

FILED

APR 2008

DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ARIZONA

BEFORE THE DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ARIZONA

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IN THE MATTER OF A MEMBER)	Nos	06-1857, 07-0006
OF THE STATE BAR OF ARIZONA,)		
)		
HOANG VAN HUYNH,)		
Bar No. 020503)	DISCIPLINARY COMMISSION	
)	REPORT	
)		
RESPONDENT)		
_____)		

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on March 15, 2008, pursuant to Rule 58, Ariz R Sup Ct, for consideration of the Hearing Officer's Report filed February 15, 2008, recommending a six-month and one-day suspension, two years of probation with terms and conditions to be determined at the time of reinstatement, but to include participation in the State Bar's law Office Management Assistance Program (LOMAP), an assessment with the State Bar's Member Assistance Program (MAP), participation in any other program deemed appropriate to that assessment, restitution, and costs

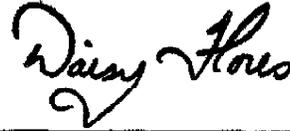
Decision

Having found no facts clearly erroneous, the eight members¹ of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for a six-month and one-day suspension, two years of probation, with specific terms and conditions to be determined upon reinstatement, but to include participation in LOMAP and a MAP assessment, and

¹ One lawyer member seat remains vacant

1 participation in any other program deemed appropriate to that assessment, restitution in the
2 amount of \$2,941.34 to Mr Cory Johnson, and costs of these disciplinary proceedings²

3 RESPECTFULLY SUBMITTED this 14th day of April, 2008

4 

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6 Daisy Flores, Chair
7 Disciplinary Commission

8 Original filed with the Disciplinary Clerk
9 this 14th day of April, 2008

10 Copy of the foregoing mailed
11 this 14th day of April, 2008, to

12 Honorable H Jeffrey Coker
13 Hearing Officer 6R
14 P O Box 23578
15 Flagstaff, AZ 86002-0001

16 Hoang Van Huynh
17 Respondent
18 1433 West Winchester Way
19 Chandler, AZ 85248-0001

20 Roberta L Tepper
21 Bar Counsel
22 State Bar of Arizona
23 4201 North 24th Street, Suite 200
24 Phoenix, AZ 85016-6288

25 by Christina [Signature]

26 /mps

² A copy of the Hearing Officer's Report is attached as Exhibit A

**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**

FILED
FEB 15 2008
HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
HOANG VAN HUYNH,)
Bar No. 020503)
)
RESPONDENT)
_____)

File Nos 06-1857 and 07-0004

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

1. Probable Cause was found in this matter on August 3, 2007, and the Order was filed on August 7, 2007. The State Bar filed a Complaint on October 9, 2007, and the Notice Of Service By Mail was filed on October 10, 2007. The matter was assigned to the undersigned on November 13, 2007. Respondent failed to answer or otherwise appear and his default was entered on December 4, 2007. Pursuant to a request by the State Bar, a Hearing on the Respondent's default was held on January 8, 2008.

FINDINGS OF FACT

2. At all times relevant hereto the Respondent was a member of the State Bar of Arizona, having been admitted on December 15, 2000.

COUNT ONE (File No. 06-1857/Baber)

3. Upon information and belief, on or about July 11, 2006, Scott Baber ("Mr Baber") was arrested on charges of domestic violence in Chino Valley, Arizona.

4. Mr. Baber was also involved in the juvenile dependency matter in the Yavapai County Superior Court.

5 Respondent was appointed by the Superior Court of Yavapai County to represent Mr Baber.

6 Between July 11, 2006, and September 26, 2006, Mr Baber encountered difficulty in communicating with Respondent in that Respondent did not promptly return telephone calls, taking anywhere from one day to one week to return a telephone call from Mr. Baber

7 Beginning on or about September 26, 2006, Mr Baber was unable to contact Respondent
No calls placed by Mr Baber to Respondent were returned by Respondent

8. Respondent was notified by Mr Baber's Child Protective Services ("CPS") caseworker that Mr. Baber was attempting to contact him.

9 Respondent was asked by the CPS caseworker to contact Mr Baber, but Respondent did not do so

10. As of October 21, 2006, when Mr. Baber alerted the State Bar of Arizona ("State Bar") to Respondent's conduct, Respondent had failed to contact Mr. Baber.

11 Mr. Baber's charge against Respondent was received by the State Bar on or about November 10, 2006

12 By letter dated November 20, 2006, the State Bar notified Respondent of Mr Baber's allegations and asked that he contact Mr. Baber and informally respond to the State Bar within 15 days Respondent did not respond

13 By letter dated March 9, 2007, mailed to Respondent at his address of record, the State Bar again informed Respondent of Mr. Baber's allegations and was informed that a disciplinary investigation, pursuant to Rule 54, Ariz.R.Sup Ct., was being commenced.

- 14 Respondent was instructed to respond in writing within 20 days of the date of the State Bar's March 9, 2007, letter. Respondent did not respond
- 15 By letter dated April 9, 2007, mailed to Respondent at his address of record, the State Bar reminded Respondent of his obligation to respond and advised that his failure to cooperate with the disciplinary investigation was, in itself, grounds for discipline Respondent did not respond
- 16 Respondent violated one or more of the Rules of Professional Conduct as follows Respondent failed to adequately communicate and/or promptly communicate with his client; Respondent knowingly failed to respond to a lawful demand for information from a disciplinary authority, Respondent engaged in conduct prejudicial to the administration of justice; Respondent failed to cooperate with staff of the State Bar acting in the course of that person's duties, and Respondent failed to furnish information or to promptly respond to an inquiry from Bar Counsel made pursuant to the Arizona Rules of the Supreme Court.
- 17 Respondent's conduct as described in this count violated rule 42, Ariz R Sup.Ct , specifically ER's 1 4, 8.1(b), 8 4(d), and rule 53(d) and(f)

COUNT TWO (File No. 07-0006/Johnson)

- 18 In mid to late 2005, Cory Johnson ("Mr Johnson") hired Respondent to handle legal work for him and/or his company, Kismet Print Productions, Inc ("Kismet"), including but not limited to collections work.
19. On or about April 26, 2006, Mr Johnson was served with a copy of a civil complaint filed against him and his wife, personally, as well as Mr Johnson's business, Kismet

Trade Printers ("Trade Printers"), Inc, vs. Kismet Print Production Inc., et al, in the South Mountain Justice Court Case No CC2006033839

20 In or about May 2006, Mr. Johnson gave a copy of the Complaint to Respondent and made it clear to Respondent that he wished to contest the allegations in the Trade Printers Complaint. Respondent assured Mr. Johnson that he, Respondent, would handle the matter.

21 Respondent thereafter, on or about May 19, 2006, filed an Answer on behalf of Mr and Mrs. Johnson and Kismet

22. Beginning in May 2006, and continuing through September 2006, Mr. Johnson was unable to contact Respondent despite numerous telephone calls and/or e-mails requesting a response from Respondent.

23 On or about July 19, 2006, Steven W. Cheifetz, attorney for Trade Printers, filed a Motion for Summary Judgment and Statement of Facts and Support of Plaintiff Trade Printers, Inc 's Motion for Summary Judgment in Case No CC2006033839 in the South Mountain Justice Court.

24 According to the service information at the conclusion of the motion, a copy was mailed to Respondent on July 19, 2006, at Respondent's address of record

25 Respondent did not notify Mr Johnson that a motion for summary judgment had been filed.

26 Respondent failed to file a response to Trade Printers' Motion for Summary Judgment or otherwise defend against it.

27 Trade Printers' Motion for Summary Judgment was granted on August 7, 2006, by the Justice of the Peace.

28 A copy of the Minute Entry memorializing the Court's ruling was mailed to Respondent on August 9, 2006, by the staff of the South Mountain Justice Court.

29 Respondent failed to inform Mr Johnson of the ruling against him on the Motion for Summary Judgment, and failed to provide any information about this matter to Mr Johnson

30 On or about September 1, 2006, Mr Cheifetz filed a Proposed Form of Judgment, as well as an Application for Attorneys' Fees, and Affidavit on Attorneys' Fees, and a Statement of Costs in key Case No 2006033839 in the South Mountain Justice Court

31 On or about September 11, 2006, judgment was granted against Mr and Mrs Johnson and Kismet for the principal sum of \$854 30, with interest of \$101 64, and continuing on the balance at 1 1/2 percent from March 15, 2006, attorneys' fees in the amount of \$1065 00, and costs in the amount of \$389.00 each with interest at 10% per year until paid

32 Respondent failed to inform Mr Johnson of the issuance of the judgment against him

33 In or about December 2006, Mr. Cheifetz, on behalf of Trade Printers, filed a Notice of Deposition According to the mailing information contained on the Notice of Deposition, a copy was mailed to Respondent on or about December 13, 2006.

34 Respondent still had no contact with Mr Johnson and failed to provide any information on the status of Mr. Johnson's matter to him.

35. Mr. Johnson learned of the judgment entered against him when he received a copy of it in the mail, in September 2006, and through no action of Respondent

36 After receiving a copy of the judgment against him, Mr Johnson again attempted to contact Respondent, but received no return communication

37. Mr. Johnson sent a copy of the judgment to Respondent, with an invoice indicating that Respondent should pay it and had no return communication from Respondent.
38. Mr Johnson has since paid the judgment, including attorney's fees, costs and interest, without having had the opportunity to defend against the action, due to Respondent's inaction
39. Mr Johnson notified the State Bar of Respondent's misconduct by submitting a written charge dated December 29, 2006, received by the State Bar on or about January 3, 2007
40. The State Bar, by letter dated January 10, 2007, mailed to Respondent at his address of record, notified Respondent of Mr. Johnson's allegations and asked that Respondent provide an informal written response no later than 10 days from the date of the State Bar's letter. Respondent did not respond
41. By letter dated March 1, 2007, mailed to Respondent at his address of record, the State Bar notified Respondent that it was initiating an investigation into the allegations made by Mr Johnson, pursuant to Rule 54, Ariz R Sup.Ct
42. Respondent was instructed to provide a written response within 20 days of the date of the State Bar's letter and reminded of his duty to respond to the inquiry of the State Bar pursuant to Rule 53, Ariz.R Sup Ct. Respondent did not respond
43. By letter dated April 9, 2007, mailed to Respondent at his address of record, the State Bar reminded Respondent of his obligation to promptly respond and provide information to the State Bar's investigation and was reminded that his failure to cooperate with the disciplinary investigation was, in itself, grounds for discipline
44. Respondent was instructed to provide his written response no later than 20 days of the date of the State Bar's letter. Respondent failed to respond

45. Respondent violated one or more of the Rules of Professional Conduct as follows: Respondent failed to abide by his clients decisions concerning the objective of his representation; Respondent failed to diligently represent his clients; Respondent failed to adequately communicate and/or promptly communicate with his client, Respondent knowingly failed to respond to a lawful demand for information from a disciplinary authority, Respondent engaged in conduct prejudicial to the administration of justice, Respondent failed to cooperate with staff of the State Bar acting in the course of that person's duties; and Respondent failed to furnish information or to promptly respond to an inquiry from Bar Counsel made pursuant to the Arizona Rules of the Supreme Court

CONCLUSIONS OF LAW

46. The undersigned Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42, Ariz R.Sup Ct., specifically ER's 1 2, 1 3, 1 4, 8 1(b), 8 4(d), and Rule 53(d) and (f), Ariz R Sup Ct

ABA STANDARDS

47. ABA *Standard* 3 0 provides that four criteria should be considered. (1) the duty violated; (2) the lawyer's mental state, (3) the actual or potential injury caused by the lawyer's misconduct, and (4) the existence of aggravating and mitigating factors.

The Duty Violated

48. Respondent's lack of diligence and his failure to adequately or honestly communicate with his clients implicate *Standard* 4 42 that provides: Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes

injury or potential injury to a client, or a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

49 Respondent's failure to cooperate with the State Bar's investigation and subsequent failure to participate in the formal discipline process implicates *Standard 7.2* which provides that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system

The Injury Caused

50 Respondent's misconduct in his clients' matters caused actual harm, at a minimum, to Mr Johnson Respondent's refusal to participate in the discipline process from the very outset damages the integrity of our self-regulated profession

The Lawyer's Mental State

51 Given the Respondent's repeated conduct and the numerous efforts that were made to contact him, this Hearing Officer must conclude that Respondent's mental state is intentional

Aggravating and Mitigating Factors

52. The undersigned Hearing Officer then considered aggravating and mitigating factors in this case, pursuant to *Standards 9.2* and *9.32*, respectively

Aggravating Factors

53. *Standard 9.2(c)* Pattern of misconduct Respondent's abandonment of two of his clients has been mirrored in his refusal to participate in the disciplinary investigation or formal discipline process.

54 *Standard 9.22(d)* Multiple offenses

55. *Standard 9.22(e)* Bad-faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency. Respondent has failed, from the very beginning to comply with his duties in this matter

Mitigating Factors

56. *Standard 9 32(a)* Absence of a prior disciplinary record. Respondent has no prior disciplinary record

57. *Standard 9 32(f)* Inexperience in the practice of law Respondent was admitted to the State Bar of Arizona in 2000

PROPORTIONALITY REVIEW

58. The Supreme Court has held in order to achieve proportionality when imposing discipline, the discipline in each situation must be tailored to fit the individual facts of the case, and discipline ordered in other matters of a similar nature

59. In *In re Bryn*, SB-05-0098 (2005), the lawyer, who had no prior disciplinary record, abandoned two clients while training to achieve a personal athletic goal One client had to retain new counsel to represent them, at additional cost to them. The other client was forced to sue the lawyer to obtain a refund of his fees, as Respondent had done no work to earn them, and obtained a Judgment against a lawyer. In each case, the clients were harmed by the lawyer's failure to perform as promised

60. In the instant matter, Mr Johnson had a Judgment entered against him and was obliged to pay the financial judgment against him due to Respondent's failure to respond to a Motion for Summary Judgment.

61. Bryn also failed to cooperate with the State Bar's investigation, and failed to respond to the Formal Discipline Complaint After default was entered in his discipline matter,

however, Bryn did appear at the aggravation/mitigation hearing. Bryn was suspended for six months and one day

62 In *In re Coe*, DC-05-0363 (2007), the lawyer failed to competently and diligently represent his clients and failed to adequately communicate with them. Coe abandoned his clients and failed to appear at court hearings on their behalf, engaged in the unauthorized practice of law while suspended, and failed to cooperate with the State Bar's investigation. Coe, who had a prior discipline record, was disbarred

63 In *In re Weich*, DC-05-2252 (2007), the lawyer, who had no prior disciplinary record, was suspended for two years for failing to diligently represent his clients, failing to communicate with them and failing to promptly respond and provide information to the State Bar

RECOMMENDATION

64 The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and deter future misconduct. It is also the objective of lawyer discipline to protect the profession and the administration of justice. *In re Fioramonti*, 176 Ariz. 82, 859 P.2d 1315 (1993), and *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in the Bar's integrity, *Matter of Horwitz* 180 Ariz. 20, 881 P.2d 352 (1994).

65 In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Association's *Standards for Imposing Lawyer Sanctions* and the proportionality of discipline imposed in analogous cases

66. Upon consideration of the facts, application of the *Standards*, including aggravating and mitigating factors, and the proportionality analysis, this Hearing Officer recommends the following.

1. Respondent be suspended for six months and one day.
2. Respondent pay restitution to Mr Cory Johnson in the amount of \$2,941 34.
3. Should Respondent apply for reinstatement, he should be placed on probation for no less than two years with terms and conditions to be determined at the time of reinstatement, but to include participation in the State Bar's Law Office Management Assistance Program, an assessment by the State Bar's Member Assistance Program and participation in any program deemed appropriate pursuant to that assessment.
4. Respondent pay all costs of these proceedings.

DATED this 15th day of February, 2008

H. Jeffrey Coker /cs
H Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 15th day of February, 2008

Original filed with the Disciplinary Clerk
this 15th day of February, 2008

Copy of the foregoing mailed
this 15th day of February, 2008, to

Hoang Van Huynh
Respondent
1433 West Winchester Way
Chandler, AZ 85248-0001

Roberta L. Tepper
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: 