

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

FILED

MAR 31 2016

In re:

BOARD OF PROFESSIONAL CONDUCT

James M. Johnson, Esq.
110 Hoyt Block Building
700 W. St. Clair Avenue
Cleveland, OH 44113-1287

No. 16 - 008

Attorney Registration No. (0012815)

Respondent,

COMPLAINT AND CERTIFICATE

(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

RECEIVED

Relator.

MAR 18 2016

BOARD OF PROFESSIONAL CONDUCT
Now comes relator, Disciplinary Counsel, and alleges that respondent, James M.

Johnson, an attorney at law, duly admitted to the practice of law in the state of Ohio, is guilty of
the following misconduct:

1. Respondent was admitted to the practice of law in the state of Ohio on October 29, 1984.
2. As an attorney, respondent is subject to the Ohio Rules of Professional Conduct and the
Rules for the Government of the Bar of Ohio

Count One – Alan Wade

3. Sometime during 2011 or 2012, Alan Wade was involved in an automobile accident.
4. Shortly after the accident, Wade retained respondent to represent him in a personal injury
matter against the tortfeasor.

5. While the case was still pending, Wade directed respondent to pay his share of the settlement proceeds to John D. Stabler, from whom Wade had previously borrowed money.
6. In or about January 2013, respondent settled Wade's personal injury case for \$15,000 without the knowledge or consent of Wade.
7. On or about January 18, 2013, respondent received a \$15,000 settlement check from Old Republic Insurance Company pursuant to the agreed upon settlement.
8. On January 18, 2013, respondent forged Wade's signature on the back of the \$15,000 check and deposited it into his IOLTA.
9. Of the \$15,000, respondent should have paid Wade/Stabler at least \$6,500. In addition, respondent should have paid Cleveland Therapy Center (CTC) \$2,862 for treatment that Wade had received.¹
10. Rather than paying Wade/Stabler or CTC, respondent misappropriated Wade's settlement. On January 22, 2013 – just four days after he had deposited Wade's settlement proceeds into his IOLTA – respondent issued a \$15,000 check (the entirety of Wade's settlement) to himself from his IOLTA, leaving a balance in his IOLTA of \$217.62. Respondent deposited this \$15,000 check into his business account and then proceeded to use the funds to pay personal and business expenses or expenses on behalf of other clients.

¹ Relator requested that respondent provide a copy of his fee agreement and settlement disbursement sheet for Wade; however, respondent failed to respond to relator's request. The amounts listed in Count One are based on relator's review of respondent's bank records, as well as relator's correspondence with Attorney Dan A. Morell, Jr., counsel for Cleveland Therapy Center.

11. From the inception of Wade's personal injury case, Wade and Stabler regularly called respondent for updates on the status of Wade's case. Each time, respondent advised Wade or Stabler that Wade's personal injury case was still pending.
12. By June 2014, Wade and Stabler had become suspicious of respondent and believed that something had gone awry with Wade's personal injury case. Accordingly, they decided to "trick" respondent.
13. In or about June 2014, Stabler called respondent and told him that he had spoken to the tortfeasor or his/her insurance company and that he had been advised that the case was settled a while ago.
14. In response, respondent stated that he need to check his mail for the settlement check.
15. On or about June 22, 2014, respondent called Stabler and told him that he had just received the settlement check. Respondent told Stabler to come to his office the following day, and he would issue a check to him for Wade's share of the settlement proceeds.
16. On June 23, 2014, respondent issued a check to Stabler for \$6,500 from his IOLTA. In order to issue this check, respondent misappropriated funds belonging to another client, Karen McElroy. (*See* Count Six.)
17. With respect to the \$2,862 that respondent should have paid to CTC, respondent failed to pay this amount in a timely manner.
18. On October 10, 2014 and February 3, 2015, a representative of CTC spoke directly to respondent regarding Wade's outstanding balance. Both times, respondent falsely advised CTC that Wade's case was still pending, but that it was close to being settled.

19. Sometime between February 3, 2015 and May 19, 2015, CTC contacted Wade and learned that his case had been settled. Thereafter, CTC made several attempts to collect the \$2,862 from respondent; however, the efforts were unsuccessful. In or about November 2015, CTC referred Wade's account (and three others also handled by respondent) to Attorney Dan A. Morell, Jr. for collection.
20. On November 11, 2015, Morell sent a letter to respondent regarding the four accounts that had been referred to him for collection.
21. Between December 13, 2015 and February 9, 2016, respondent and Morell exchanged a number of emails regarding collection of the four accounts.
22. In these emails, respondent falsely represented to Morell two different times that he had mailed payment in satisfaction of the four outstanding accounts, when he had not.
23. Morell did not receive full payment of the four accounts until February 16, 2016.
24. Between January 18, 2013 and February 16, 2015, respondent should have maintained at least \$2,862 in trust for CTC; however, as noted above in Paragraph 10, by January 22, 2013, the balance in respondent's IOLTA was \$217.62.
25. Respondent's deposition was taken in this matter on October 29, 2015. During his deposition, respondent falsely testified that Wade had asked respondent to hold on to his share of the settlement proceeds until Wade had worked out a deal with Stabler regarding the loan. Furthermore, he falsely testified that he did not distribute Wade's share of the settlement proceeds to Stabler until June 2014 because that was when Wade directed him to do so.
26. Respondent's conduct in Count One violates:
 - By failing to notify Wade of the settlement or obtain his consent to the settlement, respondent violated Prof. Cond. R. 1.2(a) (requiring a lawyer to

abide by a client's decision to settle a matter) and Prof. Cond. R. 1.4(a)(2) (requiring a lawyer to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required);

- By failing to advise Wade of the settlement in January 2013, respondent violated Prof. Cond. R. 1.4(a)(3) (requiring a lawyer to keep the client reasonably informed about the status of the matter);
- By forging Wade's signature on the back of the settlement check, respondent violated Prof. Cond. R. 8.4(b) (prohibiting a lawyer from committing an illegal act that reflects adversely on the lawyer's honesty or trustworthiness);
- By failing to hold Wade's/Stabler's and CTC's funds in trust, respondent violated Prof. Cond. R. 1.15(a) (requiring a lawyer to hold property of clients of third persons separate from the lawyer's own property);
- By failing to pay CTC in a timely manner, respondent violated Prof. Cond. R. 1.15(d) (requiring a lawyer to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive);
- By falsely testifying during his deposition that Wade had asked him to hold on to his settlement proceeds and that Wade did not direct him to disburse settlement proceeds to Stabler until July 2014, respondent violated Prof. Cond. R. 8.1(a) (prohibiting a lawyer from knowingly making a false statement of material fact in connection with a disciplinary matter); and
- By misappropriating Wade's/Stabler's and CTC's funds for his own use or that of his other clients, by misrepresenting the status of Wade's case to Wade, Stabler, and CTC, and by falsely representing to Morell that he had sent payments when he had not, respondent violated Prof. Cond. R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count Two – Daniel Chung

27. On February 24, 2014, respondent deposited \$24,000 into his IOLTA from Liberty Mutual Insurance. This check represented settlement proceeds that respondent had received on behalf of his client, Daniel Chung.
28. Chung's settlement proceeds were to be disbursed as follows:
 - \$8,000 to respondent for attorney fees;
 - \$460 to Akron City Hospital;

- \$500 to Summa Physicians; and
- \$15,040 to Chung.

29. Although respondent deposited Chung's settlement proceeds into his IOLTA on February 24, 2014, he did not disburse any proceeds to Chung until December 13, 2014.
30. Between February 24, 2014 and December 13, 2014, respondent should have had at least \$15,040 in trust for Chung; however, he did not.
31. On March 12, 2014, respondent misappropriated Chung's funds by issuing an IOLTA check to himself for \$24,000 (the entirety of Chung's settlement), leaving a balance in his IOLTA of \$482.81. Respondent deposited the \$24,000 check into his business account and proceeded to use the funds to pay personal and business expenses or expenses on behalf of other clients.
32. In November 2015, relator asked respondent to provide proof that he paid \$460 to Akron City Hospital and \$500 to Summa Physicians on behalf of Chung. To date, respondent has not provided the requested information. A review of respondent's IOLTA and business accounts between January 1, 2013 and October 31, 2015 does not reflect any payments to either Akron City Hospital or Summa Physicians in the above-referenced amounts.
33. Respondent's conduct in Count Two violates:
 - By failing to hold Chung's funds in trust, respondent violated Prof. Cond. R. 1.15(a) (requiring a lawyer to hold property of clients of third persons separate from the lawyer's own property);
 - By failing to disburse Chung's settlement proceeds to him for nearly ten months, respondent violated Prof. Cond. R. 1.15(d) (requiring a lawyer to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive); and
 - By misappropriating Chung's funds, and possibly those belonging to Akron City Hospital and Summa Physicians, for his own use or that of his other

clients, respondent violated Prof. Cond. R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count Three – Corinne Volcansek

34. On March 17, 2014, respondent deposited \$2,000 into his IOLTA from Grange Property and Casualty Insurance Company. This check represented settlement proceeds that respondent had received on behalf of his client, Corinne Volcansek.
35. Volcansek's settlement proceeds were to be disbursed as follows:
 - \$650 to respondent for attorney fees;
 - \$52.11 for medical records;
 - \$400 to respondent for legal fees in a criminal matter; and
 - \$897.89 to Volcansek.
36. Despite having deposited Volcansek's settlement proceeds into his IOLTA in March 2014, respondent did not disburse Volcansek's share of the proceeds to her until June 24, 2014. When he did so, he used funds from his business account.
37. Between March 17, 2014 and June 24, 2014, respondent should have maintained at least \$897.89 in trust for Volcansek; however, he did not.
38. On March 18 and 31, 2014, respondent misappropriated Volcansek's funds by issuing IOLTA checks to himself for \$2,000 and \$400. After issuing the \$2,000 and \$400 checks, the balance in respondent's IOLTA was \$82.81. Respondent deposited the \$2,000 and \$400 checks into his business account and then proceeded to use the funds to pay personal and business expenses or expenses on behalf of other clients. By March 31, 2014, the balance in respondent's business account was \$687.63, and by May 12, 2014, respondent had overdrawn his business account.
39. Respondent's conduct in Count Three violates:

- By failing to hold Volcansek's funds in trust, respondent violated Prof. Cond. R. 1.15(a) (requiring a lawyer to hold property of clients or third persons separate from the lawyer's own property);
- By failing to disburse Volcansek's settlement proceeds to her for over three months, respondent violated Prof. Cond. R. 1.15(d) (requiring a lawyer to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive); and
- By misappropriating Volcansek's funds for his own use or that of his other clients, respondent violated Prof. Cond. R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count Four – Henry Esther Sampson

40. On June 3, 2014, respondent deposited a check for \$5,047.03 into his IOLTA from State Farm Mutual Automobile Insurance Company. This check represented settlement proceeds that respondent had received on behalf of his client, Henry Esther Sampson.
41. Sampson's settlement proceeds were to be disbursed as follows:
- \$2,000 to respondent for attorney fees; and
 - \$3,047.03 to Sampson.
42. Prior to depositing the \$5,047.03 into his IOLTA, the balance in respondent's IOLTA was \$128.31. On the same day that respondent deposited the \$5,047.03 into his IOLTA, he misappropriated Sampson's funds by writing an IOLTA check to himself for \$5,100, leaving a balance in his IOLTA of \$75.34 when he should have had \$3,047.03 in trust for Sampson.
43. On June 4, 2014, respondent deposited the \$5,100 check into his business account to cure an existing overdraft in his business account at the time. He then proceeded to use the remainder of the \$5,100 to pay personal and business expenses or expenses on behalf of other clients.

44. On June 11, 2014, respondent issued a check to Sampson for \$3,047.03; however, he was only able to do so by misappropriating the settlement proceeds of another client, Tameka Lee. (See Count Five.)

45. Respondent's conduct in Count Four violates:

- By failing to hold Sampson's funds in trust, respondent violated Prof. Cond. R. 1.15(a) (requiring a lawyer to hold property of clients of third persons separate from the lawyer's own property); and
- By misappropriating Sampson's funds for his own use or that of his other clients, respondent violated Prof. Cond. R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count Five – Tameka Lee

46. On June 10, 2014, respondent deposited a check for \$15,300 into his IOLTA from Pacific Indemnity Company. This check represented settlement proceeds that respondent had received on behalf of his client, Tameka Lee.

47. Lee's settlement proceeds were to be disbursed as follows:

- \$5,000 to respondent for attorney fees;
- \$500 to New Family Physician Associates (Dr. Isakov);
- \$4,750 to Chiropractic and Rehabilitation for Injuries; and
- \$5,050 to Lee.

48. On June 11, 2014, respondent disbursed \$5,050 to Lee; however, he withheld the rest of Lee's settlement to pay \$500 to New Family Physician Associates, \$4,750 to Chiropractic and Rehabilitation for Injuries (CRI), and \$5,000 to himself for attorney fees.

49. Despite having withheld funds on June 11, 2014 to pay CRI, respondent did not do so until July 17, 2014.

50. Between June 11, 2014 and July 17, 2014, respondent should have maintained at least \$4,750 in trust for CRI; however, he did not.

51. Instead (and as noted above in paragraph 46), respondent used a portion of Lee's settlement to pay Henry Esther Sampson. He also wrote himself two checks from his IOLTA totaling \$9,650, leaving a balance in his IOLTA of \$362.31. Respondent deposited the two checks totaling \$9,650 into his business account and subsequently used the funds to pay personal and business expenses or expenses on behalf of other clients. By June 27, 2014, respondent had exhausted the \$9,650 and had overdrawn his business account.
52. On July 17, 2014, respondent paid \$4,750 to CRI; however, he was only able to do so by misappropriating the settlements of two other clients, Karen McElroy and Scott Strauss. (See Counts Six and Seven.)
53. In September 2014 and November 2015, relator asked respondent to provide proof that he paid \$500 to New Family Physician Associates on behalf of Lee. To date, respondent has not provided the requested information. A review of respondent's IOLTA and business accounts between January 1, 2013 and October 31, 2015 does not reflect any payments to New Family Physician Associates in the amount of \$500.
54. Respondent's conduct in Count Five violates:
- By failing to hold CRI's funds in trust, respondent violated Prof. Cond. R. 1.15(a) (requiring a lawyer to hold property of clients of third persons separate from the lawyer's own property); and
 - By misappropriating Lee's settlement funds for his own use or that of his other clients, respondent violated Prof. Cond. R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count Six – Karen and Terry McElroy

55. Karen McElroy was a state trooper with the Ohio State Highway Patrol for 24 years.
56. On October 2, 2013, McElroy was injured in an automobile accident while on duty.

57. After being off work for approximately six months due to her injuries, the Highway Patrol informed McElroy that they wanted to enforce early retirement on her with a disability pension.
58. It was at this point that McElroy and her husband, Terry, decided to pursue a personal injury claim against the tortfeasor. The McElroys initially consulted Attorney Gary Zamarly; however, they ultimately retained respondent to represent them in the personal injury matter.
59. On June 4, 2014, the McElroys settled with the tortfeasor for \$50,000, which was the limit of the tortfeasor's insurance. The McElroys then filed a claim with their insurance company because the tortfeasor was underinsured. The underinsured motorist claim is still pending.
60. On June 19 or 20, 2014, the McElroys met with respondent to endorse the back of a \$50,000 settlement check from the tortfeasor's insurance company (Safeco Insurance). During this meeting, respondent advised the McElroys that he had to pay some expenses before distributing their portion of the settlement proceeds to them. Respondent did not show the McElroys any other documents during this meeting or have them sign a settlement disbursement sheet.
61. On June 20, 2014, respondent deposited the \$50,000 check into his IOLTA.
62. The McElroys' settlement was to be disbursed as follows:
 - \$16,000 to respondent for attorney fees;
 - \$12,331.71 to the Ohio Bureau of Worker's Compensation (BWC); and
 - \$21,668.29 to the McElroys.
63. Despite having deposited the McElroys' settlement funds into his IOLTA on June 20, 2014, respondent did not disburse the McElroys' proceeds to them until February 24,

2015.² When he did so, he used funds that he had misappropriated at least in part from another client, Nicole Pribich. (See Count Eight.) Moreover, the delay in distribution caused the McElroys to inquire into the status of their settlement proceeds on at least two occasions.

64. Between June 20, 2014 and February 24, 2015, respondent should have maintained at least \$21,668.29 in trust for the McElroys; however, he did not.
65. On June 23, 2014, respondent misappropriated a portion of the McElroys' settlement to pay John D. Stabler. (See Count Two). In addition, respondent wrote seven checks to himself totaling \$27,500. By July 9, 2014, the balance in respondent's IOLTA was \$15,012.31.
66. Respondent deposited the \$27,500 into his business account and proceeded to use the funds to pay personal and business expenses or expenses on behalf of other clients. By July 31, 2014, the balance in respondent's business account was \$7,584.11.
67. To date, respondent has not paid any portion of the \$12,331.71 owed to BWC.

Specifically:

- a. On May 9, 2014, BWC advised Attorney Gary Zamyary that its subrogation lien was \$12,331.71.
- b. On June 16, 2014, respondent advised BWC that he was representing the McElroys, and he requested the amount of BWC's subrogation lien.
- c. On September 29, 2014, BWC advised respondent that the subrogation lien was currently \$14,741.31.
- d. On April 15, 2015, BWC sent respondent a letter stating that its lien was currently \$20,485.31 and that it was asserting a full subrogation interest in

² Respondent actually disbursed \$23,518.15 to the McElroys rather than the \$21,668.29 shown on his settlement disbursement sheet. At his deposition on October 29, 2015, respondent was unable to explain why he disbursed more to the McElroys than what his settlement statement showed.

McElroy's personal injury settlement. On the same day, BWC also left a message for respondent regarding the subrogation lien; however, respondent failed to return BWC's call.

- e. On May 28, 2015, BWC left respondent a message regarding the subrogation lien; however, respondent again failed to return BWC's call.
- f. On June 16, 2015, BWC called respondent a third time and left a message with his assistant, Sara Griffin. Respondent returned BWC's call and advised BWC that McElroy's case had settled for \$50,000.³
- g. On July 6, 2015, respondent faxed a letter to BWC requesting that BWC's subrogation lien be reduced to \$3,500.
- h. On July 8, 2015, BWC agreed to accept \$12,000 as partial settlement of their subrogation lien and sent respondent a release for Karen McElroy to sign.
- i. In August 2015, BWC called respondent regarding the status of the outstanding \$12,000 payment. Respondent failed to return BWC's call.
- j. On October 19, 2015 and having not yet received a payment, BWC sent a subrogation follow-up letter to respondent. Respondent did not reply to this letter, nor has he paid \$12,000 to BWC.

- 68. On October 29, 2015, respondent's deposition was taken in the disciplinary matter.
- 69. Despite having received a subrogation follow-up letter only days earlier, respondent falsely testified at his deposition that he used the \$27,500 that he withdrew from his IOLTA in June and July 2014 to pay BWC's subrogation lien.
- 70. In late November 2015 or early December 2015, relator's investigator contacted the McElroys and requested a meeting with them to discuss their settlement.
- 71. Because they were still represented by respondent in the underinsured motorist claim against their insurance company, the McElroys informed respondent that relator's investigator wished to speak with them.

³ In April 2015, Safeco Insurance Company notified BWC that the McElroys' claim had settled for \$50,000 in June 2014. This information is what prompted the calls from BWC to respondent on April 15, 2015, May 28, 2015, and June 16, 2015.

72. In response, respondent sent the McElroys an email on December 7, 2015. In this email, respondent informed the McElroys for the first time that BWC had agreed to accept \$12,000 as partial settlement of its subrogation lien. He further advised the McElroys that he would be sending them a check for \$331.71 since he had withheld \$12,331.71 from their settlement to pay BWC. Finally, respondent advised the McElroys that he had forged the McElroys' signatures on a settlement disbursement sheet that he had provided to relator.

73. As of January 25, 2016, respondent has not paid the promised \$331.71 to the McElroys.

74. Respondent's conduct in Count Six violates:

- Prof. Cond. R. 1.4(a)(3) (requiring a lawyer to keep a client reasonably informed about the status of the matter);
- By failing to hold the McElroys'/BWC's funds in trust, respondent violated Prof. Cond. R. 1.15(a) (requiring a lawyer to hold property of clients of third persons separate from the lawyer's own property);
- By failing to disburse the McElroys' or BWC's money in a timely manner, respondent violated Prof. Cond. R. 1.15(d) (requiring a lawyer to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive);
- By falsely testifying during his deposition that he had used the \$27,500 that he withdrew from his IOLTA to pay BWC's subrogation lien, respondent violated Prof. Cond. R. 8.1(a) (prohibiting a lawyer from knowingly making a false statement of material fact in connection with a disciplinary matter);
- By forging the McElroys' signature on a settlement statement and providing that statement to relator, respondent violated Prof. Cond. R. 8.1(a) (prohibiting a lawyer from knowingly making a false statement of material fact in connection with a disciplinary matter) and Prof. Cond. R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and
- By misappropriating the McElroys'/BWC's funds for his own use or that of his other clients, respondent violated Prof. Cond. R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count Seven - Scott Strauss

75. On July 11, 2014, respondent deposited a check for \$50,000 into his IOLTA from Erie Insurance Company. This check represented settlement proceeds that respondent had received on behalf of his client, Scott Strauss.
76. Per respondent's settlement statement, the Strauss settlement was to be disbursed as follows:
- \$16,000 to respondent for attorney fees;
 - \$17,731.16 to Ohio Medicaid;
 - \$1,930 to Lake Chiropractic Clinic; and
 - \$14,338.84 to Strauss.
77. On July 14, 2014, respondent disbursed \$14,968.84 to Strauss. This amount was comprised of the \$14,338.84 on respondent's settlement sheet, plus an additional \$630 because Lake Chiropractic Clinic agreed to accept \$1,300 as full satisfaction of its lien.
78. Respondent withheld the remainder of Strauss's settlement to pay the \$17,731.16 owed to Medicaid, the \$1,300 owed to Lake Chiropractic Clinic, and his \$16,000 in attorney fees.
79. Despite having withheld \$1,300 from the Strauss's settlement in July 2014 to pay Lake Chiropractic Clinic, respondent did not pay the clinic until September 26, 2014.
80. To date, respondent has not paid the \$17,731.16 owed to Medicaid, nor has he held these funds in trust. Between July 2014 and October 2015, the balance in respondent's IOLTA has been consistently below the \$17,731.16 he should have maintained for payment to Medicaid. Rather than holding the funds in trust, respondent misappropriated the \$17,731.16 to pay his personal and business expenses or expenses on behalf of other clients.
81. On October 29, 2015, respondent's deposition was taken in the disciplinary matter.

82. At the deposition, respondent falsely testified that he paid Medicaid \$17,731.16 from his business account in or about July 2014.
83. Respondent's conduct in Count Seven violates:
- By failing to hold the monies owed to Medicaid in trust, respondent violated Prof. Cond. R. 1.15(a) (requiring a lawyer to hold property of clients of third persons separate from the lawyer's own property);
 - By failing to disburse Lake Chiropractic Clinic and Medicaid's money to them in a timely manner, respondent violated Prof. Cond. R. 1.15(d) (requiring a lawyer to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive);
 - By falsely testifying at his deposition that he had paid Medicaid in July 2014, respondent violated Prof. Cond. R. 8.1(a) (prohibiting a lawyer from knowingly making a false statement of material fact in connection with a disciplinary matter); and
 - By misappropriating Medicaid's money for his own use or that of his other clients, respondent violated Prof. Cond. R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count Eight – Nicole Pribich

84. On February 20, 2015, respondent deposited \$16,827.91 into his IOLTA from Progressive Specialty Insurance Company. This check represented settlement proceeds that respondent received on behalf of his client, Nicole Pribich.
85. Of the \$16,827.91 received by respondent, Pribich was owed at least \$8,327.91.
86. Despite having deposited Pribich's settlement check into his IOLTA in February 2015, respondent did not disburse Pribich's proceeds to her until May 11, 2015. When he did so, the check was drawn on his business account, rather than his IOLTA.
87. Between February 20, 2015 and May 11, 2015, respondent should have maintained at least \$8,327.91 in trust for Pribich; however, he did not. By March 17, 2015, the balance in respondent's IOLTA was \$3,251.84.

88. Rather than disbursing Pribich's settlement proceeds to her or holding them in trust, respondent misappropriated a portion of Pribich's settlement proceeds to pay Karen and Terry McElroy. (See Count Six.) In addition, he wrote three checks to himself from his IOLTA totaling \$11,000. The \$11,000 was deposited into his business account and used to pay personal and business expenses or expenses on behalf of other clients. By March 31, 2015, the balance in respondent's business account was \$3,291.06.
89. Respondent's conduct in Count Eight violates:
- By failing to hold Pribich's funds in trust, respondent violated Prof. Cond. R. 1.15(a) (requiring a lawyer to hold property of clients of third persons separate from the lawyer's own property);
 - By failing to disburse Pribich's funds for nearly three months, respondent violated Prof. Cond. R. 1.15(d) (requiring a lawyer to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive); and
 - By misappropriating Pribich's money for his own use or that of his other clients, respondent violated Prof. Cond. R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count Nine – Christopher Williams

90. On January 29, 2014, respondent deposited a check for \$2,272.72 into his IOLTA from The Vision Insurance Group. This check represented settlement proceeds that respondent received on behalf of his client, Christopher Williams.
91. Williams' settlement proceeds were to be disbursed as follows:
- \$700 to respondent for attorney fees;
 - \$59.37 to University Hospitals for medical records;
 - \$300 to Shaker Square Chiropractic; and
 - \$1,213.35 to Williams.
92. On January 27, 2014 – two days before he deposited Williams' settlement proceeds into his IOLTA – respondent disbursed \$1,213.35 to Williams. In order to make this

disbursement, respondent used either another client's funds or earned fees that he had left in his IOLTA.

93. Respondent kept the remainder of Williams' settlement proceeds to reimburse himself \$59.37 that he had advanced for medical records in May and June 2013, to pay Shaker Square Chiropractic \$300, and to cover his attorney fees.
94. Despite having received \$300 from Williams' settlement in January 2014 to pay Shaker Square Chiropractic, respondent did not pay the entity until August 7, 2014. When he did, the check was drawn on respondent's business account, rather than his IOLTA.
95. Between January 29, 2014 and August 7, 2014, respondent should have maintained at least \$300 in trust for Shaker Square Chiropractic; however, he did not. By March 31, 2014, the balance in respondent's IOLTA was \$82.81, and by June 3, 2014, respondent had overdrawn his IOLTA.
96. Rather than holding Shaker Square Chiropractic's funds in trust, respondent deposited the funds into his business account and proceeded to use them to pay personal and business expenses or expenses on behalf of other clients. By May 12, 2014, respondent had exhausted the \$300 and overdrawn his business account.
97. Respondent's conduct in Count Nine violates:
 - By failing to hold Shaker Square Chiropractic's funds in trust, respondent violated Prof. Cond. R. 1.15(a) (requiring a lawyer to hold property of clients of third persons separate from the lawyer's own property); and
 - By misappropriating Shaker Square Chiropractic's funds for his own use or that of his other clients, respondent violated Prof. Cond. R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count Ten – Melima Craddock, Charles Craddock, and Keshia Jackson

98. On August 12, 2014, respondent deposited three checks totaling \$13,629 into his IOLTA from Artisan and Truckers Casualty Company. These checks represented settlement proceeds that respondent received on behalf of his clients: Melima Craddock (\$4,800), Charles Craddock (\$4,650), and Keshia Jackson (\$4,179).
99. Melima Craddock's settlement proceeds (\$4,800) were to be disbursed as follows:
- \$1,600 to respondent for attorney fees;
 - \$200 to Medicaid;
 - \$300 to Dr. Isakov;
 - \$900 to Chiropractic and Rehabilitation for Injuries; and
 - \$1,800 to Melima Craddock.
100. Charles Craddock's settlement proceeds (\$4,650) were to be disbursed as follows:
- \$1,500 to respondent for attorney fees;
 - \$400 to Dr. Isakov;
 - \$950 to Chiropractic and Rehabilitation for Injuries; and
 - \$1,800 to Charles Craddock.
101. Keshia Jackson's settlement proceeds (\$4,179) were to be disbursed as follows:
- \$1,200 to respondent for attorney fees;
 - \$70 to Medicaid;
 - \$400 to Dr. Isakov;
 - \$800 to Chiropractic and Rehabilitation for Injuries; and
 - \$1,709 to Keshia Jackson.
102. On August 11, 2014, respondent issued checks to Melima Craddock, Charles Craddock, and Keshia Jackson for their share of the settlement proceeds. He retained the remainder of Melima Craddock's, Charles Craddock's, and Keshia Jackson's settlements to pay Medicaid, Dr. Isakov, Chiropractic and Rehabilitation for Injuries (CRI), and his attorney fees.
103. To date, respondent has not paid CRI any of the funds that he withheld from Melima Craddock's, Charles Craddock's, and Keshia Jackson's settlements. Upon information

and belief, respondent has also not paid Medicaid or Dr. Isakov on behalf of Melima Craddock, Charles Craddock, or Keshia Jackson.

104. On January 27, 2015, February 25, 2015, and March 31, 2015, CRI contacted respondent regarding the status of Melima Craddock's, Charles Craddock's, and Keshia Jackson's settlements. Each time, respondent falsely advised CRI that the cases were still pending and that no settlement offer had been made.
105. On October 13, 2015, Rozella Brickman from CRI called and spoke to respondent regarding the status of Melima Craddock's, Charles Craddock's, and Keshia Jackson's settlements. Respondent falsely advised Brickman that the cases were still pending, but that they should be settled in the next 30 days.
106. On November 8, 2015, CRI left respondent a message regarding the status of Melima Craddock's, Charles Craddock, and Keshia Jackson's settlements. Respondent did not return CRI's call.
107. On December 8, 2015, CRI left respondent another message regarding the status of Melima Craddock's, Charles Craddock's, and Keshia Jackson's settlements. Respondent again did not return CRI's call.
108. Between August 12, 2014 and the current date, respondent should have maintained at least \$2,650 in trust for CRI; however, he did not.⁴ By November 5, 2014, the balance in respondent's IOLTA was \$614.74.
109. Rather than holding CRI's funds in trust, respondent used them to pay personal and business expenses or expenses on behalf of other clients.

⁴ According to CRI, Melima Craddock's outstanding balance is \$1,551; Charles Craddock's outstanding balance is \$1,573; and Keshia Jackson's outstanding balance is \$1,430. CRI's files do not reflect any reductions being requested or made with respect to these balances.

110. On October 29, 2015, respondent's deposition was taken in the disciplinary matter.
111. During the deposition, respondent falsely testified that he had advanced funds to CRI on behalf of Melima Craddock, Charles Craddock, and Keshia Jackson and that after settlement of their case, he had reimbursed himself for the advances he made.
112. Respondent's conduct in Count Ten violates:
- By failing to hold CRI's funds in trust, respondent violated Prof. Cond. R. 1.15(a) (requiring a lawyer to hold property of clients of third persons separate from the lawyer's own property);
 - By failing to disburse CRI's money to them in a timely manner, respondent violated Prof. Cond. R. 1.15(d) (requiring a lawyer to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive);
 - By falsely testifying during his deposition that he had advanced funds to CRI when he had not, respondent violated Prof. Cond. R. 8.1(a) (prohibiting a lawyer from knowingly making a false statement of material fact in connection with a disciplinary matter); and
 - By misappropriating CRI's funds for his own use or that of his other clients, respondent violated Prof. Cond. R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count Eleven – Ayramis Riggins

113. On April 22, 2013, respondent deposited a check for \$3,000 into his IOLTA from Travelers Insurance. This check represented settlement proceeds that respondent had received on behalf of his client, Ayramis Riggins.
114. Riggins' settlement proceeds were to be disbursed as follows:
- \$1,000 to respondent for attorney fees;
 - \$800 to Cleveland Therapy Center (CTC); and
 - \$1,200 to Riggins.
115. On May 7, 2013, respondent disbursed \$1,200 to Darria Foreman on behalf of Riggins.

116. Respondent kept the remainder of Riggins' settlement proceeds to pay \$800 to CTC and to cover his attorney fees.
117. To date, respondent has not paid CTC the \$800 that he withheld from Riggins' settlement.
118. Between April 22, 2013 and the current date, respondent should have maintained at least \$800 in trust for CTC; however, he did not. By May 28, 2013, the balance in respondent's IOLTA was \$73.14.
119. Rather than holding CTC's funds in trust, respondent wrote a series of checks to himself, which he then deposited into his business account to cure an existing overdraft in his account at the time. Respondent then proceeded to use CTC's funds to pay personal and business expenses or expenses on behalf of his clients.
120. By June 10, 2013, respondent had exhausted the funds in his business account and overdrawn his account.
121. Respondent's conduct in Count Eleven violates:
 - By failing to hold CTC's funds in trust, respondent violated Prof. Cond. R. 1.15(a) (requiring a lawyer to hold property of clients of third persons separate from the lawyer's own property); and
 - By misappropriating CTC's funds for his own use or that of his other clients, respondent violated Prof. Cond. R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count Twelve – General IOLTA and Malpractice Violations

122. Prior to October 29, 2015, respondent did not maintain records of client funds in his possession for a period of seven years after termination of the representation or the appropriate disbursement of client/third party funds as required by Prof. Cond. R. 1.15(a).

123. Prior to June 29, 2015, respondent did not maintain individual records for each client on whose behalf he held funds as required by Prof. Cond. R. 1.15(a)(2).
124. Between approximately April 2015 and at least October 2015, respondent did not maintain professional liability insurance and did not obtain his clients' written acknowledgment that they had received notice of his lack of professional liability insurance as required by Prof. Cond. R. 1.4(c).
125. Respondent's conduct in Count Twelve violates:
- By failing to maintain records of funds belonging to his clients or third persons for a period seven years from the termination of the representation or the appropriate disbursement of such funds, respondent violated Prof. Cond. R. 1.15(a) (requiring a lawyer to maintain records of account funds for a period of seven years after termination of the representation or appropriate disbursement of such funds);
 - By failing to maintain individual records for each client on whose behalf he held funds, respondent violated Prof. Cond. R. 1.15(a)(2) (requiring a lawyer to maintain a record for each client on whose behalf funds are held that sets forth the name of the client; the date, amount, and source of all funds received on behalf of each client; the date, amount, payee, and purpose of each disbursement made on behalf of such client; and the current balance for each client); and
 - By failing to provide written notice of his lack of professional liability insurance to his clients, respondent violated Prof. Cond. R. 1.4(c) (requiring a lawyer to provide written notice to a client at the time of engagement or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance in the amount of at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate).

Count Thirteen – Failure to Cooperate in a Disciplinary Investigation

126. On June 5, 2014 and again on June 12, 2014, Key Bank notified relator that respondent had overdrawn his IOLTA.
127. On July 15, 2014, relator sent respondent a Letter of Inquiry regarding the notices from Key Bank.

128. On August 15, 2014, respondent replied to relator's Letter of Inquiry alleging that the overdrafts had occurred due to bank error.
129. On September 15, 2014, respondent provided copies of several settlement disbursement sheets, at least one of which had been forged. (*See* Count Six.)
130. Based on the information provided in respondent's August 15, 2014 letter, as well as his settlement disbursement sheets, relator had concerns about various transactions in respondent's IOLTA. Accordingly, on September 29, 2014, relator sent respondent a letter requesting that he provide additional information by October 13, 2014.
131. On October 10, 2014, respondent requested and received an extension of time until October 27, 2014 to respond to relator's September 29, 2014 letter.
132. On October 27, 2014, respondent requested and received an extension of time until November 3, 2014 to respond to relator's September 29, 2014 letter.
133. On November 3, 2014, respondent requested and received an extension of time until November 5, 2014 to postmark his response to relator's September 29, 2014 letter.
134. Despite having received three extensions of time to respond, respondent did not provide a response to relator's September 29, 2014 letter.
135. On June 15, 2015 and having not yet received a response from respondent, relator sent respondent a letter requesting that he provide a response to relator's September 29, 2014 letter by June 29, 2015.
136. On June 17, 2015, and after reviewing records that relator had subpoenaed from Key Bank, relator sent respondent another letter requesting that he provide information about several transactions in his IOLTA that were not addressed in relator's September 29,

- 2014 letter. Relator requested that respondent respond to the June 17, 2015 letter by July 15, 2015.
137. On June 29, 2015, respondent provided an incomplete response to relator's September 29, 2014 letter. Specifically, he stated in his letter that he had "requested" much of the information that relator requested he provide and that he would provide the information upon receipt. Despite his assurances, respondent never provided additional information responsive to relator's September 29, 2014 letter.
138. On July 15, 2015, respondent requested and received an extension of time until August 5, 2015 to respond to relator's June 17, 2015 letter.
139. On August 5, 2015, respondent requested and received an extension of time until August 19, 2015 to respond to relator's June 17, 2015 letter.
140. On August 19, 2015, respondent requested and received an extension of time until August 24, 2015 to respond to relator's June 17, 2015 letter.
141. Despite having received three extensions of time to respond, respondent failed to provide a response to relator's June 17, 2015 letter by August 24, 2015.
142. On September 3, 2015, relator sent respondent a letter stating that his response to relator's June 17, 2015 letter must be received in relator's office by September 17, 2015.
143. Despite receiving relator's September 3, 2015 letter, respondent did not respond to relator's June 17, 2015 letter by September 17, 2015.
144. On September 29, 2015, relator served respondent with a subpoena duces tecum. The subpoena duces tecum required respondent to appear for a deposition on October 29, 2015 and to produce all documents responsive to relator's June 17, 2015 letter.

145. Respondent appeared for his deposition on October 29, 2015; however, he only produced some of the documents required by the subpoena duces tecum.
146. During the deposition, respondent was unable to answer many of relator's questions; however, he took notes and assured relator that he could and would provide information responsive to the questions following the deposition. During the deposition, respondent also revealed that despite the assertions in his June 29, 2015 letter to relator, he had not "requested" any information regarding various IOLTA transactions. (See Paragraph 139.)
147. On October 30, 2015, the day after the deposition, relator faxed respondent a letter advising him that in a few weeks (after the transcript of his deposition had been received), relator would be sending him a letter that contained a list of all documents requested during the deposition, as well as any questions that relator may have after reviewing the documents that respondent had provided at his deposition. Relator's letter specifically advised respondent that even though the follow-up letter would not be sent for a few weeks, respondent should immediately begin gathering the information requested during the deposition.
148. On November 16, 2015, relator sent respondent a letter with a list of documents requested during the deposition, as well as a list of questions based on relator's review of the documents that respondent provided at his deposition. Relator requested that respondent reply to this letter by December 14, 2015.
149. On December 22, 2015, respondent sent relator a two-paragraph letter stating that his "records are absolutely terrible" and that he was "in the process of securing a loan in

order to ensure that all of [his] obligations are met.” Respondent further stated that he would provide relator with proof of the loan “in about one week.”

150. On January 8, 2016 and having not yet received any information from respondent, relator sent respondent a letter requesting information about his alleged loan. In addition, relator advised respondent that despite the loan, he was still required to provide a response to relator’s November 16, 2015 letter. Relator requested that respondent provide information about his loan, as well as a response to relator’s November 16, 2015 letter by January 22, 2016.
151. To date, relator has not received any information regarding respondent’s alleged loan, nor has relator received a response to the November 16, 2015 letter.
152. Respondent’s conduct in Count Thirteen violates:
- By stating that he had requested information responsive to relator’s September 29, 2015 letter, when he had not, respondent violated Prof. Cond. R. 8.1(a) (prohibiting a lawyer from knowingly making a false statement of fact in connection with a disciplinary matter); and
 - By failing to respond to multiple letters from relator or providing incomplete responses, despite receiving multiple extensions of time to do so, respondent violated Prof. Cond. R. 8.1(b) (prohibiting a lawyer from knowingly failing to respond to a demand for information from a disciplinary authority).

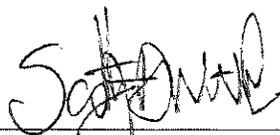
Statement of Restitution Pursuant to Gov. Bar. R. V(10)(E)(1)(b)

153. At a minimum, respondent owes at least:
- \$12,000 to BWC for the McElroy matter;
 - \$331.71 to Karen and Terry McElroy;
 - \$17,731.16 to Medicaid for the Strauss matter;
 - \$2,650 to CRI for the Melima Craddock, Charles Craddock, and Keshia Jackson matters; and
 - \$800 to Cleveland Therapy Center for the Riggins matter.

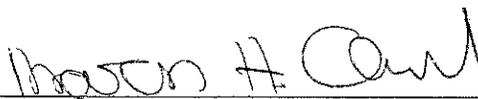
Respondent may also owe restitution with respect to at least 12 other clients; however, because respondent has failed to respond to requests for information from relator, it is not possible at the current time to determine whether additional restitution is owed.

CONCLUSION

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



Scott J. Drekel (0091467)
Disciplinary Counsel
Relator

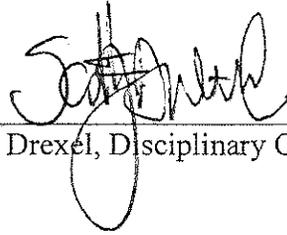


Karen H. Osmond (0082202)
Assistant Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
(614) 461-0256 (Phone)/(614) 461-7205 (Facsimile)
Karen.Osmond@sc.ohio.gov
Counsel for Relator

CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio, hereby certifies that Karen H. Osmond 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 18, 2016



Scott J. Drexel, Disciplinary Counsel