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ON GRIEVANCES & DISCIPLINE

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

In re:	:	
Javier Horacio Armengau (0069776) Registration Address: 98 Hamilton Park Columbus, Ohio 43203, Respondent,	: : :	14 - 087
vs.	:	Case No. _____
Columbus Bar Association 175 South Third Street, S-1100 Columbus, Ohio 43215-5193, Relator.	: :	

FILED
DEC 1 5 2014
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

COMPLAINT

Background

1. This Court admitted Respondent to the practice of law in Ohio in November 1998.
2. He has been a solo practitioner doing primarily criminal law in Franklin County and other Ohio counties as well as in federal courts.
3. This Court, in 2003, issued a public reprimand to Respondent. *Disciplinary Counsel v. Armengau,* 99 Ohio St.3d 55, 2003-Ohio-2465.
4. On July 8, 2014, this Court granted Relator's Motion for Immediate Interim Remedial Suspension and ordered Respondent to cease practicing law for an indefinite period. *Columbus Bar Assn. v. Armengau,* __Ohio St.3d __, 2014-Ohio-3023.
5. This Court also issued an Interim Felony Suspension against Respondent on September 15, 2014. *In re Armengau,* __Ohio St.3d __, 2014-Ohio-3940.

Count One: (Felony Conviction) [Ex. 1-A]

6. In April 2013, the Franklin County Common Pleas Court Grand Jury indicted Respondent on eighteen charges involving sexual crimes against a number of his female clients and relative of clients. *State of Ohio v. Javier Armengau*, Case No 13-CR-2217.

7. On July 7, 2014, a Petit Jury found Respondent "guilty" of the following offences:

    a) One count of Public Indecency (Misdemeanor of the Fourth Degree);

    b) Two counts of Gross Sexual Imposition (Felony of the Fourth Degree);

    c) One count of Rape (Felony of the First Degree);

    d) One count of Kidnapping (Felony of the Second Degree); and,

    e) Four counts of Sexual Battery (Felony of the Third Degree).

8. On August 28, 2014, a Franklin County Common Pleas Judge sentenced Respondent to a term of imprisonment totaling thirteen years, after which he will be subject to a five-year period of post-release control and will be classified as a sexual offender required to register and report for life.

9. Respondent's acts and failures to act as set forth in this Count violated the following provisions of the Ohio Rules of Professional Conduct:

    a) Prof.Cond.R. 8.4(b) [committing an *illegal* act that reflects adversely on the lawyer's honesty and trustworthiness];
    b) Prof.Cond.R. 8.4(c) [committing a dishonest act adversely reflecting on his honesty and trustworthiness];
    c) Prof.Cond.R. 8.4(h) [engaging in conduct adversely reflecting on fitness to practice].

Count Two: (Johnson and Rhodes) [Ex. 2-A to 2-H]

10. Beginning in 2010, both federal and state law enforcement officials engaged in a joint investigation into narcotics trafficking involving a number of suspects in central Ohio.

11. Included in this group of suspects was a person who became a confidential informant (referred to here as "C.I."). Also in the group were Michael P. Johnson and Antwane Rhodes.

12. Respondent first represented C.I. in U.S. District Court proceedings arising out of the joint investigation.

13. On behalf of CI, Respondent negotiated a plea agreement under the terms of which, C.I. agreed to cooperate fully and become a confidential informant as to any drug activity he had knowledge of taking place in the Southern District of Ohio including Franklin County. C.I. and Respondent signed that agreement.

14. Although the agreement was dated and signed on December 2, 2009, it was not filed with the court until August 12, 2010. Respondent was C.I.'s attorney during that entire period and through his subsequent sentencing.

15. Concurrently, despite an obvious conflict, Respondent undertook the representation of both Johnson and Rhodes, even though he certainly knew his client C.I. was heavily involved in the same drug conspiracy and would be obligated to cooperate with law enforcement and prosecutors against Johnson and Rhodes.

16. Both the state prosecutors (in the Johnson case) and federal prosecutors (in the Rhodes case) recognized the conflict and repeatedly warned Respondent he needed to remove himself as an attorney for these two defendants.

17. Respondent refused to withdraw, to the detriment of both Johnson and Rhodes.

18. Respondent received substantial legal fees from Rhodes and Johnson at a time he knew, or should have known, he had a serious conflict of interest and he could not possibly remain on the cases and properly represent these clients.

19. The state court judge, upon the motion of prosecutor, removed Respondent as counsel, and the client in the federal case discharged Respondent as counsel.

20. After Respondent was removed as Johnson's counsel, he visited Johnson in jail by falsely representing himself as Johnson's attorney. He did this knowing Johnson had other counsel and without notifying that counsel.

21. Respondent refused to return any of the fees paid by these clients.

22. Respondent's acts and failures to act as set forth in this Count, violated the following provisions of the Ohio Rules of Professional Conduct:

    a) Prof.Cond.R. 1.1 [not providing competent representation];
    b) Prof.Cond.R. 1.5 [charging a clearly excessive fee];
    d) Prof.Cond.R. 1.15(d) [failing to promptly deliver funds to which the client is entitled];
    e) Prof.Cond.R. 1.7(a)(1) & (2) [representing client when the representation will be materially limited by, and adverse to, responsibilities to a another client];
    f) Prof.Cond.R. 8.4(c) [committing a dishonest act adversely reflecting on his honesty and trustworthiness];
    g) Prof.Cond.R. 8.4(h) [engaging in conduct adversely reflecting on fitness to practice].

Count Three: (Pack and Stephenson) [Ex. 3-A to 3-B]

23. In December 2012, Cassandra Pack was charged with misdemeanor drug possession arising out of a search pursuant to a traffic stop.

24. Beau Stephenson, a passenger in the car driven by Pack, was found to be in possession of a syringe and was charged with misdemeanor possession of paraphernalia.

25. On February 27, 2013 Respondent entered an appearance for Pack on this misdemeanor matter.

26. Sixteen days earlier, on February 11, 2013, Respondent had taken up representation of Stephenson after he was indicted for aggravated robbery, kidnapping, aggravated murder,

attempted murder, tampering with evidence and other charges arising out of the homicide of Christopher Manley.

27. Law enforcement officials learned that Pack had a significant role in the robbery and murder by Stephenson and they met with both Stephenson and Pack regarding this matter.

28. The prosecutors moved to have Respondent disqualified as counsel for Stephenson in the murder case due to his representation of Pack in the unrelated drug case on the grounds that she would be a necessary material witness in the murder case.

29. Respondent then withdraw from Pack's drug case in an attempt keep the Stephenson murder case.

30. The trial court sustained the disqualification motion.

31. In a subsequent letter to Relator, Respondent characterized the court's decision thusly: "Not surprisingly, Judge Kim Brown sided with the state. In so doing, she disregarded the facts and simply accepted the State's position."

32. Respondent appealed the decision.

33. The Tenth District Court of Appeals rendered a Decision on February 25, 2014, affirming the disqualification outlining the law pertaining to the "successive conflict."

34. Respondent, in his letter to Relator about this matter, characterizesd the decision of the Court of Appeals as one born out of "ignorance" and "assumptions that were incorrect."

35. Respondent's acts and failures to act as set forth in this Count violated the following provisions of the Ohio Rules of Professional Conduct:

    a) Prof.Cond.R. 1.7(a)(1) & (2) [representing client when the representation will be materially limited by, and adverse to, responsibilities to a another client];
    b) Prof.Cond.R. 8.2 [knowingly, and with reckless disregard as to the truth,

making a false statement about the integrity or qualifications of a judicial officer];

c) Prof.Cond.R. 8.4(c) [committing a dishonest act adversely reflecting on his honesty and trustworthiness];

d) Prof.Cond.R. 8.4(h) [engaging in conduct adversely reflecting on fitness to practice].

Count Four: (Martin) [Ex. 4-A to 4-C]

36. Rashad Martin was sentenced in March 2006 to ten years in prison.

37. Under the terms of R.C. § 2929.20 he was not eligible for judicial release.

38. In April 2012, Martin, through his wife Leslita Martin, requested that Respondent file a motion for judicial release.

39. Respondent requested and received a fee of $1,000.

40. He provided no written fee agreement but told Ms. Martin that, if the Motion was denied as premature, he would return the fee.

41. Respondent filed for Judicial Release but it was denied in May 2012 because Mr. Martin was not yet eligible to file, as Respondent knew or should have known would be the case.

42. Respondent either failed to review the current law regarding eligibility for filing such motions or ignored it and filed what amounted to a frivolous motion.

43. Thereafter, Ms. Martin repeatedly attempted get the $1,000 fee returned, but Respondent ignored her.

44. Ms. Martin filed a grievance with Respondent

45. In his response to the grievance Respondent said that he would re-file the Motion when it was timely; however, given his suspensions and prison term he will not be in a position to do so.

46. Respondent has not refunded the fee Ms. Martin gave him.

47. Respondent's acts and failures to act as set forth in this Count violated the following provisions of the Ohio Rules of Professional Conduct:

a) Prof.Cond.R. 1.1 [not providing competent representation];
b) Prof.Cond.R. 1.5 [charging a clearly excessive fee];
c) Prof.Cond.R. 1.15(d) [failing to promptly deliver funds to which the client is entitled];
d) Prof.Cond.R. 8.4(c) [committing a dishonest act adversely reflecting on his honesty and trustworthiness];
e) Prof.Cond.R. 8.4(h) [engaging in conduct adversely reflecting on fitness to practice].

Count Five: (Maschke) [Ex. 5-A to 5-C]

48. George Maschke hired Respondent to file an Appeal of his criminal conviction.

49. The issue to be appealed concerned on a decision handed down in the trial court at a suppression hearing.

50. Respondent demanded and received flat nonrefundable fee of $15,000 for the appeal.

51. Although Respondent pursued the appeal, the Fifth District Court of Appeals affirmed the trial court because Respondent did not order or file a transcript of proceedings of the suppression hearing.

52. Respondent, took no further action on the client's behalf.

53. Respondent did not notify his client of the dismissal of the appeal; Maschke learned about it weeks later by searching court records in the prison library.

54. Maschke requested that Respondent return his files and refund the fee. Respondent did neither.

55. The Ohio Public Defender then filed a Motion to Reopen with the Court of Appeals asserting that Maschke's prior counsel was incompetent.

56. The court granted the motion, reopened its prior order, and allowed the filing of a brief on the suppression issue and submission of a copy of the transcript of the suppression hearing.

57. Maschke filed an ethics grievance with Relator.

58. In answer to the grievance Respondent said that he had given the matter to Bryan Pritikin, a lawyer in his office, to handle the matter including securing of the transcript.

59. Pritikin, says Respondent gave him only the task of writing an appellate argument using the transcript. He did so then and handed the brief and the transcript to Respondent for him to file.

60. Respondent says that he went forward with the appeal because he did not find out it was not a winner until deep into the case.

61. Having made that assessment, he decided to have Pritikin finish the case.

62. Respondent did not return the fees paid him by Maschke.

63. Respondent's acts and failures to act as set forth in this Count violated the following provisions of the Ohio Rules of Professional Conduct:

a) Prof.Cond.R. 1.1 [not providing competent representation];
b) Prof.Cond.R. 1.3 [failing to act with *reasonable* diligence];
c) Prof.Cond.R. 1.4(a)(2)-(4) &(b) [failing to *reasonably* consult with and keep his client informed];
d) Prof.Cond.R. 1.5(a) [charging a clearly excessive fee];
e) Prof.Cond.R. 1.15(d) [failing to promptly deliver funds to which the client is entitled];
f) Prof.Cond.R. 8.4(h) [engaging in conduct adversely reflecting on fitness to practice].

Count Six: (Fee Issues / Pinkney) [Ex. 6-A to 6-H]

64. Respondent did not routinely use fee agreements with his clients.

65. Respondent did not routinely give clients a written explanation regarding the scope of his representation.

66. Respondent charged clients a "flat" fee in advance and contended that the entire sum earned was earned upon receipt.

67. When he received "flat" fees, he did not advise the client simultaneously in *writing* that if he did not complete the representation for any reason, the client might be entitled to a refund of all or part of the fee based upon the value of the representation.

68. In some fee dispute matters, Respondent engaged in fee arbitrations requested by clients pursuant to Gov.Bar R. V(4)(G); however, in some of these cases, he subsequently failed to timely return the fees the arbitrators determined that he owed even though he was obligated to do so under the Arbitration Agreement he signed.

69. In May 2013, Respondent agreed to arbitrate a $9,200. fee dispute requested by client Leathia Pinkney. The parties signed an Agreement providing that whatever award the arbitrators maid would be payable within ten days. In November 2013 the arbitrators determined that Respondent had performed no work for the fee and owed the client the entire fee. Respondent was notified of the award; however, Respondent had not paid a substantial portion of the award seven months later.

70. In the period during which Respondent was under indictment and awaiting trial, he collected substantial fees from a number of new clients without telling them he was facing a potential conviction and might be unable to carry out the representation.

71. Respondent received at least one substantial fee from a client while his criminal case was being tried.

72. As on October 21, 2014, claims by former clients pending against Respondent with the Client Security Fund total $136,834.

73. Respondent's acts and failures to act as set forth in this Count violated the following provisions of the Ohio Rules of Professional Conduct:

a) Prof.Cond.R. 1.4(a)(2)-(4) &(b) [failing to *reasonably* consult with and keep his client informed];
b) Prof.Cond.R. 1.5(a) [charging a clearly excessive fee];
c) Prof.Cond.R. 1.15(d) [failing to promptly deliver funds to which the client is entitled];
d) Prof.Cond.R. 8.4(h) [engaging in conduct adversely reflecting on fitness to practice].

Count Seven: (Trust Account Issues) [Ex 7-A to 7-B]

74. Relator obtained a complete set of Respondent's trust account records covering the period from January 1, 2010 to April 30, 2014.

75. The records reveal serious, ongoing Rule violations by Respondent in the management of his IOLTA account.

76. On a number of occasions, Respondent deposited fees he had already earned in his IOLTA.

77. In some cases he comingled his own money in the IOLTA as a subterfuge to keep a positive balance in the account because he had previously used money belonging to a client for his own purposes.

78. Respondent did not maintain copies of his fee agreements with each client.

79. Respondent did not maintain a record for each client on whose behalf funds were held which complied with Prof.Cond.R. 1.15(a)(2)(i-iv).

80. Respondent did not maintain a record for each bank account which complied with Prof.Cond.R. 1.15(a)(3)(i-iii).

81. Respondent did not maintain all bank statements as required by Prof.Cond.R. 1.15(a)(4).

82. Respondent did not perform a monthly reconciliation of his IOLTA account as required by Prof.Cond.R. 1.15(a)(5).

83. Respondent's acts and failures to act as set forth in this Count violated the following provisions of the Ohio Rules of Professional Conduct:

a) Prof.Cond.R. 1.15(a)(1) (i-iv). [failing to maintain copies of fee agreements with each client];
b) Prof.Cond.R. 1.15(a)(2) (i-iv). [failing to keep records for each client on behalf of which funds are being held];
c) Prof.Cond.R. 1.15(a)(3)(i-iii) [failing to maintain complete records of showing dates of deposits and withdrawals and the balance for of funds belonging to each client];
d) Prof.Cond.R. 1.15(a)(4) [failing to maintain bank records deposits slips and check copies];
e) Prof.Cond.R. 1.15(a)(5) [failing to perform and retain a monthly reconciliation of his IOLTA];
f) Prof.Cond.R. 8.4(h)[engaging in conduct involving deceit or misrepresentation];
g) Prof.Cond.R. 8.4(h) [engaging in conduct adversely reflecting on fitness to practice].

Count 8: (False Advertising) [Ex. 8-A]

84. Respondent's law office website, www.armengau-and-associates.com, which was operating until at least October 3, 2014 but is no longer, and gave the misleading appearance that Respondent was available to practice law despite his Interim Redial Suspension.

85. The web address made reference to "Armengau & Associates," even though he did not have associates.

86. The masthead on the first page of the home screen referred to "The Armengau & Associates Legal Team."

87. The text of the site misleadingly referred to "Our experienced attorneys. . . ."

88. The website made reference to "Our Specializations: Criminal Defense . . . Wrongful Death . . . Other Legal Fields . . . Family law, Civil litigation, Serous Personal Injury Law" even though Respondent has not been certified as "specialist" in any of these categories.

89. Respondent's website and letterhead listed addresses in Illinois, Florida, Arizona, New York and California giving the misleading implication that he was admitted and maintained offices in those jurisdictions even though he was and did not.

90. In communications to clients and prospective clients and Respondent routinely included a list of "some cases I have tried for our clients" and listed more than fifty cases in which he claims to have achieved a successful result. In all but a few entries he included no information about the circumstances surrounding the claimed result. He listed no entries for cases in which he did not achieve a successful result for the client.

91. Respondent by his acts and failures to act as set forth in this Count violated the following provisions of the Ohio Rules of Professional Conduct:

a) Prof.Cond.R. 7.1 [using false or misleading communications about the lawyer or the lawyer's services];
b) Prof.Cond.R. 8.4(h)[engaging in conduct involving deceit or misrepresentation];
c) Prof.Cond.R. 7.4(e) [falsely stating or implying that the lawyer is certified as a specialist in a particular field of law]
d) Prof.Cond.R. 7.5(a)[practicing under a name that is misleading as to the identity of the lawyer or lawyers practicing under that name;
e) Prof.Cond.R. 8.4(h) [engaging in conduct adversely reflecting on fitness to practice].

Count Nine: (Degradation of Clients and Incivility in Court) [Ex. 9-A to 9-C]

92. Respondent's communications with his client often are rude and demeaning.

93. Respondent is unable to maintain the sympathetic detachment that permits objective and independent advice to clients.

94. While representing an incarcerated client, Respondent sent his client a letter in which he sarcastically told the client that "through your brilliance and keen ability to develop your defense, you have strengthened the prosecutor's case." He went on to tell the client that it is a certainty that "ultimately you will end up rotting in prison."

95. In a second case in which he had strongly advised a client to accept an offered plea bargain, but which the client declined, he wrote to his client telling him "my obligation is to represent you – not tolerate you." He called the client "delusional," and told him that, "If you had any ability to be truthful and honest, you wouldn't be in the boat you are in . . . .What you say means nothing. Your are a very dishonest person. . . .You are going to sink like the Titanic . . . ." He ended by saying "Have a wonderful day." This individual, represented himself in a jury trial and was acquitted.

96. In his trial for the crimes detailed in Count One of this Complaint, Respondent, loudly interrupted the proceedings and had to be admonished by the judge that he was being disruptive. He repeated the conduct and was held in Contempt of Court and fined.

97. Respondent's acts and failures to act as set forth in this Count violated the following provisions of the Ohio Rules of Professional Conduct:

a) Prof.Cond.R. 1.2(a) [failing to avoid all offensive tactics; failing to treat with courtesy and consideration all persons involved in the legal process; and, failing to abide by a client's decision as to a plea to be entered]
b) Prof.Cond.R. 8.4(h) [engaging in conduct reflecting on fitness to practice].

Count Ten: (Williams) [Ex. 10-A to 10-B]

98. Jessica Williams hired Respondent to represent her fiancé, Milton Branch, who was indicted in Franklin County in January 2014 on charges of Aggravated Murder, Robbery, Felonious Assault and Kidnapping in two separate cases.

99. Respondent agreed to represent Branch in both cases for a total amount of $10,000, but he offered no written fee contract.

100. At their initial meeting Williams paid Respondent $2,500 cash and received a receipt.

101. After that, the only communication Williams had with Respondent was through his secretary.

102. Respondent entered an appearance in both of Branch's cases in February 2014.

103. Williams made payments on a weekly basis on the balance of the fee and eventually paid him a total of $7,000, all in cash for which she has receipts.

104. At one point, Williams found it difficult to keep up with the payments.

105. Respondent's secretary called her in June 2014 to tell her Respondent wanted her to keep making her weekly payments even if she could only pay smaller amounts

106. At that time the secretary told Williams that Respondent was "in trial" but did not tell her the nature of the trial or that Respondent was the defendant.

107. Neither Respondent nor anyone from his office told Williams that he was being tried for criminal matters.

108. Williams' mother saw a news report on Respondent's conviction and incarceration, and she informed her daughter who attempted unsuccessfully to find out what would happen to Branch's case

109. The Judge in Branch's cases eventually appointed new counsel for him.

110. Williams has never received a refund for any of the money she gave Respondent, for which he had performed no legal service.

111. Williams has filed a claim with the Client Security Fund and attached all of the receipts from her payments.

112. Respondent's acts and failures to act as set forth in this Count violated the following provisions of the Ohio Rules of Professional Conduct:

a) Prof.Cond.R. 1.3 [failing to act with *reasonable* diligence and promptness in representing a client];
b) Prof.Cond.R. 1.4(a)(2)-(4) &(b) [failing to *reasonably* consult with and keep his client informed];
c) Prof.Cond.R. 1.5(a) [charging a clearly excessive fee];
d) Prof.Cond.R. 1.15(d) [failing to promptly deliver funds to which the client is entitled];
e) Prof.Cond.R. 8.4(c) [engaging in conduct involving dishonesty and deceit];
f) Prof.Cond.R. 8.4(d) [engaging in conduct prejudicial to the administration of justice];
g) Prof.Cond.R. 8.4(h) [engaging in conduct adversely reflecting on fitness to practice].

Count Eleven: (Lumpkin) [Ex. 11-A]

113. Charles Lumpkin, Sr. hired Respondent on May 6, 2014, to represent his daughter Alicia on a criminal matter.

114. Lumpkin paid Respondent $950 in fees.

115. In June 2014, Lumpkin saw a news report about Respondent's pending criminal charges

116. Neither Respondent nor anyone from his office had told him that Respondent was to be tried on criminal charges.

117. Despite Respondent's failure to provide legal service for his daughter from Respondent, for which he had been paid, Respondent has not refunded any of the fees Lumpkin paid.

118. Respondent's acts and failures to act as set forth in this Count violated the following provisions of the Ohio Rules of Professional Conduct:

a) Prof.Cond.R. 1.3 [failing to act with *reasonable* diligence and promptness in representing a client];
b) Prof.Cond.R. 1.4(a)(2)-(4) &(b) [failing to *reasonably* consult with and keep his client informed];
c) Prof.Cond.R. 1.5(a) [charging a clearly excessive fee];
d) Prof.Cond.R. 1.15(d) [failing to promptly deliver funds to which the client is entitled];
e) Prof.Cond.R. 8.4(c) [engaging in conduct involving dishonesty and deceit];
f) Prof.Cond.R. 8.4(d) [engaging in conduct prejudicial to the administration of justice];
g) Prof.Cond.R. 8.4(h) [engaging in conduct adversely reflecting on fitness to practice].

Count Twelve (Howard) [Ex, 12-A]

119. Union County resident, Tracy Howard, wanted to file for divorce from her estranged husband.

120. On May 23, 2014, she met with Respondent in his office to discuss the case.

121. During this meeting, Respondent told her the court costs for filing would be $479 and that he would represent her in the matter for $1,970 including the court costs.

122. The same day Howard paid the entire sum requested by Respondent by a funds transfer from her credit union.

123. While there she checked with the credit union and determined that the transfer had taken place.

124. Respondent told her that he was to be tried on a pending criminal case, but he assured her that her divorce case would be "taken care of" before his trial.

125. Respondent prepared a Divorce Complaint and other necessary papers for filing the divorce and had Howard sign them

126. Respondent told Howard he would file them promptly.

127. In the ensuing weeks, Howard repeatedly attempted to contact Respondent to find out about the status of her case, but he did not respond.

128. When he finally did call back he angrily told Howard that he was "working on it."

129. Respondent never filed the divorce for Howard and never paid the filing fee.

130. Respondent has failed to account for or return any of the $479 Howard had given him in trust for the court filing fee

131. Respondent has also failed to return any of the fees she had given him to file the case.

132. Respondent's acts and failures to act as set forth in this Count violated the following provisions of the Ohio Rules of Professional Conduct:

a) Prof.Cond.R. 1.3 [failing to act with *reasonable* diligence and promptness in representing a client];
b) Prof.Cond.R. 1.4(a)(2)-(4) &(b) [failing to *reasonably* consult with and keep his client informed];
c) Prof.Cond.R. 1.5(a) [charging a clearly excessive fee];
d) Prof.Cond.R. 1.15(d) [failing to promptly deliver funds to which the client is entitled];
e) Prof.Cond.R. 8.4(c) [engaging in conduct involving dishonesty and deceit];
f) Prof.Cond.R. 8.4(d) [engaging in conduct prejudicial to the administration of justice];
g) Prof.Cond.R. 8.4(h) [engaging in conduct adversely reflecting on fitness to practice].

Count Thirteen (Hernandez) [Ex. 13-A]

133. In June 2014, a month before Respondent's own criminal trial was scheduled to begin, Respondent agreed to represent Luis Hernandez in a federal criminal case.

134. Hernandez' family paid Respondent $3,500 in fees and agreed to pay another $3,000 on July 1, 2014.

135. Respondent met with Hernandez one time but did no other substantive work on the case.

136. After that meeting, neither Hernandez nor his family members were successful in their repeated attempts to contact Respondent to find out about the status of the case.

137. Respondent never advised Hernandez or his family about his own pending criminal trial.

138. At a pre-trial in his case, Hernandez first learned of Respondent's conviction and his interim remedial suspension from the practice of law and was informed that Respondent was no longer his counsel.

139. Respondent has failed to return any of the retainer paid in this matter.

140. Hernandez has filed a claim with the Client Security fund.

141. Respondent's acts and failures to act as set forth in this Count violated the following provisions of the Ohio Rules of Professional Conduct:

a) Prof.Cond.R. 1.3 [failing to act with *reasonable* diligence and promptness in representing a client.
b) Prof.Cond.R. 1.4(a)(2)-(4) &(b) [failing to *reasonably* consult with and keep his client informed];
c) Prof.Cond.R. 1.5(a) [charging a clearly excessive fee];
d) Prof.Cond.R. 1.15(d) [failing to promptly deliver funds to which the client is entitled];
e) Prof.Cond.R. 8.4(c) [engaging in conduct involving dishonesty and deceit];
f) Prof.Cond.R. 8.4(d) [engaging in conduct prejudicial to the administration of justice];
g) Prof.Cond.R. 8.4(h) [engaging in conduct adversely reflecting on fitness to practice].

Count Fourteen: (Locke) [Ex. 14-A]

142. DiKenbe Locke retained Respondent February 2014 for representation on a criminal matter.

143. Respondent had Locke sign a retainer agreement that provides that the total fees would be $4,500 if paid in full by February 10, 2014 but $5,000 if not.

144. The agreement states that all fees are "nonrefundable unless I do not complete representation in this manner[sic]" and provides that. if the representation is not completed, "$275.00 per hour is a reasonable rate for my services. . . ."

145. The agreement incorporates a paragraph saying that Respondent does not carry professional liability insurance, however it is not a separate document

146. Respondent did not inform Locke that, due to his own criminal charges, he might not be able to carry out this representation.

147. Locke paid Respondent a total of $4,600 in installments

148. Respondent did not complete the representation of Locke.

149. Respondent has failed to return any of the retainer paid in this matter.

150. Respondent's acts and failures to act as set forth in this Count violated the following provisions of the Ohio Rules of Professional Conduct:

a) Prof.Cond.R. 1.3 [failing to act with *reasonable* diligence and promptness in representing a client.
b) Prof.Cond.R. 1.4(a)(2)-(4) &(b) [failing to *reasonably* consult with and keep his client informed];
c) Prof.Cond.R. 1.5(a) [charging a clearly excessive fee];
d) Prof.Cond.R. 1.15(d) [failing to promptly deliver funds to which the client is entitled];
e) Prof.Cond.R. 8.4(c) [engaging in conduct involving dishonesty and deceit];
f) Prof.Cond.R. 8.4(d) [engaging in conduct prejudicial to the administration of justice];
g) Prof.Cond.R. 8.4(h) [engaging in conduct adversely reflecting on fitness to practice].

Wherefore, Relator prays that Respondent be found to have violated the Ohio Rules of Professional Conduct and that he be permanently disbarred from the practice of law in Ohio.

Respectfully submitted,

David Bloomfield

David S. Bloomfield (0006701)
175 South Third Street, Suite 505
Columbus, Ohio 43215
(614) 224-9221/(614) 224-9464 (fax)
dbloo@msn.com

Terry K. Sherman per Bruce Campbell

Terry K. Sherman (0002417)
52 West Whittier Street
Columbus, Ohio 43206
(614) 444-8800/ (614) 445-9487 (fax)
tkshermanlaw@gmail.com

Michael S. Loughry per Bruce Campbell

Michael S. Loughry (0073656)
175 South Third Street, Suite 1000
Columbus, Ohio 43215
(614) 228-5931/(614)228-5934 (fax)
mloughry@mrrklaw.com

Bruce A. Campbell

A. Alysha Clous

Bruce A. Campbell (0010802)
A. Alysha Clous (0070627)
Bar Counsel, Columbus Bar Association

175 South Third Street, S-1100
Columbus, Ohio 43215-5134
(614) 221-4112/(614) 221-4850 (fax)
bruce@cbalaw.org / alysha@cbalaw.org

COUNSEL FOR RELATOR

CERTIFICATE

The undersigned Chair of the Certified Grievance Committee of the Columbus Bar Association hereby certifies that David S. Bloomfield, Esq. (0006701), Terry K. Sherman, Esq. (0002417), Michael S. Loughry, Esq. (0073656), Bruce A. Campbell, Esq. (0010802) and A. Alysha Clous, Esq. (0070627), are duly authorized to represent Relator in the premises and have accepted the responsibility of prosecuting the matter to its conclusion. After investigation, Relator believes reasonable cause exists to file a Motion for Interim Remedial Suspension.

Dated: 11/7/14

Signed: John C. Hartranft

John Hartranft, Sr., Esq. (0023037)
Chair of the Certified Grievance Committee

(Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.)

Section (11)

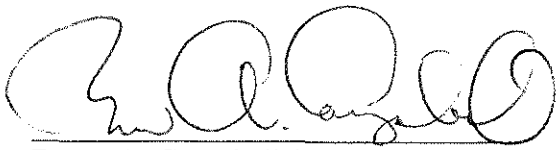
(11) *The complaint; Where Filed; By Whom Signed.* A complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the . Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board. Complaints filed by a Certified Grievance Committee shall not be accepted for filing unless signed by one or more members of the Bar of Ohio in good standing, who shall be counsel for the Relator, and supported by a certificate in writing signed by the President, Secretary of Chairman of the Certified Grievance Committee, which Certified Grievance Committee shall be deemed the Relator, certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. It shall constitute the authorization of such counsel to represent said Relator in the premises as fully and completely as if designated and appointed by order of the Supreme Court of Ohio with all the privileges and immunities of an offices of such Court. The complaint may also, but need not, be signed by the person aggrieved.

Complaints filed by the Disciplinary Counsel shall be filed in the name of Disciplinary Counsel as Relator.

Upon the filing of a complaint with the Secretary of the Board, Relator shall forward a copy thereof to Disciplinary Counsel, to the Certified Grievance Committee of the Ohio State Bar Association, to the local bar association and to any Certified Grievance Committee serving the county of counties in which the Respondent resides and maintains his/her office and for the county from which the complaint arose.

CERTIFICATE OF SERVICE

On November ~~7~~ 10, 2014, the undersigned counsel for Relator sent copies of this Complaint to Respondent by regular U.S. Mail and by Certified Mail at the Ohio Department of Rehabilitation and Corrections, Reception Center, P.O. Box 300, Orient, OH 43146. We have been informed that he is no longer represented by his prior counsel.



Bruce A. Campbell (0010802)