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

BOARD OF COMMISSIONERS  
ON GRIEVANCES & DISCIPLINE

In re:	)	
Complaint Against	)	
	)	
<b>GARY RAY AXNER (0018278)</b>	)	<b>14 - 055</b>
2357 Coventry Rd	)	
Cleveland Heights, OH 44118	)	
	)	
RESPONDENT	)	<u>COMPLAINT AND CERTIFICATE</u>
	)	
<b>CLEVELAND METROPOLITAN BAR ASSOCIATION</b>	)	<b>(Rule V of the Supreme Court Rules for the Government of the Bar of Ohio)</b>
1301 East Ninth Street, Second Level	)	
Cleveland, Ohio 44114-1253	)	
	)	
RELATOR	)	FILED
	)	JUL 02 2014
	)	BOARD OF COMMISSIONERS ON GRIEVANCES & DISCIPLINE

Now comes the Relator, Cleveland Metropolitan Bar Association, and alleges that Gary Axner, duly admitted to the practice of law in the State of Ohio, is guilty of the misconduct alleged herein.

Gary Axner, Ohio Supreme Court Attorney Registration Number 0018278, (hereinafter, "Respondent"), was admitted to the practice of law in Ohio on October 30, 1971, and as such is subject to the Supreme Court Rules for the Government of the Bar of Ohio and the Ohio Rules of Professional Conduct. Respondent is currently not registered with the Court. Respondent has been suspended indefinitely since February 14, 2013.

**COUNT I**  
**(James Gowdy)**

1. In 2005, Mr. and Mrs. James and Juanita Gowdy (“the Gowdys”) retained Respondent to file a Chapter 13 bankruptcy on their behalf.

2. On March 20, 2006, the Gowdys Chapter 13 Plan was approved by the bankruptcy court.

3. In February 2012, the Chapter 13 Trustee filed a Motion to Terminate Pay Order because the Gowdys’ history of previous bankruptcy filings had rendered them ineligible for a discharge.

4. On March 18, 2012, the Gowdys went back to Respondent and asked him to file a Chapter 7 on their behalf.

5. The Gowdys say they paid Respondent \$1,650 in installments.

6. The Gowdys’ Chapter 13 case was closed without a discharge on June 12, 2012.

7. The Gowdys had to call Respondent many times for information about the status of the filing of their Chapter 7 case.

8. On or around March 16, 2013, Respondent gave the Gowdys a Chapter 7 petition form to sign but it listed Robert J. Berk as their attorney and not Respondent. The Gowdys refused to sign the petition because they had never met with Mr. Berk.

9. Respondent did not inform the Gowdys that he had been indefinitely suspended on February 14, 2013.

10. Respondent issued a check to the Gowdys for \$300 and indicated it was a “partial reimbursement” but he has failed to provide a full refund to the Gowdys for the Chapter 7 he never filed.

11. Respondent’s conduct as described in Count I violates the following provisions of the Rules of Professional Conduct:

- a. Prof. Cond. Rule 1.3 (failing to act with diligence);
- b. Prof. Cond. Rule 1.4(a)(4) (failing to communicate with the client);
- c. Rule 1.5(a)(collecting an excessive fee); and
- d. Rule 8.4(c) (engaging in dishonest conduct).

**COUNT II**  
**(William Harris)**

12. Mr. William Harris hired Respondent in or around 2010 to file a bankruptcy.

13. Mr. Harris says he paid Respondent in full for his services but Respondent never filed a bankruptcy on his behalf.

14. Respondent has failed to refund Mr. Harris’s fee and failed to return Mr. Harris’s bills that had been provided to Respondent for the bankruptcy.

15. Respondent told Mr. Harris he has a drinking problem and referred him to another lawyer.

16. Respondent’s conduct as described in Count II violates the following provisions of the Rules of Professional Conduct:

- a. Rule 1.3 (failing to act with diligence);
- b. Rule 1.5(a)(collecting an excessive fee); and

- c. Rule 1.16(d)(failing to return a client's property upon withdrawal).

**COUNT III  
(Robert Hill)**

17. Mr. Robert Hill hired Respondent in August 2010 for bankruptcy services and paid a total fee of \$1,300 in installments.

18. Mr. Hill gave his payments to a suspended lawyer, Howard Schuman, who was employed by Respondent.

19. In December 2011, Respondent told Mr. Hill he would contact him in two weeks about his case.

20. Since that time, Respondent has not answered calls from Mr. Hill or responded to his telephone messages.

21. Respondent never filed a bankruptcy on behalf of Mr. Hill.

22. Respondent has also failed to return any of the \$1,300 fee paid.

23. Respondent's conduct as described in Count III violates the following provisions of the Rules of Professional Conduct:

- a. Rule 1.3 (failing to act with diligence);
- b. Rule 1.4(a)(4)(failing to communicate with the client); and
- c. Rule 1.5(a)(collecting an excessive fee).

**COUNT IV  
(Jennifer Braden)**

24. In August 2012, Ms. Jennifer Braden hired Respondent to file a Chapter 7 bankruptcy on her behalf.

25. Respondent filed Ms. Braden's petition on August 14, 2012.

26. On November 5, 2012, the bankruptcy court issued a notice that Ms. Braden was required to file a certification of completion of instructional course concerning personal financial management or her case could be closed without discharge.

27. On December 6, 2012, Ms. Braden's case was closed without discharge because of her failure to file the financial management course certification.

28. Respondent did not inform Ms. Braden that her case was dismissed.

29. Respondent has not responded to Ms. Braden's telephone calls.

30. Respondent's conduct as described in Count IV violates the following provisions of the Rules of Professional Conduct:

- a. Rule 1.3 (failing to act with diligence) and
- b. Rule 1.4 (a)(3)(failing to keep the client informed about a matter);
- c. Rule 1.4(a)(4)(failing to respond to requests for information from the client).

**COUNT V**  
**(Unauthorized Practice of Law)**

31. Respondent was indefinitely suspended from the practice of law on February 14, 2013.

32. Eight days later, on February 22, 2013, Respondent filed a case in the Cuyahoga County Court of Common Pleas styled *Fadee M. Mustafa v. Storm Team Construction, Inc.*, No. CV-13-801918.

33. Respondent was listed as counsel of record for the Plaintiff.

34. Service on the defendant was never perfected and the case was dismissed without any further action by Respondent on September 4, 2013.

35. Respondent's conduct as described in Count V violates the following provisions of the Rules of Professional Conduct:

- a. Rule 5.5(a)(practicing law in violation of the regulation of the legal profession in that jurisdiction).

## COUNT VI

### (Failure to Cooperate with a Disciplinary Investigation)

36. On February 19, 2013, a certified letter was sent to Respondent requesting his written response to the grievance filed by Robert Hill. The letter was returned unclaimed.

37. On February 20, 2013, a certified letter was sent to Respondent requesting his written response to the grievance filed by William Harris.

38. Respondent signed for the letter on March 26, 2013 but did not respond.

39. On March 8, 2013 and March 28, 2013, two additional letters were sent to Respondent requesting his response to Mr. Hill's grievance. Respondent did not submit a response.

40. On March 8, 2013, a second letter was sent to Respondent by regular mail concerning the Harris grievance and requesting a written response. Respondent did not submit a response.

41. Also on March 8, 2013, a certified letter was sent to Respondent requesting his written response to the allegation that he filed the Mustafa Complaint after his indefinite suspension. The letter was returned unclaimed.

42. On March 28, 2013, a second letter was sent to Respondent requesting his response to the Mustafa matter but he did not respond.

43. On April 23, 2013, a certified letter was sent to Respondent requesting a written response to the Gowdy's grievance. Respondent signed for the letter but did not respond.

44. On July 2, 2013, a certified letter was sent to Respondent requesting his written response to Jennifer Braden's grievance.

45. Respondent signed for the letter on July 9, 2013 but did not respond.

46. A second letter was sent to Respondent on July 18, 2013 requesting his response to Ms. Braden's grievance but he did not respond.

47. On August 28, 2013, Respondent was served with a subpoena to appear for a deposition on September 4, 2013, concerning the five grievances that are the basis for this Complaint.

48. On September 3, 2013, Respondent filed a Motion to Quash with the Board that was denied on September 10, 2013.

49. Despite his promise to do so, Respondent did not contact Relator's investigator to reschedule his deposition.

50. Respondent's conduct as described in Count VI violates the following provisions of the Rules for the Government of the Bar of Ohio and Rules of Professional Conduct:

- a. Gov. Bar. Rule V(4)(G) and
- b. Prof. Cond. Rule 8.1(b).

WHEREFORE, Relator prays that Respondent be appropriately disciplined for his misconduct.

Respectfully Submitted,



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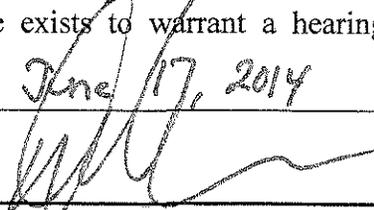
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**CERTIFICATE**

The undersigned, **DARRELL A. CLAY, CHAIRPERSON**, of the **CLEVELAND METROPOLITAN BAR ASSOCIATION'S CERTIFIED GRIEVANCE COMMITTEE**, hereby certifies that **STEPHEN D. HOBT and HEATHER M. ZIRKE** are duly authorized to represent Relator in the premises and have accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: June 17, 2014

  
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**DARRELL A. CLAY, CHAIRPERSON**  
Certified Grievance Committee

**(Rule V of the Supreme Court Rules for the Government of the Bar of Ohio)**  
**Section (4)**

(4)(I)(8) 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 Respondent. 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 or 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 officer 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 or counties in which the Respondent resides and maintains his office and for the county from which the complaint arose.