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

JUL 29 2016

In re:

BOARD OF PROFESSIONAL CONDUCT

Complaint against

Andrew Mahlon Engel, Esq.  
Kendo, Alexander, Cooper & Engel, LLP  
7925 Paragon Rd.  
Centerville, OH 45459

16 - 030

No. \_\_\_\_\_

Attorney Registration No. (0047371)

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

AUG 03 2016

Relator.

BOARD OF PROFESSIONAL CONDUCT

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

1. Respondent, Andrew Mahlon Engel, was admitted to the practice of law in the state of Ohio on November 5, 1990.
2. Respondent is subject to the Code of Professional Responsibility, the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.
3. Respondent has a record of prior discipline in the following matters:
  - a. By order filed November 21, 2001, the Supreme Court imposed a public reprimand upon respondent in *Dayton Bar Assn. v. Engel*, 93 Ohio St.3d 623, 2001-Ohio-1886. In that matter, the Supreme Court found that respondent violated (i) former DR 6-101(A)(3) [prohibiting a lawyer from neglecting an entrusted matter] by failing to

advise his client of the dismissal of a civil action, and (ii) former DR 6-101(A)(3) and DR 6-101(A)(2) [prohibiting a lawyer from attempting to handle a legal matter without preparation adequate in the circumstances] by failing to timely file various documents in an estate matter and failing to respond to his client.

- b. By order filed December 22, 2004, the Supreme Court imposed a two-year suspension upon respondent, with six months stayed, in *Dayton Bar Assn. v. Engel*, 105 Ohio St.3d 49, 2004-Ohio-6900. In that matter, the Supreme Court found that respondent violated former DR 1-102(A)(6) [prohibiting conduct that adversely reflects on the attorney's fitness to practice law], DR 6-101(A)(3) [prohibiting a lawyer from neglecting an entrusted matter], DR 7-101(A)(1) [prohibiting an attorney from intentionally failing to seek the lawful objectives of a client], DR 7-101(A)(2) [prohibiting an attorney from intentionally failing to carry out a contract of employment] and Gov. Bar R. V(4)(G) [requiring an attorney cooperate in an investigation of misconduct] for failing to pursue his client's predatory-lending claim, failing to respond to the client, and failing to respond during a disciplinary investigation.

#### **The Dianne Shelton Matter**

4. On April 14, 2015, Dianne Shelton retained respondent to represent her in a consumer debt matter. On that date, she provided respondent with the information he needed to negotiate a settlement with the creditor on her behalf.
5. On April 23, 2015, Ms. Shelton paid respondent \$500 by credit card, as advanced fees for his representation in her consumer debt matter.
6. On April 27, 2015, respondent sent a letter to Ms. Shelton's creditor on her behalf.

7. On June 9, 2015, Ms. Shelton called respondent seeking information about the status of her consumer debt matter and left a voice mail message for respondent. Respondent did not return Ms. Shelton's call.
8. On June 16, 2015, Ms. Shelton called respondent again seeking information about the status of her consumer debt matter, at which time respondent promised Ms. Shelton that he would call her creditor's attorney as a follow-up to his April, 26, 2015 letter.
9. On June 22, 2015, respondent sent a follow-up letter to Ms. Shelton's creditor on her behalf.
10. Between June 16, 2015 and August 17, 2015, Ms. Shelton telephoned, left voice mail messages and emailed respondent on many occasions seeking information about the status of her consumer debt matter. Despite these messages, respondent did not return Ms. Shelton's calls or emails.
11. Respondent never spoke to Ms. Shelton's creditor on her behalf.
12. Ms. Shelton filed a grievance against respondent with relator on August 19, 2015.
13. On September 1, 2015, respondent emailed Ms. Shelton and sent a follow-up letter to Ms. Shelton's creditor on her behalf.
14. On October 14, 2015, relator sent a Letter of Inquiry to respondent by certified mail, return receipt requested, to respondent's business address listed with the Supreme Court's Office of Attorney Services, i.e., Kendo, Alexander, Cooper & Engel, LLP, 7925 Paragon Rd. Centerville, OH 45459. The Letter of Inquiry required a response postmarked on or before October 28, 2015.

15. Respondent sent two response letters to relator, each of which was dated October 28, 2015. Respondent requested that one of his response letters not be shared with the grievant, in accordance with Gov. Bar R. V(8)(E).
16. Upon review of respondent's October 28, 2015 response, relator telephoned respondent on November 17, 2015 and left a message with his assistant. Respondent did not return relator's call. On November 19, 2015, relator sent a follow-up email to respondent. Thereafter, on November 19, 2015, respondent called relator and during this telephone conversation, respondent promised to contact Ms. Shelton and determine whether she wanted respondent to continue to represent her or wanted a refund of the fees she paid him. Respondent also promised to advise relator of Ms. Shelton's preference.
17. Between November 19, 2015 and February 16, 2016, relator did not hear from respondent.
18. On January 22, 2016 and on February 11, 2016, relator sent follow-up emails to respondent seeking information about his representation of Ms. Shelton or his payment of a refund to her. Respondent did not respond to these emails until February 16, 2016.
19. Respondent failed to contact Ms. Shelton, as promised to relator during the November 19, 2015 telephone conversation, until February 16, 2016.
20. On February 17, 2016, respondent advised relator that, at Ms. Shelton's request, he was continuing to represent her in her consumer debt matter.
21. After exchanging a few emails with Ms. Shelton on February 16 and 17, 2016, respondent failed to communicate with Ms. Shelton again until March 8, 2016. In the meantime, Ms. Shelton settled her consumer debt matter on her own.

22. On March 8, 2016, respondent promised Ms. Shelton that he would refund the “balance” of the \$500 retainer she had paid to him.
23. On April 13, 2016, relator sent a letter to respondent by first-class mail to respondent’s business address listed with the Supreme Court’s Office of Attorney Services, i.e., Kendo, Alexander, Cooper & Engel, LLP, 7925 Paragon Rd. Centerville, OH 45459. The letter was not returned to relator by the U.S. Postal Service as undeliverable for any reason. Relator’s letter requested the status of the refund respondent promised to Ms. Shelton, including a copy of respondent’s correspondence to Ms. Shelton showing the refund. However, respondent did not respond to relator’s letter.
24. On May 4, 2016, relator sent a letter to respondent by email and by certified mail, return receipt requested, to respondent’s business address listed with the Supreme Court’s Office of Attorney Services, i.e., Kendo, Alexander, Cooper & Engel, LLP, 7925 Paragon Rd. Centerville, OH 45459. The letter required that a response be received by relator no later than May 18, 2016. Respondent’s office received relator’s letter on May 6, 2016, but respondent did not respond to the letter.
25. On May 26, 2016, Relator served respondent with a subpoena commanding his presence at a deposition on June 14, 2016, as well as the production of documents relating to his representation of Ms. Shelton.
26. By letter received May 27, 2016, respondent advised relator “My firm has refunded Ms. Shelton the balance of her retainer.” Respondent did not provide relator with a copy of the correspondence to Ms. Shelton showing the refund, as requested.
27. On June 10, 2016, respondent produced documents responsive to relator’s May 26, 2016 subpoena.

28. On June 13, 2016, the day before his deposition was scheduled to be conducted, respondent requested via email that relator reschedule the deposition so that he could retain counsel.
29. After relator agreed to reschedule the deposition, respondent appeared for his deposition on June 22, 2016.
30. By the foregoing conduct, respondent violated the following provisions of the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio:
  - a. By failing to take any action on Ms. Shelton's behalf after sending an initial letter in pursuit of settlement of her consumer debt matter for which he was retained, respondent violated Prof. Cond. R. 1.3 [a lawyer shall act with reasonable diligence and promptness in representing a client];
  - b. By failing to keep Ms. Shelton reasonably informed about the status of her consumer debt matter, respondent violated Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep the client reasonably informed about the status of the client's matter];
  - c. By failing to respond to Ms. Shelton's telephone and email inquiries regarding the status of her consumer debt matter, respondent violated Prof. Cond. R. 1.4(a)(4) [a lawyer shall comply as soon as practicable with reasonable requests for information from the client];
  - d. By failing to promptly refund to Ms. Shelton unearned advanced fees following the termination of his employment, respondent violated Prof. Cond. R. 1.16(e) [a lawyer who withdraws from employment shall promptly refund any part of a fee paid in advance that has not been earned];

- e. By failing to respond to demands for information from relator regarding Ms. Shelton's grievance, respondent violated Prof. Cond. R. 8.1(b) [a lawyer shall not fail to respond to a demand for information from a disciplinary authority]; and
- f. By neglecting or refusing to assist with relator's investigation of the grievance filed against him by Ms. Shelton, respondent violated Rule V(9)(G) of the Supreme Court Rules for the Government of the Bar of Ohio.

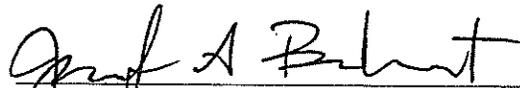
### CONCLUSION

Wherefore, pursuant to Gov. Bar R. V, the Code of Professional Responsibility and the 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



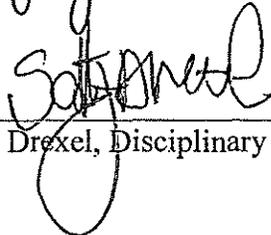
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**CERTIFICATE**

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Jennifer A. Bondurant 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: *July 28, 2016*



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Scott J. Drexel, Disciplinary Counsel