

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

FILED
MAY 29 2008
HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

IN THE MATTER OF A SUSPENDED)
MEMBER OF THE STATE BAR) File Nos. 07-0409, 07-591, 07- 1059
OF ARIZONA,) 07-1398, 07-1444, 07- 1465, 07-1499
) 07-1630
)
JOHN T. FRANKLIN,) **HEARING OFFICER'S REPORT**
Bar No. 022163)
)
RESPONDENT)
_____)

PROCEDURAL HISTORY

- 1 Probable Cause was found on the following dates On July 17, 2007, in File number 07-0591 (Huddleston), On September 6, 2007, in Files number 07-0409 (Horton) and 07- 1059 (Rockefeller), On October 26, 2007, in Files number 07-1398 (Lyons), 07-1444 (Tubbs), 07-1465 (SBA), and 07-1499 (Hall), On November 1, 2007, in File number 07- 1630 (Avakian).
2. An eight count Complaint was filed on December 31, 2007, and served on the Respondent by mail on January 9, 2008 A Notice of Default was filed on February 5, 2008 Respondent filed an Answer on February 15, 2008, and the matter proceeded to contested hearing on March 31, 2008, in the Payson Branch of the Gila County Superior Court Both parties were given the opportunity to file Post Hearing Memoranda Only the State Bar did so

FINDINGS OF FACT

Summary of Facts:

3 Respondent is a conditional admittee based on financial issues, who received an informal reprimand and probation before his conditional admittee status was over, although he never signed the contract. Respondent recently received an interim suspension from the Arizona Supreme Court. This case involves the allegation that Respondent received money from clients, failed to perform the work he was hired to do, failed to communicate with his clients or act diligently on their behalf, and failed to return unearned fees or provide an accounting. Respondent is also charged with intentionally misleading a judge, and finally, not cooperating with the State Bar in the disciplinary process and failed to provide the State Bar with any information.

4 At all times relevant hereto, Respondent was a lawyer licensed to practice law in the state of Arizona, having first been admitted to practice in Arizona on April 2, 2004.

Count One (File No. 07-0409 Horton)

5. On December 11, 2006, Patricia Horton ("Ms. Horton") retained Respondent with a \$2,500 retainer to prepare trust documents for her (Joint Pre-hearing Statement (JPS) p. 2-3-6).¹

6 On January 30, 2007, after Respondent failed to prepare the trust documents for Ms. Horton as she requested (Tr. p. 25:14-26:5 & p. 26:25 & p. 27:15-20), Ms. Horton sent a letter to Respondent terminating his services and requesting return of her retainer and her documents (Ex. 4 B/S 23). Respondent failed to respond to

¹ Referrals to the Joint Pre-hearing Statement (JPS) are referrals to the stipulated facts.

Ms Horton's January 30, 2007, letter and several attempts by her to contact him via email and phone (Tr p 29 5)

7 Ms Horton was forced to file a claim against Respondent in Small Claims (Justice Court) on February 27, 2007, where, after eight months, she reluctantly settled her case against the advice of the Mediator Ms Horton agreed to let Respondent keep \$500 and refund to her \$2,000, and the return of her documents (Tr p 28 10- 32 16)

8 In March of 2007, Ms Horton wrote to the State Bar alleging misconduct by Respondent On June 11, 2007, the State Bar sent Ms Horton's allegations to Respondent requesting a response within 20 days.² Respondent failed to respond. A second letter was sent to Respondent on July 17, 2007, and Respondent again failed to respond (JPS p. 2 12-25)

Count Two (File No. 07-591 Huddleston)

9 On September 5, 2006, after paying Respondent a \$100 consultation fee, Tom Huddleston ("Ms Huddleston") consulted with Respondent about representing her in divorce proceedings On September 5, 2006, Ms. Huddleston signed a representation agreement and thereafter paid Respondent a \$750 requested advance fee.

10. Respondent was retained by Ms Huddleston to protect her rights in the dissolution proceedings initiated by her husband, and get the case transferred to Gila County where she lived Respondent did not file a timely response to Ms Huddleston's husband's Petition for Dissolution and a default was entered (Tr P

² Respondent does not deny that he received all of the State Bar's letters to him

52 20-53 6) The Judge later set aside the default based on Respondent's avowal that he had not put sufficient postage on the Response when it was mailed

11 After a meeting with Respondent in December 2006, Ms Huddleston made numerous and repeated attempts to contact the Respondent to determine the status of her case and Respondent would not contact her (Tr p. 55.8-63:16) Finally, on February 6, 2007, Respondent met with Ms Huddleston

12 On March 24, 2007, Ms Huddleston was informed by her now ex-husband that a hearing was held on the dissolution action on March 19, 2007, and the decree of dissolution was entered by default because neither she nor Respondent appeared (JPS p 5 1-4) As a result of her failure to appear, Ms Huddleston did not get spousal maintenance and her now ex-husband subsequently did not keep up with his child support payments.

13 Respondent failed to advise Ms Huddleston of the March 19, 2007, court date and so she was unaware of it (JPS p 5 8)

14. Respondent never did seek to get the case removed from Yavapai County to Gila County as requested by Ms. Huddleston

15 Ms Huddleston terminated Respondent's services after he allowed the second default to be entered and retained new counsel to try and get the default set aside Ms. Huddleston had to borrow money from her parents to get new counsel (Tr. p 66.20-67 12)

16 Ms Huddleston wrote to the State Bar alleging that Respondent engaged in professional misconduct

17 On April 25, 2007, the State Bar sent Ms Huddleston's allegations to Respondent at his address of record asking that he respond within twenty days. Respondent failed to respond (JPS p 5 13-18)

18 On May 23, 2007, the State Bar sent a second letter to Respondent at his address of record Respondent again failed to respond (JPS p. 5 19-23).

Count Three (File No. 07-1059 Rockefeller)

19 In the summer of 2006, James Rockefeller ("Mr Rockefeller") retained Respondent for legal services and to file a lawsuit on his behalf regarding a forcible detainer action (JPS p 6 15-18)

20 In November 2006, Mr Rockefeller paid Respondent a \$25,000 retainer for representation in the forcible detainer lawsuit and for other legal services (JPS p 6 21-24)

21 After some initial work for Mr. Rockefeller, after June 1, 2007, Respondent would not communicate with Mr Rockefeller Respondent would not only not communicate with Mr Rockefeller, he never gave Mr Rockefeller an accounting for the work done (Tr. p. 270.10 -272.15).

22 Thereafter Mr Rockefeller sent a letter to the State Bar alleging that Respondent engaged in professional misconduct.

23 On July 12, 2007, the State Bar sent Mr Rockefeller's allegations to Respondent at his address of record and asked Respondent to respond within 20 days Respondent failed to respond (JPS 7.3-6)

24 On July 18, 2007, the State Bar sent a second letter to the Respondent. Respondent failed to respond (JPS p 7 14-18)

Count Four (File No. 07-1398 Lyons)

25. In October 2006, Mark Lyons ("Mr Lyons") hired Respondent in a criminal matter and a dissolution matter. This count deals with the dissolution matter. Mr Lyons paid Respondent approximately \$3,000 retainer (Tr p 112-9).
26. According to the testimony of opposing counsel in the dissolution matter, Respondent refused to respond to discovery requests (Tr p 90-1-12); failed to return a proposed order (Tr p 103-18-25), failed to return phone calls (Tr p 104:23-105-7), requested a continuance of a hearing claiming that his child was ill which was granted, but no proof was given by Respondent of the child's illness, and Respondent's client was in Mexico. Either Respondent failed to tell his client of the hearing and covered that failure with the story of his child's illness, or he was covering for his client's absence, or his child was sick and he refused to provide proof.
27. According to the testimony of Mr Lyons, Respondent failed to advise him of the hearing date (Tr p 118-21-119-1), failed to forward checks to his wife's attorney given to him by Mr Lyons for his child support obligation (Tr p. 123:13-130:23), and failed to give Mr. Lyons' new attorney an accounting of the fees paid to him (Tr p. 134:21-135:21).
28. On July 30, 2007, Mr Lyons terminated Respondent's representation (JPS p. 8-20) and thereafter, on August 19, 2007, Mr. Lyons wrote to the State Bar alleging misconduct by Respondent (JPS p. 8-22).

29. On August 29, 2007, the State Bar sent Mr. Lyons' allegations to Respondent at his address of record and asked him to respond within 20 days. Respondent failed to respond (JPS p. 9.1-5)

Count five (File No. 07-1444 Tubbs)

30. On or about January 5, 2007, Susan Tubbs ("Ms. Tubbs") retained Respondent with a \$1,500 retainer to foreclose on a property on which she had a lien (JPS p. 9.20-23)

31. Thereafter Ms. Tubbs began to have difficulty getting Respondent to return her calls, and when he did talk to her he made excuses why the foreclosure had not been started. Respondent lied to Ms. Tubbs about work that he said had been performed, but in fact had not (Tr. p. 148.22-149:23 & 152.6-155.11 & 158:8-24)

32. After a meeting in May 2007, Ms. Tubbs did not talk to Respondent again, although she repeatedly tried through August of 2007. Finally, on August 27, 2007, Ms. Tubbs went to Respondent's office and demanded return of her file and retainer (Tr. p. 162.16-20). It was not until sometime in September that Ms. Tubbs received a refund of her retainer and a portion of her file (missing one letter) (Tr. p. 164.9-165.11).

33. In or about August 2007, Ms. Tubbs wrote to the State Bar alleging that Respondent engaged in professional misconduct (JPS p. 10:5).

34. On September 11, 2007, the State Bar sent Ms. Tubbs' allegations to Respondent at his address of record asking for a response within twenty days. Respondent failed to respond (JPS p. 10.6-11)

Count Six (File No. 07-1465 State Bar)

- 35 In or around April 2007, while sitting as a Judge Pro Tem in the Globe Justice
Court, Respondent heard the matter of State v. Michael Leach (JPS p 11:304)
- 36 On April 18, 2007, defense counsel in the Leach case filed a Motion to Suppress
arguing a specific issue having to do with blood draws (Ex. 45) On April 26,
2007, the State filed opposing memoranda citing controlling authority (Pennartz
v Olcavage) in opposition to the defendant's motion (JPS p 11-5-12)
- 37 Respondent, in his capacity as Judge Pro Tem, heard oral argument on the Motion
to Suppress and, on May 15, 2007, denied the motion (JPS p. 11 15 & Ex 47
B/S 1838).
- 38 One week later, on May 22, 2007, in a case where Respondent was representing a
minor on the same charges as in the above mentioned Leach case (DUI),
Respondent filed a Motion to Suppress on behalf of his client In Respondent's
Motion to Suppress he copied verbatim virtually the entire motion filed by the
defense in the Leach case (compare Ex. 45 B/S 1715-1721, Leach's motion, with
Ex 47 B/S 1844-1850 Respondent's motion).
- 39 At oral argument on the Motion to Suppress before Judge Cahill, the State
brought up the contrary controlling authority (Pennartz v Olcavage Ex 49 B/S
1873 21-24), and when confronted by Judge Cahill with this case, Respondent
denied any knowledge of the case (Ex 49 B/S 1874.25-1875 10) Respondent
contends today that he "forgot" that he had ruled on this issue (Tr. p. 308-15) and
that he had intended to add two paragraphs with the case law (Tr p 309:13-20)

40 On September 11, 2007, the State Bar sent a letter to Respondent at his address of record requesting a response to allegations of misconduct set forth above within 20 days Respondent failed to respond (JPS p 11 16-21).

Count Seven (File No. 07-1499 Hall)

41 In or around June 2006, Tom and Becky Hall (the "Halls"), accompanied by Ms. Hall's brother Chris Monk, went to Respondent's office regarding a dissolution for Chris Monk (JPS p 12 11-14) The "Halls" paid Respondent \$100 for the initial consult fee and later \$1,500 as a retainer should the dissolution go forward (Tr p 176 3-10)

42. A short time later, Chris Monk decided that he did not want to go forward with the dissolution. Chris Monk so advised Respondent, and the "Halls" started trying to get their \$1,500 retainer returned (Tr p. 176:11-4) After being assured that the retainer would be returned by Respondent's staff, repeated attempts were made by the "Halls" to get the retainer returned, but Respondent never returned their calls (Tr p 177 2-4) and Respondent never returned the "Hall's" retainer (Tr p 177.6-7).

43 On or about August 31, 2007, the "Halls" wrote to the State Bar alleging that Respondent engaged in professional misconduct (JPS p 12:21)

44 On September 11, 2007, the State Bar wrote to Respondent at his address of record requesting a response to the allegations of professional misconduct within 20 days. Respondent failed to respond (JPS p 13 1-6)

Count Eight (File No. 07-1630 Avakian)

- 45 In late 2005, Jon Avakian ("Mr. Avakian") retained Respondent to represent him in a custody matter. Mr. Avakian initially paid Respondent approximately \$2,000 and claims to have paid Respondent a total of \$8,500, but there was no substantiation of this amount. Respondent admits that he was paid \$4,500 by Mr. Avakian (Tr. p. 318-15-319-17).
- 46 After one court hearing, Mr. Avakian had trouble reaching Respondent from July through September 2007 (Tr. p. 204:21-205:21), and when he did, Respondent said that he was waiting to hear from the other attorney (Tr. p. 202:6-203:3) and then waiting to hear from the Judge (Tr. p. 203:4-22). After several months of delay, Mr. Avakian went to the Clerk of the Court and was told that they were waiting to hear from Respondent (Tr. p. 203:4-22).
- 47 After many many unsuccessful attempts to reach Respondent from July through October 2007, Mr. Avakian tried to get his file from Respondent. Mr. Avakian never got his file from Respondent or an accounting of his fees (Tr. p. 210:11-13 & p. 222:2-6).
- 48 On August 28, 2007, Mr. Avakian wrote to the State Bar alleging that Respondent engaged in professional misconduct (JPS p. 13:24).
- 49 On October 5, 2007, the State Bar sent a letter to Respondent at his address of record requesting a response to the allegations of professional misconduct within twenty days. Respondent failed to respond (JPS p. 14:1-6).
- 50 In all Counts except Count six (dishonesty to a tribunal) Respondent's clients testified that Respondent would consistently not take their calls, refuse to see

them, and not respond to their demands³ When the clients did finally confront Respondent, he would attempt to placate them Had Respondent actually shown this Hearing Officer the work that he performed on behalf of his clients, perhaps this charge might not carry the weight that it does. This Hearing Officer knows that clients remember when they cannot reach their attorney much more often than they remember the times that they did meet. However, because Respondent did not respond, this Hearing Officer must conclude that the client's description of Respondent's persistent unresponsiveness³ is entirely accurate.

Respondent's Response

- 51 It is Respondent's position in the Counts against him
In Count One, Horton, that he did the trust work and wanted to be paid (Tr p. 312:3-24) Respondent admits that Ms Horton had to sue him to get her documents and retainer returned (Tr p 298 5-8).
- 52 In Count Two, Huddleston, that he did not get the notice, but did "drop the ball" and gave Ms Huddleston her file when requested (Tr p 312:1-18).
53. In Count Three, Rockefeller, that he did the work for Mr Rockefeller (Tr. p. 313:19 -316:1)
- 54 In Count Four, Lyons, that Mr. Lyons lied when he said that he did not know of the hearing date and that he, Respondent, never got the checks that went missing (Tr p 311 3-311 21)
- 55 In Count Five, Tubbs, denies Ms. Tubbs version of the facts but admits that he delayed the case but eventually returned her file and her money (Tr p 317 5-22)
- 56 In Count Six, State Bar, that he "forgot" (see above paragraph 39).

³ There were simply too many instances of this conduct to list herein

- 57 In Count Seven, Hall, that his client, Chris Monk, never told him personally that the case would not go forward, so he could not return the retainer Respondent stated at the hearing on this matter that he would return the Hall's money (Tr p 296.2-24 & 318 5-14).
- 58 In Count Eight, Avakian, says that he did the work for Mr. Avakian and Mr Avakian has never asked for the file so it has not been returned to him (Tr p. 302 8-11 & p 318 15-319 17)
- 59 Generally, Respondent admitted that he did not provide his clients' accountings of his services and fees earned Respondent also admits that he did not respond to the Bar when requested and did not provide either the Bar or this Hearing Officer any documentation whatsoever to support his claim that he performed work for his clients (Tr p 295 11-17 & 327 5-329·8)
- 60 Based on the evidence presented, and due in part to Respondent's failure to provide any material proof in the way of documents or records, this Hearing Officer must find that the State Bar has proven by clear and convincing evidence that Respondent committed professional misconduct as set forth above in each of the Counts

CONCLUSIONS OF LAW

61. This Hearing Officer finds that there is clear and convincing evidence that Respondent violated the following Rules and ER's
62. In all Counts Respondent violated ER 8.1(b) Failure to disclose facts and/or failure to respond to a lawful demand for information from the disciplinary

authority, Rule 53(d) Refusal to cooperate with State Bar, and (f) Failure to furnish information

- 63 In Counts One, Two, Three, Four, Five and Eight:
ER's 1.1 Competence, 1.2 Scope of Representation; 1.3 Diligence, 1.4 Communication; 1.5 Fees
64. In Count One, Respondent also violated ER's 1.15(d) Safekeeping client funds; 1.16(d) Surrendering file and unearned fees upon termination, and 8.4(d) Conduct prejudicial to the administration of justice
- 65 In Count Two, Respondent also violated ER's 1.16(d) Surrendering file and unearned fees upon termination, and 8.4(d) Conduct prejudicial to the administration of justice.
- 66 In Count Three, Respondent also violated ER 8.4(d) Conduct prejudicial to the administration of justice
- 67 In Count Four, Respondent also violated ER's 1.15(d) Safekeeping client funds; 1.16(d) Surrendering file and unearned fees upon termination; 3.4(c) Knowingly disobey an obligation to a tribunal; 8.4(c) Conduct involving dishonesty; and 8.4(d) Conduct prejudicial to the administration of justice.
68. In Count Five, Respondent also violated ER's 1.15(d) Safekeeping client funds; 1.16(d) Surrendering file and unearned fees upon termination, 8.4(c) Conduct involving dishonesty, and 8.4(d) Conduct prejudicial to the administration of justice

- 69 In Count Six, Respondent violated ER's 3.3 Candor toward tribunal, 4.1 Truthfulness in statements to others, 8.4(c) Conduct involving dishonesty, and 8.4(d) Conduct prejudicial to the administration of justice.
- 70 In Count Seven, Respondent violated ER's 1.5 Fees; and 1.15(d) Safekeeping client property.
71. In Count Eight, Respondent also violated ER's 1.15(d) Safekeeping client funds, 1.16(d) Surrendering file and unearned fees upon termination, 8.4(c) Conduct involving deceit or misrepresentation; and 8.4(d) Conduct prejudicial to the administration of justice

ABA STANDARDS

- 72 *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 behavior, (4) the existence of aggravating and mitigating factors

The Duty Violated

73. Respondent violated his duty to his clients and to his profession as set forth above

The Lawyer's State of Mind

- 74 The Hearing Officer must conclude that Respondent's uniform and consistent refusal to communicate with his clients, do their work as they wished, and respond to the Bar evidences a knowing state of mind in all counts. Respondent admits that he made mistakes but claims that he was doing the work for his clients. The consistent failure to cooperate with the Bar and failure to provide any material evidence whatsoever causes only one conclusion: Respondent knew that

he was not serving his clients appropriately. As to Count Six, Respondent's claim that he "forgot" that he had ruled on the Motion to Suppress after he had substantially copied it verbatim less than one week after ruling on the motion, is a lie unto itself

The Actual or Potential Injury Caused

- 75 In Count One, Respondent caused significant delay to Ms. Horton, then made her sue him in Justice Court to get a portion of her retainer and file back
- 76 In Count Two, Respondent caused Ms. Huddleston to have a default entered against her, failed to get the case transferred to Gila County, caused a second default to be entered against Ms. Huddleston, and forced her to retain new counsel for which she had to borrow money from her parents
- 77 In Count Three, Respondent contributed to Mr. Rockefeller losing a substantial position in a lawsuit, and kept a large amount of money that belonged to Mr. Rockefeller.
- 78. In Count Four, Respondent caused substantial delay in Mr. Lyons' case, and failed to account for or return unearned fees
- 79 In Count Five, Respondent caused a significant delay in Ms. Tubbs' foreclosure case, the full significance of which has not been realized as she is still fighting the case, failed to give Ms. Tubbs all her documents.
- 80 In Count Six, Respondent's deceit could have caused a miscarriage of justice had the Judge not been made aware of controlling authority that was opposite to Respondent's position.

81 In Count Seven, Respondent deprived the “Halls” of \$1,500 since approximately
July of 2006, and still to this date has not returned their money to them

82 In Count Eight, Respondent caused significant delay in Mr. Avakian’s case and
has not provided either an accounting or refund of fees paid

Aggravating and Mitigating Factors

Aggravating Factors

83. *Standard 9 22(a) Prior Disciplinary Offenses* Respondent is a conditional
admittee and yet failed to respond to the Bar in a screening matter. Respondent
received an informal reprimand for violating ER 8 1(b) and Rule 53(f) and then
failed to sign the contract that would have taken him off his conditional admittee
status

84. *Standard 9 22(b) Dishonest or Selfish Motive* By keeping client funds, making
another client sue him for return of her retainer, and lying to the Court
Respondent displayed a dishonest and selfish motive.

85 *Standard 9.22(c) Pattern of Misconduct* Not only does Respondent have a prior
history of not responding to the Bar, his misconduct in all but Count Six is
virtually the same to greater and lesser degrees

86 *Standard 9 22(d) Multiple Offenses (eight counts)*

87 *Standard 9 22(e) Bad Faith Obstruction of the Disciplinary Proceedings (failure
to respond)*

88 *Standard 9 22(g) Refusal to Acknowledge Wrongful Nature of Conduct* While
Respondent admitted that he had made some mistakes his admission was

somewhat hollow given his level of participation in these proceedings, and his refusal to give his clients an accounting of his fees and return money owed.

89 *Standard 9 22(j)* Indifference to paying Restitution While Respondent says that he will pay the “Halls” the money he owes them, he has not shown that he has done so, or any of his other clients that he owes money to

Mitigating Factors

90 Respondent offered no mitigating factors and none were found

SANCTION ANALYSIS

91 The ABA has set forth Standards for Imposing Lawyer Sanctions and they are useful in determining the appropriate sanction in this case. The most serious misconduct in this matter is Respondent’s lying to Judge Cahill and not accounting for or returning client funds Certainly Respondent’s lack of competence and failure to do the work requested by his clients is problematic and will be considered as aggravating factors, but the most serious misconduct is the focus of the sanction analysis.

92 The most applicable *Standard* is 6 11 which provides:

“Disbarment is generally appropriate when a lawyer, with the intent to deceive the Court, makes a false statement or improperly withholds material information, and causes a significant or potentially significant adverse effect on the legal proceeding ”

- 93 *Standard 5 11(b)* provides that disbarment is also appropriate when a lawyer engages in conduct involving dishonesty, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law
- 94 *Standard 4 11*, which provides that disbarment is appropriate for a knowing conversion of client property, might also apply given that Respondent has refused to account for or return several clients' retainers.
- 95 From the clients' perspective, the most serious misconduct is the Respondent's refusal to return their money and property. From the Profession's perspective, the most serious misconduct is dishonesty to the tribunal Under either test, the *Standards* call for disbarment

PROPORTIONALITY

- 96 The Supreme Court has held that one of the aims of attorney discipline is to tailor the discipline to the individual facts of the case and yet also have the discipline be consistent with other cases with similar factual circumstances. *In re Wines*, 135 Ariz 203, 660 P 2d 454 (1983), and *In re Wolfram*, 174 Ariz 49, 847 P.2d 94 (1993).
- 97 The most similar case is *In re Bryn*, SB-06-0127-D (9/26/06). In that case Mr Bryn failed to diligently represent clients and failed to meet deadlines He accepted fees from clients but failed to perform the work for which he had been retained As in the present case, Mr Bryn continually provided empty promises of action when confronted by his clients, and declined to return unearned fees Mr Bryn failed to comply with trust account rules and guidelines. He refused to

respond and cooperate with the State Bar's investigation Like Respondent herein, Mr Bryn violated ER's 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.2, 8.1, 8.4(d) and Rule 53(d) and (f). Mr. Bryn also violated Rules 43 and 44. In Bryn there were eight aggravating factors and no mitigating factors. Mr. Bryn was disbarred

98 In *In re Cole*, SB-06-0154D (01/09/07), Mr Coe failed to competently and diligently represent, and to adequately communicate with, his clients. Mr. Coe abandoned his clients and failed to appear at court hearings. Mr. Coe further engaged in the unauthorized practice of law while summarily suspended and failed to cooperate with the State Bar's investigation Mr. Coe was found to have violated ER's 1.1, 1.2, 1.3, 1.4, 1.5, 1.16, 3.2, 3.3, 3.4(c), 5.5(a), 7.3, 8.1(b), 8.4(c), 8.4(d) and Rules 31(b), 53(c), 53(d) and 53(f) There were six aggravating factors and no mitigating factors Mr Coe was disbarred

RECOMMENDATION

99 This Hearing Officer concludes that, based on the facts of this case, the ABA *Standards*, the aggravating factors, and the proportional cases that Respondent should be disbarred Respondent's performance on behalf of these clients was worse than inadequate. He led them to believe that he was doing their work, they relied on those assurances to their detriment, and then he would not communicate with them Respondent's refusal to cooperate in the Bar's investigation indicates that he simply does not take his responsibilities seriously Whether Respondent has emotional or psychological issues that cause him to act the way he has was not alleged or shown It therefore must be assumed that Respondent is simply

dishonest His misconduct before Judge Cahill would say that Respondent's problem is in fact a lack of personal integrity and honesty The ability to be truthful is key to our profession, without it, Respondent should not be practicing Law

- 100 It is also recommended that Respondent be ordered to pay restitution as follows
- 101 Count One to Ms Horton \$500, which is the balance of the money that she paid him for work he did not do
- 102 Count Three to Mr Rockefeller \$25,000.
103. Count Seven to Mr and Mrs Hall \$1,500
- 104 Count Eight to Mr Avakian \$4,500 ⁴

DATED this 29th day of May, 2008

Hon H Jeffrey Coker /NM
H Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 29th day of May, 2008.

Copy of the foregoing mailed
this 30th day of May, 2008, to.

⁴ In Count Two, Ms Huddleston only paid \$850 and received work for that fee In Count Four, there was simply insufficient evidence of what was paid to Respondent by Mr Lyons for this Hearing Officer to set a figure for restitution, it would just be a guess In Count Five, Respondent already refunded Ms Tubbs' retainer No restitution is due in Count Six

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by Neeta M. Maalkar