

SANCTIONED ATTORNEYS

CHARLES SAINT GEORGE KIRKLAND

Bar No. 018821; File Nos. 02-2020, 03-0917, 03-1341, 03-1353, 03-1539, 03-1602, 03-1629, 03-2208, 04-0022, 04-0271, 04-0357, 04-0542, 04-0642, 04-1269
Supreme Court No. SB-06-0115-D

By Arizona Supreme Court judgment and order dated Sept. 8, 2006, Charles Saint George Kirkland, a suspended member of the State Bar, was disbarred and assessed the costs and expenses of the disciplinary proceedings in the amount of \$4,046.47, together with interest at the legal rate.

Mr. Kirkland committed professional misconduct in 14 separate cases. In counts one through 12, Mr. Kirkland, while suspended, performed duties in two separate law firms that could only be performed by an active attorney, constituting the unauthorized practice of law. Many of the litigants in the lawsuits believed that he was a licensed attorney. Mr. Kirkland failed to correct the misperception that he was an active attorney after being made aware of the misperception.

In count 13, Mr. Kirkland contacted a represented party and engaged in activity that the court found deceptive while representing himself in a civil lawsuit. In count 14, Mr. Kirkland loaned \$20,000 held in his trust account for a client to a company he owned with a third person without the client's knowledge or consent. Mr. Kirkland failed to return the funds to the client and failed to return ownership, lien release and title documents to the client.

No mitigating factors were found. Three aggravating factors were found: a pattern of misconduct, multiple offenses and prior disciplinary offenses. On Mar. 20, 2003, Mr. Kirkland was suspended for four years in File No. 00-1039, *et al.* Thereafter he continued to practice law and on Oct. 29, 2004, was found to be in contempt of the Supreme Court's order of suspension in File No. 00-1039, *et al.*

Mr. Kirkland violated Rule 42, ARIZ.R.S.CT., ERs 3.3(a), 3.4(c), 4.2, 5.5(a), and 8.4(c) and (d).

GREGORY A. LARSON

Bar No. 010340; File No. 04-0775

Supreme Court No. SB-06-0099-D

By Arizona Supreme Court judgment and order

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Secret Recordings

Bar Counsel Insider provides practical and important information to State Bar members about ethics and the disciplinary process.

Secret recordings are inherently deceptive and dishonest because they are undertaken without the other party's knowledge or consent. Thus, a lawyer who makes a secret recording violates ER 8.4(c), which prohibits conduct involving dishonesty, deceit and misrepresentation. All lawyers should be aware that while a lawyer may sometimes have a legal right to surreptitiously record a particular conversation, such a recording may nonetheless violate a lawyer's ethical duties.

As a general rule, surreptitious recordings by lawyers are unethical and thus prohibited. Although there are some narrow exceptions to the general rule, lawyers should be mindful of this ethical prohibi-

tion against surreptitious recording. Arizona Ethics Ops. 75-13, 90-02, and 95-03 all affirm the general ethical prohibition against surreptitious recordings. In addition, in the discipline case of *In re Wetzel*, the Arizona Supreme Court concluded that the lawyer had violated ethical rules by secretly recording conversations with opposing counsel and with State Bar investigators. 691 P.2d 1063 (Ariz. 1985).

Under a few limited circumstances it *may* be ethically acceptable to make a surreptitious recording. Ethics Op. 95-03 discusses and affirms the exceptions contained in the earlier Ethics Op. 75-13, as follows:

- An attorney secretly may record "an utterance that is itself a crime, such as an offer of a bribe, a threat, an attempt to extort, or an obscene telephone call."
- A lawyer may "secretly record a conversation in order to

protect himself, or his client, from harm that would result from perjured testimony."

- "In many areas of criminal investigations, for example, narcotics or fraud, it will be necessary for a prosecutor, or a police officer or investigator working directly with or under the supervision of the prosecutor, to secretly record conversations with informants and/or persons under investigation simply as a matter of self-protection." The opinion noted that the exception "does not authorize secret recordings for the purpose of obtaining impeachment evidence or inconsistent statements."
- The opinion recognized "that secret recordings would be proper where specifically authorized by statute, court rule, or court order.

In outlining these exceptions, both opinions "emphasize the

general prohibition announced, rather than the exceptions. Secret recordings will be warranted only in rare cases." Ethics Op. 95-03 (quoting with approval Ethics Op. 75-13).

Finally, in analyzing this issue lawyers should consider their relationship with the party whose statement is to be recorded. For example, though a lawyer may ethically record a non-party witness statement under one of the exceptions identified above, a lawyer would virtually never be acting ethically in secretly recording a conversation with a client or a judicial officer, because such an act would conflict with the lawyer's other ethical obligations to the client or the tribunal. Ethics Opinion 95-03 also specifically prohibits secretly recording conversations with opposing counsel.

You can always contact the State Bar's Ethics Hotline at (602) 340-7284.

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dated June 16, 2006, Gregory A. Larson, 3030 N. Central Ave., Suite 705, Phoenix, AZ 85012, a member of the State Bar, was censured and placed on probation for six months with participation in the State Bar's Trust Account Ethics Enhancement Program. Mr. Larson was assessed the costs and expenses of the disciplinary proceedings in the amount of \$1,659.51, together with interest at the legal rate.

After the State Bar received an insufficient funds notice from the bank, a review of Mr. Larson's client trust account records revealed that he failed to maintain timely and complete client trust account records or maintain backup records and failed to maintain proper internal controls within his office. He failed to retain a duplicate deposit slip or the equivalent for each deposit that was sufficiently detailed to identify each item. He failed to make a monthly three-way reconciliation of the client ledgers, the account general ledger or register, and the account bank statement. Mr. Larson also failed to maintain a pooled interest-bearing client trust account as required by Rule 44, ARIZ.R.S.CT.

Two aggravating factors were found: bad-faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency and substantial experience in the practice of law.

One mitigating factor was found: absence of a dishonest or selfish motive.

Mr. Larson violated Rule 42, ARIZ.R.S.CT.,

EDMUND Y. NOMURA

Bar No. 007209; File Nos. 04-1073, 04-1291, 04-1440, 04-1810, 04-1999, 05-0316, 05-0394, 05-1267

Supreme Court No. SB-06-0047-D

By Arizona Supreme Court judgment and order dated May 24, 2006, Edmund Y. Nomura, 5151 N. 16th St., Suite 138, Phoenix, AZ 85016-3919, a suspended member of the State Bar, was suspended for three years, ordered to pay restitution in the amount of \$1,500 and assessed the costs and expenses of the disciplinary proceedings. Mr. Nomura also will be placed on probation for two years upon reinstatement, the terms of which will be determined at that time but will include participation in the State Bar's Member Assistance Program. This suspension will run concurrent with Mr. Nomura's three-year suspension in File Nos. 03-944 and 04-0815.

Mr. Nomura committed professional misconduct in eight separate cases. In counts one, two, three and seven, Mr. Nomura sent billing statements to clients erroneously informing them that their accounts were delinquent. The delinquent billing statements were sent two to six years after the representation had ended. In count four, a bankruptcy matter, Mr. Nomura failed to respond to requests for information from the trustee and an order to compel from the court. He repeatedly failed to inform his clients of the status of their case. In count five, Mr. Nomura failed to respond to motions for summary judgment in a civil litigation matter and repeatedly failed to inform his clients of the status of their case. In count eight, a bankruptcy matter, Mr. Nomura failed to timely ensure that the client's mortgage checks were either returned to the client or to the mortgage company.

Five aggravating factors were found: prior disciplinary offenses, dishonest or selfish motive, a pattern of misconduct, multiple offenses, and vulnerability of victim.

One mitigating factor was found: personal or emotional problems.

Mr. Nomura violated Rule 42, ARIZ.R.S.CT., ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.1, 3.2, 4.4, 5.3, 8.1(b) and 8.4(d), and Rules 53(d) and (f), ARIZ.R.S.CT.

KATHY M. O'QUINN

Bar No. 021264; File Nos. 03-1645, 04-0008, 04-1625, 04-1831, 04-1988

Supreme Court No. SB-06-0122-D

By Arizona Supreme Court judgment and order dated Sept. 26, 2006, Kathy M. O'Quinn, a member of the State Bar, was suspended for six

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months and one day, to be followed by probation, the terms and length to be determined at the time of reinstatement. She was ordered to pay restitution in the amount of \$600 and assessed the costs and expenses of the disciplinary proceedings in the amount of \$4,896.84, together with interest at the legal rate. Ms. O'Quinn must continue to participate in the State Bar's Member Assistance Program and remain in compliance with the terms of the Dec. 19, 2005, contract.

Ms. O'Quinn committed professional misconduct in five separate cases. After the State Bar received an insufficient funds notice from the bank, a review of Ms. O'Quinn's client trust account records revealed that she had issued a check to a client without the offsetting settlement deposit being credited to the trust account. She disbursed from the trust account without using prenumbered checks and made at least two online transfers and one counter withdrawal. An order of probation was issued for the trust account violations. Thereafter, Ms. O'Quinn failed to comply with the terms of the probation.

In count two, a product-liability matter, Ms. O'Quinn failed to inform the client that the case was dismissed and an award of attorney's fees and taxable costs was awarded to one of the opposing parties. The client learned that the case was dismissed after reviewing a writ of garnishment. An order of informal reprimand, probation with a practice monitor, restitution and costs was issued. Ms. O'Quinn failed to pay restitution, failed to respond to the State Bar's Law Office Management Program regarding probation and failed to find a practice monitor.

In count three, a foreclosure matter, Ms. O'Quinn failed to return documents in her possession to the client. In count four, a civil matter, Ms. O'Quinn filed a frivolous answer and counterclaim, and failed to appear at a pre-trial conference, a deposition, the trial and several show-cause hearings. In count five, a Registrar of Contractors matter, Ms. O'Quinn failed to timely file the complaint and affidavits of service, missed agreed-upon meetings with the clients, and failed to adequately communicate with clients. She failed to appear for an oral argument and a show-cause hearing. Ms. O'Quinn also failed to respond to the State Bar during its investigation in three counts.

Two aggravating factors were found: prior disciplinary offenses and obstruction of the disciplinary process.

Three mitigating factors were found: personal or emotional problems, mental disability or chemical dependency, and remorse.

Ms. O'Quinn violated Rule 42, ARIZ.R.S.CT., ERs 1.2(a), 1.3, 1.4(a) and (b), 1.15(a), 3.1, 3.2, 8.1(b) and 8.4(d), and Rules 43(a) and (d), 44(b), and 53(e), ARIZ.R.S.CT.

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.