

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST FREDERICK A. MOEGENBURG,
ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,
Complainant.

CASE NO. 201⁴AP 2557-D

FREDERICK A. MOEGENBURG,
Respondent.

RECEIVED

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COMPLAINT

CLERK OF SUPREME COURT
OF WISCONSIN

NOW COMES the Wisconsin Supreme Court – Office of Lawyer Regulation (OLR),
by Retained Counsel, Ronald P. LeFever, and alleges as follows:

1. 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. Frederick A. Moegenburg (Moegenburg) is an attorney admitted to the
practice of law in Wisconsin on June 18, 1954, State Bar ID 1007108. On November 13,
2013, Moegenburg’s license to practice law in Wisconsin was suspended for failure to pay
bar dues and for failure to comply with trust account certification requirements. His license
remains suspended. The most recent address furnished by Moegenburg to the State Bar of
Wisconsin is Frederick A. Moegenburg Law Offices, 4605 Wessex Drive, Brookfield, WI
53045-1146.

3. Moegenburg’s disciplinary history is that on July 10, 2003, he was privately
reprimanded for misconduct, including failing to hold a client’s property in trust, failing to

provide competent representation in a matter, and engaging in sexual relations with a client.

Disciplinary Proceedings Against Moegenburg, Wis. Sup. Ct. Case No. 2002AP0871-D.

LAACK MATTER
(OLR Matter No. 2012MA1593)
Counts 1-5

4. On September 30, 2010, Moegenburg, Roger Laack, (Laack) and Roger Laack's brother, Terry Laack, who had Power of Attorney relating to Laack, signed an "Affirmation Of Engagement Agreement," outlining services to be provided by Moegenburg on behalf of Laack, his client. The agreement indicated that on or about September 13, 2010, while Laack was a patient at the Elmbrook Memorial Hospital, he had contacted Moegenburg for the purpose of having Moegenburg assist him regarding actions being taken by the hospital in connection with his care and treatment. The engagement agreement referenced a \$20,000 "retainer" paid by Laack for the representation.

5. More specifically, the "Affirmation Of Engagement Agreement" stated:

Attorney's rendering of legal assistance for Client consisted of numerous contacts with members of the Elmbrook Memorial Hospital's care management team; Client's doctor Dr. James R. Magliocco; numerous other contacts with other members of Elmbrook Memorial Hospital; various contacts with members of Strawberry Lane Nursing Home and Convalescent Center in Wisconsin Rapids. Attorney further reviewed various medical and health care records relating to Client's care at Elmbrook Memorial Hospital; and previously by his doctor, Dr. Magliocco.

Attorney's work included numerous contacts with Terry A. Laack relating to Client's care as well as the refurbishing and getting Client's home at W143 N5512 Van Buren Drive, Menomonee Falls, Wisconsin into a livable condition. Attorney further made contacts with United Ambulance Service of Wisconsin Rapids regarding the conveyance of Roger L. Laack from the hospital to the Strawberry Lane Nursing Home; in addition to arranging for the conveyance, also arrange for payment for this firm.

Further, continuing work requested on behalf of Client relating to the ownership of his home and other matters regarding the use and enjoyment of it in the future, and the establishment of the title to this home by a quit claim

deed from Josephine J. Laack to Roger L. Laack dated February 6, 2001, and recorded in the Register of Deeds of Waukesha County on July 22, 2002.

Ongoing continuation of the needs of both Client and his brother under his Power of Attorney. Receipt of an additional payment of \$15,000.00 to be placed into Attorney's trust account for additional work and fees and services and charges.

6. Moegenburg told both Laack and Terry Laack that Moegenburg's hourly rate for legal services would be \$150.

7. During the representation, Laack paid Moegenburg a total of \$47,000, as follows:

- a. \$20,000 (Check #1573 dated September 2, 2010)
- b. \$15,000 (Check #1578 dated September 13, 2010)
- c. \$10,000 (Check #2043 dated December 27, 2010)
- d. \$2,000 (Check #2105 dated April 13, 2011)

8. Laack also hired Moegenburg relative to his 401(k) Edward Jones Investment Account and gave Moegenburg \$500 payment for work in connection with that matter.

9. On or about December 1, 2011, Laack called Moegenburg and terminated the representation. Laack subsequently made several requests for Moegenburg to provide a summary of the legal services provided and an accounting, but received no response from Moegenburg.

10. After Laack did not hear from Moegenburg, he mailed a letter dated February 24, 2012 to Moegenburg which confirmed that he no longer needed Moegenburg's services and demanded that Moegenburg provide an itemized bill showing the date and length of time for each and every item that had been charged to him. Laack's letter reiterated that he had given Moegenburg four checks totaling \$47,000 that were to have been put into a trust account; it requested that Moegenburg settle the account within seven days and send a check for any remaining unearned fees to Laack; and it further stated that Moegenburg had

indicated in November 2011, that Moegenburg's wife, Marilyn Moegenburg, had been working on the bill but that Laack had not yet received an itemization from Moegenburg.

11. Moegenburg responded by sending a March 1, 2012 letter to Mr. Laack stating that there had been some delays in getting the work done for Laack; that his wife had emergency pneumonia surgery during that time period; and that she was scheduled to have a knee replacement on March 2, 2012. Moegenburg asked Laack to understand his situation, and indicated that he would get Laack a complete and itemized statement as soon as it was possible to do so.

12. After receiving nothing no further from Moegenburg, Laack and Terry Laack hired Attorney Alan A. Panek (Panek) of Wisconsin Rapids, Wisconsin to contact Moegenburg to request a final accounting from Moegenburg and the return of Laack's client file. Panek wrote to Moegenburg on April 12, 2012, demanding an accounting, itemized bill, and return of any unearned funds to Laack. Panek also enclosed an authorization for the transfer of Laack's client files to his office. Moegenburg did not respond.

13. On April 30, 2012, Panek sent a follow-up letter to Moegenburg indicating that he had not received the previously requested information, and again requesting that Moegenburg immediately provide an accounting of client funds, return any unearned funds, and transfer Laack's client files to him.

14. By letter dated June 12, 2012, Moegenburg responded to Panek. In his letter, Moegenburg indicated that an initial "retainer" of \$20,000 had been provided following Laack's admission to the Elmbrook Hospital on September 13, 2010. Moegenburg's letter further described the timing and circumstances surrounding his receipt of the \$15,000 payment from the Laacks. Moegenburg asserted he had various telephone conferences with Laack's physician and with other employees or staff of the hospital, including the

Administrator, attorneys, and others relative to their concerns and Laack's release to a nursing home; that he had wanted to comply with Laack's wishes to transfer to the nursing home in the Wisconsin Rapids area; that prior to Laack's September, 2010 hospitalization, Laack had stopped at Moegenburg's office and requested that Moegenburg provide assistance on various matters of concern to him; and that Moegenburg believed he understood Laack's wishes regarding his personal and business affairs resulting from these contacts. Moegenburg's June 12, 2012 letter went on to describe in some detail his work on behalf of Laack, and concluded, "the above deals with many of the requested services I performed, and we are in the process of preparing copies of relevant parts of my file to send to you shortly."

15. Moegenburg did not send any further response to Panek.

16. On July 30, 2012, Laack filed a grievance with OLR against Moegenburg.

17. Moegenburg's initial written response to OLR regarding Laack's grievance provided the "Affirmation Engagement Agreement," copies of exhibits and documents that Moegenburg asserted were used during the time that he provided legal services for Laack, handwritten notes relating to representation of Laack and fees paid and time entries for certain services provided. There were also other miscellaneous documents relating to the Menomonee Falls property, tax information, correspondence and communications with the nursing home and funeral home, as well as medical information pertaining to Laack. One of the handwritten notes contains the heading "Fee Pay To" and lists the following:

a) Dec. 12, 2010	10,000	2043
b) 4/18/11	2,000	2105 Advertising
c) 9/2/10	20,000	1573
d) 4/13/11		2105
e) 9/13/10	15,000	1579

18. As early as September 28, 2012, OLR requested that Moegenburg provide a copy of his complete client file for representation of Laack from September 2010 until December 1, 2011; copies of all billing/accounting records in the matter, including time slips, calendar entries, notes, memos, correspondence or any other documentation setting forth the date services were provided, the type of legal services provided and the amount of time involved in providing such services; and copies of his client trust account records, including the Laack transaction register and the Laack individual client ledger.

19. Moegenburg's November 20, 2012 formal written response to the grievance stated he had known both Laack and Terry Laack for many years, and he was originally contacted by Terry Laack to assist Laack with regard to legal and personal difficulties Laack was having as a patient at Elmbrook Memorial Hospital; that Laack needed assistance regarding various actions that were occurring relative to his stay at the hospital, his discharge from the hospital, and his transfer to another facility; including communications with the hospital's administration and its attorneys; that Laack did not want to be removed from the hospital to a nearby nursing home as he did not feel that he would receive the medical assistance and attention that he needed, and that Laack instead wanted to go to a nursing home located in Wisconsin Rapids, Wisconsin to be closer to his brother and requested that Moegenburg work with Terry Laack to have him transferred; and that per Laack's request, he was involved in many activities which were all done to work toward accomplishing Laack's wishes.

20. Moegenburg asserted to OLR that Laack resisted the hospital's position that it did not have any obligation to continue with care for Laack and that he needed to be moved to a skilled nursing facility, including ongoing conversations with the hospital's attorney, the hospital administrator, and the nursing home administrator as well as with the social worker

and others; that he also had contacted an ambulance service to arrange for Laack's transportation from the hospital to the nursing home; that there were various other arrangements that were needed to assist Laack with the cost of his care at the nursing home; that he assisted Laack with pre-funeral arrangements; that he made arrangements to have Laack's 2010 tax return prepared and prepared documentation setting forth a lien on Laack's home in Menomonee Falls, Wisconsin to the nursing facility for monies owed in connection with Laack's care; that there were numerous other contacts with the real estate broker relating to the listing and sale of the house; that he assisted Laack relative to a communication received from Laack's insurance company canceling his home policy based on what they considered to be "unoccupied property"; that he placed a "for sale and for rent" sign to assist with protection of the property, completed the listing for the property, and negotiated a sale price; and that he made numerous trips to Laack's house.

21. Moegenburg did not provide OLR with the specific client trust account documentation previously requested by OLR.

22. Moegenburg never provided Laack with any accounting as to how the \$47,000 Moegenburg received from Laack for legal services had been disbursed. Moegenburg never provided Laack with any itemization of tasks performed or the amount of time expended in providing the.

23. Laack told OLR:

- a. he had refused to leave the Elmbrook Memorial hospital upon advice from Moegenburg as Moegenburg had advised him that he should stay as long as possible in the hospital as he would receive better care in the hospital as opposed to a nursing home;

- b. Although materials relating to McCoy Construction were included in Moegenburg's grievance to OLR, Moegenburg did not participate in hiring or supervising McCoy Construction with any repairs. Those tasks were either completed by his realtor and his brother;
- c. While Moegenburg assisted in obtaining the initial listing with the realtor, Moegenburg's representation was terminated prior to any offers having been received. The negotiations and closing were handled by another firm, not Moegenburg. Further, Moegenburg's efforts to rent the property were in direct violation of directives from Laack and his brother. Also, replacement home insurance had been obtained by his brother through Foremost Insurance Group, not through any efforts by Moegenburg;
- d. The portions of income tax returns that appeared in the materials submitted by Moegenburg to OLR were not prepared by Moegenburg, and Moegenburg's involvement was limited to delivering information in his possession to Laack's CPA for preparation of the return; and
- e. Although Moegenburg referenced an overnight trip to Wisconsin Rapids to meet with Laack, Laack had asked Moegenburg not to travel to meet with him, yet Moegenburg came anyway.

24. On January 21, 2013, Moegenburg called OLR and left a voicemail message that his wife had been in a car accident one month prior and had been hospitalized and at a rehabilitation center. Moegenburg stated he was trying to comply with OLR's requests and would mail financial statements to OLR. However, OLR received no further documentation from Moegenburg.

25. On February 20, 2013, Moegenburg called OLR and acknowledged receipt of a February 15, 2013 letter from OLR again requesting the client trust account information. Moegenburg asserted that he was trying to “pull stuff together for OLR.”

26. Moegenburg then sent a February 21, 2013 letter to OLR asserting that he decided to retire from the practice of law, and enclosing copies of some miscellaneous trust account information, and client trust account bank statements.

27. Moegenburg did not provide and did not maintain all required client trust account records, such as transaction register, individual client ledgers, deposit records, disbursement records, monthly statements and reconciliation reports.

28. OLR subpoenaed and obtained bank records pertaining to Moegenburg’s client trust account (M & I Bank Account #-----390) and for a personal checking account of Moegenburg and his wife (M & I Bank Account #-----679). An audit of the bank records disclosed:

- a. On September 1, 2010, there was a balance of \$3,241.09 in Moegenburg’s client trust account.
- b. On September 2, 2010, Terry Laack, POA for Laack, wrote check #1573 payable to “Fred Moegenburg Attorney” in the amount of \$20,000. The memo portion of the check contained the notation, “attorney fees.” On September 2, 2010, the \$20,000 check was deposited into Moegenburg’s personal checking account.
- c. On September 15, 2010, following a \$12 bank charge, a balance of \$3,229 remained in the client trust account. On September 20, 2010, a \$15,000 deposit was made to the client trust account via a check dated September 13, 2010 written to Moegenburg in the amount of \$15,000 by Terry Laack,

POA. The memo portion of the check states, "attorney trust." The balance in the client trust account following this deposit was \$18,229. There were no other deposits to or disbursements from the client trust account during the month of September 2010.

- d. On October 26, 2010, Check #1173 in the amount of \$1,285 was issued to Fred Moegenburg from funds on deposit in the client trust account for fees in a matter unrelated to Laack. The balance remaining in the client trust account following that disbursement was \$16,944.09. There were no further disbursements or deposits to the client trust account during the remainder of October or November 2010.
- e. On December 13, 2010, Check #1175 in the amount of \$2,000 was disbursed from the client trust account to Fred Moegenburg. The memo portion of the check contains the notation, "R Laack." The balance remaining in the client trust account following this disbursement was \$14,944.09.
- f. On December 27, 2010, there was an electronic transfer of \$3,000 from the client trust account to Moegenburg's personal checking account. At the time, there was a maximum of \$1,956.09 in the trust account not attributable to the Laack matter. The balance remaining in the client trust account following this disbursement was \$11,944.09.
- g. On December 28, 2010, a \$10,000 deposit was made to the client trust account via check #2043 payable to "Frederick Moegenburg," issued by Terry Laack. The memo portion of the check contained the notation, "Fees & Services." The balance in the client trust account following the \$10,000

deposit was \$21,944.09. There were no additional deposits to or disbursements from the client trust account during the month of December 2010.

- h. Between January 2011 and September 2011, there were eleven disbursements totaling \$20,044.09 via transfers from the Moegenburg client trust account to Moegenburg's personal checking account. On March 24, 2011, there was also a \$400 transfer from the client trust account to Account #-----160, an unknown account. There is no indication as to the purpose of these transfers or to which client matter(s) they pertained. There were no other deposits or disbursements from the client trust account during this time period. Following these transfers, the balance remaining in Moegenburg's client trust account as of September 30, 2011 was \$1,500.
- i. On October 13, 2011, there was a \$13 disbursement from the client trust account for bank charges, leaving a balance in the client trust account of \$1,487. On October 17, 2011, check #1177 in the amount of \$24 was disbursed from the client trust account to Prudential Insurance Company. The memo portion of the check contained the following notation, "Roger Laack Pol #28-614207." The balance remaining in the Moegenburg client trust account on October 31, 2011 totaled \$1,463.
- j. On November 10, 2011, there was a \$13 disbursement from the client trust account for bank charges. Following the disbursement, the balance remaining in Moegenburg's client trust account was \$1,450. There were no other deposits or disbursements to the Moegenburg client trust account during the month of November 2011.

- k. On December 13, 2011, there was a \$13 disbursement from the client trust account for bank charges. Following that disbursement, the balance remaining in the client trust account was \$1,437. On December 24, 2011, there was an electronic transfer of \$1,000 from the client trust account to Moegenburg's personal checking account. There is no indication as to the purpose of this transfer or to which client matter the funds pertained. As of December 31, 2011, the balance remaining in the client trust account was \$437.
- l. On January 12, 2012, there was a \$13 disbursement relating to bank charges from the client trust account. The balance in the client trust account following this disbursement was \$424. There were no other deposits or disbursements from the Moegenburg client trust account during the months of January through March of 2012. The balance in the client trust account on April 1, 2012 was \$424.
- m. Between April 1, 2012 and February 14, 2013, there were withdrawals in \$5 increments totaling \$50 disbursed from the client trust account, apparently for bank charges. The balance in Moegenburg's client trust account following these disbursements was \$374.

29. Handwritten notes Moegenburg provided to OLR relating to his representation of Laack include what appeared to be time entries for certain services provided. Adding those time entries, which totaled approximately 57 hours, at a rate of \$150 per hour, yields a total of \$8,550.

30. Laack disputes that Moegenburg was even authorized to provide some of those services Moegenburg listed. Moegenburg repeatedly told Laack and OLR that he

would provide more documentation to substantiate the work he claims he did on Laack's behalf. Moegenburg failed provide such supplemental documentation.

31. Of the \$47,000 paid to Moegenburg by Laack, the records provided substantiate a maximum \$8,550 in fees, leaving a balance of \$38,450 of unearned fees.

32. Of the \$38,450 balance, \$21,444.09 at minimum was converted by Moegenburg from his client trust account to his personal account.

COUNT 1

33. In failing to deposit the initial \$20,000 advanced fee received on September 2, 2010 from Terry Laack as POA for Roger Laack into his client trust account and instead depositing the \$20,000 directly into his personal checking account, with no evidence of an intention to utilize the alternative protection for advanced fees stated in SCR 20:1.15(b)(4m) that would permit the deposit of an advance in an account other than the trust account, **Moegenburg violated SCR 20:1.15(b)(1)¹ and SCR 20:1.15(b)(4).²**

COUNT 2

34. In utilizing client funds on deposit in the client trust account belonging to Laack to make eleven disbursements (without an itemization or accounting to substantiate any claim the disbursements were for earned fees) from his client trust account between January 2011 and September 2011, totaling \$20,044.09, and in depositing those disbursements directly into his personal checking account, without having indicated the purpose of the withdrawals or to which client the withdrawals pertained and without notice to

¹ **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."

² **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."

Roger Laack as to the disbursements, and in making an additional \$400 transfer from the client trust account out of funds attributable to Roger Laack on March 24, 2011 to an unknown account, and in making an additional \$1,000 disbursement from his client trust account in December 2011 and depositing that disbursement to his personal checking account during December 2011, after Roger Laack had terminated his services, **Moegenburg violated SCR 20:1.15(b)(1).**³

COUNT 3

35. In utilizing client funds on deposit in the client trust account belonging to Laack to make eleven disbursements (without an itemization or accounting to substantiate any claim the disbursements were for earned fees) from his client trust account between January 2011 and September 2011, totaling \$20,044.09, and in depositing those disbursements directly into his personal checking account, without having indicated the purpose of the withdrawals or to which client the withdrawals pertained and without notice to Roger Laack as to the disbursements, and in making an additional \$400 transfer from the client trust account out of funds attributable to Roger Laack on March 24, 2011 to an unknown account, and in making an additional \$1,000 disbursement from his client trust account in December 2011 and depositing that disbursement to his personal checking account during December 2011, after Roger Laack had terminated his services, **Moegenburg violated SCR 20:8.4(c).**⁴

³ SCR 20:1.15(b)(1), states, "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."

⁴ SCR 20:8.4(c) provides: "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

COUNT 4

36. In failing to provide the client, Roger Laack, a requested accounting as to the property held in trust and the disbursement of the same, **Moegenburg violated SCR 20:1.15(d)(1) and SCR 20:1.15(d)(2).**⁵

COUNT 5

37. By failing to provide a copy of the entire client file together with an accounting and itemized bill to the client or successor counsel upon termination of representation, and by failing to calculate or return any unearned fees to the client, despite to the client's request, **Moegenburg violated SCR 20:1.16(d)**⁶.

COUNT 6

38. By failing to maintain required client trust account records, such as a transaction register, individual client ledgers, deposit records, disbursement records, monthly statements and reconciliation reports, **Moegenburg violated SCR 20:1.15(f)**.⁷

WHEREFORE, the Office of Lawyer Regulation asks that Attorney Frederick E. Moegenburg be found in violation of Supreme Court Rules as alleged herein, that the Court suspend Attorney Moegenburg's license to practice law in Wisconsin for two years and order

⁵ SCR 20:1.15(d)(1) and SCR 20:1.15(d)(2), effective January 1, 2010, provide, "(1) 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. 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. (2) Upon final distribution of any trust property or upon request by the client or a 3rd party having an ownership interest in the property, the lawyer shall promptly render a full written accounting regarding the property."

⁶ 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."

⁷ SCR 20:1.15(f), effective January 1, 2010 provides, in part "(f) Record-keeping requirements for all trust accounts. (1) Draft Accounts. Complete records of a trust account that is a draft account shall include a transaction register, individual client ledgers for IOLTA accounts and other pooled trust accounts; a ledger for account fees and charges, if law firm funds are held in the account pursuant to sub. (b)(3); deposit records; disbursement records; monthly statements; and reconciliation reports, subject to all ..."

restitution of \$38,450 to Roger Laack, and order such other and further relief as may be just and equitable, including an assessment of costs.

Dated this 3rd day of November, 2014.

OFFICE OF LAWYER REGULATION



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