

ORIGINAL

IN THE SUPREME COURT OF OHIO

CLEVELAND METROPOLITAN BAR  
ASSOCIATION CERTIFIED GRIEVANCE  
COMMITTEE,

*Relator,*

v.

PAUL MICHAEL KAUFMAN  
Attorney Registration No. 0000690

*Respondent.*

CASE NO. 15-0058

**RELATOR'S EMERGENCY MOTION FOR INTERIM REMEDIAL SUSPENSION  
UNDER GOV. BAR R. V(5a)**

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RECEIVED  
JAN 12 2015  
CLERK OF COURT  
SUPREME COURT OF OHIO

FILED  
JAN 12 2015  
CLERK OF COURT  
SUPREME COURT OF OHIO

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PAUL MICHAEL KAUFMAN )  
Attorney Registration No. 0000690 )  
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RELATOR’S EMERGENCY MOTION FOR INTERIM REMEDIAL SUSPENSION  
UNDER GOV. BAR R. V(5a)

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**I.     INTRODUCTION**

Aware of the gravity and seriousness of this Request, Relator, the Certified Grievance Committee of the Cleveland Metropolitan Bar Association, respectfully moves this Honorable Court, pursuant to Gov. Bar R. V(5a)(A), to impose an interim remedial suspension immediately on Respondent, Paul M. Kaufman, Attorney Registration No. 0000690. This suspension is necessary to protect the public, including current clients of Respondent, from further harm and financial loss because of Respondent’s repeated misappropriation of funds for his personal benefit.

**Specifically, Respondent, who practices primarily as a plaintiffs’ personal injury lawyer, has repeatedly and admittedly failed to distribute multiple, significant settlement payments to numerous clients, failed to deposit client settlement proceeds into his IOLTA, and failed to maintain required records regarding settlements and his IOLTA. He has taken multiple actions on his clients’ cases (including entering into settlement agreements) without their knowledge or consent, has forged their signatures on settlement checks, and**

**has made numerous material representations to his clients about the status of their cases and the whereabouts of their settlement funds.** Although Respondent has generally cooperated in responding to the numerous grievances lodged against him and has admitted the vast majority of the alleged misconduct, his repeated promises to “make right” by his clients, including paying his clients settlement monies owed to them, have remained unfulfilled. Indeed, CMBA continues to receive grievances against Respondent, alleging wrongful conduct consistent with that described above, with no end in sight. Additionally, Respondent is a defendant in litigation filed by his former clients alleging conduct consistent with the foregoing description.

As a result, and as detailed more fully below, Respondent’s continued practice of law “poses a substantial threat of serious harm to the public.” This Court should therefore impose an interim remedial suspension on Respondent under Gov. Bar R. V(5a)(B). Pursuant to S.Ct. Prac. R. 14.4 and Gov. Bar R. V(5a)(A)(1)(b), this Court should do so immediately and before the filing of any memorandum in opposition as the “interests of justice warrant immediate consideration.”

## **II. NOTICE TO RESPONDENT**

As mentioned previously, Respondent has received notice of all grievances filed against him, has submitted responses thereto, and generally has admitted to the majority of his wrongful conduct.

Pursuant to the notice provisions of Gov.Bar R. V(5a)(A)(1)(a), Relator met with Respondent on January 8, 2014, and indicated its intention to seek an interim remedial suspension with this Honorable Court. At that meeting, Respondent did not agree to voluntarily relinquish his license to practice law or consent to an interim suspension.

### III. MEMORANDUM IN SUPPORT OF INTERIM REMEDIAL SUSPENSION

As set forth in more detail below, Respondent has repeatedly violated the following Rules of Professional Conduct:

#### **Rule 1.4      Communication**

(a) A lawyer shall do all of the following:

(1) promptly inform the client of any decision or circumstance with respect to which the client's *informed consent* is required by these rules;

(2) *reasonably* consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client *reasonably* informed about the status of the matter;

(4) comply as soon as practicable with *reasonable* requests for information from the client;

\* \* \*

#### **Rule 1.5      Fees and Expenses**

(c) (2) If the lawyer becomes entitled to compensation under the contingent fee agreement and the lawyer will be disbursing funds, the lawyer shall prepare a closing statement and shall provide the client with that statement at the time of or prior to the receipt of compensation under the agreement. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyer's fees with a lawyer nor in the same *firm*, as required in division (e) (3) of this rule. The closing statement shall be signed by the client and lawyer.

#### **Rule 1.15      Safekeeping Funds**

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate interest-bearing account in a financial institution authorized to do business in Ohio and maintained in the state where the lawyer's office is situated. The account shall be designated as a "client trust account," "IOLTA account," or with a clearly identifiable fiduciary title. Other property shall be identified as such and appropriately safeguarded. Records of such account funds and other property

shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation or the appropriate disbursement of such funds or property, whichever comes first . . .

\* \* \*

(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.

(d) Upon receiving funds or other property in which a client has a lawful interest, a lawyer shall promptly notify the client and promptly deliver to the client any funds or other property that the client is entitled to receive. . . Except as stated in this rule or otherwise permitted by law or by agreement with the client or a third person, *confirmed in writing*, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. Upon request by the client or third person, the lawyer shall promptly render a full accounting regarding such funds or other property.

#### **Rule 8.4 Misconduct**

It is professional misconduct for a lawyer to do any of the following:

\* \* \*

(b) commit an *illegal act* that reflects adversely on the lawyer's honesty or trustworthiness;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

\* \* \*

(h) engage in any other conduct that adversely reflects of the lawyer's fitness to practice law.

The details of Respondent's violations of the Rules of Professional Conduct are set forth below.

**A. CARGLE HOYETT MATTER<sup>1</sup>**

On December 11, 2009, Sharon Cargle Hoyett met with Respondent regarding the circumstances surrounding the death of her father, Sidney J. Cargle, Sr. Respondent advised Ms. Hoyett that she should pursue a personal injury/wrongful death claim against the medical provider. That same day, Ms. Hoyett signed a written contingency fee agreement with Respondent.

On November 23, 2010, Respondent filed a wrongful death/medical malpractice lawsuit on behalf of Ms. Hoyett against Kaiser Permanente and others in the Court of Common Pleas of Cuyahoga County, Ohio, Case No. CV-10-742026. Defendants filed a Motion for Summary Judgment on August 8, 2011.

On August 17, 2011, Respondent filed a Voluntary Dismissal Without Prejudice. On December 13, 2011, Respondent refiled the wrongful death/medical malpractice lawsuit against Kaiser Permanente and others in the Court of Common Pleas of Cuyahoga County, Ohio, which was assigned Case No. CV-11-771242 (the "Lawsuit"). Again, he provided no notice to Ms. Hoyett of these developments.

On February 25, 2013, the Court held a settlement conference in the Lawsuit. Respondent, Ms. Hoyett, and Ms. Hoyett's husband Darryl were all present for the conference. After privately meeting with opposing counsel, Respondent informed the Hoyetts that Defendants had offered \$150,000 to settle the case. Ms. Hoyett asked whether that amount was inclusive of, or in addition to, the amount of the Medicare lien that was pending against her father's estate (the exact amount of which, at that time, was unknown to Ms. Hoyett, but believed

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<sup>1</sup> Facts concerning the Cargle Hoyett matter are supported by the Affidavit of David S. Michel, which is attached hereto as Exhibit A and incorporated herein by reference.

to be approximately \$18,000), and Respondent informed her that the \$150,000 offer included the amount to pay the Medicare lien. Respondent also informed the Hoyetts that he would deduct the expenses incurred in prosecution of the lawsuit from his fee. Ms. Hoyett requested that Respondent counteroffer Defendants to settle the case for \$150,000 *plus* Defendants reimbursing Medicare for the full amount of the lien.

Respondent returned to discuss the matter with Defendants' counsel, again outside of the presence of the Hoyetts. According to Ms. Hoyett, after approximately fifteen minutes, Respondent emerged and notified the Hoyetts that Defendants had accepted Ms. Hoyett's counteroffer, and informed them that, because Defendants were separately paying the Medicare lien and because Respondent was deducting litigation expenses from his fee, the net amount payable to the estate of Ms. Hoyett's father would be \$100,000. According to Respondent, he never notified the Hoyetts that the counteroffer was accepted, but he agreed to deduct the Medicare lien from his attorney fees, resulting in a net payment to the estate of Ms. Hoyett's father of \$100,000. Respondent also informed the Hoyetts that they would receive the settlement payment within a month or two and that he would be "surprised" if it took longer than two months.

In March of 2013, Respondent presented Ms. Hoyett with an Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims (the "Application"). The Application provided that the amount of the settlement totaled \$150,000 and that Respondent was to receive a total of \$50,000 (for expenses and attorney's fees), resulting in a net payment to the estate of Ms. Hoyett's father of \$100,000, payable as follows:

<u>TO:</u>	<u>AMOUNT:</u>
Virginia Cargle (Surviving Spouse)	\$50,000
Sharon Cargle Hoyett (Administrator and daughter)	\$10,000
Sidney Cargle Hoyett, Jr. (son)	\$10,000
Spencer Cargle (son)	\$10,000
Linda Cargle (daughter)	\$10,000
Richard Stacy (son)	\$10,000

Ms. Hoyett signed the Application, which Respondent filed with the Probate Court of Cuyahoga County, Ohio in *Estate of Sidney J. Cargle, Sr.*, Case No. 2010 EST 0163545. The Application was approved by the Probate Court on March 14, 2013.

In April 2013, Ms. Hoyett began calling Respondent regarding the status of the settlement payment to her father's estate. Respondent eventually called Ms. Hoyett back and informed her that there was a delay in receiving the settlement check because Defendant Kaiser Permanente was being purchased or merged with another company, and that the settlement payment would not be received until the merger was complete.

Beginning in June 2013, Ms. Hoyett's brother and son of the deceased (who is also a licensed attorney in New York and the District of Washington), Spencer Cargle, began calling Respondent regarding the settlement payment to his father's estate. Attorney Cargle claims to have called and left a message for Respondent every week during the month of June 2013. Respondent did not return any of Attorney Cargle's calls in June 2013.

In July 2013, Attorney Cargle left another message for Respondent, requesting a status update on the settlement payment and notifying Respondent that he now represented Ms. Hoyett and the other beneficiaries of his father's estate. Respondent returned Attorney Cargle's call and informed him that Defendant had not concluded its merger and/or buyout, but that the merger/buyout would conclude around August 1, 2013, and that the settlement payment would be issued soon thereafter. In that telephone conversation, Respondent also related that he was

being “stonewalled” by counsel for the Defendants. Attorney Cargle suggested that Respondent file a Motion to Enforce Settlement with the Court to expedite Defendants’ remittance of the settlement payment.

In August 2013, both Attorney Cargle and Ms. Hoyett called Respondent regarding the status of the settlement payment. Respondent returned Attorney Cargle’s calls in late August, 2013, and reported that the merger and/or buyout of Defendant Kaiser Permanente was scheduled to close on or about September 1, 2013. According to Attorney Cargle, during that telephone conversation, Respondent reported to Attorney Cargle that, because of Defendants’ delay in tendering the settlement payment, Defendants had agreed to increase the settlement amount by 10%.

During the next several months, Attorney Cargle and Ms. Hoyett repeatedly called Respondent regarding the status of the settlement payment. In November 2013, Respondent talked with Ms. Hoyett and reported that he still had not received any settlement proceeds, but that he would obtain a “litigation loan” to remit part of the settlement monies. In November 2013, Respondent remitted two checks, one to Ms. Hoyett and one to Attorney Cargle, each in the amount of \$10,000. At that time, Respondent represented to Ms. Hoyett that she would receive the remainder of the settlement payment “soon.”

In early December 2013, Attorney Cargle left another voice message with Respondent, instructing him to seek relief from the Court by filing a Motion to Enforce Settlement. Respondent returned Attorney Cargle’s call and stated that he would file that motion. The following week, Attorney Cargle left a voice mail with Respondent regarding the status of the Motion to Enforce Settlement. On or about December 23, 2013, Respondent called Ms. Hoyett, and Respondent informed her that he did not file the motion because the Judge overseeing the

medical malpractice/wrongful death lawsuit prefers to deal with such issues on conference calls. In that same telephone call, Respondent told Ms. Hoyett that he attempted to personally meet with the Judge, but she was not in, so Respondent instead met with the Judge's law clerk. According to Respondent, the Judge's law clerk informed Respondent that he would bring the matter to the attention of the Judge, and that he would contact Defendants' attorney regarding the delinquent settlement payment.

Attorney Cargle reported that on or about January 2, 2014, he called the Judge's law clerk regarding the status of the case and any follow-up efforts with the Judge and Defendants' counsel concerning the settlement payment. The Judge's law clerk, according to Attorney Cargle, informed him that he had no knowledge of any dispute and had never spoken or met with Respondent regarding this case or any alleged delinquent settlement payment by Defendants.

On that same day, Attorney Cargle called counsel for Defendants in the Lawsuit, John Polito, and spoke with Mr. Polito's administrative assistant. Mr. Polito's assistant informed Attorney Cargle that the case between Mr. Polito's clients and Ms. Hoyett was closed. Mr. Polito's assistant advised that Mr. Polito had mailed a settlement check in the amount of \$132,000 to Respondent nearly nine months earlier, specifically on April 12, 2013. **This was the first time that either Ms. Hoyett or Attorney Cargle learned that any settlement payment had been made by Defendants in connection with the Lawsuit.**

Unbeknownst to Ms. Hoyett or Attorney Cargle, on or about April 12, 2013, Respondent received Defendants' check no. 0003940221, dated April 10, 2013, in the amount of \$132,035.11, as the complete settlement by Defendants of the Lawsuit. A copy of that settlement check, front and back, is attached hereto. That settlement check was made jointly payable to Ms. Hoyett and Respondent, allegedly endorsed by both Respondent and Ms. Hoyett,

and deposited in Respondent's IOLTA on April 12, 2013. **The endorsement signature that appears on the back of settlement check no. 0003940221, however, is not Ms. Hoyett's. Additionally, Ms. Hoyett did not authorize anyone on her behalf (including Respondent or any of his staff) to sign her name to or otherwise endorse the settlement check.** Moreover, the settlement check was made payable in the amount of \$132,035.11, rather than the \$150,000 settlement amount that Ms. Hoyett had authorized and that Respondent had represented as the amount of the settlement to the Probate Court.

Subsequent to learning on January 2, 2014 that Respondent had received settlement funds from the Lawsuit, Ms. Hoyett and Attorney Cargle notified Respondent that they were aware of his wrongful conduct and demanded that Respondent remit the remainder of the settlement funds to them. Respondent agreed to "waive" any fees or expenses that were "due" to him pursuant to the contingency fee agreement. On December 18, 2014, Respondent remitted another check for \$10,000 to Ms. Hoyett, for a total of \$30,000 paid to date.

By the above actions, Respondent violated Rules 1.4(a), 1.5(c)(2), 1.15(a), (c), and (d), and 8.4(b) and (c) of the Ohio Rules of Professional Conduct.

#### **B. DUNN/MALKIN MATTER<sup>2</sup>**

In 2011, Attorney Lee Koosed referred his sister-in-law and brother-in-law, Nancy Dunn and Dennis Malkin (the "Clients"), to Respondent concerning a fall and injuries that Ms. Dunn had suffered at Great Lakes Brewery, in Cleveland, Ohio. On November 4, 2011, the Clients entered into a contingent fee contract with Respondent. Respondent did not file a lawsuit against

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<sup>2</sup> Facts concerning the Dunn/Malkin matter are supported by the Affidavit of Robert Vecchio ("Vecchio Affidavit"), which is attached hereto as Exhibit B and incorporated herein by reference.

Great Lakes Brewery, but, instead, attempted to negotiate compensation for the Clients prior to filing litigation.

On or about November 3, 2013, Respondent went to the Clients' home, told them there was a \$50,000 offer (which included payment of a Medicare subrogation claim), and advised them to accept it. The Clients consented to that settlement. At that same meeting, Respondent had the Clients execute an insurance company release. Respondent never presented the Clients with any contingency fee closing statement.

On or about November 25, 2013, Mr. Malkin contacted the insurance company. **He was advised that Respondent had settled the Clients' claims nearly four months earlier, long before he met with the Clients to obtain any authorization to resolve the claim.** Specifically, in early July 2013, the insurance company had forwarded to Respondent check no. 891A-84029558, dated July 8, 2013, in the amount of \$40,559.66 (the \$50,000 settlement, less payment to Medicare made directly by the insurance company). The settlement check was made jointly payable to Respondent and the Clients. **The Clients had never seen the settlement check, and they did not endorse it or grant authority to any person to endorse the check on their behalf. Moreover, Respondent failed to deposit the settlement check into his IOLTA.**

After the Clients confronted Respondent with their new-found knowledge, Respondent agreed to "waive" all attorney's fees and expenses. Respondent, however, has failed to pay the Clients any portion of the settlement proceeds. Furthermore, even though the insurance company paid Medicare directly, Respondent's stated justification for failing to pay the Clients was "[t]here was some delay caused while Medicare issues will be resolved."

By the above actions, Respondent violated Rules 1.4(a), 1.5(c)(2), 1.15(a), (c), and (d), and 8.4(c) and (h) of the Ohio Rules of Professional Conduct.

**C. BARRETT MATTER<sup>3</sup>**

On January 26, 2005, Brian Barrett and his mother Mary entered into a contingent fee agreement with Respondent relating to the death of their father/husband, Thomas Barrett. Respondent was to represent them in a class action against Merck & Company pertaining to the drug Vioxx. Attorney Scott Levey had referred them to Respondent.

In May of 2013, Scott Levey asked Mr. Barrett if he had heard from Respondent as Mr. Levey had heard that the Vioxx class action had been settled. At that point, Mr. Barrett had not communicated with Respondent for several years.

After attempting to reach Respondent for several weeks, Mr. Barrett finally reached him during the week of June 16, 2013. Respondent advised Mr. Barrett that their family would be receiving settlement funds in the amount of \$146,526.94. Respondent represented that the first installment was to be paid by the end of July 2013 and the second installment by the end of September 2013. Thereafter, Respondent sent Mr. Barrett a Closing Statement of the settlement dated June 23, 2013. However, attached to the Closing Statement was an award breakdown from the Vioxx settlement administrator that was dated July 6, 2009 (nearly four years earlier).

July passed without any contact from Respondent. Mr. Barrett called Respondent's office and spoke to his paralegal, Darlene Chandler. Ms. Chandler stated that she did not know when the Vioxx settlement funds were to be distributed.

In August, Mr. Barrett and his sister conducted research regarding the Vioxx class action. They learned that the class action settlements had taken place years before. They contacted the firm who was acting as settlement administrator and **learned that two payments totaling**

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<sup>3</sup> Facts concerning the Barrett matter are supported by the Vecchio Affidavit, Exhibit B hereto.

**\$215,480.78 had been wire transferred to Respondent on August 24, 2009 and October 8, 2009, nearly four years prior to the Barretts learning of the settlement.**

Mr. Barrett contacted Scott Levey, who contacted Respondent. Respondent said that he would pay the Clients' settlement funds in October 2013 and by the end of 2013 and "waive" his fee if the Clients did not take any legal action against him. Mr. Levey emailed Respondent on September 24, 2013 and said that if half was paid by October 15 and the other half by November 30, no legal action would be taken against him. Because Respondent failed to make payment by October 15, 2013, Mr. Barrett told Respondent that he was going to take the matter to the police. Respondent apologized and said that he had made a mistake and asked Mr. Barrett not to go to the police because, if he goes to jail, he would not be able to work or pay him.

The Barretts have not received any portion of the settlement proceeds of \$215,480.78 from Respondent.

By the above actions, Respondent violated Rules 1.4(a), 1.5(c)(2), 1.15(a), (c), and (d), and 8.4(b), (c), and (h) of the Ohio Rules of Professional Conduct.

#### **D. CHASE MATTER<sup>4</sup>**

In January of 2012, Attorney Koosed referred Paul Chase to Respondent regarding injuries Mr. Chase sustained in a motor vehicle accident that occurred on February 8, 2010. Respondent entered into a contingent fee agreement with Mr. Chase on January 6, 2012. Due to the fast-approaching statute of limitations, Respondent filed suit on Mr. Chase's behalf on February 2, 2012 against the tortfeasor and Mr. Chase's underinsured motorist carrier, State Farm.

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<sup>4</sup> Facts concerning the Chase matter are supported by the Vecchio Affidavit, Exhibit B hereto.

The case was settled on or about June 11, 2013, for \$65,000, plus State Farm's waiver of its medical payments subrogation claim of \$6,760. The tortfeasor's insurance carrier, Geico, paid \$15,000 of the settlement funds, with the remaining \$50,000 funded by State Farm, which payments were received and deposited by Respondent in June, 2013.

In August, 2013, Mr. Chase contacted Attorney Koosed and advised him that he had yet to receive his settlement proceeds and had been unable to reach Respondent by telephone. Attorney Koosed thereafter attempted to reach Respondent without any success. On or about August 20, 2013, Attorney Koosed ran into Respondent at the Cuyahoga County Justice Center, and they discussed the Chase matter. Respondent assured him that things would be resolved in a week or two.

Mr. Chase authorized the settlements with Geico and State Farm, but neither he, nor his wife Nora, endorsed the settlement checks from Geico or State Farm. **They were not aware that Respondent had deposited the checks and endorsed the same on their behalf. Respondent acknowledged that he signed the Chases' names to all settlement checks without their knowledge and consent.** He also acknowledges having issued himself two checks for \$3,000 each in June of 2013.

Having not heard from Respondent after the case settled, Mr. Chase went to Respondent's office, unannounced, in early September 2013. Respondent was not there. Respondent called Mr. Chase on September 18, 2013 angry that Mr. Chase had come to his office without an appointment. Mr. Chase asked him if he had spent the settlement money, and Respondent acknowledged that he had. Although Respondent agreed to meet with Mr. Chase on October 4, 2013 to "square up," that meeting never took place.

On either November 13 or 14, 2013, Mr. Chase called Respondent and left a message stating that he was desperate for the settlement money. The next day, Respondent showed up at Mr. Chase's business and gave him a check for \$6,000. He told Mr. Chase that he was still negotiating a lien claimed due by ACS, apparently on behalf of Medical Mutual. No contingency fee closing statement was ever prepared by Respondent or signed by Mr. Chase.

Respondent subsequently admitted that he no longer has the \$65,000 in settlement proceeds. He admitted to paying himself for contingency fees and to using other portions of that money to "keep his business open." Further, Respondent admitted using Mr. Chase's settlement proceeds to pay other clients.

By the above actions, Respondent violated Rules 1.4(a), 1.5(c)(2), 1.15(a), (c), and (d), and 8.4(c) and (h) of the Ohio Rules of Professional Conduct.

**E. KURJAN/BIZGA MATTER<sup>5</sup>**

In approximately August 2010, Sally Kurjan hired Respondent to pursue a medical malpractice claim on her behalf. On August 4, 2010, Ms. Kurjan and Respondent entered into a contingency fee agreement. Thereafter, Respondent filed suit against the alleged tortfeasor in the Court of Common Pleas, Mahoning County, Ohio, Case No. 2009 CV 4082.

In approximately January of 2013, Ms. Kurjan reluctantly authorized Respondent to settle her case for \$90,000, conditioned upon her netting \$60,000 from the settlement proceeds after all case and medical expenses were paid. Respondent assured Ms. Kurjan that she would net \$60,000 "free and clear," and that fees due and owing to expert witnesses, plus a \$2,500 fund for her future dental costs, would be paid from the remaining \$30,000. At that time, Chester A.

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<sup>5</sup> Facts concerning the Kurjan/Bizga matter are supported by the Vecchio Affidavit, Exhibit B hereto.

Bizga, D.D.S. (“Dr. Bizga”) was owed \$12,134 for dental services and expert fees incurred in connection with the matter. Dr. Nicolas Frantantonio was also owed fees in connection with expert and dental services rendered, and the \$2,500 fund was to be paid to Dr. Frantantonio to cover a portion of Ms. Kurjan’s future expenses. Additionally, Respondent had reportedly advanced \$3,692 in case expenses. Although the contingency fee agreement provided for a 40% fee to Respondent, he agreed to accept less, waive his expenses, and pay the above amounts from his share in order to settle the case.

Respondent sent Ms. Kurjan a Closing Statement to execute, reflecting the following:

	\$90,000	Settlement
-	\$30,000	Attorney Fee
-	\$ 0	Case Expenses Waived
-	\$ <u>0</u>	Medical payments subrogation “No Funds Withheld”
=	\$60,000	Net Proceeds to Client

Ms. Kurjan refused to sign the Closing Statement and questioned Respondent as to why Dr. Bizga’s outstanding fees were unaccounted for, as well as the fund for her future dental care. Respondent assured her that he would take care of the outstanding dental fees owed to Dr. Bizga and deposit \$2,500 with Dr. Frantantonio. Based upon these representations, Ms. Kurjan proceeded with the settlement and received \$60,000. However, Ms. Kurjan never executed the Closing Statement.

Contrary to Respondent’s representations to Ms. Kurjan, Respondent, in fact, did not pay Dr. Bizga’s fees for his dental and expert services. Respondent also did not pay the full amount to Dr. Frantantonio. This prompted calls from Ms. Kurjan to Respondent wherein Respondent again promised he would take care of it. Subsequently, Respondent asked Ms. Kurjan to call Dr. Bizga to see if he would agree to a reduction in his fees. Respondent also requested that Ms.

Kurjan accept \$500, rather than \$2,500, as the amount to be paid to Dr. Frantantonio for future dental expenses, which Ms. Kurjan refused.

Since the distribution of the settlement funds in the first quarter of 2013, Respondent paid Dr. Bizga \$1,000 towards the \$12,134 balance owed to him, which payment was made on March 29, 2014. Dr. Bizga has retained Attorney Julius Kovacs to pursue collection efforts against both Respondent and Ms. Kurjan.

By the above actions, Respondent violated Rules 1.15(a) and (d) and 8.4(c) and (h) of the Ohio Rules of Professional Conduct.

**F. PRINGLE MATTER<sup>6</sup>**

On February 2, 2012, Cynthia Pringle entered into a contingent fee agreement with Respondent regarding a personal injury claim. She was referred to Respondent by Attorney Jim Walters, who also executed the agreement as co-counsel. On July 30, 2012, Ms. Pringle returned to work in the United Arab Emirates. From that point forward, all of her communication with Respondent was via email.

In December of 2012, Respondent reported that he was engaged in settlement negotiations on behalf of Ms. Pringle. On December 12, 2012, Respondent emailed Ms. Pringle and stated he believed he might be able to settle her claim for \$13,000. The next day, Ms. Pringle authorized Respondent to settle for \$13,000 if it was offered.

On February 7, 2013, Respondent emailed a release to Ms. Pringle representing that he had, in fact, settled her claim for \$13,000. He instructed her to execute it and then either email or fax it back to him. He further stated, "when signed release is received, I will forward to

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<sup>6</sup> Facts concerning the Pringle matter are supported by the Vecchio Affidavit, Exhibit B hereto.

insurance company and they will forward check.” Ms. Pringle executed the release on February 15, 2013 and emailed it to Respondent.

On May 20, 2013, Ms. Pringle emailed Respondent as to the status of the settlement payments. On May 23, 2013 Respondent replied “expecting funds soon.” On May 25, 2013, Ms. Pringle thanked him and asked “also, will you please arrange to pay the outstanding medical bills and then hold funds until I return?”

Ms. Pringle returned to the United States in July 2013. She attempted to reach Respondent via telephone without any success. She subsequently called the tortfeasor’s insurance company and was advised that the settlement check was issued on December 12, 2012 (the same date of Respondent’s email to her stating that he could possibly settle the case for \$13,000, and prior to Ms. Pringle’s authorization of settlement). **Ms. Pringle was also advised that her name had been endorsed on the check. However, Ms. Pringle never endorsed the settlement check and never authorized anyone, including Respondent or his staff, to do so on her behalf.**

Respondent deposited the \$13,000 check on December 17, 2012. Respondent has admitted to forging Ms. Pringle’s endorsement signature on that check. Ms. Pringle has not received any portion of the settlement payment.

By the above actions, Respondent violated Rules 1.4(a), 1.5(c)(2), 1.15(a), (c), and (d), and 8.4(b), (c), and (h) of the Ohio Rules of Professional Conduct.

#### **G. JACKSON MATTER<sup>7</sup>**

On August 3, 2012, Ernest Jackson and his wife, Grace, entered into a contingent fee agreement with Respondent pertaining to a personal injury claim arising from a motor vehicle

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<sup>7</sup> Facts concerning the Jackson matter are supported by the Vecchio Affidavit, Exhibit B hereto.

accident. In April 2013, Respondent settled the claim, with his clients' consent, for the sum of \$9,000. In June of 2013, Kaufman sent the Jacksons a release to sign and return, which they did. During the ensuing months, Respondent failed to communicate with the Jacksons regarding the status of their settlement payment.

Unbeknownst to the Jacksons, in April 2013, the insurance carrier forwarded two checks to Respondent, one in the amount of \$983.71 (made payable to Healthcare Recoveries for payment of its subrogation lien) and the other dated April 17, 2013, in the amount of \$8,016.29, made payable to the Jacksons and Respondent. Respondent deposited the check for \$8,016.29 into his IOLTA. **The Jacksons were not aware that Respondent had deposited the check and endorsed it on their behalf, and they never granted Respondent or any of his staff permission to do so.**

Respondent has not distributed any settlement funds to the Jacksons.

By the above actions, Respondent violated Rules 1.4(a), 1.15(a) and (d), and 8.4(b), (c), and (h) of the Ohio Rules of Professional Conduct.

#### **IV. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. At all times relevant to this matter Respondent, Paul M. Kaufman, was and is currently licensed to practice law in the State of Ohio, and he was and is subject to the Rules of Government of the Bar and the Ohio Rules of Professional Conduct.

2. Relator has provided substantial, credible evidence that Respondent has engaged in a pattern of ethical misconduct that violates Prof.Cond.R.1.4(a), including failing to obtain client consent before settling their cases, dismissing cases without discussion and/or consent from clients, failing to notify clients of the receipt of settlement funds, and failing reasonably to communicate with clients regarding the status of their cases and/or the progress of settlement

discussions.

3. Relator has provided substantial, credible evidence that Respondent has engaged in a pattern of ethical misconduct that violates Prof.Cond.R. 1.5(c)(2) by failing to provide closing statements to his clients.

4. Relator has provided substantial, credible evidence that Respondent has engaged in a pattern of ethical misconduct that violates Prof.Cond.R. 1.15(a), (c), and (d) by failing to deposit settlement funds into his IOLTA, paying himself fees from settlements that had not yet been deposited, and failing to pay his clients their share of settlement proceeds.

5. Relator has provided substantial, credible evidence that Respondent has engaged in a pattern of ethical misconduct that violates Prof.Cond.R. 8.4(b), (c), and (h) by endorsing checks made payable to his clients without client consent and by making misrepresentations of fact, including misrepresentations and/or omissions regarding the receipt of settlement payments and the status of his clients' cases.

6. Respondent has repeatedly engaged in ethical misconduct since at least 2009, and he continues to engage in ethical misconduct.

7. Respondent's continuing pattern of ethical misconduct poses a substantial threat of serious harm to the public.

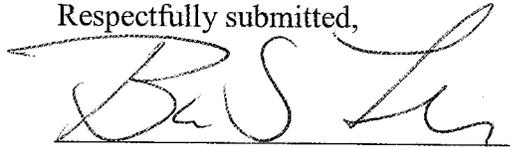
8. Respondent should be immediately suspended from the practice of law pursuant to Gov.Bar R. V(5a) and S.Ct. Prac. R. 14.4, until further order of this Court.

## V. CONCLUSION

In light of the foregoing, the continued practice of law by Respondent Paul M. Kaufman "poses a substantial threat of serious harm to the public." Accordingly, and because Relator has satisfied all prerequisites in seeking relief, this Court should impose an interim remedial

suspension on Respondent's license to practice law under Gov. Bar R. V(5a)(B). Pursuant to S.Ct. Prac. R. 14.4 and Gov. Bar R. V(5a)(A)(1)(b), Relator requests that this Court do so immediately and before the filing of any memorandum in opposition as the "interests of justice warrant immediate consideration."

Respectfully submitted,



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*Attorneys for Relator*

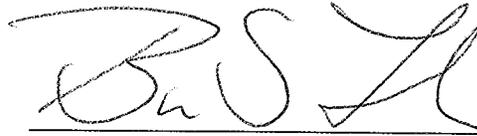
*Cleveland Metropolitan Bar Association  
Certified Grievance Committee*

CERTIFICATE OF SERVICE

A copy of the foregoing *Relator's Emergency Motion for Interim Remedial Suspension Under Gov. Bar R. V(5a)* has been served upon the following by regular U.S. Mail this <sup>9th</sup>    day of January, 2015:

Paul M. Kaufman  
1300 Fifth Third Center  
600 Superior Avenue East  
Cleveland, Ohio 44114

Respondent



One of the Attorneys for Relator  
Cleveland Metropolitan Bar Association  
Certified Grievance Committee

IN THE SUPREME COURT OF OHIO

CLEVELAND METROPOLITAN BAR  
ASSOCIATION CERTIFIED GRIEVANCE  
COMMITTEE,

*Relator,*

v.

PAUL MICHAEL KAUFMAN  
Attorney Registration No. 0000690

*Respondent.*

) CASE NO.

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**AFFIDAVIT OF DAVID S. MICHEL**

STATE OF OHIO )

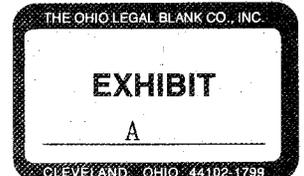
)

) ss:

COUNTY OF CUYAHOGA )

)

David S. Michel, being first duly sworn, deposes and states as follows:



1. I am over 18 years of age, and I have personal knowledge of and am competent to testify as to the facts sworn to herein.

2. I am a duly licensed attorney in the State of Ohio, Bar No. 0014173. I am a member of the Certified Grievance Committee of the Cleveland Metropolitan Bar Association.

3. In that capacity, I investigated the grievance filed by Ms. Sharon Cargle Hoyett against Attorney Paul M. Kaufman ("Respondent"). The facts set forth below are those gained from my investigation, and are true and accurate to the best of my knowledge and belief.

4. On December 11, 2009, Sharon Cargle Hoyett met with Respondent regarding the circumstances surrounding the death of her father, Sidney J. Cargle, Sr. Respondent advised Ms. Hoyett that she should pursue a personal injury/wrongful death claim against the medical provider. That same day, Ms. Hoyett signed a written contingency fee agreement with Respondent.

5. On November 23, 2010, Respondent filed a wrongful death/medical malpractice lawsuit on behalf of Ms. Hoyett against Kaiser Permanente and others in the court of Common

Pleas of Cuyahoga County, Ohio, Case No. CV-10-742026. Defendants filed a Motion for Summary Judgment on August 8, 2011. On August 17, 2011, Respondent filed a Voluntary Dismissal Without Prejudice. Respondent did not discuss the dismissal with Ms. Hoyett before he filed it, and he did not notify her after it had been filed. Instead, Ms. Hoyett learned of the voluntary dismissal only after she checked the on-line docket regarding the status of her case.

6. On December 13, 2011, Respondent refiled the wrongful death/medical malpractice lawsuit against Kaiser Permanente et al. in the court of Common Pleas of Cuyahoga County, Ohio, which was assigned Case No. CV-11-771242 (the "Lawsuit"). Again, he provided no notice to Ms. Hoyett of these developments.

7. On February 25, 2013, the Court held a settlement conference in the Lawsuit. Respondent, Ms. Hoyett, and Ms. Hoyett's husband Darryl Hoyett were all present for the conference. After privately meeting with opposing counsel, Respondent informed Ms. and Mr. Hoyett that Defendants had offered \$150,000 to settle the case. Ms. Hoyett asked whether that amount was inclusive of, or in addition to, the amount of the Medicare lien that was pending against her father's estate (the exact amount of which, at that time, was unknown to Ms. Hoyett, but believed to be approximately \$18,000), and Respondent informed her that the \$150,000 offer included the amount to pay the Medicare lien. Respondent also informed the Hoyetts that he would deduct the expenses incurred in prosecution of the lawsuit from his fee. Ms. Hoyett requested that Respondent counteroffer Defendants to settle the case for \$150,000 *plus* Defendants reimbursing Medicare for the full amount of the lien.

8. Respondent returned to discuss the matter with Defendants' counsel, again outside of the presence of Ms. Hoyett and her husband. According to Ms. Hoyett, after approximately fifteen minutes, Respondent emerged and notified Ms. and Mr. Hoyett that

Defendants had accepted Ms. Hoyett's counteroffer and informed them that, because Defendants were separately paying the Medicare lien and because Respondent was deducting litigation expenses from his fee, the net amount payable to Ms. Hoyett's father's estate would be \$100,000. According to Respondent, he never notified the Hoyetts that the counteroffer was accepted, but he agreed to deduct the Medicare lien from his attorney's fees, resulting in a net payment to Ms. Hoyett's father's estate of \$100,000. Respondent also informed the Hoyetts that they would receive the settlement payment within a month or two and that he would be "surprised" if it took longer than two months.

9. In March of 2013, Respondent presented Ms. Hoyett with an Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims (the "Application"). The Application provided that the amount of the settlement totaled \$150,000 and that Respondent was to receive a total of \$50,000 (for expenses and attorney's fees), resulting in a net payment to Ms. Hoyett's father's estate of \$100,000, payable as follows:

<u>TO:</u>	<u>AMOUNT:</u>
Virginia Cargle (Surviving Spouse)	\$50,000
Sharon Cargle Hoyett (Administrator and daughter)	\$10,000
Sidney Cargle Hoyett, Jr. (son)	\$10,000
Spencer Cargle (son)	\$10,000
Linda Cargle (daughter)	\$10,000
Richard Stacy (son)	\$10,000

10. Ms. Hoyett signed the Application, which Respondent filed with the Probate Court of Cuyahoga County, Ohio in *Estate of Sidney J. Cargle, Sr.*, Case No. 2010 EST 0163545. The Application was approved by the Probate Court on March 14, 2013.

11. In April 2013, Ms. Hoyett began calling Respondent regarding the status of the settlement payment to her father's estate. Respondent eventually called Ms. Hoyett back and informed her that there was a delay in receiving the settlement check because Defendant Kaiser

Permanente was being purchased or merged with another company, and that the settlement payment would not be received until the merger was complete.

12. Beginning in June 2013, Ms. Hoyett's brother and son of the deceased (who is also a licensed attorney in New York and the District of Washington), Spencer Cargle, began calling Respondent regarding the settlement payment to his father's estate. Attorney Cargle claims to have called and left a message for Respondent every week during the month of June 2013. Respondent did not return any of Attorney Cargle's calls in June 2013.

13. In July 2013, Attorney Cargle left another message for Respondent, requesting a status update on the settlement payment and notifying Respondent that he now represented Ms. Hoyett and the other beneficiaries of his father's estate. Respondent returned Attorney Cargle's call and informed him that Defendant had not concluded its merger and/or buyout, but that the merger/buyout would conclude around August 1, 2013, and that the settlement payment would be issued soon thereafter. In that telephone conversation, Respondent also related that he was being "stonewalled" by counsel for the Defendants. Attorney Cargle suggested that Respondent file a Motion to Enforce Settlement with the Court to expedite Defendants' remittance of the settlement payment.

14. In August 2013, both Attorney Cargle and Ms. Hoyett called Respondent regarding the status of the settlement payment. Respondent returned Attorney Cargle's calls in late August, 2013, and reported that the merger and/or buyout of Defendant Kaiser Permanente was scheduled to close on or about September 1, 2013. According to Attorney Cargle, during that telephone conversation, Respondent reported to Attorney Cargle that, because of Defendants' delay in tendering the settlement payment, Defendants had agreed to increase the settlement amount by 10%.

15. During the next several months, Attorney Cargle and Ms. Hoyett repeatedly called Respondent regarding the status of the settlement payment. In November 2013, Respondent talked with Ms. Hoyett and reported that he still had not received any settlement proceeds, but that he would obtain a "litigation loan" to remit part of the settlement monies. In November 2013, Respondent remitted two checks, one to Ms. Hoyett and one to Attorney Cargle, each in the amount of \$10,000. At that time, Respondent represented to Ms. Hoyett that she would receive the remainder of the settlement payment "soon."

16. In early December 2013, Attorney Cargle left another voice message with Respondent, instructing him to seek relief from the Court by filing a Motion to Enforce Settlement. Respondent returned Attorney Cargle's call and stated that he would file that motion. The following week, Attorney Cargle left a voice mail with Respondent regarding the status of the Motion to Enforce Settlement.

17. On or about December 23, 2013, Respondent called Ms. Hoyett, and Respondent informed her that he did not file the motion because the Judge overseeing the medical malpractice/wrongful death lawsuit prefers to deal with such issues on conference calls. In that same telephone call, Respondent told Ms. Hoyett that he attempted to personally meet with the Judge, but she was not in, so Respondent instead met with the Judge's law clerk. According to Respondent, the Judge's law clerk informed Respondent that he would bring the matter to the attention of the Judge, and that he would contact Defendants' attorney regarding the delinquent settlement payment.

18. Attorney Cargle reported that, on or about January 2, 2014, he called the Judge's law clerk regarding the status of the case and any follow-up efforts with the Judge and Defendants' counsel concerning the settlement payment. The Judge's law clerk, according to

Attorney Cargle, informed him that he had no knowledge of any dispute and had never spoken or met with Respondent regarding this case or any alleged delinquent settlement payment by Defendants.

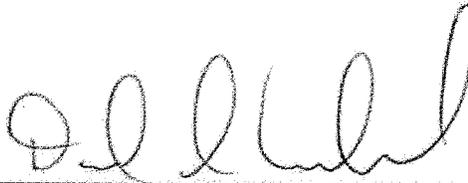
19. On that same day, Attorney Cargle called counsel for Defendants in the Lawsuit, John Polito, and spoke with Mr. Polito's administrative assistant. Mr. Polito's assistant informed Attorney Cargle that the case between Mr. Polito's clients and Ms. Hoyett was closed. Mr. Polito's assistant advised that Mr. Polito had mailed a settlement check in the amount of \$132,000 to Respondent nearly nine months earlier, specifically on April 12, 2013. This was the first time that either Ms. Hoyett or Attorney Cargle learned that any settlement payment had been made by Defendants in connections with the Lawsuit.

20. Unbeknownst to Ms. Hoyett or Attorney Cargle, on or about April 12, 2013, Respondent received Defendants' check no. 0003940221, dated April 10, 2013, in the amount of \$132,035.11, as the complete settlement by Defendants of the Lawsuit. A copy of that settlement check, front and back, is attached hereto. That settlement check was made jointly payable to Ms. Hoyett and Respondent, allegedly endorsed by both Respondent and Ms. Hoyett, and deposited in Respondent's IOLTA account on April 12, 2013. The endorsement signature that appears on the back of settlement check no. 0003940221, however, is not Ms. Hoyett's. Additionally, Ms. Hoyett did not authorize anyone on her behalf (including Respondent or any of his staff) to sign her name to or otherwise endorse the settlement check. Moreover, the settlement check was made payable in the amount of \$132,035.11, rather than the \$150,000 settlement amount that Ms. Hoyett had authorized and that Respondent had represented to the Probate Court of Cuyahoga County was the amount of the settlement.

21. Subsequent to learning on January 2, 2014 that Respondent had received settlement funds from the Lawsuit, Ms. Hoyett and Attorney Cargle notified Respondent that they were aware of his wrongful conduct and demanded that Respondent remit the remainder of the settlement funds to them. Respondent agreed to waive any fees or expenses that were "due" to him pursuant to the contingency fee agreement.

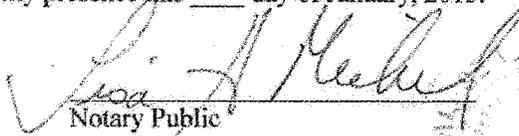
22. On December 18, 2014, Respondent remitted another check for \$10,000 to Ms. Hoyett, for a total of \$30,000 paid to date.

FURTHER AFFIANT SAYETH NAUGHT.



David S. Michel

SWORN TO BEFORE ME and subscribed in my presence this 8<sup>th</sup> day of January, 2015.



Notary Public

LISA HALE MICHEL, Attorney  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R.C.







5. On or about November 3, 2013, Respondent went to the Clients' home, told them there was a \$50,000 offer (which included payment of a Medicare subrogation claim), and advised them to accept it. The Clients consented to that settlement. At that same meeting, Respondent had the Clients execute an insurance company release. Respondent never presented the Clients with any contingency fee closing statement.

6. On or about November 25, 2013, Mr. Malkin contacted the insurance company. He was advised that Respondent had settled the Clients' claims nearly four months earlier, long before he met with the Clients to obtain any authorization to resolve the claim. Specifically, in early July 2013, the insurance company had forwarded to Respondent check no. 891A-84029558, dated July 8, 2013, in the amount of \$40,559.66 (the \$50,000 settlement, less payment to Medicare made directly by the insurance company). The settlement check was made jointly payable to Respondent and the Clients. The Clients had never seen the settlement check, and they did not endorse it or grant authority to any person to endorse the check on their behalf. Moreover, Respondent failed to deposit the settlement check into his IOLTA.

7. After the Clients confronted Respondent with their new-found knowledge, Respondent agreed to "waive" all attorney's fees and expenses. Respondent, however, has failed to pay the Clients any portion of the settlement proceeds. Furthermore, even though the insurance company paid Medicare directly, Respondent's stated justification for failing to pay the Clients was "[t]here was some delay caused while Medicare issues will be resolved."

8. On January 26, 2005, Brian Barrett and his mother Mary entered into a contingent fee agreement with Respondent relating to the death of their father/husband, Thomas Barrett. Respondent was to represent them in a class action against Merck & Company pertaining to the drug Vioxx. Attorney Scott Levey had referred them to Respondent.

9. In May of 2013, Scott Levey asked Mr. Barrett if he had heard from Respondent as Mr. Levey had heard that the Vioxx class action had been settled. At that point, Mr. Barrett had not communicated with Respondent for several years.

10. After attempting to reach Respondent for several weeks, Mr. Barrett finally reached him during the week of June 16, 2013. Respondent advised Mr. Barrett that their family would be receiving settlement funds in the amount of \$146,526.94. Respondent represented that the first installment was to be paid by the end of July 2013 and the second installment by the end of September 2013. Thereafter, Respondent sent Mr. Barrett a Closing Statement of the settlement dated June 23, 2013. However, attached to the Closing Statement was an award breakdown from the Vioxx settlement administrator that was dated July 6, 2009 (nearly four years earlier).

11. July passed without any contact from Respondent. Mr. Barrett called Respondent's office and spoke to his paralegal, Darlene Chandler. Ms. Chandler stated that she did not know when the Vioxx settlement funds were to be distributed.

12. In August, Mr. Barrett and his sister conducted research regarding the Vioxx class action. They learned that the class action settlements had taken place years before. They contacted the firm who was acting as settlement administrator and learned that two payments totaling \$215,480.78 had been wire transferred to Respondent on August 24, 2009 and October 8, 2009, nearly four years prior to the Barretts learning of the settlement.

13. Mr. Barrett contacted Scott Levey, who contacted Respondent. Respondent said that he would pay the Clients' settlement funds in October 2013 and by the end of 2013 and "waive" his fee if the Clients did not take any legal action against him. Mr. Levey emailed Respondent on September 24, 2013 and said that if half was paid by October 15 and the other

half by November 30, no legal action would be taken against him. Because Respondent failed to make payment by October 15, 2013, Mr. Barrett told Respondent that he was going to take the matter to the police. Respondent apologized and said that he had made a mistake and asked Mr. Barrett not to go to the police because, if he goes to jail, he would not be able to work or pay him.

14. The Barretts have not received any portion of the settlement proceeds of \$215,480.78 from Respondent.

15. In January of 2012, Attorney Koosed referred Paul Chase to Respondent regarding injuries Mr. Chase sustained in a motor vehicle accident that occurred on February 8, 2010. Respondent entered into a contingent fee agreement with Mr. Chase on January 6, 2012. Due to the fast-approaching statute of limitations, Respondent filed suit on Mr. Chase's behalf on February 2, 2012 against the tortfeasor and Mr. Chase's underinsured motorist carrier, State Farm.

16. The case was settled on or about June 11, 2013, for \$65,000, plus State Farm's waiver of its medical payments subrogation claim of \$6,760. The tortfeasor's insurance carrier, Geico, paid \$15,000 of the settlement funds, with the remaining \$50,000 funded by State Farm, which payments were received and deposited by Respondent in June, 2013.

17. In August, 2013, Mr. Chase contacted Attorney Koosed and advised him that he had yet to receive his settlement proceeds and had been unable to reach Respondent by telephone. Attorney Koosed thereafter attempted to reach Respondent without any success. On or about August 20, 2013, Attorney Koosed ran into Respondent at the Cuyahoga County Justice Center, and they discussed the Chase matter. Respondent assured him that things would be resolved in a week or two.

18. Mr. Chase authorized the settlements with Geico and State Farm, but neither he, nor his wife Nora, endorsed the settlement checks from Geico or State Farm. They were not aware that Respondent had deposited the checks and endorsed the same on their behalf. Respondent acknowledged that he signed the Chases' names to all settlement checks without their knowledge and consent. He also acknowledges having issued himself two checks for \$3,000 each in June of 2013.

19. Having not heard from Respondent after the case settled, Mr. Chase went to Respondent's office, unannounced, in early September 2013. Respondent was not there. Respondent called Mr. Chase on September 18, 2013 angry that Mr. Chase had come to his office without an appointment. Mr. Chase asked him if he had spent the settlement money, and Respondent acknowledged that he had. Although Respondent agreed to meet with Mr. Chase on October 4, 2013 to "square up," that meeting never took place.

20. On either November 13 or 14, 2013, Mr. Chase called Respondent and left a message stating that he was desperate for the settlement money. The next day, Respondent showed up at Mr. Chase's business and gave him a check for \$6,000. He told Mr. Chase that he was still negotiating a lien claimed due by ACS, apparently on behalf of Medical Mutual. No contingency fee closing statement was ever prepared by Respondent or signed by Mr. Chase.

21. Respondent subsequently admitted that he no longer has the \$65,000 in settlement proceeds. He admitted to paying himself for contingency fees and to using other portions of that money to "keep his business open." Further, Respondent admitted using Mr. Chase's settlement proceeds to pay other clients.

23. In approximately August 2010, Sally Kurjan hired Respondent to pursue a medical malpractice claim on her behalf. On August 4, 2010, Ms. Kurjan and Respondent

entered into a contingency fee agreement. Thereafter, Respondent filed suit against the alleged tortfeasor in the Court of Common Pleas, Mahoning County, Ohio, Case No. 2009 CV 4082.

24. In approximately January of 2013, Ms. Kurjan reluctantly authorized Respondent to settle her case for \$90,000, conditioned upon her netting \$60,000 from the settlement proceeds after all case and medical expenses were paid. Respondent assured Ms. Kurjan that she would net \$60,000 "free and clear," and that fees due and owing to expert witnesses, plus a \$2,500 fund for her future dental costs, would be paid from the remaining \$30,000. At that time, Chester A. Bizga, D.D.S. ("Dr. Bizga") was owed \$12,134 for dental services and expert fees incurred in connection with the matter. Dr. Nicolas Frantantonio was also owed fees in connection with expert and dental services rendered, and the \$2,500 fund was to be paid to Dr. Frantantonio to cover a portion of Ms. Kurjan's future expenses. Additionally, Respondent had reportedly advanced \$3,692 in case expenses. Although the contingency fee agreement provided for a 40% fee to Respondent, he agreed to accept less, waive his expenses, and pay the above amounts from his share in order to settle the case.

25. Respondent sent Ms. Kurjan a Closing Statement to execute, reflecting the following:

	\$90,000	Settlement
-	\$30,000	Attorney Fee
-	\$ 0	Case Expenses Waived
-	<u>\$ 0</u>	Medical payments subrogation "No Funds Withheld"
=	\$60,000	Net Proceeds to Client

26. Ms. Kurjan refused to sign the Closing Statement and questioned Respondent as to why Dr. Bizga's outstanding fees were unaccounted for, as well as the fund for her future dental care. Respondent assured her that he would take care of the outstanding dental fees owed to Dr. Bizga and deposit \$2,500 with Dr. Frantantonio. Based upon these representations, Ms.

Kurjan proceeded with the settlement and received \$60,000. However, Ms. Kurjan never executed the Closing Statement.

27. Contrary to Respondent's representations to Ms. Kurjan, Respondent, in fact, did not pay Dr. Bizga's fees for his dental and expert services. Respondent also did not pay the full amount to Dr. Frantantonio. This prompted calls from Ms. Kurjan to Respondent wherein Respondent again promised he would take care of it. Subsequently, Respondent asked Ms. Kurjan to call Dr. Bizga to see if he would agree to a reduction in his fees. Respondent also requested that Ms. Kurjan accept \$500, rather than \$2,500, as the amount to be paid to Dr. Frantantonio for future dental expenses, which Ms. Kurjan refused.

28. Since the distribution of the settlement funds in the first quarter of 2013, Respondent paid Dr. Bizga \$1,000 towards the \$12,134 balance owed to him, which payment was made on March 29, 2014. Dr. Bizga has retained Attorney Julius Kovacs to pursue collection efforts against both Respondent and Ms. Kurjan.

29. On February 2, 2012, Cynthia Pringle entered into a contingent fee agreement with Respondent regarding a personal injury claim. She was referred to Respondent by Attorney Jim Walters, who also executed the agreement as co-counsel. On July 30, 2012, Ms. Pringle returned to work in the United Arab Emirates. From that point forward, all of her communication with Respondent was via email.

30. In December of 2012, Respondent reported that he was engaged in settlement negotiations on behalf of Ms. Pringle. On December 12, 2012, Respondent emailed Ms. Pringle and stated he believed he might be able to settle her claim for \$13,000. The next day, Ms. Pringle authorized Respondent to settle for \$13,000 if it was offered.

31. On February 7, 2013, Respondent emailed a release to Ms. Pringle representing that he had, in fact, settled her claim for \$13,000. He instructed her to execute it and then either email or fax it back to him. He further stated, “when signed release is received, I will forward to insurance company and they will forward check.” Ms. Pringle executed the release on February 15, 2013 and emailed it to Respondent.

32. On May 20, 2013, Ms. Pringle emailed Respondent as to the status of the settlement payments. On May 23, 2013 Respondent replied “expecting funds soon.” On May 25, 2013, Ms. Pringle thanked him and asked “also, will you please arrange to pay the outstanding medical bills and then hold funds until I return?”

33. Ms. Pringle returned to the United States in July 2013. She attempted to reach Respondent via telephone without any success. She subsequently called the tortfeasor’s insurance company and was advised that the settlement check was issued on December 12, 2012 (the same date of Respondent’s email to her stating that he could possibly settle the case for \$13,000, and prior to Ms. Pringle’s authorization of settlement). Ms. Pringle was also advised that her name had been endorsed on the check. However, Ms. Pringle never endorsed the settlement check and never authorized anyone, including Respondent or his staff, to do so on her behalf.

34. Respondent deposited the \$13,000 check on December 17, 2012. Respondent has admitted to forging Ms. Pringle’s endorsement signature on that check. Ms. Pringle has not received any portion of the settlement payment.

35. By the above actions, Respondent violated Rules 1.4(a), 1.5(c)(2), 1.15(a), (c), and (d), and 8.4(b), (c), and (h) of the Ohio Rules of Professional Conduct.

36. On August 3, 2012, Ernest Jackson and his wife, Grace, entered into a contingent fee agreement with Respondent pertaining to a personal injury claim arising from a motor vehicle accident. In April 2013, Respondent settled the claim, with his clients' consent, for the sum of \$9,000. In June of 2013, Kaufman sent the Jacksons a release to sign and return, which they did. During the ensuing months, Respondent failed to communicate with the Jacksons regarding the status of their settlement payment.

37. Unbeknownst to the Jacksons, in April 2013, the insurance carrier forwarded two checks to Respondent, one in the amount of \$983.71 (made payable to Healthcare Recoveries for payment of its subrogation lien) and the other dated April 17, 2013, in the amount of \$8,016.29, made payable to the Jacksons and Respondent. Respondent deposited the check for \$8,016.29 into his IOLTA. The Jacksons were not aware that Respondent had deposited the check and endorsed it on their behalf, and they never granted Respondent or any of his staff permission to do so.

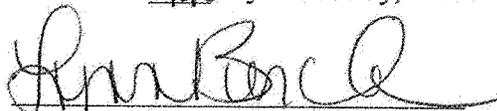
38. Respondent has not distributed any settlement funds to the Jacksons.

FURTHER AFFIANT SAYETH NAUGHT.



Robert J. Vecchio

SWORN TO BEFORE ME and subscribed in my presence this 9<sup>th</sup> day of January, 2015.



Notary Public



Lynn Burch  
Notary Public  
State of Ohio  
My Commission Expires  
August 21, 2016