Finally, we reviewed this case to determine whether the modified contingency fee agreement constituted an excessive fee under Prof.Cond.R. 1.5. As previously stated, the fee agreement in this case provided that you pay a $5,000 retainer to be charged at $100 per hour, which is one-half of Mr. Buchanan's normal rate. You also agreed to pay Mr. Buchanan a 20% contingency fee of the money that you recovered, which is also one-half his normal contingency fee rate. Ohio courts have previously considered the propriety of these blended fee agreements. At the outset, it is important to note that modified contingency fee agreements are not unethical; rather, the court will review these agreements to determine whether the fee is excessive under Prof.Cond.R. 1.5.

In *Columbus Bar Association v. Klos*, 81 Ohio St.3d 486, 1998-Ohio-610, 692 N.E.2d 565, Attorney Daniel H. Klos agreed to represent Lilly Clay in a wrongful termination matter. Clay paid Klos $500 to send an investigation letter, but the letter did not resolve the matter. Subsequently, Klos entered into a fee agreement with Clay that provided for "a retainer of $4,000 and or $150 per hour (with credit for the previously paid $500) and a sum equal to 33 percent of any sum which may be received by a compromise settlement of said claim recovered through prosecution of said claim to judgment in any court." In a separate case, Klos charged his client a "$3,000 retainer plus one-third of any recovery in excess of $3,000."

The court found that these agreements constituted excessive fees because the "language is ambiguous. It is impossible to determine from the four corners of this document whether one, two, or all three methods of fee determination apply. * * * [Further], the liquidated hourly rate in the contingent fee parts of the contracts * * * precluded the determination of a reasonable fee."

Here, the fee agreement is different than that in *Klos*. In *Klos*, the fee agreement did not contain a provision concerning a potential refund to the client should the client terminate the attorney. In this case, the retainer was not deemed "nonrefundable" or "earned upon receipt," and in fact, you were afforded a refund after the representation concluded.

In *Cincinnati Bar Association v. Schultz*, 71 Ohio St.3d 383, 1994-Ohio-46, 643 N.E.2d 1139, the court found a "contingent-fee agreement that provided for an hourly rate charge if the clients discharged the firm" violated Disciplinary Rule 2-106(A), which is now known as Prof.Cond.R. 1.5(a).

In *Cuyahoga County Bar Association v. Levey*, 88 Ohio St.3d 146, 2000-Ohio-283, 724 N.E.2d 395, Attorney Harold L. Levey entered into several excessive fee agreements that violated Disciplinary Rule 2-106(A), which is now known as Prof.Cond.R. 1.5(a). The "contingent fee agreement * * * provided for an hourly charge if respondent was discharged 'whether or not successful completion' occurred."

Here, your fee agreement is different than the *Schultz* and *Levey* cases because your fee agreement did not shift from contingent to hourly, as was the situation in *Schultz* and *Levey*.

Gov.Bar R. V(10)(D) provides, in relevant part, that, "[n]o further review or appeal [of a decision by Disciplinary Counsel to dismiss a complaint] by a grievant shall be authorized."

Accordingly, for the reasons set forth above, your complaint is being dismissed and our file on this matter is closed. Despite our determination, we appreciate your efforts in contacting our office.

Sincerely,

Kelli C. Schmidt
Assistant Disciplinary Counsel

KCS/ksl
cc: David Smith, Esq. (via electronic mail transmission)
Counsel for Respondent