



BAR COMMUNITY

LAWYER REGULATION

INTERIM SUSPENSION

ALLAN W. DUPREY

Bar No. 006122

Supreme Court No. SB-05-0143-D

By Arizona Supreme Court order of interim suspension dated Nov. 29, 2005, Allan W. Duprey, 325 W. Franklin St., Suite 101, Tucson, AZ 85701, a member of the State Bar, was suspended until final disposition of all pending proceedings against him. Mr. Duprey also was ordered precluded from distributing funds from any trust account to anyone except with written approval from the bar counsel or the court.

SANCTIONED ATTORNEYS

DEBORAH L. ABERNATHY

Bar No. 014112; File No. 04-1252

Supreme Court No. SB-05-0171-D

By Arizona Supreme Court judgment and order dated Jan. 4, 2006, Deborah L. Abernathy, 3233 W. Peoria Ave., Suite 108, Phoenix, AZ 85029-4616, a member of the State Bar, was censured and placed on probation for one year with participation in the State Bar's Law Office Management Assistance Program and Member Assistance Program. Ms. Abernathy also was ordered to pay the costs and expenses of the disciplinary proceedings in the amount of \$938.50, together with interest at the legal rate.

Against client wishes and without filing a motion to continue or to vacate the hearing as required in a domestic relations matter, Ms. Abernathy failed to appear at a return hearing, at which a date for the evidentiary hearing to address monetary support for the client would have been scheduled. She was held in contempt, ordered to pay \$500 to the clerk of court, provide proof to the court that she had not charged the client attorney's fees for the matter and appear at a show cause hearing. Ms. Abernathy paid the \$500 fine

but failed to provide the required proof that she did not charge attorney's fees and failed to appear at the show cause hearing. Ms. Abernathy's misconduct relating to her client was found to be negligent. Her misconduct relating to the court was found to be knowing.

Two aggravating factors were found: prior disciplinary offenses and substantial experience in the practice of law.

Six mitigating factors were found: absence of a dishonest or selfish motive, personal or emotional problems, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, mental disability or chemical dependency, imposition of other penalties or sanctions and remorse.

Ms. Abernathy violated Rule 42, ARIZ.R.S.C.T., ERs 1.1, 1.2, 1.3, 1.4, 3.2, 3.4, and 8.4(d).

ROBERT E. FEE

Bar No. 007065; File No. 03-0049

Supreme Court No. SB-05-0160-D

By Arizona Supreme Court judgment and order dated Dec. 19, 2005, Robert E. Fee, 4501 E. Grant, Tucson, AZ 85712-2616, a member of the State Bar, was censured, placed on probation for six months and ordered to complete the State Bar's Ethics Enhancement Program. Mr. Fee also was ordered to pay \$630 in restitution and assessed the costs and expenses of the disciplinary proceedings of \$722.18, together with interest at the legal rate.

In a corporate structuring matter, Mr. Fee prepared misleading corporate records, which he submitted to the corporate officers with supporting written legal opinion letters.

Two aggravating factors were found: prior disciplinary offenses and substantial experience in the practice of law. Three mitigating factors were found: absence of a dishonest or selfish motive, full and free disclosure to disciplinary

board or cooperative attitude toward proceedings and remoteness of prior offenses.

Mr. Fee violated Rule 42, ARIZ.R.S.C.T., ERs 8.4(a) and (c).

JAMES T. GREGORY

Bar No. 021499; File No. 03-2246

Supreme Court No. SB-05-0161-D

By Arizona Supreme Court judgment and order dated Dec. 19, 2005, James T. Gregory, 152 W. Court St., Yuma, AZ 85364, a member of the State Bar, was censured and placed on probation for two years. He must participate in the State Bar's Law Office Management Assistance Program and Member Assistance Program and obtain a practice monitor. Mr. Gregory also was ordered to pay the costs and expenses of the disciplinary proceedings in the amount of \$1,006, together with interest at the legal rate.

While employed as a Mohave County deputy public defender and arguing for his motion to continue the trial date in a criminal matter, Mr. Gregory knowingly misled the court when he claimed he had only become aware of the case a "few weeks" earlier. In fact, he had been assigned to the case more than two months earlier.

One aggravating factor was found: a history of prior discipline. Four mitigating factors were found: absence of a dishonest or selfish motive, full and free disclosure or cooperative attitude in the disciplinary proceedings, remorse and inexperience in the practice of law. The hearing officer assigned the last factor little weight because every lawyer is expected to be truthful regardless of the length of time he has practiced.

Mr. Gregory violated Rule 42, ARIZ.R.S.C.T., ERs 3.3(a)(1) and 8.4(d).

DAVID M. HAMPTON

Bar No. 020482; File Nos. 03-0918,

03-1311, 03-134, 03-1354, 03-1442,

03-1540, 03-1601, 03-1630, 03-

1781, 03-1874, 03-1959, 03-1973,

03-2103, 03-2207, 04-0003, 04-0021, 04-0111, 04-0272, 04-0384, 04-0541, 04-0549, 04-0648

Supreme Court No. SB-05-0151-D

By Arizona Supreme Court judgment and order dated Jan. 4, 2006, David M. Hampton, P.O. Box 19866, Fountain Hills, AZ 85269-1866, a member of the State Bar, was suspended for 90 days and placed on probation for one year with participation in the State Bar's Law Office Management Assistance Program. Mr. Hampton also was ordered to pay the costs and expenses of the disciplinary proceedings in the amount of \$1,293.38, together with interest at the legal rate.

Three years after being admitted to practice law in Arizona, Mr. Hampton became the head of a law firm when his employer was suspended from the practice of law for four years. The suspended attorney remained with the firm as Mr. Hampton's legal assistant. The firm developed a practice of prosecuting Telephone Consumer Protection Act ("TCPA") claims against the senders of unsolicited fax advertisements. The suspended attorney was the coordinator of these litigations. Under Mr. Hampton's supervision the suspended attorney obtained assignments of the TCPA claims by questionable means, making the filing of many of the TCPA lawsuits equally questionable. Mr. Hampton failed to supervise the suspended attorney to make sure he was not propounding burdensome discovery and enabling him to engage in activity that constituted the unauthorized practice of law. Mr. Hampton failed to take reasonable remedial action when he knew or should have known of the suspended attorney's misconduct at the time when the consequences could have been avoided or mitigated.

Two aggravating factors were found: multiple offenses and a large number of potential victims.

Five mitigating factors were

CAUTION! Nearly 16,000 attorneys are eligible to practice law in Arizona. Many attorneys share the same names. All discipline reports should be read carefully for names, addresses and Bar numbers.

E T H I C S O P I N I O N S

Opinion No. 05-08 (July 2005)

A lawyer may not pay to participate in the for-profit client/attorney Internet matching service described in this opinion (referred to hereinafter as "the Service") because the Service substantially functions as, and holds itself out as, a referral service and because the information presented by the Service on behalf of participating lawyers is materially misleading.

Opinion No. 06-01 (April 2006)

A lawyer seeking to sell his or her solo law practice may disclose limited client-specific information to the prospective lawyer-buyer without client consent to the disclosure.

The selling lawyer must sell at least an entire legal area of practice throughout the geographic area or areas where that practice is being conducted. After the sale, the selling lawyer may be able to resume practicing law, depending on what part of the lawyer's law practice was sold.

The selling lawyer may not seek through contractual provisions to avoid prohibitions in the Ethical Rules on his or her ability to practice law after the sale. Nonetheless, the parties may negotiate a covenant not to compete and/or a covenant not to solicit within the sale contract.

The selling lawyer may supplement his or her notice of sale to clients with additional information as long as the notice at least meets the requirements of ER 1.17.

Opinion No. 06-02 (April 2006)

A lawyer cannot accept a referral fee from an automobile dealer in return for referring "credit challenged" clients who purchase vehicles to the dealer.¹ This form of arrangement violates the dictates of ERs 1.7 and 1.8.

Need an Opinion?

Check out the State Bar Web site at www.myazbar.org/Ethics/ for a listing of the ethics opinions issued between 1985 and 2006, as well as Arizona's Rules of Professional Conduct.

If you are an Arizona attorney and have an ethics question, call our ethics counsel, Patricia A. Sallen, at the ethics hotline: **(602) 340-7284**.

1. The issue presented to the Committee on the Rules of Professional Conduct only involved "credit challenged" customers. This opinion should not be read to suggest that referral fees in transactions involving "non-credit challenged" customers are permissible.

statement with participation in the State Bar's Law Office Management Assistance Program with a practice monitor. Mr. McDaniel also was ordered to pay \$950 in restitution and assessed the costs and expenses of the disciplinary proceedings together with interest at the legal rate.

In two separate child custody/support matters, Mr. McDaniel failed to timely file documents with the court, failed to meet deadlines and failed to accept or return client phone calls. He also allowed his secretary to misrepresent to his client information about the status of the client's case and, when confronted with the misrepresentation, failed to respond. Mr. McDaniel abandoned his client and failed to return client files despite repeated requests.

In a child paternity/custody/support matter, Mr. McDaniel failed to communicate with his disabled client. He misrepresented to the court that he had received from his client copies of certain police reports.

Mr. McDaniel failed to respond to the State Bar in its investigation and did not participate in the formal case until the aggravation/mitigation hearing. Mr. McDaniel's conduct was found to have been knowing in all three counts.

Seven aggravating factors were found: a pattern of misconduct, multiple offenses, bad-faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, refusal to acknowledge wrongful nature of conduct, vulnerability of victim, substantial experience in the practice of law and indifference to making restitution.

Three mitigating factors were found: absence of a dishonest or selfish motive, remorse, and character or reputation. This last factor was not assigned much weight because some of Mr. McDaniel's letters came from attorneys who had opposed Mr. McDaniel in domestic relations matters but did not speak directly to his relationship to his clients or the manner in which he ran his office.

found: absence of a prior disciplinary record, personal or emotional problems, full and free disclosure or cooperative attitude in the disciplinary proceedings, inexperience in the practice of law and remorse.

Mr. Hampton violated Rule 42, ARIZ.R.S.C.T., ERs 3.1, 3.4(c), 4.2, 5.3(a), (b) and (c), 5.5(b) and 8.4(d).

CARL D. LEE

Bar No. 007439; File No. 03-1798
 Supreme Court No. SB-06-0001-D
 By Arizona Supreme Court judgment and order dated Jan. 10, 2006, Carl D. Lee, 7830 N. 23rd Ave., Phoenix, AZ 85021-6808, a member of the State Bar, was censured and placed on probation for one year. The terms of the probation require that he participate in the State Bar's Law Office Management Assistance Program and Trust Account Ethics

Enhancement Program. Mr. Lee also was ordered to pay the costs and expenses of the disciplinary proceedings in the amount of \$1,153.65, together with interest at the legal rate.

Mr. Lee disbursed funds from his client trust account when the balance was not sufficient to cover the check. Mr. Lee failed to maintain complete client trust account records, failed to keep his funds separate from those of his clients on deposit, failed to only disburse funds with pre-numbered checks and failed to conduct monthly reconciliations of the client trust account. Mr. Lee also failed to timely disburse settlement proceeds to pay liens for a client and failed to inform a third party in interest upon receipt of the funds. On several occasions, Mr. Lee also failed to respond to the State Bar. Mr. Lee's conduct was found to

be negligent.

One aggravating factor was found: a pattern of misconduct. Four mitigating factors were found: absence of a prior disciplinary record, absence of dishonest or selfish motive, personal or emotional problems, and remorse.

Mr. Lee violated Rule 42, ARIZ.R.S.C.T., ERs 1.3, 1.15 and 8.1, and Rules 43, 44 and 53(f), ARIZ.R.S.C.T.

THOMAS C. McDANIEL III

Bar No. 016986; File Nos. 03-2202, 03-2319, 04-0510
 Supreme Court No. SB-05-0134-D
 By Arizona Supreme Court judgment and order dated Oct. 24, 2005, Thomas C. McDaniel III, 5561 E. First St., Tucson, AZ 85711-1408, a member of the State Bar, was suspended for six months and one day and placed on probation for two years upon rein-

Mr. McDaniel violated Rule 42, ARIZ.R.S.CT., ERs 1.1, 1.2(a), 1.3, 1.4(a) and (b), 1.5(a), 1.16(d), 3.2, 3.3(a)(1), 5.3(b) and (c), 8.1(b) and 8.4(c) and (d) and Rules 53(d) and (f) ARIZ.R.S.CT.

THOMAS C. PICCIOLI

Bar No. 012546; File No. 03-1481

Supreme Court No. SB-05-0144-D

By Arizona Supreme Court judgment and order dated Nov. 29, 2005, Thomas C. Piccioli, 5757 N. Camino Esplendor, Tucson, AZ 85718-4503, a suspended member of the State Bar, was suspended for two years and six months and was assessed the costs and expenses of the disciplinary proceedings together with interest at the legal rate. Mr. Piccioli also will be subject to a two-year term of probation upon reinstatement.

Mr. Piccioli became involved in an illegal investment scheme, both as an investor and as an employee of one of the conspirators behind the scheme. At some point during his involvement, Mr. Piccioli became aware of significant legal problems with the investment scheme. Nevertheless, he continued to work on the project and, ultimately, prepared a fraudulent invoice and faxed that invoice to an undercover FBI agent. Shortly thereafter, Mr. Piccioli turned himself in to the FBI and pled guilty to the crimes of conspiracy to commit wire fraud and wire fraud. He was convicted on Mar. 25, 2003, in the Federal District Court, Southern District of New York, and sentenced to 15 months in federal prison and two years of probation upon release.

One aggravating factor was found: dishonest or selfish motive. Six mitigating factors were found: absence of a prior disciplinary record, personal or emotional problems, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, remorse, character and reputation, and imposition of other penalties or sanctions. Mitigating weight also was given to the fact that Mr. Piccioli's conduct did not cause any client harm. The hearing officer found that although the lack of client harm is not an enumerated

mitigating factor in the *ABA Standards*, both the court and commission have placed great weight on this factor in previous case law.

Mr. Piccioli violated Rule 42, ARIZ.R.S.CT., ERs 8.4(b) and 8.4(c).

ALAN B. SHAW

Bar No. 012882; File Nos. 03-0263, 04-0158, 04-1495

Supreme Court No. SB-05-0152-D

By Arizona Supreme Court judgment and order dated Jan. 4, 2006, Alan B. Shaw, P.O. Box 317, Mesa, AZ 85211-0317, an inactive member of the State Bar, was suspended for 90 days and placed on probation for two years with participation in the State Bar's Law Office Management Assistance Program and Member Assistance Program. Mr. Shaw also was ordered to pay restitution of \$675 and assessed the costs and expenses of the disciplinary proceedings of \$835.74, together with interest at the legal rate.

In one case, after the discharge was issued in a bankruptcy matter, Mr. Shaw failed to transmit a reaffirmation agreement to a lender and failed to contact a credit card company as promised to the client, which adversely affected her credit rating. For this misconduct, Mr. Shaw was placed in diversion by order of the probable cause panelist. When Mr. Shaw failed to comply with the terms of the diversion, the order of diversion was vacated and an order of probable cause entered. In another case, a client paid Mr. Shaw to handle a bankruptcy matter, but shortly thereafter he abandoned the case, failed to return the fees paid by the client and failed to cooperate with the State Bar. In a third case, Mr. Shaw failed to complete his duties as a court-appointed arbitrator and failed to cooperate with the State Bar. Mr. Shaw also failed to comply with the terms of the diversion. His conduct was found to be knowing.

Four aggravating factors were found: prior disciplinary offenses, multiple offenses, vulnerability of

victim and substantial experience in the practice of law.

Four mitigating factors were found: absence of a prior disciplinary record, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, imposition of other penalties or sanctions and remorse.

Mr. Shaw violated Rule 42, ARIZ.R.S.CT., ERs 1.2, 1.3, 1.4, 1.16, 3.2, 3.4 and 8.4(d), and Rules 53(c), (d) and (f), ARIZ.R.S.CT.

JEFFREY J. TONNER

Bar No. 011338; File Nos. 03-1536, 04-0188

Supreme Court No. SB-05-0150-D

By Arizona Supreme Court judgment and order dated Nov. 4, 2005, Jeffrey J. Tonner, 5225 N. Central Ave., Suite 109, Phoenix, AZ 85012-1400, a member of the State Bar, was censured and placed on probation for one year. Mr. Tonner's probation requires him to participate in the State Bar's Law Office Management Assistance Program, obtain a practice monitor, and make monthly payments of \$3,000 in accordance with a Maricopa County Superior Court judgment. He must also pay costs and expenses of the disciplinary proceedings in the amount of \$722.

In a civil lawsuit, Mr. Tonner failed to produce court-ordered documents on behalf of his client. He failed to timely produce the client's file upon the request of the client's subsequent counsel. Mr. Tonner also failed to advise the client in writing to seek independent legal advice prior to entering into a settlement of the client's malpractice claim against him. In a second civil matter, Mr. Tonner failed to timely file an opening brief and failed to file a response to a motion to dismiss.

Three aggravating factors were found: dishonest or selfish motive, multiple offenses and substantial experience in the practice of law.

Four mitigating factors were also found: absence of a prior disciplinary record, timely good-faith effort to make restitution or to rectify consequences of misconduct, full and free disclosure to

disciplinary board or cooperative attitude toward proceedings and remorse.

Mr. Tonner's conduct violated Rule 42, ARIZ.R.S.CT., ERs 1.2, 1.3, 1.8(h) and 1.16(d).

MICHAEL J. WICKS

Bar No. 010522; File No. 03-1477

Supreme Court No. SB-05-0140-D

By Arizona Supreme Court judgment and order dated Oct. 18, 2005, Michael J. Wicks, P.O. Box 16233, Phoenix, AZ 85011-6233, a member of the State Bar, was censured and placed on probation for one year with participation in the State Bar's Law Office Management Assistance Program. Mr. Wicks also was assessed the costs and expenses of the disciplinary proceedings in the amount of \$600, together with interest at the legal rate.

Mr. Wicks erroneously deposited client funds into his operating account that should have been held in his client trust account. He then disbursed funds from his client trust account, not realizing that the offsetting funds were not on deposit. This resulted in a shortage in the account, which caused the bank to send an insufficient funds notice to the State Bar. Mr. Wicks failed to properly maintain a bookkeeping system for his client trust. Mr. Wicks could not completely account for the total balance of funds in his trust account given deficiencies in his recordkeeping. The records that were available reflected that the total balance in the trust account fell below what should have been on account for three clients. Mr. Wicks' conduct was negligent.

Two aggravating factors were found: prior disciplinary offenses and substantial experience in the practice of law. Three mitigating factors were found: absence of a dishonest or selfish motive, full and free disclosure to disciplinary board or cooperative attitude toward proceedings and remoteness of prior offenses.

Mr. Wicks' conduct violated Rule 42, ARIZ.R.S.CT., ER 1.15 and Rules 43 and 44, ARIZ.R.S.CT. 