STATE OF WISCONSIN IN SUPREME COURT

In the Matter of Disciplinary Proceedings
Against Christopher S. Carson, Attorney at Law:

OFFICE OF LAWYER REGULATION,

Case No. 2014AP 2732 -D

Complainant,

-v-

Case Code: 30912

CHRISTOPHER S. CARSON,

Respondent.

COMPLAINT

Now comes the Office of Lawyer Regulation of the Supreme Court of Wisconsin (OLR), by its undersigned retained counsel, and alleges as follows:

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

2. Carson was admitted to the practice of law in Wisconsin on May 18, 1992 (State Bar No. 1018184). The most recent address furnished by Carson to the State Bar of Wisconsin is 15350 W. National Ave., Suite 101, New Berlin, WI 53151.

PRIOR DISCIPLINE

3. In 2008, Carson was privately reprimanded for misconduct in two matters. *Private Reprimand*, 2008-OLR-15. In the first matter, he violated SCR 20:3.5(a) and (b) (*ex parte* communication) by writing to a judge without copying the other lawyers in the case. In the second matter, Carson violated SCR 20:3.4(c) (failure to obey court order) by continuing to prosecute a lawsuit that violated a prior, permanent injunction, even after opposing counsel

reminded him that the lawsuit violated the injunction.

4. In 2009, Carson was publicly reprimanded for misconduct in a divorce matter. *Public Reprimand of Christopher S. Carson*, 2009-OLR-10. Carson violated SCR 20:1.1 (competence) for filing a motion to enforce a physical placement order in a divorce action when no underlying physical placement order existed, and he violated SCR 20:3.1(a)(1) (asserting frivolous claim) by continuing to pursue the motion when warned by a family court commissioner and judge that the motion was frivolous. Carson also violated SCR 20:3.3(a)(1) (false statement to tribunal) by repeatedly asserting in a brief to the court of appeals in the matter that the opposing party had withheld all placement of the minor children until after the first temporary hearing, when, in fact, Carson knew that his client had received some placement with the children prior to that hearing.

REGARDING N.S.
COUNTS I - III
(OLR MATTER NO. 2011MA1733)

5. In or about April 2010, Nicole S. (N.S.) retained Carson to represent her in two operating while intoxicated cases and a then-forthcoming felony drug possession case.

6. Prior to the commencement of the lawyer-client relationship between N.S. and Carson in or about April 2010, no consensual sexual relationship existed between them. In fact, no personal or professional relationship existed between N.S. and Carson before their lawyer-client relationship.

7. On August 11, 2010, N.S. and Carson attended N.S.'s initial court appearance in the drug possession case.

8. The court set a signature bail bond which provides, in relevant part: "Defendant is not to possess or consume any alcohol. Defendant is not to possess/consume drugs unless prescribed by a physician." N.S. executed the bond in Carson's presence at the initial appearance. The court's clerk provided Carson with a copy of the executed signature bond.

9. The drug possession case concluded on or about May 31, 2011. The terms of the August 11, 2010, bail bond remained in effect, without modification, until on or about May 31, 2011. Carson represented N.S. continuously throughout the pendency of the case.

10. In early 2011, Carson met with N.S. at her residence to discuss her pending cases.

11. Thereafter, Carson proposed taking N.S. out of town to visit an art museum. N.S. ultimately agreed to set April 23, 2011, as the date for the art museum visit.

12. On April 23, N.S. left with Carson for the art museum visit. She wore sweatpants, a sweatshirt, a sports bra, and tennis shoes, and did not have on any makeup.

13. On the way to the art museum, N.S. and Carson had lunch. Carson paid for their lunch in cash.

14. As N.S. and Carson did not arrive at their destination until approximately 5:00 p.m., and the art museum closed at 6:00 p.m., N.S. and Carson agreed that there was not sufficient time to visit the museum. Instead, N.S. and Carson went shopping.

15. N.S. and Carson first went to a beauty products store where Carson purchased makeup products for N.S., paying in cash.

16. N.S. and Carson next went to a department store where Carson purchased a dress for N.S., paying in cash.

17. N.S. and Carson later went to a restaurant for dinner. During dinner, N.S. consumed two alcoholic drinks. Carson paid for their dinner and beverages, paying in cash.

18. Later that evening, back at N.S.'s residence, Carson and N.S. engaged in "sexual relations" as defined in SCR 20:1.8(j)(1)[1]. Carson then left for the evening.

19. The next night, April 24, 2011, Carson returned to N.S.'s residence. Upon arriving, Carson went to the back porch and looked through a window where he observed N.S. and her boyfriend in the living room. Carson then rang the doorbell and was permitted to enter by N.S.'s boyfriend. Ultimately, N.S. left with Carson to get ice cream.

20. After leaving the ice cream store, Carson parked his car at or near a park close to N.S.'s residence. Carson then engaged in "sexual relations" as defined in SCR 20:1.8(j)(1) with N.S. Carson then drove N.S. home.

21. N.S. filed a grievance with OLR against Carson. During the course of OLR's grievance investigation, Carson denied to the OLR's District Committee that he purchased the clothing for N.S.

22. OLR's District Committee interviewed the department store sales clerk that conducted the sale. The clerk remembered N.S. and Carson, and that Carson paid for the purchase in cash.

23. Carson also denied to OLR's District Committee that on April 24, 2011, that he could see inside N.S.'s home, asserting that there was no back window with which to see inside the living room.

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[1] **SCR 20:1.8(j)(1) provides, in relevant part**, "'[S]exual relations' means sexual intercourse or any other intentional touching of the intimate parts of a person or causing the person to touch the intimate parts of the lawyer."

24. The back wall of N.S.'s residence does have a large picture window, and it is possible to stand on the back porch and look through the kitchen and dining room area and see the living room.

COUNT I

25. By purchasing two alcoholic drinks for N.S. on April 23, 2011, when the bail bond that N.S. signed on August 11, 2010, in Carson's presence prohibited her from consuming alcohol, and while the conditions of the bail bond were still in effect, **Carson violated SCR 20:1.2(d).**[2]

COUNT II

26. By engaging in sexual relations with N.S., a current client, on April 23 and 24, 2011, while he was representing her on criminal charges, when a consensual sexual relationship did not exist between them when the lawyer-client relationship commenced, **Carson violated SCR 20:1.8(j).**[3]

COUNT III

27. By denying to OLR's District Committee that he purchased clothing for N.S. during their trip on April 23, 2011, and by stating to OLR's District Committee that it was impossible for him to have looked through a back window at N.S.'s home and observe her and her boyfriend in the living room on April 24, 2011, because there was no such window, and it

[2] **SCR 20:1.2(d) provides**, "A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law."

[3] **SCR 20:1.8(j) provides, in relevant part**, "A lawyer shall not have sexual relations with a current client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced. '[S]exual relations' means sexual intercourse or any other intentional touching of the intimate parts of a person or causing the person to touch the intimate parts of the lawyer."

would have been impossible for him to see into the living room from the back porch, when one or both of such statements were misrepresentations, **Carson violated SCR 22.03(6)[4] and SCR 22.04(1).**[5]

REGARDING GRYSKE
COUNT IV
(OLR MATTER NO. 2009MA277)

28. In July 2005, Judge Mark Warpinski sentenced Michael Gryske to thirteen years in prison for the repeated first-degree sexual assault of a child in *State v. Gryske*, No. 03-CF-1051 (Brown Co. Cir. Ct.). The judgment of conviction ordered Gryske to have no contact with minor children, unless approved by his offender agent.

29. Gryske and his wife desired Gryske to have visitation with their recently-born baby daughter during his incarceration. They sought permission for visits from Gryske's social worker and agent, which was denied. They sought review of the denial from the warden, who upheld the denial in late-September 2005, subject to reconsideration upon successful completion of treatment programs.

30. On September 1, 2005—three weeks before the warden sustained the denial of visitation—Judge Warpinski amended the judgment of conviction to permit Gryske to have supervised and monitored prison visits with his daughter. However, the amended judgment did not strike the pre-existing order prohibiting contact with minor children without the approval of

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

[5] **SCR 22.04(1) provides, in relevant part**, "A respondent has the duty to cooperate specified in SCR 21.15(4) and 22.03(2) in respect to the district committee."

Gryske's agent.

31. Visitation was further denied to Gryske by prison officials later in 2005, and in 2006 and 2007. In each of those instances, Gryske and/or his wife were informed of their appeal rights. The prison case notes regarding the 2007 denial provide, in relevant part: "[Gryske] was informed that his wife would receive a letter of denial in the mail with her appeal rights. Appeal rights were explained to [Gryske]."

32. WIS. STAT. § 801.02(7)(b) provides:

> No prisoner may commence a civil action or special proceeding, including a petition for a common law writ of certiorari, with respect to the prison or jail conditions in the facility in which he or she is or has been incarcerated, imprisoned or detained until the person has exhausted all available administrative remedies that the department of corrections has promulgated by rule or, in the case of prisoners not in the custody of the department of corrections, that the sheriff, superintendent or other keeper of a jail or house of correction has reduced to writing and provided reasonable notice of to the prisoners.

33. WIS. ADMIN. CODE § DOC 310 provides the administrative remedy framework for the review of inmate complaints—the Inmate Complaint Review System (ICRS). Under the ICRS, inmate complaints are first processed by the institution complaint examiner, who makes disposition recommendations to the reviewing authority. WIS. ADMIN. CODE §§ DOC 310.11-.12. An inmate dissatisfied with the reviewing authority's decision generally may appeal it.[6] WIS. ADMIN. CODE § DOC 310.13(1). The appeal is initially reviewed by a corrections complaint examiner, who recommends a decision to the Secretary of the Department of Corrections. WIS.

[6] The exception is when the reviewing authority affirms the institution complaint examiner's rejection of a complaint on the technical grounds set forth in WIS. ADMIN. CODE § DOC 310.11(5). WIS. ADMIN. CODE §§ DOC 310.11(6) and 310.13(3). In that instance, the reviewing authority's decision is final. WIS. ADMIN. CODE § DOC 310.07(5).

ADMIN. CODE §§ DOC 310.13-.14. The Secretary's decision is final. WIS. ADMIN. CODE § DOC 310.07(5).

34. Gryske never utilized the ICRS to contest any denials of visitation in prison with his daughter.

35. Gryske never appealed under the ICRS any denials of visitation with his daughter to the Secretary of the Department of Corrections.

36. Gryske failed to exhaust his administrative remedies with the Department of Corrections for each of the denials of visitation.

37. In early 2009, Gryske's wife retained Carson to take legal action seeking to permit Gryske to have prison visitation with his daughter. Gryske's wife provided Carson with a copy of Gryske's prison case notes, which state there is an appeals process.

38. Carson never independently investigated whether Gryske exhausted his administrative remedies regarding prior denials of visitation.

39. On March 3, 2009, Carson filed a motion for remedial contempt and a writ of mandamus in the Brown County criminal case seeking to compel the Department of Corrections to permit visitation. He directed the motion to Judge Warpinski, Brown County District Attorney John Zakowski and Assistant Attorney General William Wolford. Carson did not serve the Attorney General's office with the motion. The motion was scheduled for hearing on March 9.

40. Carson was not aware of the ICRS administrative remedy exhaustion framework when he filed the motion.

41. WIS. STAT. § 783.01 provides: "*Mandamus is a civil action.* The writ of mandamus shall specify the time within which the defendant shall make return thereto. Before

such time expires the defendant may move to quash the writ and such motion shall be deemed a motion to dismiss the complaint under s. 802.06(2)" (emphasis added).

42. At the March 9 motion hearing, Carson withdrew the motion.

43. On or about April 17, Carson filed a second motion for a writ of mandamus in the Brown County criminal case seeking substantially the same relief as the previously-withdrawn motion. The second motion was directed to the same recipients as the first, as well as to Ana Boatwright, the warden of the New Lisbon Correctional Institution, where Gryske was incarcerated. The motion was scheduled for hearing on June 3.

44. Carson did not serve Warden Boatwright with the second motion in either April or May. Instead, on June 1, two days before the hearing, he faxed the motion (without the documents referenced in it as attached) to Carol Garclau, the program director at New Lisbon Correctional Institution, along with an admission of service, requesting that Garclau accept service of the second motion on behalf of Warden Boatwright.

45. On June 2, Jonathan Nitti, assistant legal counsel to the Department of Corrections, faxed Judge Warpinski and Carson a letter motion to dismiss the second motion because Warden Boatwright was not personally served with it. The letter motion quotes WIS. STAT. § 783.01 in its entirety, including the first sentence of the statute, which provides: "Mandamus is a civil action."

46. Carson withdrew the second motion.

47. On July 10, Carson filed a third motion[7] for a writ of mandamus in the Brown County criminal case seeking substantially the same relief as the two previously-withdrawn

[7] It is styled as petition, but for consistency will be referred to as a motion.

motions. However, in the third motion, Carson altered the caption from *State v. Gryske* to *Gryske v. The State of Wisconsin, by the Department of Corrections and Warden Ana Boatwright.* Carson did not receive permission from Judge Warpinski to modify the caption. The third motion was directed to the same recipients as the second. The motion was scheduled for hearing on July 24.

48. On July 14, Andrea Olmanson, assistant legal counsel for the Department of Corrections, filed a motion to dismiss Carson's third motion and for statutory costs or, alternatively for a transfer to Dane County. The grounds for her motion to dismiss and for costs were: lack of personal service, a mandamus petition cannot be brought in criminal actions because it is a civil action, criminal courts lack jurisdiction to mandate prison visitation, the mandamus filing fee was unpaid and no fee waiver was sought, failure to exhaust administrative remedies, and that mandamus is an improper vehicle to compel the discretionary act of visitation.

49. Olmanson's alternative request for transfer to Dane County was based upon WIS. STAT. § 801.50(3), which then provided: "All actions in which the sole defendant is the state, any state board or commission, or any state officer, employee, or agent in an official capacity shall be venued in Dane County unless another venue is specifically authorized by law."

50. On July 14, Judge Warpinski adjourned the July 24 hearing and requested supplemental briefing on the issues raised in Olmanson's motion.

51. That same day, Olmanson provided Carson the twenty-one day "safe harbor" notice of her intent to file a motion under WIS. STAT. § 802.05 seeking a finding that Carson's third motion is frivolous and for an award of actual attorneys' fees.

52. On August 4—the last day of the "safe harbor" period—Carson withdrew the third motion.

COUNT IV

53. After being hired to represent an incarcerated man who had unsuccessfully sought prison visitation with his minor child, and after being provided with "prison case notes" stating that an appeals process had been explained to the man and that notice of appeal rights had been sent to the man's wife, by failing to obtain information about the administrative appeal process within the Department of Corrections or familiarize himself on the relevant law and codes on the appeal process; and/or by thereafter seeking visitation rights by filing a series of three motions in the client's prior criminal case instead of first exhausting the client's administrative remedies and by failing to file a motion against the State of Wisconsin in the proper venue, **Carson violated SCR 20:1.1.** [8]

REGARDING WRIGHT
COUNT V
(OLR MATTER NO. 2012MA80)

54. In 2002, Larry Wright (Wright) was sentenced in Milwaukee County Circuit Court to forty-two months in prison to be followed by forty-two months on extended supervision following his conviction for possession with intent to deliver THC.

55. On July 20, 2010, while on extended supervision, Wright's extended supervision was revoked by the Department of Corrections for two counts of sex with a child and one count of failing to report to his agent, all of which occurred in 2009.

[8] **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."

56. Two days later, on July 22, Wright was convicted in Milwaukee County Circuit Court on two counts of second degree sexual assault of a child and one count of child enticement, regarding the same child that was the subject of his extended supervision revocation. For that conviction, Wright was sentenced to nine years in prison to be followed by seven years of extended supervision.

57. In late 2011 or very early 2012, Wright retained Carson to challenge the revocation in 2010 of his extended supervision from his 2002 drug case, on the basis that Wright received ineffective assistance of counsel at his extended supervision revocation hearing.

58. As the time to file a petition for writ of certiorari from the extended supervision revocation expired in 2010, Carson decided to file a petition for a writ of habeas corpus.

59. Carson filed the petition for a writ of habeas corpus in Milwaukee County Circuit Court on January 3, 2012.

60. WIS. STAT. § 801.50(4)(b) requires that a petition for a writ of habeas corpus be filed in the county, "[w]here the liberty of the plaintiff is restrained if the action seeks relief concerning any other matter relating to a restraint on the liberty of the plaintiff." At the time Carson filed the petition, Wright was incarcerated at Redgranite Correctional Institution, located in Waushara County, Wisconsin.

61. WIS. STAT. § 782.04(1) provides that a petition for a writ of habeas corpus must state, among other things, "the person by whom imprisoned and the place where, naming both parties, if their names are known, or describing them if they are not." Carson failed to name the warden at Redgranite Correctional Institution, Michael Dittmann, in the petition.

62. WIS. STAT. § 782.10 requires that a writ of habeas corpus be served upon the warden or left with an underofficer at the institution that has charge of the inmate. Carson only mailed the petition to Warden Dittmann.

63. WIS. STAT. § 782.04 requires that a petition for a writ of habeas corpus be verified. The petition Carson filed was not verified by him or Wright.

64. Carson's petition states: "Mr. Wright later faced a jury trial on the underlying allegations rendered within the Revocation Decision and was convicted of *one* of the charges in circuit court" (emphasis added). However, Wright was convicted of *both* counts of second degree sexual assault of a child, as well as one count of child enticement.

65. In the conclusion of his petition, Carson first requests "the remedy of immediate release." If the writ was granted, the remedy would be a new hearing on Wright's ineffective assistance claim, not release. Moreover, at the time of filing the petition, Wright was less than two years into a nine year prison sentence for the sexual assault of a child convictions. Therefore, no action that the circuit court could have taken on the habeas petition filed by Carson could have resulted in Wright's release from incarceration.

66. On January 17, Andrea Olmanson, assistant legal counsel for the Department of Corrections, filed a motion to dismiss the petition and to declare a "strike" against Wright under the Prisoner Litigation Reform Act. The grounds for her motion to dismiss were: failure to obtain jurisdiction by not specifically naming Warden Dittmann nor properly serving him with the petition, failure to state a claim upon which relief can be granted because the petition was unverified, and thus not legally applied for, and the petition was filed in the wrong county.

67. Olmanson also filed a separate motion for sanctions against Carson under WIS. STAT. § 895.044 seeking a finding that Carson's petition was frivolous and for an award of actual attorneys' fees.

68. Later in January, Carson voluntarily dismissed the petition and Olmanson agreed to dismiss her motions to dismiss and for sanctions.

69. On February 3, Carson filed a new petition for a writ of habeas corpus in Waushara County Circuit Court. This second petition is a revised version of the first. However, it still only references Wright's conviction on one count of sexual assault with a child, and again seeks Wright's immediate release.

70. WIS. STAT. § 782.04(4) provides, in relevant part: "If the imprisonment is by virtue of any order or process a copy thereof must be annexed," to a petition for a writ of habeas corpus. Carson did not attach a copy of any judgment of conviction that formed the basis for Wright's imprisonment.

71. With regard to Department of Corrections extended supervision revocation proceedings, WIS. ADMIN. CODE §§ HA 2.05(6)(f) provides: "The department has the burden of proof to establish, by a preponderance of the evidence, that the client violated the rules or conditions of supervision. *A violation is proven by a judgment of conviction arising from conduct underlying an allegation*" (emphasis added). Wright was convicted two days later in circuit court on the same charges that led to his extended supervision revocation. Therefore, even if Wright was granted habeas corpus relief, a new revocation hearing would produce the same results as the first, as the violations are proved by Wright's subsequent criminal convictions.

72. On February 9, Olmanson filed a motion to dismiss the second petition and to declare a "strike" against Wright under the Prisoner Litigation Reform Act. The grounds for her motion to dismiss were: failure to state a claim upon which relief can be granted because not all necessary documents were attached to the petition, the alleged ineffective assistance of counsel claim regarding the revocation proceeding was rendered moot by Wright's subsequent criminal conviction on those same charges, the bases for the petition are conclusory and/or factually incorrect, and the failure to state any justification for the immediate release requested in the petition.

73. Olmanson also filed a separate motion for sanctions against Carson under WIS. STAT. § 895.044 seeking a finding that Carson's second petition was frivolous and for an award of actual attorneys' fees.

74. Carson thereafter filed his own motion for sanctions against Olmanson under WIS. STAT. § 895.044.

75. The second petition and the sanctions motions were heard on April 17. Judge Guy Dutcher denied the second petition. Addressing Olmanson's sanctions motion, he stated, in part:

> The Court, frankly, Attorney Carson, is going to be challenged to not find that this writ is frivolous. I am going to give you fair opportunity to defend that; but it appears to the Court, from what is before us, that this writ is frivolous. And I make that finding, initially.

76. Judge Dutcher later stated:

> The first problem with the writ of cert is that it is facially defective. It does not include a certified copy of the judgment of conviction from which relief is sought. That's required under '782.04(4).' It's not even annexed.... And the Court is troubled further to find that that infirmity was transpired in the apparent aftermath of this case having initially been filed improperly in Milwaukee County.

77. At the conclusion of the hearing, Judge Dutcher set the matter for additional briefing and a continued hearing.

78. On May 10, Carson wrote a letter to the court withdrawing his motion for sanctions against Olmanson. The basis provided by Carson was, "the better to narrow the stated issues pressing in the court's mind."

79. The hearing continued on September 11, before Judge John Storck, following a judicial reassignment. Carson was represented by counsel at the hearing. Judge Storck concluded, as codified in a September 28 order, that the second petition was frivolous and ordered fee submissions.

80. The parties exchanged fee submissions and, at an October 8 hearing, Judge Storck ordered Carson to pay attorneys' fees and costs totaling $1,788.50. The order imposing these sanctions was entered October 19. Carson appealed. The court of appeals summarily affirmed and remanded for the determination and assessment against Carson of attorneys' fees and costs reasonably incurred by the State in the appeal. Carson did not file a petition for review.

COUNT V

81. By making multiple errors in a petition for a writ of habeas corpus that he filed in Milwaukee County Circuit Court on January 3, 2012, including filing the petition in the wrong county, failing to verify the petition by signing it under oath, misstating the number of charges of which his client had been convicted, and seeking an inappropriate remedy, eventually dismissing the petition and filing a revised petition in Waushara County in which he corrected some, but not all, of his previous errors, **Carson violated SCR 20:1.1**.

REGARDING EHLERS
COUNTS VI - VIII
(OLR MATTER NO. 2011MA1484)

82. On July 26, 2010, Audriene Stokes, now Audriene Ehlers, met with Carson for a consultation regarding possible divorce representation. At the conclusion of the consultation, Ehlers gave Carson a $700 advanced fee, but instructed him not to use those funds and to take no further action on her behalf. She explained to Carson that she would only need Carson's representation if her husband filed for divorce. Carson told Ehlers that he would charge her $195 per hour for his services in the matter. Ehlers requested that Carson prepare a fee agreement and provide a receipt for the $700 advanced fee. Carson never provided a fee agreement to Ehlers. In March 2011, Carson finally provided a receipt for Ehlers' $700 payment.

83. Carson did not deposit the $700 advanced fee into his office trust account. Instead, he deposited it into his office business account.

84. In July 2010, Ehlers wrote to Carson to provide her mailing address, which was a post office box, and her home addresses.

85. In September 2011, Carson told an OLR intake investigator that he deposited the $700 advanced fee into his office business account because it was a flat fee for representation of Ehlers in an uncontested divorce. Carson never provided Ehlers with the written notice set forth in SCR 20:1.15(b)(4m).

86. By March 2011, Ehlers began to consider initiating the divorce proceedings. On March 15, 2011, Ehlers met with Carson for legal advice. She paid Carson $200, which he deposited into his office business account.

87. On March 17, 2011, Ehlers wrote to Carson indicating that she still had not decided when to file for divorce, and advised him, "I will keep you posted. For now just sit tight." She requested in that letter that Carson provide her with a receipt for the $700 advance fee paid in July 2010 and for the $200 she paid for his services two days earlier. Carson provided both receipts shortly thereafter.

88. On March 31, 2011, Ehlers sent Carson a letter by certified mail informing him that she and her husband were reconciling, and she would not need Carson's services. Ehlers requested a refund of the $700 advanced fee she paid in July 2010. She wrote, "If there is any way to get my retainer back that would be a great help. I really should give that money back to my mother, in Oregon." Carson did not respond to Ehlers' advanced fee refund request.

89. On June 3, 2011, Ehlers sent a second letter to Carson by certified mail indicating that the letter was her final request for him to return her $700 advanced fee. Ehlers stated in the letter that Carson had not replied to her March 31, 2011, letter, and that she intended to commence a small claims action against Carson if her $700 advanced fee was not returned within ten days. Later in June, Carson informed Ehlers that she was not entitled to a refund of any portion of her advanced fee.

90. Ehlers filed a grievance with OLR against Carson in August 2011. By that time, Carson had not provided Ehlers an itemized statement of account nor an explanation as to why she was not entitled to a return of the $700 advanced fee.

91. Carson asserted to an OLR intake investigator in September 2011 that the $700 advanced fee deposited into his office business account constituted a flat fee. OLR's intake investigator directed Carson to provide Ehlers with the SCR 20:1.15(b)(4m)b written notice

regarding fee accounting and dispute resolution upon termination of representation.

92. Carson then prepared a letter titled, titled "Termination of Services Letter and Accounting of Fees" addressed to Ehlers, which indicated that it was to be sent to her at the e-mail address shown on the letter. Carson sent the letter to that e-mail address. However, the e-mail address contained a typographical error. It was not received by Ehlers. OLR received a copy of the letter from Carson by fax on September 6, 2011.

93. Carson's letter provided information about fee arbitration. Carson concluded that, based upon his accounting, he earned the $700 advanced fee and that Ehlers was not entitled to any refund. Carson then stated: "In the event you are entitled to a refund of some portion of the advanced fee payments made (if the case was an hourly rate case), I would enclose the check for this refund. In this instance, you are not entitled to any refund."

94. A lawyer's obligation to refund an unearned advanced fee extends to all matters in which an advanced fee is received, irrespective of the basis for charging the fee (*e.g.*, hourly, flat fee, etc.).

COUNT VI

95. By receiving a $700 advanced fee from Ehlers on or about July 26, 2010, in anticipation of possible representation in a divorce and depositing those funds into his business account without utilizing the alternative fee placement measures permitted under SCR 20:1.15(b)(4m), **Carson violated SCR 20:1.15(b)(4).**[9]

[9] **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."

COUNT VII

96. Having received a March 31, 2011, letter from Ehlers in which she terminated the legal representation and inquired as to the possibility of having her advanced fee returned to her, by failing until June 2011 (and only after subsequent inquiries from Ehlers) to address the matter of the advanced fee either by refunding a portion of the advance or by promptly informing Ehlers that no refund was forthcoming in light of work performed, **Carson violated SCR 20:1.16(d).**[10]

COUNT VIII

97. In September 2011, by sending a "termination of services letter and accounting of fees" to Ehlers (at an incorrect email address) that incorrectly stated that a refund of an advanced fee was possible only in hourly fee cases, and only sending his letter more than five months after Ehlers' termination of the legal representation in a belated effort to comply with the alternative fee placement measures permitting deposit of an advanced fee into a business account, **Carson violated SCR 20:1.15(b)(4m)b.**[11]

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[10] **SCR 20:1.16(d) provides,** "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law."

[11] **SCR 20:1.15(b)(4m)b provides,** "Upon termination of the representation, the lawyer shall deliver to the client in writing all of the following:

1. a final accounting, or an accounting from the date of the lawyer's most recent statement to the end of the representation, regarding the client's advanced fee payment with a refund of any unearned advanced fees;

2. notice that, if the client disputes the amount of the fee and wants that dispute to be submitted to binding arbitration, the client must provide written notice of the dispute to the lawyer within 30 days of the mailing of the accounting; and

3. notice that, if the lawyer is unable to resolve the dispute to the satisfaction of the client within 30 days after receiving notice of the dispute from the client, the lawyer shall submit the dispute to binding arbitration."

WHEREFORE, OLR respectfully requests that Carson be found in violation of the Supreme Court Rules as alleged in the eight counts of this complaint, and that the Court suspend Carson's license to practice law for three months and order such other and further relief as may be just and equitable, including an award of costs.

Dated this 25th day of November, 2014.

OFFICE OF LAWYER REGULATION

By _____
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