage matter, of his duty to cooperate with the investigation, and requested Ramthun provide a written response to the grievance on or before April 10, 2013. Ramthun failed to respond.

125. In an April 17, 2013 letter, OLR reminded Ramthun of his duty to cooperate, advised him of the consequences in the event of his failure to respond, and requested Ramthun provide a written response to the grievance postmarked no later than April 29, 2013. On April 19, 2013, Ramthun's legal assistant, O'Connell, signed a return receipt. Ramthun failed to respond.

126. On May 13, 2013, O'Connell, was personally served at Ramthun's then-law office located at 2100 North Mayfair Road, Suite 102, Milwaukee, Wisconsin 53226-2239 with OLR's May 7, 2013 letter, including copies of OLR's March 18, 2013 and April 17, 2013 letters. OLR's May 7, 2013 letter stated that in order to avoid a SCR 22.03(4) motion Ramthun's written

response to the grievance had to be filed with OLR within seven days of service of the letter. Ramthun failed to respond.

127. On June 19, 2013, based upon Ramthun's non-cooperation in this and another matter, and pursuant to SCR 22.03(4), OLR filed a *Notice of Motion and Motion Requesting Order to Show Cause* as to why Ramthun's law license should not be temporarily suspended for his willful failure to cooperate in OLR's investigations. (OLR Matter Nos. 2012MA1668 and 2013MA356). *Office of Lawyer Regulation v. Phillip J. Ramthun*, Case No. 2013XX801-D

128. On June 20, 2013, the Supreme Court of Wisconsin ordered Ramthun to show cause, in writing, within 20 days of the date of the order why OLR's motion should not be granted and his law license should not be temporarily suspended. On July 9, 2013, OLR received Ramthun's motion response and affidavit of same date sent via facsimile. OLR withdrew its above motion on August 12, 2013.

129. On September 17, 2013, EZ Self Storage faxed additional documentation to OLR, including a "moveout ledger," which also listed brief notes regarding phone calls and correspondence between EZ Self Storage

employees, Ramthun, his law office staff, and showed that on July 24, 2013, EZ Self Storage received Ramthun's outstanding balance (totaling \$1,790) via certified check.

130. In a November 8, 2013 written response to OLR, Ramthun confirmed his storage units contained closed client files.

Count 17

131. By failing to timely pay his monthly storage unit rent, allowing the revealing of information at a public sale of his former clients' files to be held at the West Allis EZ Self Storage facility, **Ramthun violated SCR 20:1.6(a).**¹⁴

Count 18

132. By failing to timely pay his monthly storage unit rent, failing to safeguard client files by allowing a public sale of his former clients' files to be held at the West Allis EZ Self Storage facility, **Ramthun violated SCR 20:1.15(b)(6)**¹⁵.

¹⁴ **SCR 20:1.6(a) provides:** "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in pars. (b) and (c)."

¹⁵ **SCR 20:1.15(b)(6) provides:** "Unless the client otherwise directs in writing, a lawyer shall keep securities in bearer form in a safe deposit box at a financial institution authorized to do business in Wisconsin. The safe deposit box shall be clearly designated as a "Client Account" or "Trust Account." The lawyer shall clearly identify and appropriately safeguard other property of a client or 3rd party."

Count 19

133. By failing to provide a written response to OLR's EZ Storage grievance investigation due on or before April 10, 2013, until July 9, 2013, **Ramthun violated SCR 22.03(2)¹⁶ and (6), enforceable via SCR 20:8.4(h).**

Regarding Novacek

Count 20

OLR Matter No. 2014MA000147

134. On January 5, 2012, Ramthun hired Southeast Wisconsin Process, LLC (SE Wisconsin) to serve two defendants: West Brook Church, Inc. (West Brook) and Acuity, A Mutual Insurance Company (Acuity) in a personal injury case (personal injury case) in which Ramthun represented the plaintiff, Kimberly Kohler Foltman. *Kimberly Kohler Foltman v. West Brook Church, Inc., et. al.*, Waukesha County Case No. 2011CV004344.

129. Ms. Kohler Foltman did not advance any funds to Ramthun.

135. On or about January 11, 2012, Ramthun received invoice #MDN-2020203168 from SE Wisconsin for

¹⁶ 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."

\$55.00 regarding a January 6, 2012 service of process on Acuity.

136. On or about January 18, 2012, Ramthun received invoice #MDN-2020203167 from SE Wisconsin for \$35.00 regarding a January 16, 2012 service of process on West Brook.

137. As of January 16, 2014, Ramthun had not paid to SE Wisconsin \$127.94 in process service and late fees for the West Brook and Acuity service.

138. Directed by Ramthun, O'Connell made the following statements to various SE Wisconsin staff members:

- on August 9, 2012, that [SE Wisconsin] would not receive payment until his client paid him;
- on October 1, 2012, that a check would be cut that day;
- on January 2, 2013, that a check would be reissued;
- on April 8, 2013, that a check was sent on April 5, 2013; and,
- on August 7, 2013, that a check would be mailed that day.

139. In late July 2013, the parties in the personal injury case agreed to a \$20,000 settlement.

140. On August 1, 2013 letter, defense counsel sent Ramthun a \$20,000 settlement check made payable to Ramthun's trust account.

141. On August 7, 2013, Ramthun deposited the \$20,000 settlement check into his trust account.

142. On August 26, 2013, a Stipulation and Order for Dismissal was filed.

143. As July 20, 2014, Ramthun had not paid SE Wisconsin.

Count 20

144. By instructing his legal assistant on numerous occasions to make false statements regarding payment of his outstanding balance to SE Wisconsin Process staff members, **Ramthun in each instance violated SCR 20:5.3(b)¹⁷ and SCR 20:5.3(c)(1).¹⁸**

Regarding Joseph J., Jr. and Joseph J., Sr.

Count 21

OLR Matter No. 2013MA001398

145. In mid-February 2011, Joseph J., Jr. (Joe Jr.) hired Ramthun to represent him in a Social Security Disability (SSD) benefits claim.

¹⁷ SCR 20:5.3(b) provides: "With respect to a nonlawyer employed or retained by or associated with a lawyer, a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer."

¹⁸ SCR 20:5.3(c)(1) provides: "With respect to a nonlawyer employed or retained by or associated with a lawyer, a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved."

146. Approximately two months later, Joe Jr.'s father, Joseph J., Sr. (Joe Sr.), hired Ramthun to represent him in a SSD benefits claim.

147. Joe Jr. and Joe Sr. filed an OLR grievance against Ramthun.

148. In an October 15, 2013 letter, OLR provided Ramthun with written notice of the formal investigation of the grievance, of his duty to cooperate with the investigation, and requested that Ramthun provide a written response to the grievance on or before November 8, 2013, as required by SCR 22.03(2), said letter sent via first-class mail to Ramthun's then-address as listed with the State Bar.

149. On October 30, 2013, OLR received a new office address for Ramthun: 10701 W. North Ave., Ste. 203, Wauwatosa, Wisconsin 53226.

150. On November 1, 2013, OLR re-sent its October 15, 2013 letter via first-class mail to Ramthun's new address on W. North Ave. requesting that Ramthun provide a written response to the grievance on or before November 25, 2013. Ramthun failed to respond.

151. In correspondence dated November 29, 2013, OLR reminded Ramthun of his duty to cooperate in the grievance investigation, advised him of the consequences

in the event of a failure to respond, and requested that Ramthun provide a written response to the grievance postmarked no later than December 9, 2013, said letter sent both first-class mail and certified mail/return receipt to Ramthun's current address as listed with the State Bar.

152. OLR's November 29, 2013 letter sent via certified mail was returned stamped, "return to sender, unclaimed, unable to forward."

153. OLR's November 29, 2013 letter sent via first-class mail was not returned.

154. On February 11, 2014, O'Connell was personally served at Ramthun's office with a cover letter from OLR dated January 30, 2014, including copies of OLR's previous letters sent to Ramthun on October 15, November 1, and November 29, 2013.

155. OLR's January 30, 2014 cover letter stated that in order to avoid being subject to a motion filed pursuant to SCR 22.03(4), Ramthun's written response must be filed with OLR no later than 10 days from the date that the letter was served. Ramthun failed to respond.

156. On February 26, 2014, based upon Ramthun's non-cooperation in this and another matter, OLR filed in

the Supreme Court of Wisconsin a SCR 22.03(4) *Notice of Motion and Motion Requesting Order to Show Cause* as to why Ramthun's law license should not be temporarily suspended for his willful failure to cooperate in OLR's investigations.

157. On February 27, 2014, the Court issued an order requiring Ramthun to show cause, in writing, within 20 days of the date of the order, why OLR's motion should not be granted and his law license should not be temporarily suspended. Ramthun failed to respond.

158. On April 17, 2014, the Court issued an order granting OLR's motion and temporarily suspended Ramthun's law license as of the date of the order and until further order of the Court. *In the Matter of OLR Investigations Concerning Phillip Ramthun, Sup Ct. Case No. 2014XX246-D.*

159. On April 29, 2014, OLR sent an email to Ramthun attaching OLR's November 1, 2013 letter, an Affidavit of Service, and OLR's January 30, 2014 cover letter, among other documents.

160. On May 28, 2014, OLR received Ramthun's response to the grievance via email.

161. After OLR reported Ramthun's cooperation to the Court, on June 12, 2014, the Court reinstated Ramthun's law license.

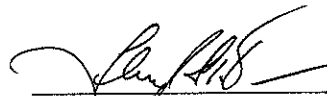
Count 21

162. By failing to provide a written response to the grievance, **Ramthun violated SCR 22.03(2) and (6).**

WHEREFORE, the Office of Lawyer Regulation asks that Attorney Phillip J. Ramthun be found in violation of the Supreme Court rules as alleged in Counts 1 through 21 of this *Complaint*, that the Court suspend Attorney Ramthun's Wisconsin law license for a period of six months, and for such other and further relief as may be just and equitable, including an award of costs.

Dated this 22 day of October 2014.

OFFICE OF LAWYER REGULATION



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