

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

**In re:**

**Complaint against**

**Daniel Alan Niehaus, Esq.**  
**2111 Fullmoon Court**  
**Independence, KY 41051**

**Attorney Registration No. (0078682)**

**Respondent,**

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

**Relator.**

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

**COMPLAINT AND CERTIFICATE**  
**(Rule V of the Supreme Court Rules for**  
**the Government of the Bar of Ohio.)**

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FILED

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BOARD OF PROFESSIONAL CONDUCT

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

1. Respondent, Daniel Alan Niehaus, was admitted to the practice of law in the state of Ohio on May 9, 2005. Respondent is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.
2. At all times relevant to this Complaint, respondent maintained an IOLTA with Huntington National Bank, account number xxxxxxxx7008.

**COUNT ONE**  
**The James Marshall Matter**

3. On May 14, 2013, James Marshall retained respondent to represent him in a divorce. Respondent and Marshall entered a written fee agreement for the representation.
4. On January 12, 2014, as a result of an issue with the marital property, Marshall gave respondent \$1,500 to hold in trust for which respondent signed a receipt. The receipt

stated: "This money is NOT payment towards retainer fees and instead is going into Attorney's IOLTA Trust account to hold. While pending, loan modification packets will be prepared for each loan and submitted. Once the application process is complete, the monies will be withdrawn and distributed accordingly." Respondent failed to deposit the \$1,500 into his IOLTA. Respondent has not returned the \$1,500 to Marshall, or otherwise distributed it on his behalf.

5. Similarly, on March 6, 2015, Marshall gave respondent an additional \$300 to hold in trust for which respondent signed a receipt. Again, the receipt stated: "This money is NOT payment towards retainer fees and instead is going into Attorney's IOLTA Trust account to hold. While pending, loan modification packets will be prepared for each loan and submitted. Once the application process is complete, the monies will be withdrawn and distributed accordingly." Respondent failed to deposit the \$300 into his IOLTA. Respondent has not returned the \$300 to Marshall, or otherwise distributed it on his behalf.
6. Just before the divorce was final, respondent advised Marshall that, for \$1,000, he would file a motion regarding a potential custody issue.
7. On April 16, 2015, Marshall paid respondent \$1,000 for the motion; however, respondent failed to deposit the funds into his IOLTA, failed to file the motion, and never refunded the fee.
8. On April 24, 2015, respondent and Marshall signed and filed the final divorce decree.
9. Marshall's last contact with respondent was on May 1, 2015. Since that time, Marshall has attempted to contact respondent on multiple occasions regarding the status of the custody matter and the \$1,800 (\$1,500 + \$300) respondent was supposed to be holding in trust. Respondent has failed to respond to Marshall.

10. On November 2, 2015, Marshall filed a grievance against respondent.
11. On November 10, 2015, Marshall sent respondent a letter by certified mail requesting that respondent return the \$1,800 he was supposedly holding in trust and the \$1,000 fee that Marshall paid for the custody matter. Respondent failed to respond to the letter.
12. Respondent's conduct, as alleged in Count One, violates the following provisions of the Ohio Rules of Professional Conduct:
  - a. By failing to prepare and file a motion on Marshall's behalf in the potential custody matter, 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 Marshall reasonably informed about the status of the potential custody 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]; and
  - c. By failing to respond to Marshall's inquiries regarding the status of his potential custody matter and the money respondent was supposed to be holding in trust, 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 misappropriating Marshall's \$1,800 and \$1,000, respondent violated Prof. Cond. R. 8.4(c) [it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, misrepresentation];
  - e. By failing to deposit Marshall's \$1,000 advanced fee payment into his IOLTA, respondent violated 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 by the lawyer only as fees are earned or expenses incurred]; and
  - f. By failing to promptly refund to Marshall unearned advanced fees, 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].

**COUNT TWO**  
**The Cerissa Newbill Matter**

13. On March 9, 2015, Cerissa Newbill retained respondent to represent her in a criminal matter in Hamilton County Municipal Court, 14CRB34303.
14. On June 10, 2015, Newbill was acquitted of the criminal charge.
15. On August 7, 2015, the record of arrest in Newbill's criminal matter was sealed.

16. On September 18, 2015, Newbill retained respondent to represent her in pursuing a claim for civil damages against the police arising out of the above-referenced criminal matter. Respondent and Newbill entered into a written contingency fee agreement for the representation, in which respondent, among other things, agreed to file a complaint by September 25, 2015, and provide Newbill with at least biweekly updates on the matter.
17. Between September 18, 2015 and December 16, 2015, Newbill telephoned and left voice mail messages for respondent on many occasions seeking information about the status of her civil matter. Despite these messages, respondent did not return Newbill's calls. Respondent failed to provide Newbill with the promised biweekly updates on the matter.
18. In a meeting in respondent's office on November 10, 2015, respondent informed Newbill, for the first time, that he had taken time off due to a family member's health issues.
19. Respondent failed to file a civil complaint on behalf of Newbill.
20. On December 16, 2015, Newbill terminated respondent's representation via letter sent by certified mail. The letter also requested an itemization of services and her file. Respondent failed to respond to this letter and failed to provide Newbill with her file or an itemization of his services.
21. On January 13, 2016, Newbill filed a grievance against respondent.
22. On May 6, 2016, Newbill's new lawyer filed a complaint in the U.S. District Court for the Southern District of Ohio, naming as defendants three employees of the Cincinnati Police Department and the City of Cincinnati. The complaint alleges damages under 42 U.S.C. 1983 and U.S.C. 1988, and the matter is ongoing.
23. Respondent's conduct, as alleged in Count Two, violates the following provisions of the Ohio Rules of Professional Conduct:

- a. By failing to prepare and file a complaint on Newbill's behalf, 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 Newbill reasonably informed about the status of her civil 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]; and
- c. By failing to respond to Newbill's telephone inquiries regarding the status of her civil matter and failing to respond to Newbill's December 16, 2015 request for an itemization of services and her file, 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].

**COUNT THREE  
IOLTA**

**The Lemle Matter**

24. On August 10, 2014, the balance in respondent's IOLTA was \$1,876.29.
25. On August 11, 2014, respondent deposited a check into his IOLTA in the amount of \$3,500 on behalf of his client, Robert Lemle, as full and final settlement of Lemle's claim in a personal injury matter.
26. On August 14, 2014, respondent issued a check drawn on his IOLTA in the amount of \$1,166.66, which represented his one-third fee of the settlement proceeds. The check was made payable to "Niehaus Law LLC" and the words "Robert Lemle BI Settlement" were written on the memo line.
27. On August 17, 2014, respondent misappropriated the remainder of Lemle's funds by issuing a check drawn on his IOLTA in the amount of \$2,333.34. The check was made payable to "Daniel A. Niehaus" and the words "Robert Lemle Bodily Injury" were written on the memo line. After respondent misappropriated Lemle's funds, the balance in the IOLTA was \$1,876.29, which was the balance in the IOLTA prior to the deposit of Lemle's settlement funds.

28. On October 3, 2014, respondent deposited a settlement check into his IOLTA in the amount of \$6,125 on behalf of another client, Gary Weber. Respondent failed to withdraw his one-third fee from the Weber settlement, thereby commingling his personal funds with client funds.
29. On October 8, 2014, respondent issued a check drawn on his IOLTA in the amount of \$2,333.34 made payable to "Robert Lemle." The check was ostensibly dated September 11, 2014; however, on that date, the balance in respondent's IOLTA was \$1,876.29, which would have been insufficient to pay Lemle his share of the settlement proceeds.

**Additional Misappropriation of Client Funds**

30. Based upon a review and reconstruction of respondent's IOLTA records, respondent routinely withheld a portion of his clients' settlement funds in his IOLTA ostensibly to pay third party providers (see chart); however, he never disbursed the funds on behalf of his clients.

Client	Settlement	Deposit Date	Fees to Respondent	Funds to Client	Funds to third Parties	Funds Remaining in Trust
Andrews	\$3,000	07/09/14	\$712.63	\$750	0	\$1,537.37
April L.	\$15,000	10/27/14	\$6,600	\$3,000	\$3,639.53	\$1,760.47
Short	\$4,500	01/06/15	\$1,726	\$1,000	0	\$1,774.00
Payne	\$12,000	05/21/15	\$4,300 <sup>1</sup>	\$4,000	0	\$3,700.00
Edwards	\$13,000	06/09/15	\$4,832.90 <sup>2</sup>	\$3,455	0	\$4,712.10
					<b>Total</b>	<b>\$13,483.94<sup>3</sup></b>

<sup>1</sup> Respondent paid \$1,500 of the \$4,300 to co-counsel.

<sup>2</sup> Respondent paid \$1,583.23 of the \$4,832.90 to co-counsel.

<sup>3</sup> Due to respondent's non-cooperation in relator's investigation, related cannot determine the exact amount of respondent's misappropriation; however, upon information and belief, respondent misappropriated at least \$11,900, not including the \$2,800 respondent misappropriated from Marshall (see Count One).

31. Although respondent should have had at least \$13,483.94 in his IOLTA, as of August 3, 2015, the balance in respondent's IOLTA was \$12,448.36—all of which belonged to clients or third parties.
32. Between August 4, 2015 and September 22, 2015, respondent misappropriated \$11,900 by issuing 10 checks drawn on his IOLTA made payable to his wife, "Marcy Niehaus."
33. Respondent issued two additional checks (1193 and 1195) drawn on his IOLTA to his wife; however, those checks were returned due to insufficient funds, resulting in a balance of \$476.36.<sup>4</sup>
34. In addition to misappropriation of client funds, respondent failed to maintain a ledger for each client on whose behalf funds were being held in his IOLTA between August 1, 2015 and November 30, 2015.
35. Similarly, respondent failed to maintain a general ledger for his IOLTA between August 1, 2015 and November 30, 2015.
36. Respondent's conduct, as alleged 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:
  - a. By failing to maintain a record for each client on whose behalf funds are held on his client trust account, respondent violated Prof. Cond. R. 1.15(a)(2);
  - b. By failing to maintain a record for his client trust account setting forth the name of the account, the date, amount, and client affected by each credit and debit, and the balance in the account, respondent violated Prof. Cond. R. 1.15(a)(3);
  - c. By commingling personal funds in his client trust account, respondent violated Prof. Cond. R. 1.15(a); and

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<sup>4</sup> \$12,448.36-\$11,900-\$72 in bank charges for the two returned checks leave a balance of \$476.36.

- d. By misappropriating Lemle's funds along with at least \$11,972, respondent violated Prof. Cond. R. 8.4(c) [it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, misrepresentation].

**COUNT FOUR**  
**Investigation by Relator**

37. On November 20, 2015, relator sent a Letter of Inquiry ("LOI") to respondent, regarding the overdraft of his IOLTA, by certified mail to the employer address that he registered with the Supreme Court's Office of Attorney Services, i.e., 117 Broad Street, 3<sup>rd</sup> Floor, Cincinnati, OH 45202. The LOI was delivered to respondent's employer address on November 12, 2015. The LOI required that a response from respondent be received by relator no later than November 24, 2015.
38. On Wednesday, November 25, 2015 at 5:04 p.m., the day before Thanksgiving, relator received from respondent a facsimile requesting an extension of time to respond to the LOI.
39. On Monday, November 30, 2015, respondent called relator.
40. On December 7, 2015, relator received a response to the LOI; however, the response failed to include most of the information requested in the LOI, including but not limited to, individual client ledgers, fee agreements, a ledger reflecting personal funds, copies of correspondence to clients whose funds were affected by the overdraft, and proof that his IOLTA was restored to the proper pre-overdraft balance.
41. On January 7, 2016, relator sent to respondent a letter by first class mail to respondent's employer address. The letter required respondent to provide a written response to various additional questions and provide copies of specified documents. The letter also required that the response be postmarked no later than January 21, 2016. Respondent failed to respond to the letter.

42. On January 29, 2016, relator sent to respondent a letter, by certified mail, return receipt requested, to respondent's employer address. The letter was delivered on February 1, 2016. The letter required respondent to provide an immediate response to relator's January 7, 2016 letter.
43. On February 5, 2016, respondent called relator and requested an extension of time to respond to the January 7, 2016 and January 29, 2016 letters. At respondent's request, relator granted an extension of time until February 15, 2016.
44. On February 10, 2016, relator received a facsimile from respondent confirming the extension of time. Respondent failed to submit a response to relator by February 15, 2016.
45. On February 25, 2016, relator emailed respondent regarding his outstanding response to the January 7, 2016 and January 29, 2016 letters. Respondent replied on February 26, 2016 and promised to submit his outstanding response to relator by March 1, 2016. Due to his mother's health, relator provided respondent until March 25, 2016 to submit his outstanding response. Respondent failed to submit his outstanding response by that date.
46. On March 28, 2015, relator received a facsimile from respondent requesting a few additional days to submit his outstanding response due to the passing of his mother. Relator responded by email and granted respondent an extension until April 5, 2016 to submit his outstanding response.
47. On April 5, 2016, respondent submitted his outstanding response to relator's January 7, 2016 and January 29, 2016 letters.
48. On April 6, 2016, relator sent a Letter of Inquiry ("Newbill LOI") to respondent, regarding Newbill's grievance, by certified mail, return receipt requested, to the employer address that he registered with the Supreme Court's Office of Attorney Services, i.e., 117

Broad Street, 3<sup>rd</sup> Floor, Cincinnati, OH 45202. The Newbill LOI was “unclaimed” and returned to relator by the U.S. Postal Service.

49. On April 6, 2016, relator sent a Letter of Inquiry (“Marshall LOI”) to respondent, regarding Marshall’s grievance, by certified mail, return receipt requested, to the employer address that he registered with the Supreme Court’s Office of Attorney Services, i.e., 117 Broad Street, 3rd Floor, Cincinnati, OH 45202. The Marshall LOI was “unclaimed” and returned to relator by the U.S. Postal Service.
50. On May 5, 2016, respondent emailed relator and inquired whether relator had sent him certified mail. Respondent’s email stated that he “was recently out-of-town having returned this morning to a ‘final redelivery notice’ from [the] USPS.”
51. On May 6, 2016, relator sent respondent a letter regarding the Newbill LOI and the Marshall LOI, by certified mail, return receipt requested, to his home address and by email. The letter was delivered to respondent’s home address on May 9, 2016. The letter required respondent to provide a response on or before May 13, 2016.
52. On Saturday, May 14, 2016, respondent sent relator a two-page facsimile, which included a cover sheet and only one page of what appeared to be a multi-page response.
53. On May 16, 2016, relator emailed respondent regarding the missing pages. Respondent failed to respond to the email.
54. On May 24, 2016, respondent emailed relator regarding his response to the Newbill LOI and the Marshall LOI. Relator responded by email and attached relator’s May 16, 2016 email regarding the missing pages. Respondent failed to respond to the email.
55. On May 31, 2016, respondent emailed relator again regarding his response to the Newbill LOI and the Marshall LOI. Relator responded by email requesting that respondent call at

his earliest convenience. Respondent failed to respond to the email, either by email or by calling relator as requested.

56. On June 1, 2016, relator called and left a voice mail message for respondent and relator sent respondent a facsimile regarding the missing pages. Respondent failed to respond to either the voice mail message or the facsimile.

57. On June 22, 2016, relator called respondent but was unable to leave a voice mail message because his voice mailbox was “full.” Respondent failed to respond to the call.

58. On July 22, 2016, relator called respondent but was unable to leave a voice mail message because his voice mailbox was “full.” Respondent failed to respond to the call.

59. On August 24, 2016, relator personally delivered the following documents to respondent’s home address:

- a. A letter regarding relator’s attempts to contact respondent about his outstanding and overdue responses;
- b. A LOI regarding another grievance; and
- c. A subpoena compelling his attendance at a deposition on September 22, 2016 at 9:30 a.m. at the Cincinnati Bar Association, 225 E. 6<sup>th</sup> Street, Cincinnati, OH 45202.

The subpoena was left with a family member who reported that respondent was not home.

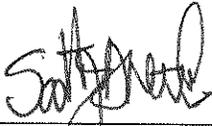
60. Respondent failed to appear for the September 22, 2016 deposition and failed to notify relator that he was unable to appear or that he did not intend to appear.

61. Respondent’s conduct, as alleged 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:

- a. By knowingly failing to respond to demands for information by relator, respondent violated Prof. Cond. R. 8.1(b); and
- b. By neglecting or refusing to assist in relator's disciplinary investigation of the allegations contained in this Complaint, respondent violated Gov. Bar R. V(9)(G).

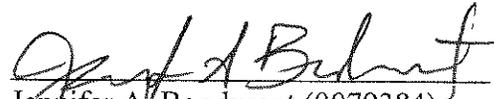
### CONCLUSION

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



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Scott J. Drexel (0091467)  
Disciplinary Counsel



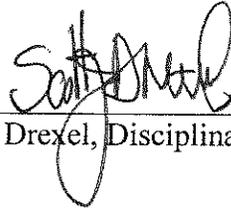
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## CERTIFICATE

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: October 28, 2016



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Scott J. Drexel, Disciplinary Counsel