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MAR 26 2015

BEFORE THE BOARD OF PROFESSIONAL CONDUCT  
OF  
THE SUPREME COURT OF OHIO

BOARD OF PROFESSIONAL CONDUCT

In re:

Complaint against

Benjamin Joltin, Esq.  
3855 Starr Centre Dr., Suite A  
Canfield, OH 44406

No. 15-022 a a

Attorney Registration No. (0072993)

COMPLAINT AND CERTIFICATE

Respondent,

(Rule V of the Supreme Court Rules for  
the Government of the Bar of Ohio.)

Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411

FILED

APR 13 2015

Relator.

BOARD OF PROFESSIONAL CONDUCT

Now comes the relator and alleges that Benjamin Joltin, an Attorney at Law, duly admitted to the practice of law in the state of Ohio, is guilty of the following misconduct:

1. Respondent, Benjamin Joltin, was admitted to the practice of law in the state of Ohio on November 20, 2000.
2. At all times relevant to the following allegations, respondent was subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

COUNT ONE

**Lisa Torok**

3. On or about September 11, 2012, Lisa Torok hired respondent to represent her in a divorce case. Torok gave respondent a check for \$18,000 to hold in trust and they agreed on a \$2,500 flat fee.

4. On or about January 25, 2013, Torok asked for \$15,000 of her money from respondent. Respondent wrote Torok a check. Torok did not cash the check immediately.
5. In or around September 2013, Torok decided to cash the \$15,000 check. The check was returned September 11, 2013 for insufficient funds.
6. Torok contacted respondent and told him that the check had bounced. Respondent informed her that the court put a restraining order on the monies. In fact, however, the reason that the \$15,000 check bounced was because respondent had used a significant portion of Torok's funds for his own purposes and there were not enough of Torok's funds left in respondent's IOLTA to cover the check. Needing money to pay her living expenses, respondent wrote Torok a check for \$1,800 on September 16, 2013<sup>1</sup>.
7. On or about December 15, 2013, respondent wrote Torok another check for \$5,000.
8. On February 25, 2014, Torok terminated respondent's representation. She requested her file and the remaining monies, \$11,200, that should have been held in respondent's trust account. Torok indicated that she would write a check to respondent for his fee after she received her monies.
9. Respondent did not provide Torok with her file or her monies.
10. A review of respondent's IOLTA records demonstrates that, at the time he deposited Torok's check on September 12, 2012, he had a beginning balance of \$28.70. On September 18, 2012, respondent wrote himself a check for \$4,000, with a subject line of "Torok." As of the September 29, 2012 IOLTA statement, respondent had only \$12,553.70 in his account. As of the January 1, 2014 IOLTA statement, the balance in his account was only \$421.78, far less than the \$11,200 owed to Torok at the time.

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<sup>1</sup> Around this time, Torok agreed to increase the flat fee payment by \$500, increasing the total amount to be paid to respondent to \$3,000.

11. On March 24, 2014, Torok filed a grievance with relator.
12. On March 27, 2014, relator sent respondent a Letter of Inquiry, via certified mail, regarding the Torok grievance. The letter was mailed to respondent's office address at 3855 Starr Centre Drive, Suite A, Canfield, Ohio, the address provided by respondent to the Office of Attorney Services.
13. Relator did not receive a response to the Letter of Inquiry.
14. On April 8, 2014, respondent sent Torok her file and a check for \$4,900.
15. Since April 2014, Torok, and her new attorney John Chaney, have made numerous attempts to retrieve the remaining \$6,300 from respondent. Respondent has failed to respond to Torok or Chaney and has not provided Torok with the remainder of her money. Because respondent's representation was terminated prior to the conclusion of Torok's divorce case, he is not entitled to the entire \$3,000 flat fee.
16. On April 16, 2014, relator sent respondent a second Letter of Inquiry, via certified mail, regarding the Torok grievance.
17. Relator received a response from respondent on April 23, 2014.
18. On April 24, 2014, John Juhasz sent relator a letter indicating that he would be representing respondent. On April 30, 2014, relator sent a letter with additional requests to Juhasz regarding respondent. Juhasz provided a response to some of relator's requests on May 15, 2014, indicating that he would provide a prompt response to the rest of relator's inquiries.
19. Relator never received the requested information, so a deposition was scheduled for September 10, 2014. Respondent indicated he could not make the deposition on September 10, 2014, so the deposition was rescheduled for September 24, 2014. On

September 23, 2014, Jared Wilson entered his appearance on behalf of respondent and indicated he could not be present at the September 24, 2014 deposition. Relator agreed to reschedule the deposition for November 5, 2014.

20. On October 1, 2014, relator's investigator served respondent with the subpoena for deposition on November 5, 2014. Respondent did not appear at the deposition pursuant to subpoena.
21. Respondent's conduct in Count One violates the following provisions of the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio: Prof. Cond. R. 1.5(a) [prohibiting a lawyer from charging or collecting a clearly excessive fee]; Prof. Cond. R. 1.15(c) [a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance to be withdrawn only as fees are earned or expenses incurred]; Prof. Cond. R. 1.15(d) [requiring a lawyer to promptly deliver to the client any funds that the client is entitled to receive]; Prof. Cond. R. 1.16(e) [a lawyer shall promptly refund any part of a fee paid in advance that has not been earned]; Prof. Cond. R. 8.4(c) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; Prof. Cond. R. 8.1(b) [prohibiting a lawyer from knowingly failing to respond to a demand for information from a disciplinary authority]; and Gov. Bar R. V(9)(G) (former Gov. Bar R. V(4)(G))[requiring a lawyer to cooperate with a disciplinary investigation].

## **COUNT TWO**

### **Dr. Michael Cayavec**

22. From September 11, 2009 to November 9, 2009, Dr. Michael Cayavec at the Warren Injury Center treated Roger Johnson after he was in a car accident.

23. Respondent represented Johnson in a civil lawsuit against the other driver, Nancy Nevin. *Roger Johnson v. Nancy Nevin*, Trumbull County Court of Common Pleas, Case No. 2011 CV 2030.
24. Cayavec sent respondent a Notice of Assignment for payment.
25. On October 29, 2009, respondent sent Cayavec a Letter of Protection accepting the assignment of payment for treatment.
26. On September 10, 2013, the case settled but respondent neither notified Cayavec of the settlement nor provided him with payment for the treatment he had rendered.
27. On October 2, 2014, Cayavec filed a grievance with relator.
28. On October 3, 2014, relator sent respondent a Letter of Inquiry, via certified mail, regarding the Cayavec grievance. The letter was mailed to respondent's office address at 3855 Starr Centre Drive, Suite A, Canfield, Ohio, the address provided by respondent to the Office of Attorney Services. Respondent, or a representative of respondent, received this letter.
29. Relator did not receive a response to the Letter of Inquiry.
30. On October 27, 2014, relator sent respondent a second Letter of Inquiry, via certified mail, regarding the Cayavec grievance.
31. Although respondent's office received the second Letter of Inquiry, relator has not received a response from respondent.
32. Respondent's conduct in Count Two violates the following provisions of the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio: Prof. Cond. R. 1.15(d) [a lawyer shall promptly notify a client or third person with a lawful interest upon receipt of funds and shall promptly deliver to the client or third

person any funds that the client or third person is entitled to receive]; Prof. Cond. R. 8.4(h) [a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law]; Prof. Cond. R. 8.1(b) [prohibiting a lawyer from knowingly failing to respond to a demand for information from a disciplinary authority]; and Gov. Bar R. V(9)(G) (former Gov. Bar R. V(4)(G)) [requiring a lawyer to cooperate with a disciplinary investigation].

### **COUNT THREE**

#### **Mark Patterson**

33. On February 19, 2014, Mark Patterson filed a Notice to Leave Premises against his tenants, Rob and April Hood.
34. On or around March 25, 2014, Patterson retained respondent to file a forcible eviction motion and to attend the hearing on the motion. Patterson paid respondent \$205, of which \$105 was for payment of the filing fee.
35. Between March 17, 2014 and June 4, 2014, Patterson called respondent multiple times to inquire about the status of the case. Patterson was unable to actually speak with respondent; he only spoke to respondent's secretary, who assured him that respondent was working on the case.
36. On April 1, 2014, Patterson sent respondent an email detailing the eviction issues for the motion. Respondent did not respond to Patterson's email.
37. On April 30, 2014, Patterson sent respondent an email terminating his relationship and asking for his file and a refund.
38. On May 28, 2014, Patterson sent respondent another email asking for a refund. Respondent did not reply to any of Patterson's emails.

39. Respondent has never refunded Patterson's money or returned his file. Respondent never filed anything on Patterson's behalf.
40. On November 20, 2014, Patterson filed a grievance with relator.
41. On November 24, 2014, relator sent respondent a Letter of Inquiry, via certified mail, regarding the Patterson grievance. The letter was mailed to respondent's office address at 3855 Starr Centre Drive, Suite A, Canfield, Ohio, the address provided by respondent to the Office of Attorney Services. Respondent, or a representative of respondent, received this letter.
42. Although respondent received the Letter of Inquiry, relator did not receive a response to the Letter of Inquiry.
43. On December 17, 2014, relator sent respondent a second Letter of Inquiry, via certified mail, regarding the Patterson grievance.
44. Relator has not received a response from respondent.
45. Respondent's conduct in Count Three violates the following provisions of the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio: Prof. Cond. R. 1.3 [a lawyer shall act with reasonable diligence and promptness in representing a client]; Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep the client reasonably informed about the status of the matter]; Prof. Cond. R. 1.5(a) [prohibiting a lawyer from charging or collecting a clearly excessive fee]; Prof. Cond. R. 1.15(d) [a lawyer shall promptly deliver to the client any funds that the client is entitled to receive]; Prof. Cond. R. 1.16(d) [a lawyer shall promptly deliver all papers and property to a client upon termination of representation]; Prof. Cond. R. 1.16(e) [a lawyer shall promptly refund any part of a fee paid in advance that has not been earned]; Prof. Cond. R. 8.1(b) [prohibiting

a lawyer from knowingly failing to respond to a demand for information from a disciplinary authority]; and Gov. Bar R. V(9)(G)(former Gov. Bar R. V(4)(G)) [requiring a lawyer to cooperate with a disciplinary investigation].

#### **COUNT FOUR**

##### **IOLTA**

46. On September 13, 2013, relator received a notice from PNC Bank that respondent's IOLTA ending in 2369 was overdrawn on September 9, 2013.
47. On October 9, 2013, via certified mail, relator sent respondent a Letter of Inquiry regarding the overdraft. Respondent's response was to be postmarked no later than October 23, 2013.
48. When respondent failed to respond, on November 14, 2013, relator sent another letter regarding the overdraft to respondent by regular mail. Respondent did not respond to this letter.
49. On December 6, 2013, relator sent respondent a third letter regarding the overdraft by regular mail. Respondent's response was to be postmarked no later than December 20, 2013.
50. On December 4, 2013, relator received a notice from PNC Bank that respondent's IOLTA ending in 2369 was overdrawn a second time on November 26, 2013.
51. On December 6, 2013, relator received a third notice from PNC Bank that respondent's IOLTA ending in 2369 was again overdrawn on November 29, 2013.
52. On December 9, 2013, relator sent respondent a letter regarding the two additional overdrafts via regular mail. Relator asked respondent to address the new overdrafts as

well as the initial overdraft. Respondent's response was to be postmarked no later than December 23, 2013.

53. On December 20, 2013, respondent submitted a letter in response that only addressed the initial overdraft that had occurred on September 9, 2013. Respondent did not provide client ledgers or bank statements requested by relator in its October 9, 2013 Letter of Inquiry.
54. On December 24, 2013, relator sent respondent a letter requesting additional information, and again asked for a response to relator's December 9, 2013 letter requesting information regarding the second and third overdrafts. Respondent was to provide a response by January 7, 2014.
55. When respondent failed to respond, relator sent another letter to respondent on January 15, 2014 requesting a response to the previous inquiries with a deadline of January 29, 2014. Respondent did not respond to this letter.
56. On March 17, 2014, relator's investigator personally served respondent with a subpoena for a deposition to be conducted on April 14, 2014; however, respondent failed to appear for the deposition.
57. On April 24, 2014, John Juhasz sent relator a letter indicating that he would be representing respondent. On April 30, 2014, relator sent a letter with additional requests to Juhasz regarding respondent. Juhasz provided a response to some of relator's requests on May 15, 2014, indicating that he would provide a prompt response to the rest of relator's inquiries. Juhasz did not provide any further response as promised.
58. On August 5, 2014, relator's investigator served respondent with a subpoena for deposition to be conducted on August 19, 2014. On August 15, 2014, respondent sent

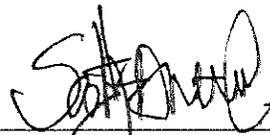
relator a fax indicating he could not get coverage for his cases on the scheduled deposition date. Relator agreed to reschedule the deposition for September 10, 2014.

59. On September 9, 2014, respondent faxed a letter to relator indicating he could not make the deposition on September 10, 2014, so the deposition was rescheduled for September 24, 2014. On September 23, 2014, Jared Wilson entered his appearance on behalf of respondent and indicated he could not be present at the September 24, 2014 deposition. Relator agreed to reschedule the deposition for November 5, 2014.
60. On October 1, 2014, relator's investigator served respondent with the subpoena for deposition on November 5, 2014. Respondent did not appear at the deposition pursuant to subpoena.
61. Respondent's IOLTA bank records, for the period of December 2012 through March 2014, reflect that respondent repeatedly misused his IOLTA and failed to safeguard client funds. Respondent also deposited personal funds into his IOLTA.
62. Respondent wrote checks for personal expenses from his IOLTA on at least 85 occasions between December 11, 2012 and February 11, 2014.
63. Respondent's conduct in Count Four violates the following provisions of the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio: Prof. Cond. R. 1.15(a)(2) [requiring a lawyer to maintain a record for each client that sets forth the name of the client; the date, amount, and source of all funds received on behalf of the client; the date, amount, payee, and purpose of each disbursement made on behalf of the client; and the current balance for each client]; Prof. Cond. R. 1.15(a)(3) [requiring a lawyer to maintain a record for each bank account that sets forth the name of the account; the date, amount, and client affected by each credit and debit; and the

balance in the account]; Prof. Cond. R.1.15(a)(4) [requiring a lawyer to maintain all bank statements, deposit slips, and canceled checks for each bank account]; Prof. Cond. R. 1.15(a)(5) [requiring a lawyer to perform and retain a monthly reconciliation of the items contained in divisions (a)(2), (3), and (5) of Rule 1.15]; Prof. Cond. R. 1.15(b) [lawyer may deposit the lawyer's own funds in an IOLTA for the sole purpose of paying or obtaining a waiver of bank service charges on that account, but only in an amount necessary for that purpose]; Prof. Cond. R. 1.15(c) [a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance to be withdrawn only as fees are earned or expenses incurred]; Prof. Cond. R. 8.1(b) [prohibiting a lawyer from knowingly failing to respond to a demand for information from a disciplinary authority]; and Gov. Bar R. V(9)(G) (former Gov. Bar R. V(4)(G)) [requiring a lawyer to cooperate with a disciplinary investigation].

### CONCLUSION

Wherefore, pursuant to Gov. Bar R. V, and the Ohio Rules of Professional Conduct, relator alleges that respondent is chargeable with misconduct; therefore, relator requests that respondent be disciplined pursuant to Rule V of the Rules of the Government of the Bar of Ohio.



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Scott J. Drexel (0091467)  
Disciplinary Counsel



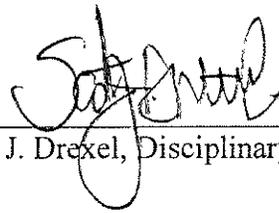
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**CERTIFICATE**

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Catherine M. Russo is duly authorized to represent relator in the premises and has accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: March 26, 2015



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Scott J. Drexel, Disciplinary Counsel