

STATE OF MICHIGAN

Attorney Discipline Board

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ATTORNEY DISCIPLINE BOARD

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Grievance Administrator,

Petitioner/Appellant,

v

Ronald G. Kraft, P 16196,

Respondent/Appellee,

Case No. 09-59-GA

Decided: April 18, 2011

*Appearances:*

Frances A. Rosinski, for the Grievance Administrator, Petitioner/Appellant  
Ronald G. Kraft, Respondent/Appellee

**BOARD OPINION**

Respondent, Ronald G. Kraft, was the subject of an order of revocation and restitution issued by Tri-County Hearing Panel #72 of the Attorney Discipline Board on September 28, 2010. Respondent petitioned for review of that order on the grounds that his letter of resignation from active membership in the State Bar of Michigan, submitted prior to the hearing before the panel, deprived the panel of jurisdiction. The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118 and has considered the arguments and briefs submitted by the parties. For the reasons discussed below, we conclude that respondent's argument is without merit and that the hearing panel's order of revocation and restitution should be affirmed.

**Proceedings Before the Hearing Panel**

The Grievance Administrator filed a formal complaint on June 29, 2009, alleging five separate counts of professional misconduct. As of that date, respondent's license had already been suspended for approximately 16 months as the result of an order of suspension and restitution suspending his license for 48 months effective February 21, 2008. *Grievance Administrator v Ronald G. Kraft*, ADB Case No. 07-37-GA. Respondent's default for failure to file an answer to the

complaint was entered on August 13, 2009. On September 24, 2009, respondent faxed to the Attorney Grievance Commission a proposed "Resignation Pursuant to an Order of Revocation," accompanied by a copy of his handwritten letter stating that he wished to take that action because "I do not intend to return to the practice of law or have hearings related to same." Upon receiving a copy of that message, the Attorney Discipline Board's Executive Director wrote to the parties, citing MCR 9.115(M) which states that a lawyer who is the subject of formal discipline proceedings cannot resign except through an order of revocation and inquiring whether the Grievance Administrator had any objection to the immediate entry of an order revoking respondent's license. The Administrator's counsel responded by stating that while the Administrator had no objection to the entry of such an order, the Administrator was requesting a formal hearing before the panel "so that the order of revocation may accurately reflect that respondent is in default for failing to answer the formal complaint and so that the Grievance Administrator may present argument for restitution."

On October 9, 2009, the hearing panel entered an order expressing the panel's intent to enter an order of revocation but giving the Grievance Administrator an opportunity to object and to submit an itemized statement of the amounts which would be claimed for restitution should the matter proceed to a hearing. The Administrator filed a written request for restitution to four complainants in the total amount of \$201,751.77. That itemization prompted a written response from respondent denying that he owed any money to the listed individuals and/or that he could not reply because he was bound by certain attorney/client privileges. Respondent formally submitted his resignation, with an agreement to the entry of an order of revocation, to the panel on October 26, 2009.

A hearing before the panel was scheduled for June 14, 2010. The week before that hearing, respondent Kraft submitted a two page letter, with 43 pages of attachments, stating that "upon my resignation I believe I am not within the jurisdictional control of the Attorney Discipline Board or the Attorney Grievance Commission. As such, I will not be appearing at the scheduled hearing on June 14, 2010, at 9:30 am."

True to his word, respondent did not appear. The panel announced that respondent had taken no steps to set aside the default filed ten months earlier and that the misconduct charged in the complaint was therefore deemed to be admitted. The panel further announced that because respondent was not present and had waived his opportunity to offer any evidence in mitigation, there would be no point in considering aggravating factors since the panel had already clearly announced

its intention to impose the sanction of revocation. The remainder of the hearing was therefore devoted to the Grievance Administrator's presentation of testimony and documentary evidence in support of the claims for restitution.

The hearing panel's order of revocation and restitution entered September 28, 2010, includes an order of restitution to the four complainants in the aggregate amount of \$160,042.00. The charges of misconduct and the hearing panel's findings are set forth in the formal complaint, attached to this opinion as Appendix A. The hearing panel's report of September 28, 2010, is attached as Appendix B.

### **Discussion**

The respondent's petition for review presents this issue:

Did respondent's written offer of resignation and request for the entry of an order of revocation deprive the hearing panel of jurisdiction to consider the Grievance Administrator's request for restitution?

As the Grievance Administrator properly points out, respondent cannot avoid accountability for his alleged wrongdoing by submitting a "resignation" and choosing to walk away from the proceeding. MCR 9.115(M) speaks plainly to the situation presented here:

An attorney's request that his or her name be stricken from the official register of attorneys may not be accepted while a request for investigation or a complaint is pending, except pursuant to an order of revocation.

In this case, respondent does not claim that his resignation - either his faxed letter to the Grievance Commission of September 24, 2009, or his submission to the hearing panel on October 26, 2009 - was "accepted" by the hearing panel, the State Bar of Michigan, the clerk of the Supreme Court or any other body charged with maintaining an official register of actively licensed attorneys. Instead, respondent argues that he was not notified that his resignation was not accepted. In fact, the hearing panel made it quite plain to respondent that his attempted resignation had not been accepted and that further proceedings before the panel might be held. In its order of October 9, 2009, the panel stated its intention to follow MCR 9.115(M) by issuing an order revoking respondent's license but, the panel continued,

Any objection to the entry of such an order must be filed, in writing, no later than 14 days after the date of this order. If the Grievance Administrator wishes to seek restitution, a written request for restitution must be filed within 14 days of the date of this order and

shall include an itemization of the amounts claimed in restitution. Respondent may file a response to a request for restitution within 14 days after the request is filed. Copies of requests or objections regarding restitution should be served upon the complainants.

The panel's order then concluded:

Respondent's resignation pursuant to MCR 9.115(M) has been taken under advisement by the hearing panel pending its review of any objections and/or requests submitted by the parties in accordance with this notice.

As stated above, the Administrator's counsel provided a written itemization of the restitution claimed on behalf of four complainants and respondent filed written objections. There should have been no question in respondent's mind that the issue of restitution had been joined and that restitution would be the focus of the hearing subsequently scheduled by the panel.

At the review hearing conducted by the Board on March 9, 2011, respondent offered a brief explanation as to why the panel's findings on restitution were not meritorious. He was then asked by a member of the Board why he did not choose to make those arguments to the panel:

Mr. Kienbaum: You apparently just took the position they don't have jurisdiction, I'm not going to show up. That's a heck of a gamble. Why did you take that gamble?

Mr. Kraft: Well, to me it wasn't a gamble. I felt that -

Mr. Kienbaum: You thought you were right?

Mr. Kraft: I thought I was absolutely right.

Mr. Kienbaum: You still think you're right?

Mr. Kraft: I think I'm absolutely right right now.  
[Tr 03/09/11, p 8.]

Notwithstanding respondent's certainty, we do not find any ambiguity in the language of MCR 9.115(M), nor do we find any error in the procedure utilized by the hearing panel. Moreover, the plain language of MCR 9.115(M) and its application in this case is entirely consistent with Rule 3(E) of the Supreme Court's Rules Governing the State Bar:

Resignation does not deprive the Attorney Grievance Commission or the Attorney Discipline Board of jurisdiction over the resignee with respect to misconduct that occurred before the effective date of the resignation.

### **Conclusion**

The rules governing discipline proceedings in Michigan make it clear that a lawyer facing disciplinary charges cannot avoid a discipline proceeding - including proceedings to determine restitution - by offering to resign if an investigation or formal proceedings have commenced. With knowledge of the potential consequences, respondent elected not to answer the formal complaint in this case and chose not appear before the panel to contest the evidence submitted by the Grievance Administrator in support of claims for restitution. The proceedings before the hearing panel were consistent with the applicable rules and the resulting order of revocation and restitution is affirmed.

Board Members William J. Danhof, Thomas G. Kienbaum, Andrea L. Solak, Rosalind E. Griffin, M.D., Carl E. Ver Beek, Craig H. Lubben, James M. Cameron, Jr., and Sylvia P. Whitmer, Ph.D., concur in this decision.

Board Member William L. Matthews was absent and did not participate.

# Appendix A

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**State of Michigan**  
**Attorney Discipline Board**

**Grievance Administrator,  
Attorney Grievance Commission,  
State of Michigan,**

Petitioner,

**Case No. 09-59-GA**

**v**

**Ronald G. Kraft, P-16196,**

Respondent.

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**Formal Complaint**

Petitioner, upon information and belief, states the following:

1. Respondent, Ronald Kraft, was licensed to practice law in Michigan in 1961, and by virtue of said license is a member of the State Bar of Michigan who is subject to the jurisdiction of the Michigan Supreme Court and the Attorney Discipline Board in matters of discipline for professional misconduct.
2. Respondent last maintained an office for the practice of law in the County of Oakland, State of Michigan.
3. As an attorney subject to the rules and regulations of the Michigan Supreme Court, Respondent is subject to the standards for discipline set forth in MCR 9.104(A) and MRPC 1.0(b).

**Count One**  
**(Kukhahn Estate)**

4. On or about June 24, 2004, Respondent appeared in the Estate of Carl F. Kukhahn (Kukhahn Estate) as the attorney for the co-personal representatives, Joanne Hall and Bruce Kukhahn.
5. On June 25, 2004, Bank One issued an \$118,800.59 check to the Kukhahn Estate which closed out Carl Kukhahn's two bank accounts.
6. On June 25, 2004, Respondent, as a "known customer," opened an account at Fidelity Bank in the name of Estate of Carl Kukhahn, Jr., Dec'd, Bruce D. Kukhahn and Joanne M. Hall, Co-Pers Rep, Ronald G. Kraft Agent, with Respondent's office address (Estate Account). Respondent, Bruce Kukhahn, and Joanne Miller were signatories.
7. On June 25, 2004, Respondent deposited the \$118,800.59 check into the Estate Account.
8. From June 25, 2004 through November 15, 2006, when the Estate Account was closed, Respondent systematically depleted the account by numerous checks written to himself in varying amounts ranging from \$500 to \$7,500 for a total of \$93,095.00.
9. Respondent deposited at least a portion of the \$93,095.00 he took from the Estate Account into his personal account at Comerica Bank in the name of Ronald G. Kraft and Marlene L. Kraft, account no. 373140748 and his business checking account in the name of Ronald G. Kraft, account no. 1840076671.
10. Respondent never informed his clients of his withdrawal of the Estate funds.
11. Respondent did not file an inventory in the Kukhahn Estate identifying the \$118,800.59.



12. In an answer to a request for a Special Fiduciary filed on or about November 24, 2007, Respondent represented to the probate court that the "largest asset of the estate is a house,...land up North and **some cash.**"

13. On January 29, 2008, the probate court removed Bruce Kukhahn and Joanne Hall as the co-personal representatives.

14. On February 25, 2008, the appointed personal representative, Eric Braverman, filed a petition to surcharge Bruce Kukhahn and Joanne Hall as the co-personal representatives for the monies missing from the Kukhahn Estate.

15. Respondent did not disgorge any portion of the \$93,095.00 he took from the Estate Account until he was ordered to do so and jailed by the Wayne County Probate Court after which he paid \$25,000. Respondent then filed bankruptcy.

16. By reason of the conduct described above in this complaint, Respondent has violated MCR 9.104(A)(4) by engaging in the following professional misconduct:

- a) failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, in violation of MRPC 1.4(b);
- b) failing to hold property of clients or third persons in connection with the representation separate from the lawyer's own property, in violation of MRPC 1.15(d);
- c) knowingly making a false statement of material fact to a tribunal, in violation of MRPC 3.3(a)(1);

- d) engaging 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);
- e) engaging in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(A)(2);
- f) engaging in conduct contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(A)(3); and,
- g) violating or attempting to violate the Rules of Professional Conduct in violation of MRPC 8.4(a).

**Count Two**  
**(Keyotta Miles)**

17. In or about April of 2005, Respondent was retained by Keyotta Miles to handle her claims for injuries arising out of an automobile accident that happened on April 23, 2005.

18. Ms. Miles signed a written contingent fee agreement which allowed Respondent to be paid 1/3 of the total recovery, plus costs.

19. Respondent negotiated with the Avis Budget Group (Budget) for PIP benefits, including lost wages, and with AAA for liability.

20. In December of 2005, Budget began issuing checks payable to Ms. Miles.

21. During 2006 and 2007, Ms. Miles asked Respondent about the status of checks from Budget.

22. During 2006 and 2007, Respondent told Ms. Miles that he had not received any checks from Budget.

23. Ms. Miles never gave Respondent or any other person authority to sign her name to any document or check.

24. Respondent signed or caused Ms. Mile's name to be signed as an endorsement on the following checks issued by Budget and then deposited them:

<u>Date</u>	<u>Payee</u>	<u>Amount</u>	<u>Depositing Bank</u>
12/5/05	Miles	\$27,518.75	Fidelity Bank
3/23/06	Miles	\$10,273.64	Fidelity Bank
4/12/06	Miles	\$ 30.00	Fidelity Bank
4/12/06	Miles	\$ 9,225.24	Fidelity Bank
3/1/07	Miles	\$ 3,145.00	TCF Bank
3/2/07	Miles and R	\$15,725.00	TCF Bank

25. On or about October 9, 2006, Respondent received a \$3,200.00 check from Budget payable to "Law Office of Ronald Kraft."

26. Respondent never advised Ms. Miles of the \$3,200.00 check, nor did he pay her any funds due to her from this check.

27. On December 12, 2005, Respondent deposited the \$27,518.75 check into an account at Fidelity Bank in the name of Ronald G. Kraft, Attorney at law, Clients Trust Account-IOLTA, account number 28101495 (Fidelity IOLTA). The balance on December 12, 2005 was \$55,233.47.

28. Respondent did not advise Ms. Miles of any costs incurred on her behalf as of December 12, 2005, nor was Ms. Miles aware of any costs Respondent could have incurred on her behalf as of December 12, 2005 except for a possible deposition cost.

29. Ms. Miles share of the \$27,518.75 was \$18,162.37.

30. After the deposit of \$27,518.75, Respondent made the following payments from the Fidelity IOLTA to Ms. Miles:

<u>Date</u>	<u>Amount</u>	<u>Check No.</u>
12/19/05	\$1,000	1173
12/19/05	\$1,000	1174
12/28/05	\$1,000	1183
12/28/05	\$4,000	1184
1/10/06	\$3,000	1190
1/18/06	\$7,342	1197 with memo "Balance of no-fault benefits"

31. After the deposit of the \$27,518.75 check dated December 5, 2005 through January of 2006, Respondent made the following withdrawals from the Fidelity IOLTA to himself or on behalf of himself:

<u>Date</u>	<u>Payee</u>	<u>Amount</u>	<u>Check No.</u>
12/12/05	Respondent	\$1,000	1164
12/12/05	Respondent	\$1,000	1165
12/13/05	Cash	\$ 400	1167
12/13/05	Respondent	\$1,000	1168
12/13/05	Lord & Taylor	\$ 405	1168(sic)
12/15/05	Respondent	\$ 750	1171

12/16/05	Respondent	\$2,200	1172
12/20/05	Respondent	\$2,500	1176
12/2/05 (sic)	Respondent	\$ 850	1178
12/21/05	Marshall Fields	\$ 355	1178(sic)
12/22/05	Respondent	\$1,000	1180
12/22/05	Respondent	\$ 500	1181
12/29/05	Respondent	\$1,500	1185
12/29/05	Respondent	\$ 500	1186
1/6/06	Respondent	\$ 500	1188
1/10/06	Respondent	\$ 500	1189
1/12/06	Lord & Taylor	\$ 110	1192
1/13/06	Respondent	\$ 500	1194
1/17/06	Respondent	\$1,500	1195

32. Respondent did not notify Ms. Miles of his receipt of the checks issued in 2006 and 2007, listed above.

33. In or about October 2007, Ms. Miles contacted Budget and was advised of the checks issued in 2006 and 2007.

34. Respondent's representations to Ms. Miles that he had not received any checks from Budget during 2006 and 2007 were false and were known by him to be false for the reason that he had received checks from Budget, as described above.

35. Respondent did not pay Ms. Miles any portion of the \$10,273.64, the \$9,225.24, or the \$15,725.00 checks, listed above, until after Ms. Miles initiated a Request for Investigation against Respondent on November 8, 2007 with the Attorney Grievance Commission, File no. 2869/07.

36. In or about November of 2006, Respondent negotiated a \$90,000 settlement for Ms. Miles with AAA.

37. On November 29, 2006, AAA issued a \$1,242.89 check to the United States Treasury to satisfy a tax levy against Respondent which was required before Ms. Miles could receive her settlement proceeds.

38. On November 30, 2006, AAA issued an \$88,757.11 check payable to Ms. Miles and Respondent.

39. Respondent did not advise Ms. Miles of his receipt of the AAA settlement check on or about November 30, 2006.

40. Ms. Miles did not endorse the AAA check.

41. Respondent signed or caused Ms. Miles's name to be signed as an endorsement onto the AAA check.

42. Despite being requested to do so, Respondent has not provided information to the Attorney Grievance Commission about where he deposited the AAA check.

43. Based on their written contingent fee agreement, Ms. Miles was due \$60,000, less costs, from the AAA settlement.

44. Respondent did not advise Ms. Miles of any costs incurred on her behalf as of November 30, 2006, nor was Ms. Miles aware of any costs Respondent could have incurred on her behalf as of November 30, 2006.

45. Respondent never issued a check to Ms. Miles for \$60,000 for her share of the AAA settlement.

46. On January 11, 2007, Respondent opened an account at TCF Bank in the name of Ronald G. Kraft Attorney at Law, IOLTA Trust, account no. 3883556997 (TCF account), with a \$30,000 deposit.

47. The TCF account was not an IOLTA.

48. On May 16, 2007, Respondent deposited into the TCF account a \$32,000 check issued to him and his wife, Marlene Kraft, as "JTWROS" from Merrill, Lynch from an "Office Disbursement Account."

49. On or about May 23, 2007, Respondent issued a \$30,268 check to Ms. Miles from the TCF account, check no. 1040, which was returned for nonsufficient funds.

50. In October of 2007, Respondent finally paid Ms. Miles \$30,268 by cashier's check.

51. Respondent has not paid the balance owed to Ms. Miles from the AAA settlement.

52. Respondent represented to Ms. Miles that he would pay her medical bills from the monies paid by Budget and/or AAA.

53. As of July 2008, Ms. Miles' credit report reflects unpaid medical bills relating to her injuries resulting from the automobile accident in the approximate amount of \$1,254.00.

54. During the grievance administrator's investigation of AGC File #2869/07, the grievance administrator demanded that Respondent produce his client file and copies of all

checks and bank records pertaining to Ms. Miles' funds by letters dated January 16, 2008 and May 13, 2008, and a subpoena dated June 13, 2008.

55. Despite the requested extensions being granted to Respondent for production of the requested information, Respondent never produced his complete client file, copies of any checks, nor any bank records pertaining to Ms. Miles funds.

56. Respondent did not maintain complete records of the funds he received on behalf of Ms. Miles or disbursed to her.

57. Neither Respondent nor Ms. Miles can establish whether Ms. Miles has received all of the funds to which she is entitled due to Respondent's lack of records of her funds.

58. By reason of the conduct described above in this complaint, Respondent has violated MCR 9.104(A)(4) by engaging in the following professional misconduct:

- a) failing to keep his clients reasonably informed about the status of his matter and to promptly comply with reasonable requests for information, in violation of MRPC 1.4(a);
- b) failing to communicate with his clients to the extent reasonably necessary for the clients to make informed decisions regarding the representation, in violation of MRPC 1.4(b);
- c) failing to notify his client when funds in which the client has an interest is received, in violation of MRPC 1.15(b)(1);



- d) failing to preserve complete records of such account funds, in violation of MRPC 1.15(b)(2);
- e) failing to promptly pay funds that his client is entitled to receive and to promptly render a full accounting upon request, in violation of MRPC 1.15(b)(3);
- f) knowingly failing to respond to the Grievance Administrator's demand for information, in violation of MRPC 8.1(a)(1);
- g) engaging 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);
- h) engaging in conduct prejudicial to the administration of justice, in violation of MCR 9.104(A)(1); and MRPC 8.4(c);
- i) engaging in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(A)(2);
- j) engaging in conduct contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(A)(3); and,
- k) violating or attempting to violate the Rules of Professional Conduct in violation of MRPC 8.4(a).

**Count Three**  
**(Mae Crawford)**

59. On or about December 28, 2006, Respondent was retained by Mae Crawford to handle her claims arising out of slip and fall at Kmart on April 1, 2006.

60. On or about February 13, 2008, Respondent called Silvia Herrera, a claims manager at K-Mart, to initiate settlement negotiations of Ms. Crawford's claims.

61. Effective February 21, 2008, Respondent's license to practice law was suspended for four years in *Grievance Administrator v Ronald G. Kraft*, ADB Case No. 04-120-GA, with restitution to his clients: \$14,407.00 to Frances Zabel and \$8,419.20 to the Estate of Cecilia Adams.

62. Respondent has never paid restitution ordered in *Grievance Administrator v Ronald G. Kraft*, ADB Case No. 04-120-GA.

63. Respondent did not notify Mae Crawford of his suspension from the practice of law as required by MCR 9.119(A).

64. In February of 2008, Respondent began negotiations for settlement with a K-Mart claims manager.

65. Throughout March of 2008, Respondent continued settlement discussions with K-Mart and had discussions with K-Mart about the medical information necessary to establish Ms. Crawford's claims.

66. On or about April 7, 2008, Respondent submitted medical information to K-Mart.

67. On or about April 7, 2008, K-Mart made a settlement offer to Respondent, and negotiations continued with Respondent.

68. On or about June 16, 2008, Respondent sent to K-Mart, by facsimile on his firm's letterhead, the release and other information necessary to consummate the settlement for \$30,000.

69. On June 20, 2008, Kmart issued a \$30,000 check payable to Respondent and Ms. Crawford.

70. Respondent negotiated the \$30,000 check.

71. Respondent paid himself \$8,000.

72. Respondent issued a Settlement Statement which expressly stated that Respondent was to hold \$6,000 in escrow to be used for the payment of Ms. Crawford's medical liens and that Respondent was to negotiate the resolution of the medical liens with any remaining monies from the \$6,000 to be paid to Ms. Crawford.

73. Respondent paid Ms. Crawford her 2/3 portion of the \$24,000 remaining after the withholding of the \$6,000 for medical liens in two payments; one for \$2,000 and the second for \$14,000 paid from his TCF account.

74. Respondent did not use any portion of the \$6,000 to pay off any medical lien.

75. Respondent did not release the \$6,000 to any other person to handle the medical liens.

76. Respondent did not advise Ms. Crawford that he did not payoff the medical liens.

77. Respondent's failure to negotiate and pay the medical liens has adversely and seriously affected Ms. Crawford's credit rating.

78. Respondent did not pay any portion of the \$6,000 to Ms. Crawford.

79. Respondent has not disgorged any portion of his \$8,000 fee.

80. By reason of the conduct described above in this complaint, Respondent has violated MCR 9.104(A)(4) by engaging in the following professional misconduct:

- a) failing to communicate with his clients to the extent reasonably necessary for the clients to make informed decisions regarding the representation, in violation of MRPC 1.4(b);
- b) engaging in the unauthorized practice of law, in violation for MRPC 5.5(a);
- c) failing to promptly pay or deliver funds that a third person is entitled to receive, in violation of MRPC 1.15(b)(3);
- d) engaging 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);
- e) failing to notify his client of his suspension from the practice of law, in violation of MCR 9.119(A);
- f) failing to file proof of compliance with the orders of discipline, in violation of MCR 9.119(C);
- g) practicing law and holding himself out as an attorney after the effective date of his suspension, in violation of MCR 9.119(E);

- h) violating his order of discipline, in violation of MCR 9.104(A)(9);
- i) charging and collecting an illegal and excessive fee, in violation of MRPC 1.5(a);
- j) engaging in conduct prejudicial to the administration of justice, in violation of MCR 9.104(A)(1); and MRPC 8.4(c);
- k) engaging in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(A)(2);
- l) engaging in conduct contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(A)(3); and,
- m) violating or attempting to violate the Rules of Professional Conduct in violation of MRPC 8.4(a).

**Count Four**  
**(Yvonne Jones)**

81. On or about May 16, 2006, Respondent was retained by Yvonne Jones to handle her divorce, captioned *Eugene Jones v Yvonne Jones*, Oakland County Circuit Court Case No. 06-720715-DM (*Jones* divorce).

82. Respondent and Ms. Jones agreed to a \$175 hourly fee arrangement.

83. Ms. Jones paid a \$750.00 retainer to Respondent. Respondent deposited at least \$250.00 of the \$750.00 into an account at Comerica Bank in the name of Respondent and Marlene Kraft, his wife, account number 0373140748 (Personal account);

84. On May 9, 2006, an Ex Parte Mutual Injunctive Order Against Disposal of Assets (Injunctive Order) was entered prohibiting the transfer or concealment of any assets of the parties whether titled in the name of either party.

85. On or about May 16, 2006, Respondent advised Ms. Jones to deplete her IRA and to give the funds to him to hold in escrow so that her husband's attorney would not know about the funds.

86. Ms. Jones followed Respondent's advice and withdrew all the funds from her IRA with a penalty in excess of \$500.00, leaving Ms. Jones with \$4,174.77.

87. On or about May 18, 2006, Ms. Jones endorsed to Respondent the \$4,174.77 check from her IRA.

88. On May 18, 2006, Respondent deposited the \$4,174.77 into the Fidelity IOLTA bringing the balance to \$6,434.42.

89. By June 5, 2006, Respondent had depleted the funds in the Fidelity IOLTA such that the balance had dropped to \$225.22.

90. Ms. Jones never gave Respondent any authority to use her funds and fully expected that Respondent was holding her funds in escrow for her.

91. In or about January of 2007, Ms. Jones was attempting to refinance the marital property through Pathway Financial.

92. On February 7, 2007, Respondent sent a letter to Pathway Financial Company representing that:

Please be advised for the past four months this office has been holding in Escrow the amount of \$4,000.00 for our client, Yvonne Jones, regarding a legal matter which has been resolved. Yvonne Jones will be reimbursed with these funds immediately.

93. Ms. Jones knew of Respondent's letter to Pathway Financial.
94. On February 12, 2007, the *Jones* divorce was dismissed because Ms. Jones and her husband reconciled.
95. Prior to February 12, 2007, Ms. Jones had not received any invoices from Respondent suggesting that her \$750 retainer had been exhausted.
96. Beginning on or about February 12, 2007 through June of 2007, Ms. Jones repeatedly asked Respondent for the return of her funds.
97. From February through June of 2007, Respondent first told Ms. Jones that her funds would be forthcoming, but thereafter repeatedly gave Ms. Jones various reasons and excuses as to why he could not distribute her funds.
98. On or about June 21, 2007, Ms. Jones declined to accept a \$250.00 check from Respondent's secretary because she wanted all of her funds.
99. On or about June 21, 2007, Respondent's secretary sent by facsimile an invoice dated March 8, 2007, which did not provide any dates of services and stated a balance owing of \$3,375.50, with the following notation:

Deposit in Escrow \$4,174.77 on May 16, 2006, to be deducted from the balance. \$797.77 to be refunded to client from balance.
100. Prior to June 21, 2007, Ms. Jones had never been provided with any invoice for Respondent's services.

101. Ms. Jones disputed the amount of the invoice and that she had never been notified that her retainer had been exhausted and that fees were being incurred.

102. On June 27, 2007, Ms. Jones filed a Request for Investigation against Respondent, AGC File #1681/07, alleging that Respondent had mishandled her funds and had used her funds to pay for fees without notice of the fees.

103. Respondent then represented to Ms. Jones and the grievance administrator that he never was to have held Ms. Jones' funds from her IRA in escrow and that the funds were to be used to pay his fees.

104. Respondent's representations to Ms. Jones and the grievance administrator as described in the above paragraph were false and were known by Respondent to be false for the reason that his agreement with Ms. Jones was to hold her funds from the IRA in escrow pending resolution of the divorce.

105. In the alternative, Respondent's representations to Ms. Jones that he was going to hold her funds in escrow were false and were known by him to be false for the reason that he always intended on immediately using Ms. Jones' funds for his own purposes.

106. By reason of the conduct described above in this complaint, Respondent has violated MCR 9.104(A)(4) by engaging in the following professional misconduct:

- a) failing to communicate with his clients to the extent reasonably necessary for the clients to make informed decisions regarding the representation, in violation of MRPC 1.4(b);
- b) failing to communicate with his client regarding the basis or rate of his fee, in violation of MRPC 1.5(b);



- c) engaging 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);
- d) engaging in conduct prejudicial to the administration of justice, in violation of MCR 9.104(A)(1); and MRPC 8.4(c);
- e) engaging in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(A)(2);
- f) engaging in conduct contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(A)(3); and,
- g) violating or attempting to violate the Rules of Professional Conduct in violation of MRPC 8.4(a).

**Count Five**  
**(Improper use of IOLTA)**

107. At all times relevant, Respondent maintained the Fidelity IOLTA.

108. By check dated April 27, 2006 from the Fidelity IOLTA, Respondent paid his wife, Marlene Kraft, \$2,300.

109. By checks dated April 27, 2006 and May 20, 2006 from the Fidelity IOLTA, Respondent paid his secretary, Theresa Duncan a/k/a Marijane, \$6,153 and \$50.00.

110. On March 2, 2006, Respondent deposited a \$3,500 check from his personal account held at Comerica Bank in the name of Ronald G. Kraft and Marlene Kraft, Account number 373140748, into the Fidelity IOLTA.

111. On March 9, 2006, Respondent deposited a \$4,850 check from his personal account held at Comerica Bank in the name of Ronald G. Kraft and Marlene Kraft, Account number 373140748, into the Fidelity IOLTA.

112. On March 23, 2006, Respondent deposited a \$1,000 check from his account held at Comerica Bank in the name of Ronald G. Kraft, Attorney at Law, Account number 1840076671, into the Fidelity IOLTA.

113. On June 8, 2006, Respondent deposited an \$85,000 check from his personal account held at Comerica Bank in the name of Ronald G. Kraft and Marlene Kraft, Account number 373140748, into the Fidelity IOLTA.

114. On November 21, 2006, Respondent deposited a \$1,695.96 check from his account held at Comerica Bank in the name of Ronald G. Kraft, Attorney at Law, Account number 1840076671, into the Fidelity IOLTA.

115. On November 27, 2006, Respondent deposited a \$1,000.00 check from his account held at Comerica Bank in the name of Ronald G. Kraft, Attorney at Law, Account number 1840076671, into the Fidelity IOLTA.

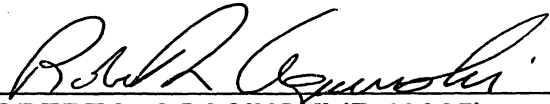
116. On May 5, 2008, during Respondent's suspension from the practice of law, Respondent deposited his social security check in the amount of \$1,331.95 into a TCF account no. 9883612461, in the name of Ronald G. Kraft, Attorney at Law, IOLTA Trust.

117. By reason of the conduct described above in this complaint, Respondent has violated MCR 9.104(A)(4) by engaging in the following professional misconduct:

- a) Holding his own funds in accounts in which he was holding client funds, in violation of MRPC 1.15(d);
- b) Depositing his own funds in a client trust account in amounts that were not reasonably necessary to pay financial institution service charges or fees; in violation of MRPC 1.15(f);
- c) engaging in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(A)(2);
- d) engaging in conduct contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(A)(3); and,
- e) violating or attempting to violate the Rules of Professional Conduct in violation of MRPC 8.4(a).

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

Dated: June 29, 2009

  
**ROBERT L. AGACINSKI (P-10065)**  
Grievance Administrator  
State of Michigan  
Attorney Grievance Commission  
243 West Congress, Suite 256  
Detroit, Michigan 48226  
(313) 961-6585

State of Michigan  
Attorney Discipline Board

Grievance Administrator,  
Attorney Grievance Commission,  
State of Michigan,

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ATTORNEY DISCIPLINE BOARD

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Petitioner,  
-vs-

Case No. 09-59-GA

Ronald G. Kraft, P-16196,

Respondent.

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Discovery Demand

In accordance with MCR 9.115(F)(4)(a) and (b), Petitioner makes the following demand for discovery:

- 1) Copies of all documentary evidence you propose to introduce at the hearing, or access to such documentary evidence so that it can be inspected and copied;
- 2) The names, addresses, and telephone numbers of all witnesses to be called by you at the hearing and copies of any statements given by those witnesses;
- 3) Copies of any statements given by witnesses to be called at the hearing by either party; and,
- 4) All documentary evidence supporting any affirmative defense which has been raised or will be raised by you.

Under MCR 9.115(F)(4)(d), your failure to comply timely with the above demands may subject you to one or more of the sanctions set forth in MCR 2.313(B)(2)(a)-(c).

Dated: June 29, 2009

  
ROBERT L. AGACINSKI, (P-10065)  
Grievance Administrator  
Attorney Grievance Commission  
243 W. Congress, Ste. 256  
Detroit, MI 48226  
(313) 961-6585

# Appendix B

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Attorney Discipline Board

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ATTORNEY DISCIPLINE BOARD  
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GRIEVANCE ADMINISTRATOR,  
Attorney Grievance Commission,

Petitioner,

v

Case No. 09-59-GA

RONALD G. KRAFT, P 16196,

Respondent.

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**REPORT OF TRI-COUNTY HEARING PANEL #72**

**PRESENT:** William L. Martens, Chairperson  
Mark S. Jacobs, Member  
Shirley A. Saltzman, Member

**APPEARANCES:** Frances A. Rosinski, Associate Counsel  
for the Attorney Grievance Commission

Ronald G. Kraft, Respondent  
in pro per

**I. EXHIBITS**

Petitioner's Exhibit A: Notice of Suspension & Restitution

Petitioner's Exhibit 1: Settlement Statement

Petitioner's Exhibit 2: Production of Documents

Petitioner's Exhibit 3: Fax from AAA

Petitioner's Exhibit 4: Packet of Documents

Petitioner's Exhibit 5: Copy of Check

Petitioner's Exhibit 8: Copies of Checks

Petitioner's Exhibit 9: Copies of Checks

Petitioner's Exhibit 10: Calculations

## **II. WITNESSES**

Yvonne Jones  
Mae Rose Crawford  
Eric Braverman  
Keyotta Miles

## **III. PANEL PROCEEDINGS**

The Grievance Administrator filed a formal complaint on June 29, 2009, alleging five counts of professional misconduct. It was served on respondent on July 7, 2009. Respondent's default for failure to respond to the formal complaint was entered on August 13, 2009. A hearing originally scheduled for August 24, 2009, was rescheduled for October 10, 2009, but did not go forward.

On October 10, 2009, the panel issued a Notice of Intent to Order Revocation Under MCR 9.115(M). The Grievance Administrator indicated the Attorney Grievance Commission was seeking restitution as a condition of entry of the order. On October 14, 2009, the Grievance Administrator filed a written request for an order of restitution by respondent. The Grievance Administrator sought a gross total of \$201,751.77 in restitution related to four clients of respondent, including \$38,750 in attorney fees.

The respondent submitted a document on October 21, 2009, titled "Respondent's Resignation Pursuant to an Order of Revocation." The text is, "I, RONALD G. KRAFT, do hereby resign from the State Bar of Michigan and request that my name be stricken from the official register of attorneys. I, further understand and agree that an Order of Revocation pursuant to MCR 9.115(M) shall be entered forthwith by the Attorney Discipline Board." The document was dated October 21, 2009, and signed by Ronald G. Kraft.

The respondent also filed a document on October 21, 2009, titled "Response to Request for an Order of Restitution by Respondent." A hearing was scheduled for June 14, 2010.

On April 27, 2010, the hearing panel chairperson wrote to the Attorney Discipline Board with copies to the parties, noting that the hearing would go forward and that the panel could act only on the basis of evidence in the forthcoming hearing.

The respondent filed a two-page letter dated June 8, 2010, with 43 pages of attachments. The respondent asserted that "Upon my Resignation I believe I am not within the jurisdiction or control of the Attorney Discipline Board or the Attorney Grievance Commission. As such, I will not be appearing at the scheduled hearing on June 14, 2010, at 9:30 a.m."

The respondent failed to appear and offered no evidence of mitigating factors. Counsel for the Grievance Administrator offered Petitioner's Exhibit A and evidence of aggravating factors. Exhibit A was admitted without objection and shows that respondent was suspended from the practice of law on February 21, 2008, for 48 months for misappropriation of funds, commingling funds and false statements to a court.

The Grievance Administrator offered the testimony of four witnesses, whose testimony was supported by documents offered and received as Petitioner's Exhibits 1-5 and 8-10.

After findings as set forth below, the panel determined that it had jurisdiction and that the Grievance Administrator had established respondent's professional misconduct. The panel then proceeded to a hearing on appropriate discipline, including restitution.

The panel unanimously determined that the appropriate discipline in this matter is revocation of the respondent's license to practice law in Michigan. The panel further unanimously determined that the respondent should be ordered to pay restitution as set forth below.

#### **IV. FINDINGS AND CONCLUSIONS REGARDING JURISDICTION**

MCR 9.115(M) provides that:

An attorney's request that his or her name be stricken from the official register of attorneys **may not be accepted while a request for investigation or a complaint is pending**, except pursuant to an order of revocation. (Emphasis added.)

MCR 9.115(F)(5) provides as to discipline by consent:

A Respondent may offer to plead nolo contendere or to admit all essential facts contained in the complaint ... in exchange for a stated form of discipline and **on the condition that the plea or admission and discipline agreed on is accepted by the commission and the hearing panel**. (Emphasis added.)

The respondent's resignation has not been accepted by the Grievance Administrator, nor has an order of revocation been entered by the Attorney Discipline Board. The panel finds that the respondent's assertion that he and this matter are not within the jurisdiction of the Commission or the Board is without merit. The panel finds that this panel and the Board have jurisdiction over the respondent and this matter.

#### **V. FINDINGS AND CONCLUSIONS REGARDING MISCONDUCT**

The willful failure of respondent to appear at the hearing in this matter violated MCR 9.115(H), which mandates "Respondent shall personally appear at the hearing." This reinforces respondent's original state of default for purposes of determining misconduct.

The panel finds that each and every allegation in the Grievance Administrator's formal complaint is established by the respondent's default and by the testimony of the witnesses presented by the Grievance Administrator.



## VI. REPORT ON DISCIPLINE

The panel has considered the arguments and evidence presented by petitioner and the unanswered allegations in the complaint. It is the panel's unanimous conclusion that the appropriate discipline in this case is revocation of respondent's license to practice law retroactive to February 21, 2008.

Further, MCR 9.106(5) provides that misconduct is grounds for an order "requiring restitution, in an amount to be set by a hearing panel, the board, or the Supreme Court, as a condition of an order of discipline...." ABA Standard 2.8(a) also expressly provides for restitution as an additional sanction or remedy which may be imposed.

The panel is mindful of the evolution of the philosophy of the Board and the Supreme Court from the early view that the Board is not a collection agency to the contemporary view enunciated in MCR 9.106(5). In this case, the panel is persuaded that the misconduct of respondent has been so egregious and pervasive in dealing with multiple clients as to warrant substantial restitution, including forfeiture of fees.

The clients who suffered losses should be made whole. Appellate decisions reaffirm that it is appropriate to bar payment of attorney fees:

"... when an attorney engages in misconduct that results in representation that falls below the standard required of an attorney (e.g., disciplinable misconduct under the Michigan Rules of Professional Conduct) or when such recovery would otherwise be contrary to public policy." [*Reynolds v Polen*, 222 Mich App 20 (1997), citing *Hightower v Detroit Edison*, 262 Mich 1 (1933) and *Rippey v Wilson*, 280 Mich 233 (1937)].

The panel subscribes to the practical consideration of restitution as enunciated by the Board in 2007, that awarding restitution is appropriate "when the proper amount can be reasonably accurately ascertained without the extraordinary commitment of resources ...." *Grievance Administrator v Tank*, ADB Case No. 06-116-GA.

Therefore, the panel concludes that respondent should pay restitution as follows within 30 days of the issuance of the revocation order:

Estate of	
Carl F. Kukhahn -	\$68,095.00 (misappropriated monies)
Keyotta Miles -	\$16,280.00 (misappropriated monies) \$57,540.00 (fee forfeiture)
Mae Crawford -	\$ 6,000.00 (misappropriated monies) \$ 8,000.00 (fee forfeiture)
Yvonne Jones -	\$ 3,377.00 (monetary loss incurred) \$ 750.00 (fee forfeiture)
TOTAL	\$160,042.00

**VII. SUMMARY OF PRIOR MISCONDUCT**

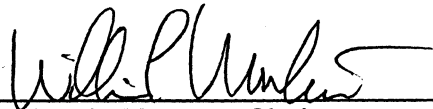
<b><u>ADB Case No.</u></b>	<b><u>Discipline</u></b>	<b><u>Effective Date</u></b>
07-32-GA	48 Month Suspension & Restitution	02/21/08

**VIII. ITEMIZATION OF COSTS**

Attorney Grievance Commission: (See Itemized Statement filed 07/26/10)	\$ 336.54
Attorney Discipline Board: Hearing held 06/14/10	\$ 328.50
Administrative Fee [MCR 9.128(B)(1)]	<u>\$1,500.00</u>
<b>TOTAL:</b>	<b>\$2,165.04</b>

**ATTORNEY DISCIPLINE BOARD**  
Tri-County Hearing Panel #72

By:

  
\_\_\_\_\_  
William L. Martens, Chairperson

**DATED: September 28, 2010**