

STATE OF WISCONSIN

IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST JOSEPH J.
KAUPIE ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,

CASE NO. 2014AP 2570 -D

Complainant;

JOSEPH J. KAUPIE,

Respondent.

RECEIVED

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CLERK OF SUPREME COURT
OF WISCONSIN

COMPLAINT

NOW COMES the Wisconsin Supreme Court - Office of Lawyer Regulation (OLR) by retained counsel, Attorney Brenda K. Sunby, 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. Joseph J. Kaupie (Kaupie) was admitted to the practice of law in Wisconsin on September 29, 1999. Kaupie's law license is currently suspended due to: failure to pay mandatory State Bar dues (effective October 31, 2011); failure to comply with CLE requirements (effective June 12, 2012); and a SCR 22.03(4) temporary suspension imposed by the Supreme Court of Wisconsin in

Sup. Ct. Case No. 2012XX106-D (effective March 15, 2012). The most recent address furnished by Kaupie to the State Bar of Wisconsin is Kaupie Law Office, 415 Division Street, Wausau, WI 54403. Mail sent to that address has been returned to OLR. Upon information and belief, Kaupie's current mailing address is 3504 Golf View Drive, Wausau, WI 54403.

**REGARDING BISHOP
(OLR Matter No. 2011MA1332)
COUNTS 1 - 3**

3. David Bishop (Bishop) was charged with two counts of sexual assault on June 1, 2009. On July 15, 2010, a jury found him guilty. He was sentenced to prison on October 13, 2010. A notice of intent to pursue post-conviction relief was filed by Bishop's trial counsel on October 18, 2010.

4. On November 16, 2010, an order was entered appointing Kaupie, through the State Public Defender (SPD), to represent Bishop for his appeal.

5. A copy of the court file was mailed to Kaupie on January 18, 2011, and trial-level transcripts were either requested or prepared at approximately the same time.

6. Bishop left phone messages for Kaupie which were not answered and which were unreturned.

7. Bishop sent a letter to Kaupie. It was returned to Bishop as undeliverable.

8. First Assistant State Public Defender Joseph N. Ehmann (Ehmann) sent letters, left phone messages on six occasions, and sent an email to Kaupie. Kaupie did not respond.

9. Kaupie had no contact at any time with Bishop regarding his appeal.

10. Kaupie did not do any work to advance Bishop's appeal. As a result, Bishop's appellate deadlines lapsed.

11. As a result of Kaupie's inaction, Ehmann, on behalf of the SPD Office, filed a Motion to Enlarge Time For Filing Post-conviction Motion Or Notice Of Appeal Or, In The Alternative, Petition For Writ Of Habeas Corpus.

12. The SPD removed Kaupie from its list of attorneys eligible to receive post-conviction appointments.

13. On August 24, 2011, the Court granted Ehmann's motion and ordered that the time for filing a notice of appeal or post-conviction motion was extended to 60 days

after successor appointed counsel received the transcripts and the court record.

14. A grievance was filed with OLR against Kaupie regarding Kaupie's conduct in the Bishop matter.

15. On September 28, 2011, OLR sent a letter to Kaupie at his address of record, Kaupie Law Office, 415 Division Street, Wausau, Wisconsin 54403-6204, requesting a written response on or before October 20, 2011. Mr. Kaupie did not respond. However, OLR's letter was later returned by the post office as undeliverable.

16. Meanwhile, on October 25, 2011, OLR had sent a second letter to Kaupie at his address of record, by first class and certified mail, requesting a written response postmarked no later than November 3, 2011. OLR's letter was returned by the post office as undeliverable.

17. On December 15, 2011, OLR addressed a third letter to Kaupie requesting a written response no later than seven days from the date of personal service. On December 21, 2011, Kaupie was personally served at 3504 Golf View Drive, Wausau, Wisconsin. Kaupie did not respond to OLR's third letter.

COUNT ONE

18. Other than possibly requesting transcripts on trial-level proceedings, by failing to perform any work on Mr. Bishop's appeal after he was appointed to act as Mr. Bishop's appellate counsel, **Kaupie violated SCR 20:1.3¹.**

COUNT TWO

19. By failing to communicate with Mr. Bishop regarding the status of his appeal, and by failing to respond to Mr. Bishop's requests for information, **Kaupie violated SCR 20:1.4(a)(3) and SCR 20:1.4(a)(4)².**

¹ **SCR 20:1.3 provides:** "A lawyer shall act with reasonable diligence and promptness in representing a client".

² **SCR 20:1.4(a)(3) and (4) provide:** "(a) 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."

COUNT THREE

20. By failing to respond to OLR's attempts to investigate the Bishop matter, **Kaupie violated SCR 22.03(2) and SCR 22.03(6)³, enforced via SCR 20:8.4(h)⁴.**

**REGARDING ERICKSON
(OLR Matter No. 2011MA1814)
COUNTS 4 - 7**

21. Patrick Scotty Erickson (Erickson) was charged with two counts of armed robbery in July 2009. In August 2009, he was charged with burglary, receiving stolen property and criminal damage to property. He entered a plea agreement as to both cases. On October 8, 2010, Erickson was sentenced to prison.

³ **SCR 22.03 (3) and (6) provide:** "(2) Upon commencing an investigation, the director shall notify the respondent of the matter being investigated unless in the opinion of the director the investigation of the matter requires otherwise. The respondent shall fully and fairly disclose all facts and circumstances pertaining to the alleged misconduct within 20 days after being served by ordinary mail a request for a written response. The director may allow additional time to respond. Following receipt of the response, the director may conduct further investigation and may compel the respondent to answer questions, furnish documents, and present any information deemed relevant to the investigation. (6) In the course of the investigation, the respondent's wilful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance."

⁴ **SCR 20:8.4(h) provides:** "It is professional misconduct for a lawyer to: (h) fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by ... SCR 22.03(2), SCR 22.03(6)..."

22. A notice of intent to pursue post-conviction relief was filed in both cases on October 13, 2010.

23. Kaupie became the attorney of record in both cases on November 16, 2010. The court record in both cases were sent to Kaupie on that date.

24. Kaupie did not file a statement on transcript nor a brief on Erickson's case. Further, he disregarded the Court of Appeal's delinquency notice regarding his failure to file Erickson's brief. Kaupie was removed from the appeal and the SPD was ordered to appoint replacement counsel.

25. The SPD appointed successor counsel, Attorney Ralph J. Sczygelski (Sczygelski), effective October 5, 2011.

26. On December 6, 2011, the Court of Appeals granted a Motion to Have File Produced and ordered Kaupie to send Sczygelski the entire file within 10 days of the date of this order.

27. Kaupie did not turn over the file to Sczygelski as ordered.

28. On February 2, 2012, the Court of Appeals, entered an order granting Sczygelski additional time to

file Erickson's appeal because Kaupie had not turned over the file.

29. A grievance was filed with OLR against Kaupie regarding his conduct in Erickson's cases.

30. On October 6, 2011, OLR sent a letter to Kaupie at his address of record, Kaupie Law Office, 415 Division Street, Wausau, Wisconsin 54403-6204, requesting a written response on or before October 28, 2011. Kaupie did not respond. Later, OLR's letter was returned by the post office as undeliverable.

31. Meanwhile, on November 3, 2011, OLR had sent a second letter to Kaupie at his address of record, by first class and certified mail, requesting a written response to be postmarked no later than November 14, 2011. OLR's letter was returned by the post office as undeliverable.

32. On December 15, 2011, OLR addressed a third letter to Kaupie requesting a written response no later than seven days from the date of personal service. On December 21, 2011, Kaupie was personally served at 3504 Golf View Drive, Wausau, Wisconsin. Kaupie did not respond to OLR's third letter.

COUNT FOUR

33. After filing notices of appeal for Erickson, by failing to file a statement on transcript or a brief, and by disregarding the Court of Appeals delinquency notice regarding the appellant's brief, **Kaupie violated SCR 20:1.3.**

COUNT FIVE

34. By failing to provide the Erickson case file to successor counsel on his own volition, prior to the December 6, 2011 order, **Kaupie violated SCR 20:1.16(d)⁵.**

COUNT SIX

35. By disobeying the December 6, 2011, Court of Appeals, District 3, order to send Attorney Sczygelski the entire Erickson case file within ten days, **Kaupie violated SCR 20:1.16(d) and SCR 20:3.4(c)⁶.**

⁵ **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."

⁶ **SCR 20:3.4 (c) 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."

COUNT SEVEN

36. By failing to respond to OLR, **Kaupie violated SCR 22.03(2) and SCR 22.03(6), enforced via SCR 20:8.4(h).**

**REGARDING MOUA
(OLR Matter No. 2011MA1816)
COUNTS 8 - 10**

37. Yeng Moua (Moua) was charged with four drug-related crimes and one count of resisting/obstructing an officer in August 2008. Moua was convicted pursuant to a plea agreement and was sentenced to prison. A notice of intent to seek post-conviction relief was filed on March 5, 2009 by Moua's trial counsel.

38. Moua requested SPD to appoint appellate counsel. Kaupie began representing Moua on July 6, 2010. SPD's order appointing Kaupie was entered on July 15, 2010.

39. On July 26, 2010, a notice of appeal was filed in circuit court.

40. Kaupie did not file a brief or do meaningful work to advance Moua's appeal.

41. Moua briefly met with Kaupie in the prison but had no further communication with him. Mr. Moua attempted

to contact Kaupie by telephone and by mail. Kaupie did not reply.

42. On June 25, 2011, Moua sent a letter to the Clerk of the Court of Appeals asking for the status of his appeal. He learned that his appeal had been dismissed on December 2, 2010 for failure to file a brief.

43. Moua filed a Motion to Enlarge Time for Filing Postconviction Motion Or Notice Of Appeal Or, in the Alternative, Petition For Writ of Habeas Corpus.

44. On January 9, 2012, the circuit court concluded that Kaupie's representation of Moua amounted to ineffective assistance of counsel. Moua's direct appeal rights were reinstated.

45. On October 6, 2011, OLR sent a letter to Kaupie at his address of record, Kaupie Law Office, 415 Division Street, Wausau, Wisconsin 54403-6204, requesting a written response on or before October 28, 2011. Kaupie did not respond. However, OLR's letter was later returned by the post office as undeliverable.

46. Meanwhile, on November 3, 2011, OLR had sent a second letter to Kaupie at his address of record, by first class and certified mail, requesting a written response to

be postmarked no later than November 14, 2011. OLR's letters were returned by the post office as undeliverable.

47. On December 15, 2011, OLR addressed a third letter to Kaupie requesting a written response no later than seven days from the date of personal service. On December 21, 2011, Kaupie was personally served at 3504 Golf View Drive, Wausau, Wisconsin. Mr. Kaupie did not respond to OLR's third letter.

COUNT EIGHT

48. After filing a notice of appeal, by failing to file a brief, resulting in the dismissal of Mr. Moua's appeal, **Kaupie violated SCR 20:1.3.**

COUNT NINE

49. By failing to communicate with Mr. Moua regarding the status of his appeal, and by failing to promptly respond to Mr. Moua's requests for information, **Kaupie violated SCR 20:1.4(a)(3) and SCR 20:1.4(a)(4).**

COUNT TEN

50. By failing to respond to OLR, **Kaupie violated SCR 22.03(2) and SCR 22.03(6), enforced via SCR 20:8.4(h).**

REGARDING WITAK
(OLR Matter No. 2011MA2189)
COUNTS 11 - 14

51. On September 23, 2009, Jason Witak (Witak) was convicted of second degree sexual assault of a child. A notice of intent to pursue post-conviction relief was filed on November 19, 2009.

52. Kaupie was appointed as appellate counsel by the SPD, and began representing Witak on December 18, 2009. A copy of the court record was mailed to Kaupie on February 1, 2010.

53. Kaupie filed Defendant's Motion For A New Trial on April 21, 2010. The motion was denied on May 24, 2010.

54. Kaupie filed a No-Merit Notice of Appeal in circuit court on July 29, 2010 and in the Court of Appeals on September 9, 2010.

55. On September 13, 2010, the Court of Appeals determined that it had jurisdiction regarding the appeal from the judgment of conviction but no jurisdiction to review the post-conviction ruling. The Court attempted to remedy the post-conviction jurisdictional issue by ordering Kaupie to obtain a written order on the post-conviction motion. Kaupie failed to obtain the order.

56. On October 5, 2010, the Court ordered Kaupie to file a certification of service of the No-Merit Report on his client within 10 days of the date of the order. On October 21, 2010, Kaupie filed a No Merit Report.

57. On May 5, 2011, the Court of Appeals ordered Kaupie to explain by May 24, 2011, his basis for concluding that arguments he asserted in a post-conviction motion now lacked arguable merit. Kaupie failed to respond.

58. On July 5, 2011, the Court of Appeals ordered Kaupie to provide the Court with a response as detailed in the Court's May 5, 2011 order by July 22, 2011. Kaupie failed to respond.

59. On August 8, 2011, the Court of Appeals issued an Order in which the No-Merit Report was rejected and was converted to an appeal. The Court further ordered that Kaupie "shall obtain a written order on the postconviction motion in the circuit court and submit a copy of the order to this court. Attorney Kaupie shall file a notice of appeal from the circuit court order within ten days of the date it is entered." Kaupie did not respond to the Court's August 8, 2011 order.

60. On August 24, 2011, the Office of the SPD wrote to Kaupie regarding the Court's August 8, 2011 order in Witak as well as other issues.

61. On September 29, 2011, the Court of Appeals entered an order requesting input from the SPD as to whether Kaupie was still appointed or if successor counsel would be appointed.

62. On September 29, 2011, the SPD again wrote to Kaupie and suspended him "[b]ased on your pattern of failing to communicate with the court, our appellate office and your client."

63. On October 11, 2011, the Court of Appeals stayed Witak's appeal and dismissed Kaupie as attorney of record.

64. On October 24, 2011, Attorney Leonard Kachinsky (Kachinsky) was appointed successor counsel.

65. The SPD requested that Kaupie provide the Witak file to Kachinsky. Kaupie failed to provide the file.

66. A grievance was filed with OLR against Kaupie regarding his conduct in Witak's case.

67. On December 8, 2011, OLR sent a letter by first class and certified mail to Kaupie at his address of record, Kaupie Law Office, 415 Division Street, Wausau,

Wisconsin 54403-6204, requesting a written response on or before December 30, 2011. Kaupie did not respond. Later, the post office returned both letters as undeliverable.

68. On December 15, 2011, OLR addressed another letter to Kaupie requesting a written response no later than seven days from the date of service. On December 21, 2011, Kaupie was personally served at 3504 Golf View Drive, Wausau, Wisconsin. Kaupie did not respond to OLR's third letter.

COUNT ELEVEN

69. After filing a notice of appeal in Mr. Witak's case, by failing to obey three court orders which required him:

- to explain his basis for concluding that arguments he asserted in a post conviction motion lacked arguable merit;
- to obtain a written order on the post-conviction motion in the circuit court and then submit a copy of the order to the Court of Appeals;
- to file a notice of appeal from the circuit court order;

Kaupie violated SCR 20:1.3.

COUNT TWELVE

70. After filing a notice of appeal in Mr. Witak's case, by failing to obey three court orders which required him:

- to explain his basis for concluding that arguments he asserted in post conviction motion lacked arguable merit;
- to obtain a written order on the post-conviction motion in the circuit court and then submit a copy of the order to the Court of Appeals;
- to file a notice of appeal from the circuit court order;

Kaupie violated SCR 20:3.4(c).

COUNT THIRTEEN

71. By failing, despite a request from the SPD, to provide Mr. Witak's file to successor counsel or the SPD's office, **Kaupie violated SCR 20:1.16(d).**

COUNT FOURTEEN

72. By failing to respond to OLR, **Kaupie violated SCR 22.03(2) and SCR 22.03(6), enforced via SCR 20:8.4(h).**

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

One through Fourteen of this Complaint; that the Court suspend Joseph Kaupie's license to practice law in Wisconsin for six months; and that the Court 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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