

SUPREME COURT OF ARIZONA

In the Matter of a Member of the) Arizona Supreme Court
State Bar of Arizona) No. SB-18-0012-AP
)
JOHN DUKE HARRIS,) Office of the Presiding
Attorney No. 7407) Disciplinary Judge
) No. PDJ20179086
Respondent.)
) **FILED 11/20/2018**
)
_____)

DECISION ORDER

Respondent John Duke Harris appealed the Hearing Panel's January 16, 2018 Decision and Order Imposing Sanctions. On behalf of the Panel the Presiding Disciplinary Judge granted a Request for Stay on February 13, 2018. Good cause appearing,

IT IS ORDERED denying the appeal, lifting the stay and affirming the sanction of reprimand effective immediately.

IT IS FURTHER ORDERED placing Respondent on probation for two years, effective immediately under the following terms and conditions:

1. During the period of probation, Respondent is to obtain six hours of continuing legal education: three hours in alternative dispute resolution and three hours in professionalism and candor in addition to his annual requirement.

2. Within 30 days, Respondent will contact the Member Assistance Program of the State Bar of Arizona ("MAP") and submit to a MAP assessment. The State Bar will prepare the terms of probation, incorporating any specific terms identified by the MAP Director or

designee. Respondent will sign the terms and conditions of participation, including reporting requirements as provided in the MAP Agreement within a reasonable period of time as directed by the MAP Director or designee. Respondent will be responsible for any costs associated with the MAP Assessment and Agreement.

IT IS FURTHER ORDERED that Respondent pay costs and expenses of the disciplinary proceeding.

DATED this 20th day of November, 2018.

/s/

SCOTT BALES
Chief Justice

TO:

John Duke Harris

James D Lee

Amanda McQueen

Sandra Montoya

Maret Vessella

Don Lewis

Beth Stephenson

Mary Pieper

Raziel Atienza

Lexis Nexis

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,

JOHN DUKE HARRIS,
Bar No. 007407

Respondent.

PDJ 2017-9086

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar No. 15-2791]

FILED JANUARY 16, 2018

Rule 42, Ariz. R. Sup. Ct., E.R. 8.4(c) states it is professional misconduct to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. E.R. 8.4(d) states it is professional misconduct to engage in conduct that is prejudicial to the administration of justice. John Duke Harris (“Harris”) violated these ethical rules and committed professional misconduct by creating a fraudulent Summons that stated it was from an arbitrator; it was not. It was issued by and from Harris. Nothing had been initiated in arbitration. He knowingly misrepresented that a “Notice of Arbitration and of Arbitration Hearing Date” he wrote and signed had been filed in arbitration under the rules of the American Arbitration Association or the rules of the State Bar of Arizona and assigned to Arbitrator Bruce Meyerson. Harris served these documents on his prior client knowing they were fraudulent.

The State Bar requested a short-term suspension with two years of probation and additional continuing legal education (“CLE”) in addition to his mandatory

annual CLE requirements. The misconduct warrants a Reprimand with two years of probation under MAP and additional CLE.

I. Procedural History

On June 30, 2017, James D. Lee, Senior Bar Counsel for the State Bar of Arizona filed a single count complaint against Harris seeking relief under Rule 42, Ariz. R. Sup. Ct., E.R. 8.4(c) and (d). Harris timely filed an answer on July 31, 2017. The initial case management conference was held on August 10, 2017. Presiding Disciplinary Judge William J. O’Neil (“PDJ”) set the matter for hearing. The parties filed their joint prehearing statement on September 18, 2017. A motion for continuance was filed under seal by Harris on October 10, 2017. The motion was granted and the hearing reset to November 27, 2017. The parties filed their Joint Prehearing Statement (“JPS”) on September 18, 2017. Each party filed prehearing memorandum.

This matter proceeded to hearing on November 27, 2017. James D. Lee, Bar Counsel, appeared on behalf of the State Bar of Arizona. Harris appeared by counsel, Geoffrey M. T. Sturr, *Osborn Maledon PA*. The Hearing Panel (“Panel”) was comprised of Ralph J. Wexler, Attorney Member, Howard M. Weiske, Public Member and the PDJ. The Panel received the testimony of Bruce E. Meyerson Esq., Vartan Arabyan, Thomas M. Connelly, Esq., and Harris. The PDJ admitted into evidence stipulated Exhibits 1-20. In addition, the PDJ admitted into evidence

stipulated Exhibits 1-20 and Exhibits 21-30, 37, 40-43, & 48. Exhibits 41 & 48 were admitted for limited purposes only. At the request of the parties, closing arguments were submitted in writing.

II. Findings of Fact and Rule Violations

The Panel finds the following facts were established by clear and convincing evidence. All referenced stipulated facts are from the JPR. Where not otherwise indicated, these facts are drawn from testimony or exhibits. Harris was admitted to the State Bar of Arizona on October 23, 1982, under State Bar No. 007407.¹ He is subject to the jurisdiction of the Arizona Supreme Court and the Panel in this disciplinary proceeding.²

On June 16, 2013, Mr. Harris entered into an hourly fee agreement with Vartan Arabyan (“Vartan”) and his wife, Shacke Arabyan (“Shacke”), to pursue tort claims against the alleged victims in a criminal case in which Harris had represented Vartan. The fee agreement of Harris included a mandatory fee arbitration provision that stated:

b. Arbitration Client and Attorney agree to submit any dispute arising between them, from the terms of this Agreement, or from the breach thereof, to binding arbitration pursuant to the rules of the American Arbitration Association, or the rules of the State Bar of Arizona, whichever is applicable.³

¹ Stip. Fact 1.

² Rule 46, Ariz. R. Sup. Ct.

³ Stip. Facts 2-3.

Although Harris apparently represented both clients, only Vartan signed the fee agreement. [Ex.1.] In his response to the State Bar, Harris erroneously states that the fee agreement was signed by both parties. [Ex. 17, Bates SBA000053.]

On January 27, 2014, Harris initiated a civil action on the Arabyans' behalf, *Vartan Arabyan et al. v. Matthew Lair, et al.*, Arizona Superior Court in Maricopa County, No. CV2014-052153. Respondent issued an invoice to the Arabyans dated December 26, 2014 [Ex. 2], for which Harris received a payment on February 28, 2015. [Ex. 17, Bates SBA00055.] He issued an invoice to them dated March 15, 2015. [Ex. 3.]⁴

On May 20, 2015, Harris moved to withdraw, without client consent, and to extend the deadline for the Arabyans to respond to a pending motion for summary judgment. He issued another invoice to them on May 29, 2015, demanding payment of \$19,807.34. [Ex. 37 & 4.]⁵

Vartan disputed some of the bills sent by Harris and asked Harris for a copy of the signed fee agreement and the prior billing statements. Harris refused the request. On June 18, 2015, Harris emailed Vartan Arabyan and informed him that he would initiate collection procedures for his failure to pay the final billing statement. Vartan responded on June 25, 2015 again stating he had no complete

⁴ Stip. Facts 4-6.

⁵ Stip. Facts 7-8.

billings or the signed fee agreement. “It seems a simple procedure to copy these and send them to me. If you start a collection proceeding you will have to provide these documents anyway. Please provides these requested documents, ASAP.” Harris did not respond. [Ex.5 & Vartan & Harris Testimony.]

On July 2, 2015, the Court in CV2014-052153 issued an Order granting the Harris motion to withdraw. [Ex. 40.] On July 14, 2015, Harris served Vartan and Shacke by process server and certified mail with a *Notice of Arbitration and of Arbitration Date* (“Notice”) signed by Harris. [Ex. 6 & Testimony of Harris & Vartan.] Harris also caused each to be served with a separate *Summons for Arbitration Notice, Claim and Hearing* (“Summons”). [Ex. 7, 8 & Harris & Vartan Testimony.]⁶

The Notice stated, in part, “Unless earlier changed by motion for and good cause shown by Mr. Harris, the Arbitration Hearing has been set for August 21, 2015 from the times of 9:00 a.m. until 5:00 p.m. at the place in Phoenix, Arizona as designated by the Arbitrator, the Honorable Bruce Meyerson.” (“Meyerson”). [Ex. 6.] Each Summons stated, “**YOU ARE ADDITIONALLY REQUIRED TO APPEAR** at the Arbitration Hearing set for 9:00 A.M. on the 31st day of July, 2015, at the location in Phoenix, Arizona to be designated and before the Honorable Judge Bruce Meyerson (Retired), Arbitrator.” (Emphasis in original). [Ex. 7-8.]

⁶ Stip. Facts 9, 10 and 10 (There are two separate facts which are each numbered 10.)

Harris knew neither Summons was from Meyerson or anyone associated with the American Arbitration Association, and was not issued under the rules of the State Bar of Arizona as stated in the fee agreement he drafted. Harris knew that Meyerson did not know of the case. Harris knew nothing had been done to initiate the legal process of arbitration under his fee agreement or to initiate any other arbitration. He knew that no hearing had been set nor requested by him. He knew the documents were fraudulent.

Harris did not try to schedule the date or time of arbitration with Meyerson prior to sending the Notice and Summons. He did not try to determine if Meyerson was even available for a private arbitration. Neither the Notice or the Summons, complied with the American Arbitration Association rules, or the rules of the State Bar of Arizona. [Harris & Meyerson Testimony; Ex. 24-28.]

We find not credible the testimony of Mr. Harris that he did not read the documents he created before serving them but merely caused them to be cut and pasted from another arbitration he had been involved in. Mr. Harris' misleading actions in creating these documents did not comport with the American Arbitration Association Rules and Procedures nor those of the State Bar.

Harris testified he had done arbitrations before. He was required to file a demand with the American Arbitration Association and pay the administrative filing fee to initiate arbitration. [Ex. 26, Bates SBA000170.] In addition, "The filing party

shall simultaneously provide a copy of the Demand and any supporting documents to the opposing party.” [Ex. 26, ¶ (g), Bates SBA000171.] Mr. Harris had already refused to provide those documents. The misconduct of Harris assured the Arabyans would assume they did not have the right to an administrative conference to discuss the selection of an arbitrator. [Ex. 26, ¶ R-10, Bates SBA000173.] The Arabyans were entitled under the fee agreement to participate in the selection of the arbitrator. [Ex. 26, ¶ R-12(a)-(c), Bates SBA000174.]

Under the scheme of Harris, he chose the arbitrator and the date of the hearing by misleading his former clients, ignoring the process, creating mistrust and which gave the appearance he controlled the arbitration. The motive for his scheme is not our concern. That he schemed is. We reject his testimony that an email of July 20, 2015 to Meyerson related to this matter as there is nothing within the document that identifies it as related to the Arabyan matter. [Ex. 25-26; Meyerson Testimony & Ex. 9.]

Upon being served with the purported “arbitration” documents written by Harris, the Arabyans contacted Thomas M. Connelly Esq. Connelly suspected the documents were not what they were stated to be. On July 23, 2015, Connelly spoke with Meyerson regarding the matter. Meyerson informed Connelly that he was not the arbitrator, no arbitration was scheduled and he that he did not know of any case involving Vartan Arabyan. Mr. Connelly verified their conversation with an email

of July 23, 2015. Myerson testified the email accurately states things Meyerson said to him. [Connelly & Meyerson Testimony; Ex. 11.]

Meyerson and Harris had a telephone conversation soon after Meyerson spoke with Connelly. Meyerson informed Harris that what he was doing was inappropriate and that he did not follow the arbitration rules. Myerson did not agree with the language in the Notice and testified the Notice usually came from the American Arbitration Association or the arbitrator. When Meyerson learned there had been no demand made, he informed Harris the arbitration process required a formal demand. [Meyerson Testimony.]

Harris sent to Meyerson a letter dated July 23, 2015. [Ex. 10.] In the letter, Harris omitted that he had served by process server as was certified by him on the Notice he sent. Instead he stated, “Further, I enclose a Summons in this matter. Mr. and Mrs. Arabyan were served in this matter by regular mail. Attempts to serve these parties by certified mail has so far been unsuccessful.” [Ex. 10.]

Rather than acknowledge his error, Harris on August 4, 2015, sent an e-mail to the Arabyans captioned “Past Due Attorneys Fees and Costs; Demand for Arbitration,” which stated: “See attached letter regarding *your failure* to submit to Arbitration after your failure and refusal to pay your attorneys’ fees and costs in the Laird and Loughery litigation.” (Emphasis added.)

Harris knew the Notice and Summons he served on them was improper, that he had not attempted to initiate arbitration and had made false and misleading statements in those documents. His actions assured that arbitration under the American Association of Arbitrators (“AAA”) would not be available to the Arabyans. He knew there was no hearing set, that neither the AAA Rules or the State Bar Rules were followed and the Summons fraudulently stated they were from Meyerson. The letter he attached with the email is additional evidence of his scheme. It demonstrates a continuing disregard for the truth, the legal process of arbitration, the rights of his clients to proceed under the specific terms of the fee agreement and that he intended that the documents he drafted be viewed as legal pleadings by the Arabyans. His letter stated:

As you know, you have failed and refused to pay my Firm’s charges for legal services provided and costs incurred in your March 15, 2015 and May 29, 2015 Billing Statements. I sent you a Notice of Arbitration *pleading* and a Summons for each of you. You have *ignored the demand* that you participate in an arbitration of this dispute and provide a response within 15 days.

As a result, you are hereby notified that if you do not file a response to my Notice of Arbitration by 12:00 noon on August 7, 2015, I will promptly file a lawsuit in the Maricopa County Superior Court to compel your participation in the arbitration process and for other relief. In such a situation, you will be responsible for more expenses. (Emphasis added.)

[Exhibit 12.]

His misconduct enabled him to avoid arbitration under the fee agreement and proceed to Court where his complaint demanded \$19,807.34 and additional attorney

fees. [Ex. 13 & 16.] Rather than arbitration under the AAA or the State Bar, the Superior Court ordered arbitration. Harris was awarded, \$9,020.94 plus costs of \$1,745.48. The award was reduced to judgment for that amount plus additional costs of \$386.80, which judgment was satisfied. [Ex. 18-20.]

III. Analysis

In his response to the State Bar, Harris states the attorney-client agreement provided for arbitration of disputes and that he attempted to “set up” a fee arbitration proceeding with Meyerson but the Arabyans failed and refused to arbitrate the dispute in violation of the fee agreement. [Ex. 17, Bates SBA00060.] We find this untrue. In the hearing Harris testified that he pursued arbitration because he couldn’t even get Vartan to communicate with him. This is also untrue. Exhibit 5 demonstrates that Vartan was responding to him by email. It was Harris that refused to communicate further.

There was no cover letter with the “arbitration” documents Harris drafted and served on his prior clients. We find no genuine remorse. At best Mr. Harris sought to take advantage of his lay clients, did not try to determine if he was complying with any set of arbitration rules, argues that he did not read what he signed and seems to blame his clients for his own professional misconduct. He testified his conduct was simply not best practices. If he is to be believed, he neither reviewed or read the documents, had an aide copy them from some undisclosed arbitration form and that

setting the arbitration date, with Meyerson as the Arbitrator and serving him clients with a summons that included a default clause was excused because it was a “nullity.” [Harris Closing Argument.] None of the documents he created comported with his own contract or the American Arbitration Association Rules or Procedures

Similarly, he argues that nothing really occurred because fraudulent conduct is inherently untrue and is therefore a nullity. There was no arbitration scheduled. We find his conduct was done knowingly, if not intentionally. The document he wrote bore his signature. The Notice and the Summons he drafted and served were not honest, had no integrity in principle, lacked fairness and straightforwardness. *In re Scanio*, 919 A.2d 1137, 1143 (D.C. 2007). We look at the totality of the circumstances. The documents are the best evidence of what Harris intended. The Summons states, “**YOU ARE HEREBY NOTIFIED**, that in case of your failure to Respond and defend within the time applicable, judgment by default may be rendered against you for the relief demanded in the Notice of Arbitration and Notice of Arbitration Hearing Date pleading.”

That notification identifies the Notice as a “pleading,” because Harris intended for the reader to assume it was a pleading. The argument that because the Arabyans hired a lawyer and discovered the fraud, that then everyone knew it a nullity because Harris knew if they did nothing, he in turn could do nothing, is fallacious. Such an argument reflects intentional conduct. Falsehoods,

misrepresentations and omissions of this magnitude have a direct effect on the practice of law. In analyzing the applicability of ER 8.4(c), “the question is whether the attorney lied...” Motive is irrelevant. *In re Dann*, 960 P.2d 416 (Wash. 1998).

Rule 8.4(d) encompasses abusive or uncivil behavior towards an opposing party. *See* Bennett, Ellen J., et al. *Annotated Model Rules of Professional Conduct*. Center for Professional Responsibility, American Bar Association, 2015. Harris was knowingly, if not intentionally, dishonest in the statements in the documents. His conduct abused the legal process which violates Rule 8.4(d). *See, e.g. In re Alexander*, 300 P.3d 536 (Ariz. 2013), *In re Olsen*, 326 P.3d 1004 (Colo. 2014) and *In re Spikes*, 881 A.2d 1118 (D.C. 2005).

Conclusions of Law

The Panel finds by clear and convincing evidence Mr. Harris violated: Rule 42, Ariz. R. Sup. Ct., specifically ERs 8.4(c) (engage in conduct involving dishonesty, deceit, fraud or misrepresentation) and (d) (conduct prejudicial to the administration of justice).

IV. Sanctions

The American Bar Association (“ABA”) *Standards for Imposing Lawyer Sanctions* (“Standards”),⁷ the Arizona Supreme Court Rules, case law and if applicable, a proportionality analysis, guide the imposition of sanctions for lawyer

⁷ Rule 58(k), Ariz. R. Sup. Ct., and *In re Cardenas*, 164 Ariz. 149, 791 P.2d 1032 (1990).

misconduct. When imposing a sanction after a finding of lawyer misconduct, a hearing panel must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the lawyer's misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

ABA Standard 3.0 – Duty, Mental State, and Injury

Duties violated:

Mr. Harris breached his duty to clients and the public by violating ER 8.4(c).

Mr. Harris breached his duty to the legal profession by violating ER 8.4(d).

Mental State and Injury:

Mr. Harris knowingly if not intentionally prepared, wrote, signed, and served the Notice of Arbitration and Summons. He knew it contained multiple false statements. He had not initiated arbitration. He intentionally included dates certain for the arbitration hearing and falsely stated a specific arbitrator had been assigned, despite having no contact with his chosen arbitrator. He knowingly prepared the summon with the appearance that the arbitrator had prepared and sent the summons.

Mr. Harris' misconduct caused potential harm to his clients and actual harm to the legal profession. Mr. Harris' misconduct negatively affected the public's perception of the legal profession.

Analysis Under ABA *Standards* and Arizona Case Law

Mr. Harris' violation of ER 8.4(c) implicates *Standard 4.62, Lack of Candor* which states that suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to a client.

Standard 5.13, Failure to Maintain Personal Integrity is also implicated when violating ER 8.4(c) and provides that reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

Mr. Harris knowingly prepared and served the Notice and Summons. The Panel is not persuaded that Mr. Harris negligently failed to read the documents prior to signing the Notice and serving the documents. His staff did not generate form pleadings or letters. Harris inserted the fictitious date, time, name of an assigned arbitrator and potential sanction for nonresponse. The Notice also reflected that it was from the arbitrator, when it was not. This was misleading to the clients.

Additionally, Mr. Harris violated ER 8.4(d), which implicates *Standard 6.0, Abuse of the Legal Process*. Specifically, *Standard 6.12* provides that suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal

proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

The Panel determined the presumptive sanction for Mr. Harris' misconduct is between suspension and reprimand.

ABA Standard 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any consideration that may justify an increase in the degree of the sanction to be imposed. Mitigating circumstances may warrant a reduction in the severity of the sanction. *See Standards 9.21 and 9.31*

Aggravating Factors:

Prior Disciplinary Offenses – 9.22(a): There is one similar prior that was not disclosed and we decline to take judicial notice; we find the others remote in time. We decline to apply this factor.

Dishonest or Selfish Motive – 9.22(b): The Panel finds Harris' conduct was selfish. He knowingly ignored the requirements of the fee contract he wrote to make a frivolous fictitious claim against his prior clients in the hopes to benefit himself.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): While Harris has stipulated to certain facts, he has not admitted that he acted wrongfully and that he harmed his prior client.

Substantial Experience in the Practice of Law – 9.22(i): Respondent was admitted to the Arizona bar thirty-five years ago, in 1982. He has substantial

experience as a lawyer and should know to comply with the ethical responsibilities of an attorney.

Mitigating Factors:

Full and free disclosure to disciplinary board or cooperative attitude toward proceedings – 9.32(e).

Delay in the disciplinary proceedings – 9.32(j). The bar charge was received by the State Bar in October 2015.

V. Conclusion

The Supreme Court “has long held that ‘the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.’” *In re Alcorn*, 202 Ariz. 62, 74, 41 P.3d 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It has also concluded that the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). A goal of lawyer regulation is to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

The Panel determined the appropriate sanction using the facts, application of the *Standards*, including the aggravating and mitigating factors, and the goals of the attorney discipline system. The Panel orders:

VI. ORDER

1. Mr. Harris is reprimanded effective thirty (30) days from this order.
2. Mr. Harris shall be placed on two (2) years of probation effective thirty (30) days from this order. During the period of probation, Mr. Harris shall obtain six (6) hours of Continuing Legal Education. Three (3) hours in alternative dispute resolution and three (3) hours in professionalism and candor. This is in addition to his annual requirement.
3. MAP: Mr. Harris shall contact the State Bar Compliance Monitor at (602) 340-7258 within ten (10) days. Mr. Harris shall submit to a MAP examination. The State Bar will prepare the terms of probation, incorporating any specific terms identified by the MAP Director or designee. Mr. Harris shall sign the terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Mr. Harris shall sign and return the terms of probation within thirty (30) days of this order. Mr. Harris shall be responsible for any costs associated with MAP.
4. Mr. Harris shall pay all costs and expenses incurred by the SBA. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.

A final judgment and order will follow.

DATED this 16th day of January 2018.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Howard M. Weiske

Howard M. Weiske Volunteer Public Member

Ralph J. Wexler

Ralph J. Wexler, Volunteer Attorney Member

COPY of the foregoing e-mailed/mailed
on this 17th day of January 2018, to:

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