

State of Michigan
Attorney Discipline Board

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ATTORNEY DISCIPLINE BOARD
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**Grievance Administrator,
Michigan Attorney Grievance Commission,**

Petitioner,

Case No. 17-30-GA

v

Alexander E. Kuhne, P41382,

Respondent.

Formal Complaint

(Parties and Jurisdiction)

1. Petitioner, Grievance Administrator, is authorized by MCR 9.109(B)(6) to prosecute this Formal Complaint by the Attorney Grievance Commission, which is the prosecution arm of the Supreme Court for the discharge of its constitutional responsibility to supervise and discipline Michigan attorneys.

2. As a licensed Michigan attorney, Respondent is subject to the jurisdiction of the Supreme Court and the Attorney Discipline Board as set forth in MCR 9.104.

3. Michigan attorneys have a duty to conduct themselves personally and professionally at all times in conformity with the standards imposed on members of the bar as a condition of the privilege to practice law.

4. Respondent is a Michigan attorney who was licensed in 1988 and who resides or has his place of business in the County of Oakland.

Count One
(Factual Allegations)

5. In October 2013, Respondent was retained by T.S. Capital Limited of Hong Kong (hereinafter referred to as "the client"), through its agent, Chung Kin Hau, to receive approximately \$125,000 by wire transfer to be deposited in his client trust account (IOLTA) pending confirmation of an "MT 760" as part of a Bank Guarantee and Letter of Credit procedure.

6. The MT 760 is a bank guarantee issued by the sending bank upon instructions of its account holder in favor of a particular transaction or a counter party.

7. Respondent's agreement with the client was to hold the client's funds of \$125,000 in his client trust account until confirmation was obtained that the MT 760 (guarantee of funds) was received from the counter party, Mr. Miguel Gaines, thus fulfilling the condition that Mr. Gaines was able to secure project funding.

8. The agreement between Respondent and the client further provided that once confirmation of the MT 760 was provided, Respondent would only release the funds when he received express authority to do so.

9. At all times relevant hereto, Respondent maintained and administered an IOLTA, account number XXXXXXXXXXXX3475, at First Place Bank, Birmingham, Michigan (now known as Chemical Bank).

10. On or about October 22, 2013, the client, through its agent and attorney, Tom H. Cheng, of Hong Kong, China, wire transferred approximately \$125,000 to Respondent's IOLTA account.

11. Thereafter, Mr. Gaines was unable to meet the condition, i.e., unable to obtain the MT 760 and unable to secure project funding.

12. Accordingly, Mr. Chung advised Respondent to return the client's funds of approximately \$125,000 to the client, T.S. Capital Limited.

13. Though numerous requests were made of Respondent to return the funds to the client and/or agent, Respondent did not return the funds.

14. Respondent has abandoned the representation of the client.

15. The records of Chemical Bank, the successor to First Place Bank, show that on October 22, 2013, the client funds from Cheng Associates in the specific amount of \$124,973.00 were deposited in Respondent's IOLTA per "Incoming Wire".

16. As of the next day, October 23, 2013, the balance in Respondent's IOLTA was only \$123,664.

17. On November 29, 2013, the balance in Respondent's IOLTA account was only \$58.65.

18. Respondent did not return the client's funds, failed to safeguard the client's funds in his IOLTA and converted the client's funds.

(Grounds for Discipline)

19. By reason of the conduct described above in Count One of this Formal Complaint, Respondent has committed the following misconduct and is subject to discipline under MCR 9.104 as follows:

- a) Failed to seek the lawful objectives of a client through reasonably available means permitted by law and these rules, in violation of MRPC 1.2(a);

- b) Failed to keep a client reasonably informed about the status of the matter and comply promptly with reasonable requests for information, in violation of MRPC 1.4(a);
- c) Failed to explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation, in violation of MRPC 1.4(b);
- d) Failed to promptly pay or deliver funds that the client is entitled to receive and failed to promptly provide a full accounting of such funds, in violation of MRPC 1.15(b)(3);
- e) Failed to hold client funds in connection with a representation in an IOLTA or non-IOLTA trust account, and failed to appropriately safeguard such funds, in violation of MRPC 1.15(d);
- f) Engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b);

- g) Engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2), and,
- h) Engaged in conduct contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

**Count Two
(Factual Allegations)**

20. In April 2015, Maureen Drouillard retained Respondent for the purpose of preparing estate planning documents and to complete an application for Veteran's Administration (VA) benefits for Complainant's elderly mother, Catherine Gavin.

21. Ms. Drouillard paid Respondent a retainer of \$2,500 for the legal representation.

22. Respondent failed to prepare the estate planning documents and to complete the application for the VA benefits during the period of April 2015 through April 2016.

23. Complainant made Respondent aware of the fact that her mother, Ms. Gavin, had serious health issues requiring treatment and rehabilitation in January and February 2016.

24. Ms. Drouillard informed Respondent in March 2016 that her mother, Ms. Gavin, had suffered a stroke.

25. Ms. Drouillard threatened Respondent with a civil suit if he did not take immediate steps to complete the estate planning documents and the VA benefits application.

26. Respondent promised to provide the documents on April 21, 2016 and again on April 25, 2016, but failed to do so on both occasions.

27. Finally, on May 28, 2016, Respondent met with Ms. Drouillard and presented her with estate planning documents, but not the VA benefits application, and did not return to Complainant the original documents which she had provided to him.

28. The estate planning documents which Respondent had prepared contained numerous errors which rendered the documents unable to be executed at that time and required revisions.

29. Though Respondent promised to make the necessary corrections and revisions and to resubmit the estate planning documents to Ms. Drouillard, he failed to do so.

30. Thereafter, Respondent abandoned Ms. Drouillard without providing her proper and complete estate planning documents and without providing and filing the VA benefits application.

(Grounds for Discipline)

31. By reasons of the conduct described above in Count Two of this Formal Complaint, Respondent has committed the following misconduct and is subject to discipline under MCR 9.104, as follows:

- a) Failed to provide competent representation to his client with regard to her legal matters, in violation of MRPC 1.1;

- b) Neglected a legal matter entrusted to him, in violation of MRPC 1.1(c);
- c) Failed to seek the lawful objectives of his client, in violation of MRPC 1.2(a);
- d) Failed to act with reasonable diligence and promptness, in violation of MRPC 1.3;
- e) Failed to keep a client reasonably informed about the status of the matter, in violation of MRPC 1.4(a);
- f) Failed to explain a matter to his client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, in violation of MRPC 1.4(b);
- g) Upon termination, failed to surrender papers to which the client is entitled, in violation of MRPC 1.16(d);
- h) Engaged in conduct that exposes the legal profession, to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and,
- i) Engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

Count Three

32. On July 19, 2016, Respondent was served the Request for Investigation in AGC RI File No. 16-0430, filed by Maureen Drouillard, at his address registered with the State Bar of Michigan, in accordance with MCR 9.112(C)(1)(b), with a demand that he file a written answer to the allegations set forth therein, within 21 days of the date of the letter.

33. On August 10, 2016, Respondent was served the Request for Investigation in AGC RI File No. 16-0622, filed by Chung Kin Hau, at his address registered with the State Bar of Michigan, in accordance with MCR 9.112(C)(1)(b), with a demand that he file a written answer to the allegations set forth therein, within 21 days of the date of the letter.

34. Respondent did not file answers to the Requests for Investigation in the 21-day time period.

35. Final Notices demanding a written response to the allegations in each Request for Investigation within ten additional days, were served by registered mail, return receipt requested, on Respondent's State Bar address, with each respective Request for Investigation attached thereto, on August 16, 2016 in the Drouillard matter and on September 15, 2016 in the Hau matter.

36. Respondent was also served the Final Notice and Requests for Investigation on August 16, 2016 and September 15, 2016, respectively, at a secondary address.

37. A summary of Petitioner's service of the Requests for Investigation on Respondent is as follows:

Complainant	RI #	Date RI Served, Regular Mail	Date of Service of Final Notice, RI, Registered Mail/ Return Receipt Requested
Maureen Drouillard	16-0430	7/19/16	8/16/16
Chung Kin Hau	16-0622	8/10/16	9/15/16

38. On October 12, 2016, Petitioner's counsel attempted to contact Respondent by telephone, but received an operator-recorded message stating that the telephone number was no longer in service.

39. On October 12, 2016, Petitioner's counsel emailed Respondent at his email address of LexKuhne@gmail.com, requesting Respondent to file an Answer to the Request for Investigation filed by Ms. Drouillard, noting that he had been served on July 19 and August 16, 2016 in that particular matter, and failed to timely file a response.

40. Notwithstanding Petitioner's counsel's email to Respondent, Respondent did not respond to the email and did not file an Answer to the Request for Investigation of Maureen Drouillard.

41. On October 20, 2016, Petitioner's counsel attempted to contact Respondent by telephone, but received an operator-recorded message that the telephone number was no longer in service.

42. In addition, on November 29, 2016, Respondent was subpoenaed to personally appear at the office of the Attorney Grievance Commission, 535 Griswold, Suite

1700, Detroit, Michigan, 48226, which included a demand for production of specified documents, to take place on December 19, 2016 at 10:00 a.m.

43. On December 19, 2016, Petitioner's counsel telephoned Respondent's office, and reaching his voicemail, left a voicemail message regarding his failure to appear, and asking Respondent to contact him regarding both Requests for Investigation matters described previously herein.

44. Respondent failed to respond to the telephone message left for him on his answering machine failed to appear at the time and place designated for his testimony under oath, and failed to produce the documents requested.

45. To date, Respondent has not contacted Petitioner or any member of Petitioner's staff regarding these matters.

46. To date, Respondent has not answered the Requests for Investigation identified above.

(Grounds for Discipline)


47. By reasons of the conduct described above in Count Three of this Formal Complaint, Respondent has committed the following misconduct and is subject to discipline under MCR 9.104, as follows:

- a) Failed to answer two Requests for Investigation, in violation of MCR 9.113(A) and MCR 9.104(7);
- b) Knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2);

- c) Engaged in conduct that exposed the legal profession to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and,
- d) Engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

Wherefore, Respondent should be subjected to such discipline as may be warranted by the facts or circumstances of such misconduct, including any restitution owed.

Dated: March 23, 2017



Alan M. Gershel (P29652)
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