

STATE OF WISCONSIN

IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST MATTHEW R. SCHWITZER,
ATTORNEY AT LAW

RECEIVED

APR 06 2015

CLERK OF SUPREME COURT
OF WISCONSIN

OFFICE OF LAWYER REGULATION,

CASE CODE: 30912

Complainant,

v.

CASE NO. 2015AP 675-D

MATTHEW R. SCHWITZER,

Respondent.

COMPLAINT

NOW COMES Complainant Wisconsin Supreme Court - Office of Lawyer Regulation ("OLR"), by its retained counsel, Gregory P. Seibold, and as and for its Complaint against Respondent Matthew R. Schwitzer, alleges and states as follows:

1. OLR was established by the Wisconsin Supreme Court and operates pursuant to Supreme Court Rule. This complaint is filed pursuant to SCR 22.11.
2. Attorney Matthew R. Schwitzer ("Schwitzer") is a Wisconsin attorney first licensed to the practice of law in Wisconsin on October 15, 2007, State Bar ID: 1065705. The most recent address furnished by Schwitzer to the State Bar of Wisconsin is PO Box 8413, Green Bay, WI 54308-8413.
3. Although discipline has not been previously imposed upon Schwitzer's Wisconsin law license as the result of a disciplinary proceeding filed against him, his law license has been suspended since October 31, 2013, and remains suspended:

- a. Schwitzer's Wisconsin law license was suspended on October 31, 2013 for failure to pay dues and failure to file required trust account certifications.
- b. Schwitzer's Wisconsin law license was also suspended on June 2, 2014 for failure to comply with CLE reporting requirements.
- c. Schwitzer's Wisconsin law license was additionally suspended on September 25, 2014, for willful failure to cooperate with an OLR investigation concerning his conduct. *OLR v. Schwitzer, Wis. Sup. Ct. Case No. 2014XX893-D.*

Regarding Criminal Conduct, Website and Non-Cooperation
(OLR Matter No. 2013MA1576)
COUNTS 1-3

Regarding Criminal Conduct (Count 1)

4. On August 18, 2013, Schwitzer's wife and family members found what appeared to be narcotics and drug paraphernalia in a residential room Schwitzer had been using. After family members contacted Schwitzer about this, Schwitzer texted his wife, accusing her of betraying him and making statements that she interpreted as threats. Schwitzer was arrested the following day, and a police search of his car revealed additional evidence of illegal activity.

5. On August 21, 2013, the Brown County District Attorney's office filed a criminal complaint against Schwitzer alleging nine counts of criminal conduct, including telephone harassment, possession of drug paraphernalia, and possession of various narcotics and illegally obtained prescription medication. Brown County Circuit Court Case No. 2013CF1142.

6. On February 4, 2014, Schwitzer was convicted of the following in Case No. 2013CF1142:

- a. Unlawful Phone Use – Threatens Harm, in violation of Wis. Stat. §947.012(1)(a), a Class B misdemeanor;
- b. Possession of THC, in violation of Wis. Stat. §961.41(3g)(e), an unclassified misdemeanor; and
- c. Possession of Cocaine/Coca, in violation of Wis. Stat. §961.41(3g)(c), an unclassified misdemeanor.
- d. Other charges related to possession of paraphernalia, narcotics and illegally obtained prescription drugs were dismissed but read in.

7. The court withheld sentence and placed Schwitzer on two years' probation, conditioned on thirty days in jail, to run concurrently on each of the three counts. Schwitzer was also ordered to comply with his healthcare provider's recommendations, continue psychological and medical treatment, take all prescription medication, surrender a firearm, and have no contact with anyone who uses, sells or possesses illegal drugs.

COUNT 1

8. By engaging in the conduct leading to his convictions of three misdemeanors in *State v. Schwitzer*, Brown County Circuit Court Case No. 13CF1142, Schwitzer violated SCR 20:8.4(b).¹

Regarding the Website (Count 2)

9. Prior to his arrest in August 2013, Schwitzer practiced law with attorneys Todd G. Simon ("Simon") and Timothy J. Feldhausen ("Feldhausen") as part of the law firm Schwitzer Simon, LLC.

10. Schwitzer and his brother Kevan Schwitzer created a website used by Schwitzer Simon, LLC with a domain located at <http://schwitzerlaw.com> (the

¹ SCR 20:8.4(b) provides: "It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

“Website”).

11. Schwitzer’s partners, Simon and Feldhausen, did not have any control or access to the content of the Website.

12. Following Schwitzer’s arrest, Simon and Feldhausen negotiated a separation from Schwitzer Simon, LLC, which was completed in May 2014, by the signing of a formal separation agreement.

13. Before the separation of Simon and Feldhausen from Schwitzer Simon, LLC was complete, Simon and Feldhausen had asked Schwitzer to remove their information from the Website.

14. In a formal separation agreement signed in May 2014, Schwitzer was required to remove Simon’s and Feldhausen’s information from the Website.

15. The Website, as controlled by Schwitzer, continued to operate and be accessible by the public following Schwitzer’s suspension on October 31, 2013, at least until November 10, 2014.

16. Sometime between January 4, 2014, and August 11, 2014, Schwitzer caused the Website to be modified so as to advertise a law firm titled Matthew R. Schwitzer, LLC of which Schwitzer was the only attorney.

17. There is no registered Wisconsin limited liability company named Matthew R. Schwitzer, LLC or any similarly named company other than Schwitzer Simon, LLC.

18. As of October 30, 2014, the Website continued to state that Schwitzer was admitted to practice law in Wisconsin as a member of the Wisconsin Bar Association and also admitted to practice before the Supreme Court of Wisconsin.

19. As of October 30, 2014, the Website invited website visitors to “Call today... for a free initial consultation.”

20. As of October 30, 2014, the Website described Schwitzer’s law firm as follows:

We are well positioned to handle bankruptcy, personal injury, criminal defense, family law, and divorce cases. All the firm’s talent and resources are dedicated to working with our clients to help them achieve their goals...The most important aspect of our law firm is our commitment to our clients. Attorney Matthew Schwitzer strives to make things as easy as possible for the firm’s clients. The firm offers competitive hourly fees and fixed fee arrangements to take some of the uncertainty out of hiring a lawyer. Contact Green Bay attorney Matthew Schwitzer directly to learn more about our firm and the services that it can provide to you.

21. As of October 30, 2014, the Website represented Schwitzer’s personal attorney profile as follows:

Mr. Schwitzer regularly counsels business, individual, and institutional clients on bankruptcy, insolvency, and secured transactions. Mr. Schwitzer practices in the area of bankruptcy, insolvency, real estate, secured transactions, and receivership matters. He also advises clients on business planning and strategy.

22. As of October 30, 2014, the Website identified the address for Matthew R. Schwitzer, LLC as P.O. Box 8413, Green Bay, Wisconsin 54308, which is the same address provided to OLR by Schwitzer for communications during its investigation.

COUNT 2

23. By causing the Website to be modified to hold Schwitzer out as an attorney admitted to practice law in Wisconsin at a time when his license to practice law was suspended, **Schwitzer violated SCR 20:5.5(b) and SCR 20:7.1(a).**²

² SCR 20:5.5(b) provides: “A lawyer who is not admitted to practice in this jurisdiction shall not...hold out to the public or otherwise represent that the lawyer is admitted to the practice of law in this jurisdiction.”
SCR 20:7.1(a) provides: “A lawyer shall not make a false or misleading communication about the lawyer or

Regarding Non-Cooperation (Count 3)

24. Beginning in 2013, OLR began to investigate Schwitzer in connection with the criminal charges filed against Schwitzer in Brown County Case No. 2013CF1142. At Schwitzer's request, OLR agreed to put its investigation on hold pending resolution of the Brown County criminal case.

25. On May 12, 2014, after OLR's file was reopened, OLR Investigator Emily Kokie (Kokie) wrote to Schwitzer inquiring about the circumstances surrounding his convictions. Schwitzer's deadline to respond was May 29, 2014. Schwitzer did not respond.

26. On June 5, 2014, Kokie wrote to Schwitzer with a second request for information concerning the circumstances pertaining to the criminal case. Kokie's investigative letter was sent by certified and regular mail, and was received by Schwitzer. Schwitzer did not respond.

27. On July 14, 2014, OLR filed a Notice of Motion and Motion Requesting Order to Show Cause with the Supreme Court of Wisconsin, seeking an order for Schwitzer to show cause why his license should not be suspended for a willful failure to cooperate with OLR's investigation concerning his conduct. On July 17, 2014, the Court issued an order pursuant to SCR 22.03(4) requiring Schwitzer to show cause, in writing, why the Court should not grant OLR's motion. Schwitzer failed to respond to the Court's Order to Show Cause. On September 25, 2014, the Court granted OLR's motion and temporarily suspended Schwitzer's law license.

the lawyer's services. A communication is false or misleading if it...contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading..."

28. Since Schwitzer's license suspension for his willful failure to cooperate, Schwitzer has failed to provide any further information to OLR in its investigation.

COUNT 3

29. By failing to provide the information requested by OLR's May 12, 2014 correspondence, **Schwitzer violated SCR 22.03(6), via SCR 20:8.4(h).**³

**Regarding Attempted Trust Account Transfer
(OLR Matter No. 2013MA1626)
COUNTS 4-5**

30. As of August 19, 2013, the date Schwitzer was arrested on the aforementioned criminal charges, Schwitzer Simon, LLC maintained a client trust account at BMO Harris Bank (Trust Account).

31. Schwitzer, Simon and Feldhausen were the only persons who were authorized to disburse money from, or otherwise access the Trust Account.

32. On August 20, 2013, while incarcerated at the Brown County Jail, Schwitzer used a fellow inmate's contraband cell phone to access the Trust Account and initiated a transfer of \$2,000 from the Trust Account to a personal account belonging to Schwitzer.

33. Simon and/or Feldhausen learned of Schwitzer's attempt to transfer trust account proceeds to his personal bank account while it was in pending status and caused BMO Harris Bank to reverse the transaction.

³ **SCR 22.03(6) provides:** "In the course of the investigation, the respondent's willful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance..."
SCR 20:8.4(h) provides: "It is professional misconduct for a lawyer to...fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by...SCR 22.03(2), SCR 22:03(6)..."

34. In correspondence to OLR, Schwitzer admitted attempting to transfer funds from the Trust Account to his personal account while incarcerated at the Brown County Jail on or about August 20, 2013, by using a telephone from another inmate that had been smuggled into the jail.

35. OLR's investigation was unable to determine whether Schwitzer used another inmate's telephone to access the Trust Account by phone, or whether he attempted the transfer by using the internet connection through the phone.

36. Pursuant to Supreme Court Rules, disbursements from a trust account cannot be made telephonically or by way of internet transaction.

COUNT 4

37. By accessing his law firm's trust account from another inmate's contraband cell phone, Schwitzer made client and third party funds being held in trust by his firm vulnerable to third party access, **in violation of SCR 20:1.15(b)(1).**⁴

COUNT 5

38. By attempting [**in violation of SCR 20:8.4(a)**⁵] to transfer funds to himself from his law firm's trust account by using a fellow inmate's contraband cell phone Schwitzer either attempted to make a disbursement by telephone transfer, **in violation of SCR 20:1.15(e)(4)(b)**⁶ or Schwitzer attempted to make a disbursement by internet

⁴ 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 third parties that is in the lawyer's possession in connection with a representation."

⁵ SCR 20:8.4(a) provides: "It is professional misconduct for a lawyer to... violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another." [*emphasis added*]

⁶ SCR 20:1.15(e)(4)(b) provides: "No deposits or disbursements shall be made to or from a pooled trust account by a telephone transfer of funds."

transaction, in violation of SCR 20:1.15(e)(4)(c).⁷

WHEREFORE, the Office of Regulation requests that Attorney Matthew R. Schwitzer be found in violation of the Supreme Court Rules as alleged in the five misconduct counts herein; that the Supreme Court suspend Schwitzer's license to practice law in the State of Wisconsin for a period of six months; and, order such other and further relief as may be just and equitable, including an award of the costs of these proceedings.

Dated this 2nd day of April, 2015.

By: 

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Retained Counsel
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⁷ SCR 20:1.15(e)(4)(c) provides: "A lawyer shall not make deposits to or disbursements from a trust account by way of an Internet transaction."