

STATE OF WISCONSIN  
SUPREME COURT

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

KENNETH R. KRATZ

OFFICE OF LAWYER REGULATION,  
Case Code: 30912

Complainant,

Case No:

KENNETH R. KRATZ,

**COMPLAINT**

Respondent.

TO: THE HONORABLE JUSTICES OF THE  
WISCONSIN SUPREME COURT

Now comes the Wisconsin Supreme Court---Office of  
Lawyer Regulation (OLR), by Retained Counsel Thomas J.  
Basting, Sr. of Madison WI, and alleges to the Court as  
follows:

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

2. Kenneth R. Kratz was admitted to the practice of  
law in the State of Wisconsin on May 20, 1985, and

maintains an office to practice law as Kratz Law Firm LLC at 702 Eisenhower Drive, Suite A, Kimberly WI 54136-2152. Kratz's Wisconsin law license is active and in good standing.

3. Kratz was appointed District Attorney of Calumet County Wisconsin in 1992 and served in the position until he resigned in October 2010. Previously, Kratz had served as an Assistant District Attorney in La Crosse ,WI.

**Regarding SVG (Counts 1-4)**

4. On August 12, 2009, Kratz while serving as Calumet County District Attorney, filed a felony criminal complaint against Mr. Shannon R. Konitzer (Konitzer) of Kaukauna, WI. According to the complaint, Konitzer beat and strangled Ms. SVG, a former live-in partner and mother of Konitzer's child. The complaint charged one felony count of strangulation and suffocation (pursuant to Wis. Stat. 940.235(1)) and one count of disorderly conduct (Wis. Stat. 947.01).

5. On October 13, 2009, the Court held a preliminary hearing, found probable cause, and bound Konitzer over for trial.

6. On October 20, 2009, SVG met with Kratz alone in a conference room at the District Attorney's office. SVG requested the meeting, exercising her right to

consult with the district attorney "concerning the disposition of a case involving a crime of which he or she was a victim... " See Wis. Stats. 950.04(1v)(zm).

7. During the meeting, SVG, upon information and belief, volunteered personal information to Kratz during their discussion, stating that she did not have a current boyfriend, that she suffered from low self-esteem, that she lived with her mother and was struggling as a single mother.

8. According to SVG, she understood during her meeting with Kratz that he would be prosecuting Konitzer. SVG also relayed details of her relationship with Konitzer, and indicated that Konitzer had previously abused her, including beatings and strangulation. Kratz asked SVG if she objected to reducing the charges from a felony to a misdemeanor. SVG objected to the suggestion. At the conclusion of the meeting Kratz and SVG exchanged cell phone numbers.

9. Kratz claimed that he "perceived some flirtation by SVG" and that he became personally interested in SVG, believing her "to be quite interesting." SVG was 25 years old at the time of the meeting; Kratz, married, with one child, was 50 years old.

10. As a victim of domestic abuse, SVG was entitled to the rights outlined in Wis. Stats. Chapter 950 and Wisconsin Const. art I, section 9m.

11. After SVG left Kratz's office, Kratz began texting SVG from his personal cell phone. Kratz sent her 3 messages on October 20, 2009, the same day they met, his last message stating, "I wish you weren't one of this offices clients. You'd be a cool person to know!"

12. On October 21, 2009, Kratz sent SVG 19 messages, including asking her, "Are you the kind of girl that likes secret contact with an older married elected DA...the riskier the better? Or do you want to stop right know (sic) before any issues?"

13. On October 22, 2009, Kratz sent SVG 8 more messages, telling her that she was "beautiful", "pretty", that "I'm the atty. I have the \$350,000 house. I have the 6 figure career. You may be the tall, young, hot nymph, but I am the prize! Start convincing", and that "I would not expect you to be the other woman. I would want you to be so hot and treat me so well that you'd be THE woman. R U that good?"

14. Kratz's texts carried sexual overtones and sought to initiate a personal relationship with SVG. SVG's

responses to Kratz's texts were short, often with a single word and in a neutral manner.

15. According to SVG, Kratz's personal overtures were unwelcome and offensive, and that she felt pressure that if she failed to respond to Kratz, he may take action with respect to the case against Konitzer that could potentially adversely affect SVG.

16. On October 22, 2009, SVG, accompanied by her mother, traveled to the Kaukauna Police Department and reported the messages to Officer P. Romanesko. She told the police, "I'm afraid that if I don't do what he wants me to do he will throw out my whole case, and who knows what else."

17. After photographing the text messages on SVG's telephone and taking SVG's statement, the Kaukauna Police Department referred the matter to the State of Wisconsin Department of Justice (DOJ).

18. After reviewing the text messages and the report of the Kaukauna Police Dept., the DOJ determined that there had not been any criminal activity. Nonetheless in a series of e-mails and telephone conversations with Kratz in early November 2009, DOJ representatives strongly suggested to Kratz that he must step aside from the prosecution of Konitzer. The DOJ advised Kratz to self-report his conduct

to OLR and upon information and belief advised Kratz that he failed to treat SVG with the dignity and respect required by Wis. Stat. 950.01. In addition, DOJ advised Kratz that his conduct potentially violated conflict of interest rules because the discomfort communicated by SVG regarding Kratz's obviously sexual overtones, as well as her reporting unwanted advances to the police, "is a good indication that her willingness to work with you has been compromised."

19. Kratz facilitated the appointment of a special prosecutor in the Konitzer case. Kratz also agreed to resign as Chairman of the Wisconsin Crime Victims' Rights Board (CVRB).

20. In a December 4, 2009 letter to OLR that included the transcribed messages to and from SVG, Kratz admitted that he had sought a personal "friendship" with SVG. He expressed regret and embarrassment for his conduct and admitted that he had violated SVG's trust. Kratz also noted that he was undergoing therapy "to answer why a career prosecutor, with a spotless record and sterling reputation, would risk his professional esteem on such a disrespectful communication with a crime victim."

21. On April 5, 1010, Konitzer entered a plea to one felony count of strangulation and suffocation. Sentence was

withheld, and Konitzer was placed on 3 years of probation. As one condition of probation, Konitzer was ordered to serve one year jail time, with six months stayed, with Huber privileges. The disorderly conduct count was dismissed, but read-in for sentencing purposes.

22. On September 15, 2010, the Associated Press published a story regarding the text messages. Kratz issued a statement admitting that he sent the texts and was embarrassed at his lack of judgment.

23. On September 17, 2010, the executive committee of the Wisconsin District Attorney's Association issued a letter to Kratz calling for his resignation. The letter stated in part, "the goals you were pursuing were improper, disturbing and repugnant" and suggested that Kratz took advantage of victim contact information "to pursue an unwanted sexual liaison."

24. Following receipt of additional information from other women that suggested improper conduct by Kratz, then-Governor Doyle initiated removal proceedings pursuant to Wis. Stats. Chapter 17. On October 4, 2010, Kratz resigned as Calumet County District Attorney.

#### **COUNT ONE**

25. By seeking a personal relationship with SVG, a domestic abuse crime victim and witness, while serving as

the prosecutor of the perpetrator of the domestic crime, thereby creating a significant risk that the representation of the State of Wisconsin would be materially limited by his own personal interests, **Kratz engaged in a concurrent conflict of interest in violation of SCR 20: 1.7(a)**<sup>1</sup> (as applied to a lawyer serving as a public officer via SCR 20: 1.11(d))<sup>2</sup>.

### COUNT TWO

26. By seeking a personal relationship with SVG, a domestic abuse crime victim and witness, and by sending her text messages carrying sexual overtones, While prosecuting the perpetrator of the domestic crime during the time in which the crime victim was protected by the provisions of Wis. Stats. 950, *et. seq.*, **Kratz violated SCR 20: 8.4 (f)**<sup>3</sup>.

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<sup>1</sup> **SCR 20:1.7(a) provides:** “Except as provided in par. (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.”

<sup>2</sup> **SCR 20:1.11(d) provides:** “Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to SCR 20:1.7 and SCR 20:1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by SCR 20:1.12(b) and subject to the conditions stated in SCR 20:1.12(b).”

<sup>3</sup> **SCR 20:8.4(f) provides:** “It is professional misconduct for a lawyer to violate a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of lawyers.”



**COUNT THREE**

27. By seeking a personal relationship with SVG, a domestic abuse crime victim and witness, and by sending her text messages carrying sexual overtones, while prosecuting the perpetrator of the domestic crime, **Kratz engaged in offensive personality, in violation of SCR 20: 8.4 (g)<sup>4</sup> and SCR 40.15<sup>5</sup>.**

**COUNT FOUR**

28. By sending deliberate, unwelcome and unsolicited sexually suggestive text messages to SVG, a single, domestic abuse victim and witness while prosecuting the perpetrator of the domestic crime, **Kratz harassed SVG on the basis of her sex, in violation of SCR 20: 8.4 (i)<sup>6</sup>.**

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<sup>4</sup> **SCR 20:8.4(g) provides:** "It is professional misconduct for a lawyer to violate the attorney's oath."

<sup>5</sup> **SCR 40.15 provides:** "The oath or affirmation to be taken to qualify for admission to the practice of law shall be in substantially the following form:

I will support the constitution of the United States and the constitution of the state of Wisconsin;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense, except such as I believe to be honestly debatable under the law of the land;

I will employ, for the purpose of maintaining the causes confided to me, such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with my client's business except from my client or with my client's knowledge and approval;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. So help me God."

<sup>6</sup> **SCR 20:8.4(i) provides:** "It is professional misconduct for a lawyer to harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with the lawyer's professional activities. Legitimate advocacy respecting the foregoing factors does not violate par. (i)."

**REGARDING SS (COUNTS 5-6)**

29. SS is a social worker with the Calumet County Human Services Department. In October of 2009, Kratz was prosecuting a termination of parental rights case and SS was a witness in the case.

30. Prior to testifying, SS commented on whether she could trust Kratz since she was nervous about testifying. In response to SS's concerns, Kratz stated to SS that he "won't cum in your mouth,"

31. Kratz's statement to SS was a sexual and demeaning remark.

32. SS stated in a statement to the DOJ that Kratz's remark was unwelcome, made her uncomfortable and bothered her.

33. The same day, Kratz also remarked to SS that he wanted the trial to be over because he was leaving on a trip to Las Vegas, where he could have "big boobed women serve me drinks".

**COUNT FIVE**

34. In his capacity as Calumet County District Attorney, by stating to SS, a Calumet County social worker and witness in a termination of parental rights case that he "won't cum in your mouth", and, in addition, indicating to her that he wished the trial to be over because he was

travelling to Las Vegas where he could have "big-boobed women serve me drinks," **Kratz engaged in offensive personality, in violation of SCR 20:8.4(g) and SCR 40.15.**

**COUNT SIX**

35. In his capacity as Calumet County District Attorney, by stating to SS, a Calumet County social worker and witness in a termination of parental rights case, that he "won't cum in your mouth", and, in addition, indicating that he wished the trial would be over because he was travelling to Las Vegas where he could have "big boobed women serve me drinks", **Kratz harassed SS on the basis of her sex, in violation of SCR 20:8.4 (i).**

**REGARDING RH (COUNT 7)**

36. RH is a social worker with the Calumet County Human Services Department and works in child protection and juvenile justice cases. RH regularly testifies in court proceedings.

37. During a court proceeding Kratz made a sexually charged comment to RH. Kratz commented in court to RH that the court reporter had "big beautiful breasts".

38. Kratz's comment to RH was unprofessional and inappropriate.

COUNT SEVEN

39. In his capacity as Calumet County District Attorney, by making a comment during a court proceeding to RH, a Calumet County social worker, that a reporter, had "big beautiful breasts", **Kratz engaged in offensive personality, in violation of SCR 20: 8.4 (g) and SCR 40.15.**

REGARDING JW (COUNTS 8 & 9)

40. In April of 2006, Kratz prosecuted JW of Appleton, Wisconsin for theft-false representation. In June of 2006, Kratz prosecuted JW for retail theft. In December of 2008, Kratz was the prosecutor against JW for disorderly conduct .

41. Kratz contacted JW sometime between Thanksgiving and Christmas of 2009. To JW, the contact was "out of the blue" in that JW did not know how Kratz got her phone number.

42. After various phone conversations, Kratz asked to visit JW at her apartment. JW asserts that Kratz arrived at her apartment and after threatening JW, forced her to have sex. Thereafter JW asserts that Kratz telephoned and came to her apartment regularly.

43. On September 28, 2010, JW provided the information about Kratz to her probation officer at the

Department of Corrections (DOC). The DOC reported the issue to the DOJ.

44. The DOJ interviewed JW who provided a statement. The statement JW provided alleges that Kratz, while District Attorney of Calumet County, had forcible sex with an emotionally vulnerable woman after previously prosecuting the woman.

45. Kratz alleged that his sexual relationship with JW was private and consensual.

**COUNT EIGHT**

46. In his capacity of Calumet County District Attorney, by pursuing and engaging in sexual contact with JW, a vulnerable woman whom he had previously prosecuted, **Kratz engaged in offensive personality, in violation of SCR 20:8.4(g) and SCR 40.15.**

**COUNT NINE**

47. In his capacity as Calumet County District Attorney, by pursuing and having sexual contact with JW, a vulnerable woman who he had previously prosecuted, **Kratz harassed JW on the basis of her sex, in violation of SCR 20:8.4(i).**

**REGARDING MR (COUNTS 10 & 11)**

48. MR is an Appleton, Wisconsin native and a recent law school graduate. In 2008 MR sought assistance from

Kratz in helping her obtain a pardon for an earlier drug conviction. Kratz, who had previously prosecuted MR, supported her pardon in a letter sent to the then-Governor of Wisconsin.

49. After receiving the letter of support, MR wrote a thank-you note in May of 2008 in which she asked Kratz for career advice. In response, Kratz asked MR to make an appointment with him.

50. MR met with Kratz in his office during normal business hours. During the meeting Kratz asked MR about various sexual scenarios, such as what she thought about a boss and a secretary having sex, or a babysitter and child having sex, people of different ages having sex, or older men having sex with younger girls. MR believed the questions to be unusual, but thought Kratz was trying to see if she was tough enough to be a prosecutor.

51. Following the meeting, Kratz gave MR his cell phone number. MR sent him a text message thanking him for his support. A week later, on July 2, 2008, Kratz sent a text message to MR telling her, "I'm on vacation with my family (Traverse City) all week. So, in between naps, I thought I would let you impress me the next couple days. Let's see what you do." Kratz sent another text message to

MR later that same day stating, "How can you fail to respond to that invitation?"

52. On July 22, 2008, at 8:20 p.m., Kratz sent a text message to MR asking again, "How are you doing? Anything you want to tell me?" Kratz then texted MR again asking "Things still going well?"

53. MR believed that in the context of her previous meeting with Kratz, that his later unsolicited text messages were of a sexual nature.

54. Two months later, on September 22, 2008 at 1:50 p.m., Kratz texted MR and stated, "I need to meet with you (personal matter). Either bring it up the next time we talk, or contact me to set up a discussion. Thanks. Ken. This is from that district attorney."

55. MR never met with Kratz, but later advised investigators that she was disturbed by Kratz's text messages and was worried that Kratz might take back his support of her pardon request.

#### **COUNT TEN**

56. In his capacity as Calumet County District Attorney, by sending unsolicited, inappropriate text messages to MR, a young woman seeking a pardon from a conviction in a matter he had previously prosecuted, including a message asking her to schedule an appointment

with him on a "personal matter" and an "invitation" that "in between naps, I thought I would let you impress me the next couple of days. Let's see what you can do", **Kratz engaged in offensive personality, in violation of SCR 20:8.4(g) and SCR 40.15.**

**COUNT ELEVEN**

57. In his capacity as Calumet County District Attorney, by sending unsolicited, inappropriate text messages to MR, a young woman seeking a pardon from a conviction in a matter he had previously prosecuted, including a message asking her to schedule an appointment with him on a "personal matter" and an "invitation" that "in between naps, I thought I would let you impress me the next couple of days. Let's see what you can do", **Kratz harassed MR on the basis of her sex, in violation of SCR 20:8.4(i).**

**WHEREFORE,** The Office of Lawyer Regulation asks that Kenneth R. Kratz be found to have violated the Supreme Court Rules of Professional Conduct for Attorneys as alleged in this complaint; and that the Court suspend Kratz's license to practice law in Wisconsin for six months, and issue such orders as are just, including an



order requiring the respondent to pay the costs of this proceeding.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

OFFICE OF LAWYER REGULATION

By: \_\_\_\_\_

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