

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST PETER J.  
KOVAC, ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,

CASE NO. 2015AP 694-D

Complainant;

PETER J. KOVAC

Respondent.

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**COMPLAINT**

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**RECEIVED**

APR 02 2015

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 Peter J. Kovac (Kovac), is a Wisconsin attorney (State Bar No. 1014894) admitted to practice law in 1973. Kovac's office address is currently listed with the Wisconsin State Bar as 1551 N. Prospect Avenue, PO Box 510155, Milwaukee, WI 53203.

3. Kovac's disciplinary history in Wisconsin consists of:

(a) A 2008 consensual public reprimand for failure to competently represent a criminal appellate client; failure to diligently represent three criminal clients; failure to communicate with clients; failure to communicate with two clients about their appeals' status; continuing to represent a client after a conflict of interest arose; and non-cooperation with the Office of Lawyer Regulation concerning three of the investigations. Public Reprimand of Peter J. Kovac, 2008-OLR-05.

(b) A 2012 public reprimand for failing to timely respond to the OLR notice of investigation. *Disciplinary Proceedings Against Kovac*, 2012 WI 117.

**REGARDING REITER**  
**Counts 1 - 3**  
**OLR Matter No. 2012MA102**

4. In September, 2011, Keith Reiter (Reiter) hired Kovac to defend him on felony criminal charges (felony matter). United States of America v. Keith Reiter, U.S. District Court, Eastern District, Case No. 11-CR-183-JPS

**No Written Fee Agreement**

5. On September 9, 2011, Kovac requested Reiter pay \$5,000 for review of the felony matter, and thereafter, Kovac received a \$5,000 check drawn from Reiter's credit card.

6. There is no written fee agreement with Reiter in the felony matter.

7. Kovac discussed a \$15,000 to \$25,000 range as fees for the felony matter.

8. Kovac received an additional \$2,500 paid from Reiter's credit card after the first day of trial; Reiter thereafter rescinded the \$2,500 payment.

#### **Failure to Turn Over File**

9. Reiter was convicted and sentenced to a six-month term of incarceration, supervised release, and restitution in the felony matter.

10. Attorney Jeffrey Jensen's (Jensen) January 21, 2012 *Motion to Substitute Attorney* was granted.

11. Subsequent to being appointed as successor counsel, Jensen attempted on numerous occasions to obtain the client file from Kovac. Kovac failed to respond.

12. On April 12, 2012, Jensen filed a *Motion to Compel* requesting Kovac be ordered to turn over his client file.

13. On April 17, 2012, the court issued an order directing Kovac to turn over the Reiter client file to Jensen prior to 10:00 a.m. on Friday, April 20, 2012, stating that failure to do so would cause the U.S. Marshal to arrest Kovac and hold him in custody until he turned over the file.

14. On April 20, 2012, Kovac's Reiter client file was delivered to Jensen's office.

### **Non-cooperation**

15. In a letter dated June 5, 2012, OLR notified Kovac of OLR's investigation and requested he submit a written response to the grievance by June 28, 2012. Kovac failed to respond.

16. By letter dated July 19, 2012 sent via regular and certified mail, OLR notified Kovac that his written response to the investigation had not been received and requested Kovac submit his written response to OLR by July 30, 2012. The certified return receipt for the July 19, 2012 correspondence was returned to OLR with a July 23, 2012 signature of Peter Kovac. The July 19, 2012 letter sent by regular mail was not returned to OLR. Kovac failed to respond.

17. On September 18, 2012, OLR filed a *Notice of Motion and Motion Requesting Order to Show Cause* as to why Kovac's law license should not be suspended for willful failure to cooperate with OLR's investigation.

18. On September 21, 2012, the Wisconsin Supreme Court issued an *Order to Show Cause* as to why Kovac's law license should not be suspended.

19. On October 15, 2012, Kovac filed a *Response to Order to Show* asking the court to not take any action against

him and asking the court to allow him to participate in a monitoring program with the OLR.

20. On October 16, 2012, OLR filed a Reply requesting the Court temporarily suspend Kovac's license to practice law for failure to respond to the underlying grievance matter.

21. On November 5, 2012, OLR received Kovac's response to the grievance and asked the Court to withdraw its motion. On November 6, 2012, the Court granted OLR's request to withdraw its motion.

#### Count 1

22. By failing to have a written fee agreement when the total legal costs of the representation in connection with Reiter's federal criminal matter were more than \$1,000 and having received a \$5,000 advance from Reiter, **Kovac violated SCR 20:1.5(b)(1) and (2)<sup>1</sup>.**

#### Count 2

23. By failing upon termination of representation, to promptly turn over his client file for representation of

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<sup>1</sup> SCR 20:1.5 (b)(1) provides, "The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, except before or within a reasonable time after commencing the representation when the lawyer will charge a regularly represented client on the same basis or rate as in the past. If it is reasonably foreseeable that the total cost of representation to the client, including attorney's fees, will be \$1000 or less, the communication may be oral or in writing. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client."

SCR 20:1.5(b)(2) provides, "If the total cost of representation to the client, including attorney's fees, is more than \$1000, the purpose and effect of any retainer or advance fee that is paid to the lawyer shall be communicated in writing."

Reiter in the federal criminal matter to successor counsel, Kovac violated SCR 20:1.16(d)<sup>2</sup>.

**Count 3**

24. By failing to timely provide a written response to OLR in the matter of the grievance of Reiter, Kovac violated SCR 22.03(2)<sup>3</sup> and SCR 22.03(6)<sup>4</sup> enforced via SCR 20:8.4(h)<sup>5</sup>.

**REGARDING BONDS**

**Counts 4-7**

**OLR Matter No. 2013MA1662**

25. Kovac represented Anthony Bonds (Bonds) in a Milwaukee County criminal matter (criminal matter). State of

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<sup>2</sup> 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."

<sup>3</sup> 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."

<sup>4</sup> 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."

<sup>5</sup> 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 21.15(4), SCR 22.001(9)(b), SCR 22.03(2), SCR 22.03(6), or SCR 22.04(1)."

Wisconsin v. Anthony Rania Bonds, Milwaukee County Circuit  
Court Case No. 2012CF5195.

**Failure to Communicate,  
Failure to Effect Appeal Notice,  
and Failure to Comply With Court Orders**

26. Bonds entered a guilty plea in two drug-related charges in the criminal matter, was found guilty, and was sentenced on February 1, 2013.

27. Kovac did not file a *Notice of Intent to Appeal* in the criminal matter.

28. Bonds filed a pro se motion to extend time to file a *Notice of Intent to Appeal* seeking post conviction relief.

29. Bonds contacted Kovac on numerous occasions, including sending a letter to and calling Kovac, to obtain his client file so that successor counsel could perfect post-conviction relief in the criminal matter. Kovac failed to respond.

30. On January 10, 2014, the Appeals Court directed Kovac to respond to Bonds' motion. Kovac failed to comply with the January 10, 2014 appellate court order.

31. In a March 18, 2014 Order, the Court of Appeals extended the time for Kovac to respond and directed him to explain why he had not responded to the January 10, 2014 court order. Kovac failed to comply with the March 18, 2014 appellate court order.

32. In an April 15, 2014 Order, the Court of Appeals noted, in part:

- that Bonds had filed a motion to extend the time for filing a notice of intent to pursue post-conviction relief
- Bonds had been sentenced on February 1, 2013
- Bonds had been unable to contact his attorney, Attorney Peter Kovac, to have him file the notice of intent.

33. The Court of Appeals noted that Bonds' file did not contain the required Notice of Intent to appeal form.

34. The Court of Appeals issued an order granting an extension for filing the Notice of Intent to Appeal, informed Kovac that a copy of the Order would be sent to OLR, and requested that the Office of the State Defender request transcripts and appoint counsel for Bonds.

#### **Failure to Turn Over Client File**

35. Attorney Kevin Gaertner (Gaertner) was appointed successor counsel in the criminal matter.

36. Gaertner repeatedly requested Kovac turn over the client file in the criminal matter.

37. Kovac never delivered the client file to Gaertner.

38. Gaertner received the file on May 1, 2014 from the State Public Defender's Office.

#### **Non-cooperation**

39. On October 2, 2013, OLR notified Kovac of Bonds' grievance and requested he provide a written response to



the grievance no later than October 25, 2013. Bonds failed to respond.

40. On November 22, 2013, OLR notified Kovac of Bonds' grievance and again requested he submit a written response by December 2, 2013. A return receipt for the certified letter contained the signature "Alena" and was dated November 25, 2013. Kovac failed to respond.

41. On February 13, 2014, Milwaukee Process Service personally served Kovac at his residence with OLR's third letter dated December 18, 2013 together with attachments and requested a written response within 7 days of personal service. Kovac failed to respond.

42. On March 19, 2014, OLR filed a *Notice of Motion Requesting Order to Show Cause* as to why Kovac's law license should not be suspended for a willful failure to cooperate with OLR's investigation. On March 24, 2014, the Wisconsin Supreme Court issued an *Order to Show Cause* as to why Kovac's license should not be temporarily suspended for his failure to respond to OLR.

43. On Monday, April 14, 2014, OLR received a written response from Kovac and OLR filed a *Report and Withdrawal of Motion* with the Court indicating Kovac had filed a response.

44. By letter dated April 25, 2014, OLR sent to Kovac via regular and certified mail to both known addresses, a

request that Kovac provide additional information relating to Bond's grievance.

45. On May 16, 2014, Kovac signed the receipt for the April 25, 2014 OLR certified letter. The April 25, 2014 OLR letter sent by regular mail was not returned as undelivered. Kovac failed to respond.

46. By letter dated May 30, 2014, sent to Kovac via regular and certified mail to two addresses, OLR informed Kovac his supplemental written response had not been received. OLR requested Kovac submit his supplemental written response to OLR no later than June 13, 2014. The receipt for the OLR May 30, 2014 letter sent by certified mail was signed by Kovac. The OLR May 30, 2014 letter sent by regular mail was not returned as undelivered. Kovac failed to respond.

47. On June 19, 2014, Kovac left a voicemail message at OLR stating he would be responding to the inquiry received in the Bonds matter. On June 27, 2013, OLR called Kovac and left a voicemail message informing Kovac that OLR still had not received his supplemental response in the Bonds matter and that if OLR did not receive the requested information OLR would pursue a *Motion For an Order to Show Cause* as to why his license should not be suspended.

48. On July 7, 2014, Kovac called OLR and indicated he was working on his response. Kovac failed to respond thereafter.

49. On July 16, 2014, OLR filed a *Motion Requesting Order to Show Cause* as to why Kovac's license should not be suspended. On July 17, 2014, the Court issued an *Order to Show Cause* as to why Kovac's license should not be temporarily suspended.

50. On August 12, 2014, OLR received a response from Kovac relating to the grievance. On August 12, 2014, OLR filed a *Report and Withdrawal of Motion*. On August 18, 2014, the Wisconsin Supreme Court granted OLR's request to withdraw.

#### **Count 4**

51. By failing to file the notice of intent to pursue post conviction relief in the Bonds' matter, **Kovac violated SCR 20:1.3<sup>6</sup>**.

#### **Count 5**

52. By failing, upon termination of representation, to respond to phone calls and letters from Bonds relating to requests to return his file so that he could pursue post-conviction relief, **Kovac violated SCR 20:1.16(d)**.

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<sup>6</sup> SCR 20:1.3 provides, "A lawyer shall act with reasonable diligence and promptness in representing a client."

**Count 6**

53. By failing to respond to multiple Orders from the Court of Appeals requesting that Attorney Kovac provide a response concerning whether he had counseled Bonds regarding the decision to seek post-conviction relief, **Kovac violated SCR 20:3.4(c)<sup>7</sup>.**

**Count 7**

54. By failing to provide a timely initial response to Bonds' grievance and by failing to timely respond to OLR's request for a supplemental response to Bonds' grievance, **Kovac violated SCR 22.03(2) and SCR 22.03(6), enforced via 20:8.4(h).**

**WHEREFORE,** the Office of Lawyer Regulation asks that Attorney Peter J. Kovac be found in violation of the Supreme Court rules as alleged in Counts 1 through 7 of the *Complaint*, that the Court suspend Attorney Kovac's Wisconsin law license for a period of sixty days and for such other and further relief as may be just and equitable, including an award of costs.

Dated this 2<sup>nd</sup> day of April 2015.

OFFICE OF LAWYER REGULATION



SHERYL ST. ORES

Assistant Litigation Counsel  
State Bar No. 1017028

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<sup>7</sup>SCR 20:3.4(c) provides: "A lawyer shall not: knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists."

110 East Main Street, Suite #315  
Madison, Wisconsin 53703-3383  
608-261-0695