

ORIGINAL

IN THE
SUPREME COURT OF OHIO

Columbus Bar Association
175 South Third Street, S-1100
Columbus, Ohio 43215-5193,
Relator,

vs.

Javier Horacio Armengau (0069776)
98 Hamilton Park
Columbus, Ohio 43203,
Respondent.

Case No. 14-0997

Original Matter Related to the Practice of Law
Authorized by S.Ct. Prac. R. Section 13.

**RELATOR'S MOTION FOR IMMEDIATE
INTERIM REMEDIAL SUSPENSION
UNDER GOV.BAR R.V(5a) & S.CT.PRAC. R. 4.01(C),
AND FOR APPOINTMENT OF COUNSEL UNDER GOV.BAR R. V(8)(F)**

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INTRODUCTION

Relator moves this Court for an order imposing an immediate interim remedial suspension of Javier Armengau's privilege of practicing law in Ohio because he has engaged -- and continues to engage -- in serious misconduct that is harmful to his clients, the public, and the administration of justice. His actions repeatedly demonstrate his disregard of the Rules of Professional Conduct, the rulings of courts, and the legal rights of his clients. He is belligerent and condescending to those he represents and dismissive of the advice and counsel of colleagues and judges. He has demonstrated a pattern of misusing his trust account and failing to keep records to ensure that his clients' money is safeguarded and not comingled with his own money. He has used misleading advertising to secure clients.

Moreover, he has recently been indicted for, and is awaiting trial on, eighteen felony sexual crimes he is alleged to have committed against a number of his female clients and others.

Armengau was admitted to the practice of law in Ohio in November 1998. He is a solo practitioner. He primarily practices criminal law in Franklin County and other Ohio counties. He represents numerous clients in state and federal courts.

Previously this Court issued a public reprimand to Armengau. *Disciplinary Counsel v. Armengau*, 99 Ohio St.3d 55, 2003-Ohio-2465. The conduct at issue in that proceeding was much the same as many of the matters that are raised here. In a criminal case, Armengau had engaged in a surreptitious and deceitful pre-trial investigation of prosecution witnesses, and

during cross examination of the witnesses, he repeatedly asserted his personal knowledge of facts at issue based on his own observations. The judge strongly admonished Armengau for doing so, but he continued undeterred. In another criminal case, he blatantly ignored a judge's pre-trial order limiting the scope of cross examination of a confidential police informant. In that matter, despite several warnings by the judge, he continued to violate the court's order and ultimately was held in contempt of court.

In relator's opinion, Armengau's professional and personal misconduct described in this motion is so egregious as to necessitate the imposition of an interim remedial suspension of his license to practice law. Moreover, relator submits that the "interests of justice" justify immediate action on this matter pursuant to S.Ct.Prac. R. 4.01(C).

Finally, relator asks that should the Court issue an interim remedial suspension, it will also authorize the appointment of an attorney to handle Armengau's pending matters and protect his client's interests under the provisions of Gov.Bar R.V(8)(F).

NOTICE TO ARMENGAU

Armengau is fully aware of the various matters that form the basis of this Motion. He has been provided with copies of the grievances that have been filed against him.

Relator's Bar Counsel, on June 13, 2014, hand delivered to Javier Armengau, Esq. and his counsel Fredrick Benton, Esq. at 98 Hamilton Park, Columbus, Ohio, a Notice of Relator's Intent to file this Motion for Interim Remedial Suspension on or after June 16, 2014, as well as a copy of the Motion and its Exhibits.

MEMORANDUM IN SUPPORT OF RELATOR'S MOTION

Matter A: Johnson and Rhodes

Overview:

Beginning in 2010, both federal and state law enforcement officials engaged in a joint investigation into narcotics trafficking involving a number of suspects in central Ohio. Included in this group of suspects was a person who became a confidential informant (referred to here as "C.I.") Also in the group were Michael P. Johnson and Antwane Rhodes.

Attorney Armengau first represented C.I. in federal court proceedings arising out of the joint investigation. On behalf of this client, Armengau negotiated a plea agreement under the terms of which, C.I. agreed to cooperate fully and become a confidential informant (CI) as to any drug activity he had knowledge of taking place in the Southern District of Ohio including Franklin County. C.I. and Armengau signed that agreement. Although the agreement was dated and signed on December 2, 2009, it was not filed with the court until August 12, 2010. Armengau was C.I.'s attorney during that entire period and through his subsequent sentencing.

Concurrently, despite a major and obvious conflict, Armengau undertook the representation of both Johnson and Rhodes, even though he certainly knew C.I. was heavily involved in the same drug conspiracy and would be obligated to cooperate with law enforcement and prosecutors against Johnson and Rhodes. Both the state prosecutors (in the Johnson case) and federal prosecutors (in the Rhodes case) recognized the conflict and repeatedly warned Armengau he needed to remove himself as an attorney for these two defendants. Armengau refused to withdraw, to the detriment of both Johnson and Rhodes.

Additionally, Armengau received substantial legal fees from Rhodes and Johnson at a time he knew, or should have known, he had a serious conflict of interest and he could not possibly remain on the cases and properly represent these clients. Predictably, he was eventually

removed as counsel in both cases. Nevertheless, he refused to return any of the fees paid by these clients.

After Armengau was removed as Johnson's counsel, he visited Johnson in jail by falsely representing himself as Johnson's attorney. He did this knowing Johnson had other counsel and without notifying that counsel. In the interview, he elicited information that he then passed on to C.I. in an attempt to color C.I.'s testimony in an upcoming proceeding.

Michael P. Johnson:

On August 9, 2012, Michael P. Johnson was indicted in state court on multiple counts of Trafficking in Drugs and one count of Engaging in a Pattern of Organized Corrupt Activity. Allegedly, he was part of the conspiracy referred to above involving 47 other co-defendants. Johnson retained Armengau to represent him on this Indictment. To a large extent, the state's case depended on testimony of co-defendants and cooperating individuals, including C.I., for whom Armengau negotiated the above-referenced plea deal with the government. Armengau was still C.I.'s counsel at the time he accepted Johnson's case.

In entering an appearance in Johnson's case, Armengau has to have known his client, C.I., would be a critical witness in Johnson's case. After his appearance for Johnson, Franklin County Prosecutors repeatedly advised Armengau to remove himself from the case due to a conflict of interest. Notes of relator's interview with the Franklin County Prosecutors are attached as [Mot. Ex. A-1]. Nevertheless, Armengau refused to withdraw, and the prosecutors were forced to file a Motion to Disqualify.

Judge Schneider held an evidentiary hearing on the Motion. The transcript and exhibits of the evidentiary hearing before Judge Schneider were sealed. At relator's request, Judge Schneider issued an Order under which relator was given access copies of the transcript and

items presented at the hearing but requiring relator to keep these materials sealed. [Mot. Ex. A-2] Judge Schneider subsequently authorized relator to file a copy of the materials with the Supreme Court for purposes of this Motion but has asked that they be filed under seal. They will be tendered to the Court with a Motion requesting that they be filed as a sealed document for in camera examination by members of the Court. They are designated [Motion Ex. A-3].

At the evidentiary hearing before Judge Schneider, it was undisputed that Armengau represented C.I. and negotiated the Plea Agreement for him in federal court. The Plea Agreement required C.I. to cooperate with law enforcement and testify, if necessary. Prosecutors stated unequivocally that C.I. was to be a witness in the Johnson case. Moreover, C.I.'s Affidavit was presented to Judge Schneider. According to that Affidavit, C.I. stated Armengau advised him that he did not have to testify in the Michael P. Johnson case because it was not part of his federal Plea Agreement. In this affidavit, C.I. asserted that Armengau had asked him whether his conversations with Johnson had been recorded by law enforcement authorities. C.I. responded that they had not. Armengau subsequently used this information to suggest to Johnson that he need not be concerned about his testimony being contradicted by a recording.

Judge Schneider removed Armengau from the case as of November 2012. Attorney Kirk McVay was then appointed to defend Johnson. Armengau filed an appeal of the removal order to the Tenth District Court of Appeals, which affirmed the trial court on April 25, 2013. [Mot. Ex. A-4].

The case against Johnson went to trial on October 23, 2013. Jail visitation records show Armengau went to the jail in October 13, 2013, to see Michael Johnson. [Mot. Ex. A-5]. That would have been 10 days before his trial was to start. Armengau signed into the jail as the

attorney for Michael Johnson. In other words, Armengau made an attorney visit with Michael Johnson knowing that he was no longer Johnson's attorney and that his former client had other counsel. His counsel McVay had not authorized Armengau's visit.

In his response to Relator's inquiry into the ethical issues raised in this matter, Armengau blames prosecutors for "unethical" tactics. He ends by saying that the "Court of Appeals affirmed the decision [of Judge Schneider]; however, sadly through their own ignorance, the Court made assumptions that were incorrect. Sadly the State can always fabricate an excuse and manipulate the system to have an attorney removed." [Mot. Ex. A-6]

Antwane Rhodes:

In March 2011, Antwane Rhodes became aware he was under investigation. He hired Javier Armengau to represent him. Armengau quoted a fee of \$25,000 but did not present a written contract or engagement letter. Armengau admitted that he received \$23,000 in legal fees. When Rhodes hired Armengau to represent him, the Federal Grand Jury had begun its investigation of Rhodes and others. It was during this critical time that the co-defendant, C.I., who was heavily involved in the same conspiracy, was proffering regularly with the government, providing information about others who were also involved. According to the U.S. Attorneys, there was over a year of covert investigation that became overt in March 2011, with the execution of a search warrant at several locations, including the residence of Antwane Rhodes. Armengau's client at that time C.I., provided the information that led to these searches.

According to AUSA Kevin Kelley, he specifically told Armengau he had a conflict in his representation of Rhodes because of his representation of C.I., who had been cooperating in the investigation of Rhodes. Notes of relator's interview with the Assistant U.S. Attorney are attached as [Mot. Ex. A-7]. Kelley told Armengau that information obtained from C.I. was

utilized in the federal search warrant that had been obtained for Rhodes' residence. The prosecutors warned Armengau that C.I. was a potential witness in any subsequent criminal case involving Rhodes. Clearly, C.I. was fulfilling the agreement with the government that Armengau had negotiated, and there was no way he could effectively represent Rhodes with such a conflict. Armengau disagreed with Kelley, stating that if Rhodes chose to plead, any potential conflict would be limited. However, Rhodes decided against cooperating.

Rhodes was indicted on June 1, 2012, and arrested on June 4, 2012. Rhodes fired Armengau, and hired Attorney Jon Paul Rion. Rion entered a plea of guilty on behalf of Rhodes, and then on February 11, 2013, filed a Motion to Compel to force the Prosecutors to recommend a downward depart because Rhodes' previous counsel, Armengau, had precluded the defendant from receiving the benefit of a downward departure Motion pursuant to 18 U.S.C. 3553(E). [Mot. Ex. A-8]. Rion further contended that Armengau specifically denied to Rhodes that the co-defendant (C.I.) was cooperating with the government against him. Rhodes relied on this misinformation in gauging the strength of the government's case, and he decided not to cooperate with prosecutors under the mistaken belief that the co-defendant, C.I., was not providing the government with information. Because he chose not cooperate at that time, he lost the benefit of a substantial assistance motion. Judge Watson overruled the motion to compel, and Rhodes was denied a downward departure from sentencing guidelines that would have been available had Armengau not misled him.

Armengau knew that his client C.I. was a critical witness against Rhodes before he took Rhodes' case, and he received a substantial retainer to do so. He knew, or should have foreseen, that it was highly likely that he would be disqualified from this representation. Nevertheless, he did not return any of Rhodes' legal fees after he was removed from the case.

Armengau's own acts and failures to act in this matter violated numerous provisions of the Rules of Professional Conduct including, at least, Prof.Cond.R. 1.1 (competence); Prof.Cond.R. 1.2 (scope of Representation); Prof.Cond.R. 1.3 (diligence); Prof.Cond.R. 1.5 (excessive fees); Prof.Cond.R. 1.7(a)(1) & (2) (conflict of interest); Prof.Cond.R. 1.9 (duties to former clients); and Prof.Cond.R. 3.3 (candor toward a tribunal).

Matter B: Pack and Stephenson

Not chastened by the decisions of two courts in the Johnson case, Armengau recently repeated the same ethical lapses in another set of cases. Once again, two courts had to tell him that a conflict of interest required his withdrawal from a case.

In December 2012, Casandra Pack was charged with misdemeanor drug possession arising out of a search pursuant to a traffic stop. Beau Stephenson, a passenger in the car driven by Pack, was found to be in possession of a syringe and was charged with misdemeanor possession of paraphernalia.

On February 27, 2013 Armengau entered an appearance for Pack on this misdemeanor matter. Sixteen days earlier on February 11, 2013, however, Armengau had taken up representation of Stephenson after he was indicted for aggravated robbery, kidnapping, aggravated murder, attempted murder, tampering with evidence and other charges arising out of the homicide of Christopher Manley.

Ultimately, law enforcement officials learned that Pack had a significant role in the robbery and murder by Stephenson. They met with both Stephenson and Pack regarding this matter. The prosecutors then moved to have Armengau disqualified as counsel for Stephenson in the murder case due to his representation of Pack in the unrelated drug case on the grounds that

she would be a necessary material witness in the murder case. Only at that point, did Armengau withdraw from Pack's drug case in a belated attempt keep the Stephenson murder case.

The trial court sustained the disqualification motion. In a subsequent letter to Relator, Armengau characterized the court's decision thusly: "Not surprisingly, Judge Kim Brown sided with the state. In so doing, she disregarded the facts and simply accepted the State's position." [Mot. Ex B-1]. Not surprisingly, Armengau appealed the decision.

The Tenth District Court of Appeals rendered a Decision on February 25, 2014, affirming the disqualification of Armengau as Stephenson's counsel. [Hrg.Ex. B-2]. The decision carefully outlines the law pertaining to the "successive conflict" that continued to exist after Armengau withdrew from Pack's drug case. The court concludes with a quotation from a federal case: "When an attorney attempts to represent his client free of compromising loyalties, and at the same time preserve the confidences communicated by a present or former client during representation in the same or substantially related matter, a conflict arises." *U.S. v. Agosto*, 675 F.2d 965, 971 (8th Cir.1982).

Once again, Armengau, in his letter to Relator about this matter, characterizes the decision of the Court of Appeals as one born out of the "ignorance" and "assumptions that were incorrect."

Matter C: Martin

Rashad Martin was sentenced in March 2006 to ten years in prison. Under the terms of ORC§2929.20 he was not eligible for judicial release. In April 2012, Martin, through his wife Leslita Martin, requested that Armengau file a motion for judicial release. Armengau requested

and received a fee of \$1,000. He provided no written fee agreement but told Ms. Martin that, if the Motion was denied as premature, he would return the fee.

Armengau filed for Judicial Release but it was denied in May 2012 because Mr. Martin was not yet eligible to file, as Armengau knew or should have known would be the case. Thereafter, Ms. Martin repeatedly attempted get the \$1,000 fee returned, but Armengau ignored her. She then filed a grievance with ODC, which forwarded it to relator [Mot. Ex. C-1].

Armengau either failed to review the current law regarding eligibility for filing such motions or ignored it and filed what amounted to a frivolous motion.

Ms. Martin has informed relator that that she has not received from Armengau a written statement, a refund, or any explanation as to when he would refile the motion. Her affidavit is attached. [Mot.Ex. C-2].

In his response of 8/5/13 to this grievance Armengau indicated that he did say he would refund the fee or refile at a later date (notwithstanding the fact that he cannot do the latter for several years hence). He claims that his client directed him not to communicate with his wife. He does not say that he has returned or plans to return any part of the funds in question to his client or anyone else on the client's behalf. [Mot. Ex. C-3].

Matter D: Maschke

George Maschke hired Armengau to file an Appeal of his conviction based on a decision handed down in a suppression hearing. Armengau received flat nonrefundable fee of \$15,000 for the appeal. Although Armengau initiated the appeal, the Court of Appeals dismissed the case because Armengau did not order or file a transcript of proceedings of the suppression hearing. Armengau, having accomplished nothing for his client, then stopped representing Maschke on

the appeal. Armengau did not notify Maschke of the dismissal of the appeal; the client learned about it weeks later by searching court records in the prison library. Maschke requested that Armengau return his files and refund the fee. Armengau did neither.

Maschke, on his own, filed a motion with the court on the basis of incompetent counsel. The court granted the motion and reopened its prior order. It allowed Mr. Maschke *pro se* to file an argument on the suppression issue and to order a copy of the transcript of the suppression hearing. Mr. Maschke's grievance to Relator is attached. [Mot.Ex. D-1].

When Armengau was contacted by relator about this matter, he claimed that the case was not a winner. He also indicated that Bryan Pritikin, in his office, handled all the matters; however, Pritikin, told relator that it was Armengau's obligation to obtain the transcript. Pritikin was only given the task of writing an appellant argument using the transcript. He did so and handed the brief and the transcript to Armengau for him to file.

Armengau says that he went forward with the appeal because he did not find out it was not a winner until deep into the case. "My assessment was that we had an unwinnable case." He says he concluded that after reviewing all the evidence that, "even if the chemical test were [sic. suppressed [it still]] would have resulted in conviction." Having made that assessment, he decided to have Pritikin finish the case, but Pritikin did not present the transcript to the court. Armengau does not explain why he decided to go forward on an appeal that would not have benefited the client. He stated that, "I do not believe that at the end of the day anything would have changed the outcome." Armengau's letter to relator is attached [Mot. Ex. D-2]

Not filing a transcript was a failure of Armengau -- the counsel of record -- and that failure forced Maschke, on his own, to reopen the case. This course of conduct violated Prof.Cond.R. 1.1 (competence), Prof.Cond.R. 1.3 (diligence) and Prof.Cond.R. 1.4

(communication). He also collected – and has not returned – a clearly excessive fee in violation of Prof.Cond.R. 1.5.

Again, Armengau followed a pattern of not paying close attention to his cases and blaming others for his own mistakes.

Matter E: Fee Issues

In a written response to relator, Armengau indicated that he does not use fee agreements, does not have a trust account ledger and does not carry a balance on the account and does not otherwise reconcile his IOLTA. [Mot. Ex. E-1]. Armengau has stated that he charges clients a fee and takes the money in advance in the belief that the money is his as soon as he collects it. However, he has produced no records showing that when he receives such flat fees, he has “simultaneously advised in *writing* that if [he] does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation. . . ,” as required by Prof.Cond.R. 1.5(d)(3).

He claims that he has refunded fees in cases in which he did not earn the fee, but he has not been able to point out any case in which he has given a refund.

In other fee dispute matters, Armengau engaged in fee arbitrations requested by clients pursuant to Gov.Bar R. V(4)(G), but subsequently failed to timely return the fees the arbitrators determined that he owed. For example, in May 2012, Leathia Pinkney retained Armengau to represent her son, Fred Cloud, who was incarcerated. Ms. Pinkney paid Armengau \$9,200 of his flat fee of \$15,000. There was no written fee agreement. It was Ms. Pinkney’s understanding that for the \$15,000 flat fee, Armengau would handle Mr. Cloud’s federal criminal appeal and any related matters.

Armengau never filed the appeal on Mr. Cloud's behalf. On March 4, 2013, Ms. Pinkney requested a refund from Armengau. After receiving no refund, she and Mr. Cloud submitted a request for fee arbitration. [Mot. Ex. E-2]. The arbitration hearing took place on November 25, 2013. The arbitration panel determined that Armengau was not reasonably entitled to any fees in the matter and awarded Ms. Pinkney and Mr. Cloud a full refund of \$9,200. [Mot. Ex. E-3]. The arbitration award was delivered to Armengau on November 26, 2013 [Mot. Ex. E-4]. Under the terms of the Arbitration Agreement, he was obligated to comply with the award within ten (10) days of receiving it. [Mot. Ex. E-5]. Armengau did not pay the award by December 5, 2013, as required. Weeks later, Ms. Pinkney received a check for \$2,500 enclosed with a letter dated December 20, 2013, from Armengau. In the letter, Armengau instructed Ms. Pinkney not to cash the check until after December 25, 2013. [Mot. Ex. E-6]. Ms. Pinkney contacted relator in early February 2014 because she had received nothing further from Armengau. Armengau has since made additional payments to Ms. Pinkney, but as of June 4, 2014, still owes approximately \$1,700. Ms. Pinkney's affidavit is attached. [Mot. Ex. E-7].

These incidents highlight Armengau's pattern and practice of charging a fee without a written agreement, keeping the entire fee whether or not he did the work contemplated and ignoring the clients' requests for an accounting and/or a refund. He continues to charge fees without a written agreements and without the required notice regarding refunds. Thus, he continues to ignore the dictates of Prof.Cond.R. 1.5 to the detriment of the public.

Matter F: Trust Account Issues

Relator has very recently obtained a complete set of Armengau's trust account records covering the period from January 1, 2010 to April 30, 2014. These records are voluminous, but they have been scanned. They will be provided to the Court upon request.

Although a complete forensic analysis of the records has not yet been undertaken, a preliminary review reveals serious, long-term anomalies in Armengau's use and management of his Interest On Lawyers' Trust Account (IOLTA) bank account. This is just a sampling.

In the month August 2012, when Javier received and deposited in his IOLTA a \$43,499.40 check for work done by court appointment under the Criminal Justice Act (CJA). His IOLTA beginning balance that month was \$206.25. He had deposits and credits in the amount of \$63,199.63 (including the CJA check). He had debits of \$62,273.24 and an ending balance of \$1,132.64. If the CJA check was for work already performed, it should never have been deposited into his IOLTA account. If the CJA check had not been in the IOLTA, his ending balance that month would have been a deficit of \$42,366. This means that he comingled his personal funds with client trust money in violation of Prof.Cond.R. 1.15(a). The inescapable conclusion from this is that he must have misappropriated client funds in prior months and was comingling his own money as a subterfuge to keep a positive balance in the account. This dishonesty constitutes a violation of Prof.Cond.R. 8.4(c). The bank records supporting this defalcation are attached. [Mot. Ex. F-1].

On June 18, 2013, a check in the amount of \$5,393, from Arizona State University, and made payable to Terence Armengau, was deposited into Armengau's IOLTA. The address on the check for Terence Armengau is a residence owned by Armengau's former spouse. It is assumed that Terence Armengau is a relative, and not a client, of Armengau. The ending

balance for Armengau's IOLTA for June 2013 was \$4,549.34. Therefore, without the infusion of non-client funds, Armengau's IOLTA would have had a negative balance by the end of the month.

On July 19, 2013, check number 221 in the amount of \$2,500, was deposited into Armengau's IOLTA. On July 22, 2013, check number 211 in the amount of \$1,500 was deposited into Armengau's IOLTA. Both checks were drawn from Armengau's personal Chase bank account ending in 6602. The ending balance for Armengau's IOLTA for July 2013 was \$2,349.34. Therefore, without the infusion of Armengau's personal funds, his IOLTA would have had a negative balance at the end of the month.

On August 29, 2013, a check from Bowen & Keck Law, LLC, in the amount of \$15,000, was deposited into Armengau's IOLTA. The memo on the check indicates that the funds are a refund for the Lytle appeal. A review of Armengau's IOLTA through April 30, 2014, show that this refund has not been returned to Armengau's client. In the meantime, Armengau's IOLTA balance has only rarely exceeded \$15,000.

On September 24, 2013, a check from the Marion County Auditor in the amount of \$5,334 was deposited into Armengau's IOLTA. It can only be concluded that this payment is for court appointment work. As such, it has been earned and should never have been deposited into Armengau's IOLTA. The ending balance for Armengau's IOLTA for September 2013 was \$38.19. Therefore, without the infusion of Armengau's earned fees, his IOLTA would have had a negative balance at the end of the month.

On November 6, 2013, a check from the Franklin County Auditor in the amount of \$8,173 was deposited into Armengau's IOLTA. It can only be concluded that this payment is for court appointment work. As such, it has been earned and should never have been deposited into

Armengau's IOLTA. The ending balance for Armengau's IOLTA for November 2013 was \$1,687.75. Therefore, without the infusion of Armengau's earned fees, his IOLTA would have had a negative balance at the end of the month. Bank records in support these more recent misappropriations are attached collectively. [Mot. Ex. F-2].

These inappropriate uses of IOLTA funds added to the fact that Armengau, by his own admissions, does not maintain ledgers or reconciliation records of client funds constitute a clear sign that he is at least reckless, if not worse, in his handling money he is not entitled to. It becomes all the more important that he immediately be stopped from continuing these unprofessional practices until a full reckoning of the ethics of his practice can be assessed by the Board of Commissioners and this Court.

Matter G: Client Security Fund Claims

There are currently four claims by former clients pending against Armengau with the Client Security Fund. They total \$60,200. Confirmation of this information by the Secretary of the Fund, Janet Green Marbley is attached. [Mot. Ex. G-1].

Matter H: False Advertising

Armengau's website is now, and has been in the past, misleading in several respects. As an initial matter, it uses the web address www.armengau-and-associates.com, and the masthead on the first page of the home screen is captioned "Welcome to Armengau & Associates." At www.armengau-and-associates.com/attorneys/, the top of page 1 reads, "The Armengau & Associates Legal Team." In the text of the site Armengau refers to "Our experienced attorneys. . . ." In fact, he has no associate lawyers. He lists only one other individual at the firm as an "Investigator/Assistant."

Copies of the “armengau-and-associates.com” home screen and click-on screens armengau-and-associates.com/attorneys/ and “armengau-and-associates.com/practice-areas/” as they appeared on June 3, 2014, are attached. [Mot. Ex. H-1]

This Court has determined that false representations of this nature are misleading and a violation of Prof.Cond.R. 7.5. See *Disciplinary Counsel v. McCord*, 121 Ohio St.3d 497, 2009-Ohio-1517, ¶ 30-32; *Disciplinary Counsel v. Character*, 129 Ohio St.3d 60, 2011-Ohio-2902, ¶ 54-55.

Additionally, the website proclaims “Our Specializations: Criminal Defense . . . , Wrongful Death . . . Other Legal Fields . . . Family law, Civil litigation, Serous Personal Injury Law. In fact he has not been certified as “specialist” in any of these categories.

Ohio Rule of Professional Conduct R. 7.4(e) prohibits a lawyer from stating that he is a specialist in a particular area unless he has been certified as a “specialist” by an organization approved by the Supreme Court Commission on Certification of Attorneys as Specialists and the name of the certifying organization is clearly identified in the communication. The Certification Commission has accredited no organization that provides a certification program for specialization in the area of “wrongful death.” Criminal Law Trial Advocacy is certified through the National Board of Legal Specialty Certification, but Armengau’s website did not identify this or any other recognized certifying agency.

Finally, Armengau’s website and letterhead touts addresses in Illinois, Florida, Arizona New York and California giving the misleading implication that he is a lawyer in those jurisdictions, which, in fact, he is not. In a letter to relator he contends that he has “multiple clients, mostly federal, *from* each of those areas [emphasis supplied]. He further points out that

he does not actually say that he is admitted in the states. [Mot. Ex. H-2]. His website clearly violates Prof.Cond.R. 7.4(e).

Matter I: The Criminal Indictment

Melissa Schiffel was appointed as special prosecutor in the case of *State of Ohio v. Javier Armengau* in the Franklin County Court of Common Pleas (case #13 CR 2217). The matter involves allegations of sexual assault, kidnaping, public indecency, gross sexual imposition, rape (with specifications)¹, and sexual battery on five women, two of whom were Armengau's former clients. Armengau was indicted on eighteen counts on May 20, 2013. [Mot. Ex. I-1] After Armengau's indictment, the Columbus Police Department in January 2014, forwarded information to Ms. Schiffel about another possible case of sexual assault. She followed up on that information by asking the Ohio Bureau of Criminal Investigation (BCI) to investigate. Special Agent Greg Burri was assigned to investigate the matter. He interviewed Ms. Makayla Horn on February 12, 2014, and her mother, Lisa Horn-Corp on February 13, 2014. He recorded his interviews and prepared summaries of them.

On February 21, 2014, Ms. Schiffel filed a grievance against Armengau with the Office of Disciplinary Counsel. [Mot. Ex. I-2]. ODC forwarded that grievance to relator on March 5, 2014. In her grievance, Ms. Schiffel summarized some of her own findings and included a copy of the Armengau Indictment as well as copies of Burri's reports. These reports are attached as [Mot. Ex. I-3].

Special Prosecutor Schiffel found that Armengau had represented Ms. Makayla Horn in various criminal matters and was her lawyer since she turned 16 years of age and that he represented her at that time in a juvenile court matter. She states that *while he represented her in*

¹ In a Decision entered on May 30, 2014, Judge Fais dismissed the "Sexual Violent Predator Specifications" with respect to six rape charges in the Indictment. That Decision is included in Motion Exhibit I-1 with the Indictment

various matters, they began a sexual relationship, most likely starting when she was 17. He continued to represent her in criminal matters for 12 years. Ms. Horn is now in her late twenties. She says she and Armengau had an “off again/on again” sexual relationship over the 12 year period including times he represented her as a lawyer. Ms. Schiffel’ s Affidavit attesting to her grievance is attached. [Mot. Ex. I-4].

According to BCI Investigator Burri’s second report, Armengau also had a consensual sexual relationship with Ms. Horn’s mother Lisa Horn. She told Burri that Armengau represented her in a divorce. She also said that all of Armengau’s legal work for her daughter was by court appointment, so he not was required to charge her a fee. She said Armengau “would give Makayla money and took her on trips to Lake Erie.” It should be noted, however, that the matters discovered on the investigation regarding Makalya Horn have not been included in the Indictment or charged separately to date.

Relator has received other grievances from female clients of Armengau regarding inappropriate sexual conduct; however it has held off contacting any of the potential witnesses in the criminal case against Armengau in order to not interfere with or taint the criminal investigation.

Relator is, of course mindful of the fact that Armengau is innocent of criminal charges until proven guilty and understands that he intends to defend himself against these charges, as is his right. However, based on the information supplied by Special Prosecutor Melissa Schiffel and the documentation in BCI Agent Burri’s report, relator believes there is strong enough evidence to conclude that Armengau’s approach to the practice of law and his personal life poses a present danger to the community and the legal profession during the interim between the filing

of a Complaint with the Board of Commissioners and the opportunity for this Court to act on whatever Findings, Conclusions and Recommendations the Board may make.

In addition to the potential violations of the Rules of Professional Conduct previously cited, these allegations raise other ethical issues. These include violation of Prof.Cond.R. 1.7(a)(2) (conflict between interest of a client and the lawyers own personal interests); Prof.Cond.R. 7.2 (b) (gifts to clients); Prof.Cond.R. 8.4(b) (committing an illegal act that reflects adversely on lawyer's trustworthiness); Prof.Cond.R. 8.4(c) (conduct involving fraud or deceit); and, Prof.Cond.R. 8.4(h) (conduct adversely reflecting on fitness to practice).

Matter J: Lack of Professionalism and Degradation of Clients

This Court created a Commission Professionalism in 1992 to “. . . advance the highest standards of integrity and honor among members of the profession.” *Professional Ideals for Ohio Lawyers and Judges* On the recommendation of the Commission, the Court adopted *A Statement on Professionalism, A Lawyer's Creed* and *A Lawyer's Aspirational Ideals*. Among the *Ideals* is the statement “As to clients, I shall aspire to maintain the sympathetic detachment that permits objective and independent advice to clients.” *Ideals* (b)(3).

While the *Professional Ideals* and their component parts were not intended to be a set of “additional bases for discipline,” they express professional norms that are closely related to an individual's “fitness to practice.” The *Ideal* recited above is pertinent to Armangau's fitness.

As other counts of this Motion have revealed, Armangau has a proclivity to be disrespectful of judges (e.g. referring to their “ignorance” and making “incorrect assumptions”) when he is displeased with their rulings. His communications with and about his clients is certainly no less tendentious.

Two examples serve to demonstrate Amengau's inability to "maintain the sympathetic detachment that permits objective and independent advice to clients." In both cases he was attempting to persuade his client to accept a plea offer – which of course may be the lawyer's professional obligation – but he clearly was neither detached nor sympathetic in his approach.

While representing an incarcerated client, Ray Bertuzzi, Armengau sent his client a letter in which he sarcastically tells the client that "through your brilliance and keen ability to develop your defense, you have strengthened the prosecutor's case." He goes on to tell the client that it is a certainty that "ultimately you will end up rotting in prison." [Mot. Ex. J-1].²

In a second case he writes to his client, Harry Brown, telling him "my obligation is to represent you – not tolerate you." He calls the client "delusional," and tells him that, "If you had any ability to be truthful and honest, you wouldn't be in the boat you are inWhat you say means nothing. You are a very dishonest person. . . .You are going to sink like the Titanic" He ends by saying "Have a wonderful day." [Mot. Ex. J-2]

To be sure, practitioners of criminal law sometimes find themselves representing unpleasant and unreasonable clients. That should not, however, entitle a lawyer to descend to the client's level of discourse, mentality and morality. Armengau apparently feels otherwise. In his response to relator regarding Harry Brown's grievance he begins by reciting (in quite unnecessary profane detail) the language his client has used, as if his client's rude behavior somehow justifies his own vitriolic responses. [Mot. Ex. J-3]³ Also to be noted in the same letter, is Armengau's surly tone to Assistant Bar Counsel in response to her letter of inquiry in

² Note: Portions of the letters submitted as Motion Exhibits J-1 and J-2 have been expurgated to exclude case details and discussions of strategies that relate to other people and confidential information not pertinent to issues of Armengau's conduct with respect to his client.

³ This letter was previously attached as Mot. Ex. H-2 for its reference to advertising issues. For convenience it is reattached here as it pertains to professionalism issues.

which she characterized as “disturbing” some of the language he used in his letter to Brown. Incivility should not beget retaliatory incivility – especially for a lawyer.

Ironically, Mr. Brown, this “delusional” and “dishonest” individual, represented himself in a jury trial and did not share the fate of the Titanic. He was acquitted.

Armengau’s apparent inability to control his temper and his reflexive hostility when challenged are yet another reason he needs to be pulled up short by this Court.

PROPOSED FINDINGS OF FACT

Pursuant to Gov.Bar R. V §5a(A)(1)(b), Relator proposes the following findings of fact and conclusions of law:

1. Armengau is currently licensed to practice law in the State of Ohio and is subject to the Rules for the Government of the Bar and the Code of Professional Responsibility.
2. Armengau is presently the subject of a pending Motion for Interim Remedial Suspension filed by Relator in the Supreme Court of Ohio pursuant to Gov.Bar. R. V(5a) and S.Ct.Prac. R 401(e)
3. Relator has provided substantial, credible evidence that Armengau has acted incompetently in his representation of clients, in violation of Prof.Cond.R. 1.1.
4. Relator has provided substantial, credible evidence that Armengau has failed to abide by his client’s decisions and failed to consult with clients regarding the means by which their representation will be pursued, in violation of Prof.Cond.R. 1.2(a)
5. Relator has provided substantial, credible evidence that Armengau has failed to act with *reasonable* diligence and promptness in representing a client, in violation of Prof.Cond.R. 1.3.

6. Relator has provided substantial, credible evidence that Armengau has failed to: promptly inform his clients of any decision which requires the client's *informed consent*; *reasonably* consult with clients; keep the clients *reasonably* informed about the status of their cases; and comply with *reasonable* requests from the client for information, all in violation of Prof.Cond.R. 1.4(a)&(b).

7. Relator has provided substantial, credible evidence that Armengau has charged clearly excessive fees, in violation of Prof.Cond.R. 1.5(a).

8. Relator has provided substantial, credible evidence that Armengau in accepting "earned upon receipt" or "flat" fees, has failed to notify clients in *writing* that that if he does not complete the representation for any reason, the client may be entitled to a refund, in violation of Prof.Cond.R.1.5(d)(3).

9 Relator has provided substantial, credible evidence that Armengau revealed information relating to the representation of a client including information protected by the attorney-client privilege without informed consent of the client, in violation of Prof.Cond.R. 1.6(a).

10. Relator has provided substantial, credible evidence that Armengau accepted or continued representation of a client that: was directly adverse to another current client; was subject to a substantial risk that the lawyer's ability to consider, recommend or carry out an appropriate course of action was materially limited by his responsibilities to another client, a former client or the lawyer's own interests; and, was undertaken without the *informed consent confirmed in writing* of each client, all in violation of Prof.Cond.R. 1.7(a)&(b).

11. Relator has provided substantial, credible evidence that Armengau has represented a client when the representation was materially adverse to that of his former client interests in a *substantially related matter*, in violation of Prof.Cond.R. 1.9(a).

12. Relator has provided substantial, credible evidence that Armengau has: failed to appropriately hold property of client in an IOLTA account; failed to maintain required records of and perform reconciliations of his IOLTA account; deposited his inappropriate amounts of his own funds in his IOLTA account, and failed to return to promptly deliver to a client funds to which the client was entitled to receive, all in violation of Prof.Cond.R. 1.15(a)(b)&(c).

13. Relator has provided substantial, credible evidence that Armengau has: failed to withdrawn from representation when discharged by a client; withdrawn from representation of another client without taking *reasonably* practicable steps to protect the client's interests; and failing to refund promptly any part of a fee paid in advance that had not been earned, all in violation of Prof.Cond.R. 1.16(a)(3), (d) & (e).

14. Relator has provided substantial, credible evidence that Armengau has failed to exercise independent professional judgment and render candid advice, in violation of Prof.Cond.R. 2.1

15. Relator has provided substantial, credible evidence that Armengau in a trial asserted personal *knowledge* of facts in issue when he was not a witness, in violation of Prof.Cond.R. 3.4(e).

16. Relator has provided substantial, credible evidence that Armengau engaged in conduct that was intended to disrupt a *tribunal*, was undignified and discourteous, and was degrading to the *tribunal*, in violation of Prof.Cond.R. 3.5(5)&(6).

17. Relator has provided substantial, credible evidence that Armengau while representing a client, has communicated about the subject of representation with a person the lawyer *knows* to be represented by another lawyer in the matter without the other lawyer's consent, in violation of Prof.Cond.R. 4.2.

18. Relator has provided substantial, credible evidence that Armengau was responsible for the misconduct of another lawyer over which he had managerial and direct supervisory authority when he *knew* of the conduct at a time when its consequences could be avoided or mitigated, but he failed to take *reasonable* remedial action, in violation of Prof.Cond.R. 5.1(c)(2).

19. Relator has provided substantial, credible evidence that Armengau used false and misleading communications in communications about the lawyer's services, in violation of Prof.Cond.R. 7.1

20. Relator has provided substantial, credible evidence that Armengau stated or implied that he was certified as a specialist in a particular when he had not been certified by an organization approved by the Supreme Court Commission on Certification, in violation of Prof.Cond.R. 7.4.

21. Relator has provided substantial, credible evidence that Armengau has used a *firm* name that is misleading by implying that he had "associates" when he did not, in violation of Prof.Cond.R. 7.5(a).

22. Relator has provided substantial, credible evidence that Armengau has: engaged in conduct involving dishonesty, *fraud*, deceit, or misrepresentation; engaged in conduct that is prejudicial to the administration of justice, and, engaged in conduct that adversely reflects on the lawyer's fitness to practice, all in violation of Prof.Cond.R. 8.4(c),(d)&(h).

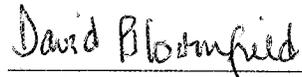
23. Relator has provided substantial, credible evidence that Armengau has repeatedly engaged in conduct that establishes that he poses a substantial risk of serious harm to his clients and to the public and that adversely reflects on his fitness to practice, in violation of Prof.Cond.R. 8.4(h).

CONCLUSION

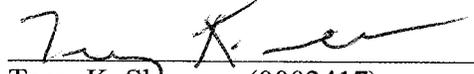
It is a serious undertaking to ask that a lawyer's license to practice law be taken away on an interim basis while regular disciplinary processes are carried out. Relator has not taken the unusual step of filing this motion lightly or without consideration of its consequences. It has invoked this special process only once before in the last twenty-five years.

That said, relator believes that the many facets of Armengau's malefactions -- the number of clients who have been harmed, the courts that have been put to the task of correcting his failures to abide by ordinary rules of conduct and decorum, his obdurate pattern of blame-shifting, and his contentious refusal to be guided by any boundaries other than those born of his own skewed logic -- taken together constitute a formulation destined to bring still more harm to courts and clients and disrepute to the judicial system. All of that pared with his looming (and much publicized) trial for heinous crimes against multiple legal clients, has caused relator to invoke extraordinary remedies to forestall any further damage in the interim. Armengau is a lawyer out of control, and he should not be allowed to continue on his reckless course unabated.

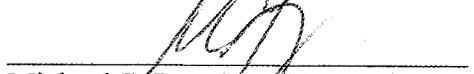
Respectfully submitted,



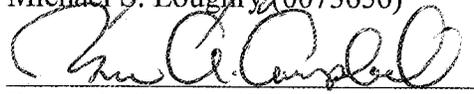
David S. Bloomfield (0006701)



Terry K. Sherman (0002417)



Michael S. Loughry (0073656)



Bruce A. Campbell (0010802)



A. Alysha Clous (0070627)

COUNSEL FOR RELATOR

CERTIFICATE OF SERVICE

Relator's Bar Counsel, on June 13, 2014, hand delivered Notices of relator's Intent to file this Motion for Interim Remedial Suspension as well as a copies of the Motion and its exhibits to the registrations address of Javiar Armengau, Esq. and his counsel Fredrick Benton, Esq. at 98 Hamilton Park, Columbus, Ohio 43203.



Bruce A. Campbell (0010802)

COUNSEL FOR RELATOR

**IN THE
SUPREME COURT OF OHIO**

Columbus Bar Association
175 South Third Street, S-1100
Columbus, Ohio 43215-5193,
Relator,
vs.

Javier Horacio Armengau (0069776)
98 Hamilton Park
Columbus, Ohio 43203,
Respondent.

Case No. _____

Original Matter Related to the Practice of Law
Authorized by S.Ct. Prac. R. S

**Notice of Relator's Intent to File Motion for Immediate
Interim Remedial Suspension In the Supreme Court of Ohio**

Relator Columbus Bar Association hereby gives Notice to Javier Horacio Armengau, Esq. and to his counsel, Fredrick D. Benton, Esq. by personal delivery to their registration address, 98 Hamilton Park, Columbus, OH 43203, this **13th day of June, 2014**, that **on or after the 16 th day of June, 2014**, it will file with the Supreme Court of Ohio pursuant to Gov.Bar R.V(5a), S.Ct.Prac. R.401(c), and Gov.Bar R.V.(8)(F) a Motion for Interim Remedial Suspension of his license to practice law and a Motion to File an Exhibit Under Seal.

Copies of the Motions and all Exhibits are enclosed with this Notice

David S. Bloomfield (0006701)
Terry K. Sherman (0002417)
Michael S. Loughry (0073656)
A. Alysha Clous (0070627)



Bruce A. Campbell (0010802)

COUNSEL FOR RELATOR

CERTIFICATE

The undersigned Chair of the Certified Grievance Committee of the Columbus Bar Association hereby certifies that David S. Bloomfield, Esq. (0006701), Terry K. Sherman, Esq. (0002417), Michael S. Loughry, Esq. (0073656), Bruce A. Campbell, Esq. (0010802) and A. Alysha Clous, Esq. (0070627), are duly authorized to represent Relator in the premises and have accepted the responsibility of prosecuting the matter to its conclusion. After investigation, Relator believes reasonable cause exists to file a Motion for Interim Remedial Suspension.

Dated: June 10, 2014

Signed: _____

John C. Hartranft
John Hartranft, Sr., Esq. (0023037)
Chair of the Certified Grievance Committee

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

Section (11)

(11) *The complaint; Where Filed; By Whom Signed.* A complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the Respondent. Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board. Complaints filed by a Certified Grievance Committee shall not be accepted for filing unless signed by one or more members of the Bar of Ohio in good standing, who shall be counsel for the Relator, and supported by a certificate in writing signed by the President, Secretary or Chairman of the Certified Grievance Committee, which Certified Grievance Committee shall be deemed the Relator, certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. It shall constitute the authorization of such counsel to represent said Relator in the premises as fully and completely as if designated and appointed by order of the Supreme Court of Ohio with all the privileges and immunities of an offices of such Court. The complaint may also, but need not, be signed by the person aggrieved.

Complaints filed by the Disciplinary Counsel shall be filed in the name of Disciplinary Counsel as Relator.

Upon the filing of a complaint with the Secretary of the Board, Relator shall forward a copy thereof to Disciplinary Counsel, to the Certified Grievance Committee of the Ohio State Bar Association, to the local bar association and to any Certified Grievance Committee serving the county of counties in which the Respondent resides and maintains his office and for the county from which the complaint arose.