

SANCTIONED ATTORNEY**KENNETH J. WHITEHEAD**

Bar No. 011353; File Nos. 02-1698, 02-1765, 02-1863, 02-1950, 02-1985, 02-2069, 02-2084, 02-2094, 02-2131, 02-2171, 02-2172, 02-2193, 02-2235, 02-2236, 02-2243, 02-2255, 02-2266, 02-2268, 02-2271, 02-2308, 02-2324, 02-2357, 02-2388, 02-2403, 02-2427, 02-2475, 02-2476, 02-2482, 03-0047, 03-0063, 03-0078, 03-0101, 03-0105, 03-0169, 03-0182, 03-0280, 03-0325, 03-0411, 03-0421, 03-0459, 03-0467, 03-0539, 03-0584, 03-0614, 03-0719, 03-0890, 03-1365

By Supreme Court judgment and order dated Feb. 11, 2005, Kenneth J. Whitehead, P.O. Box 7458, Phoenix, AZ 85011, a suspended member of the State Bar, was suspended for four years; placed on probation for two years, effective upon reinstatement; ordered to pay restitution of \$121,464.80; and was assessed the State Bar's costs and expenses of \$7,230.03, together with interest at the legal rate.

Mr. Whitehead's misconduct included failing to act with reasonable diligence and promptness in representing clients; failing to keep clients reasonably informed regarding the status of matters or

promptly complying with reasonable requests for information; charging unreasonable fees; failing, upon request of clients, to promptly render a full accounting regarding clients' property held in trust; failing to return unearned advanced fees; failing to make timely refunds after withdrawing from representation; knowingly failing to respond to lawful demands for information from disciplinary authority; engaging in conduct that is prejudicial to the administration of justice; and failing to furnish information or respond promptly to an inquiry or request from disciplinary agency made pursuant to the rules for information relevant to matters under investigation concerning his conduct.

Four aggravating factors were found: prior disciplinary offenses; a pattern of misconduct; multiple offenses; and obstruction of the disciplinary proceeding.

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

Mr. Whitehead violated Rule 42, ARIZ.R.S.Ct., ERs 1.3, 1.4, 1.5, 1.15, 1.16, 8.1 and 8.4(d), and Rule 51(h) and (i), ARIZ.R.S.Ct.

ETHICS OPINIONS**Opinion No. 05-02 (May 2005)**

An attorney who is on inactive status and not practicing law must comply with the Rules of Professional Conduct. An inactive attorney may pay a referral fee to a third party so long as the fee is not related to legal services and does not constitute sharing of legal fees. An inactive attorney may not, however, pay the referral fee to a practicing attorney.

Opinion No. 05-03 (July 2005)

Under ER 7.1, as amended in 2003, it is ethical for a lawyer to advertise that the lawyer is listed in *The Best Lawyers in America* as long as the advertisement is truthful and includes the year and specialty for the listing. In light of the amendment to ER 7.1, Opinion 91-08 is no longer viable to the extent it conflicts with this Opinion.

Opinion No. 05-04 (July 2005)

ERs 1.6 and 1.1 require that an attorney act competently to safeguard client information and confidences. It is not unethical to store such electronic information on computer systems whether or not those same systems are used to connect to the Internet. However, to comply with these ethical rules as they relate to the client's electronic files or communications, an attorney or law firm is obligated to take competent and reasonable steps to assure that the client's confidences are not disclosed to third parties through theft or inadvertence. In addition, an attorney or law firm is obligated to take reasonable and competent steps to assure that the client's electronic information is not lost or destroyed. To do that, an attorney must be competent to evaluate the nature of the potential threat to client electronic files and to evaluate and deploy appropriate computer hardware and software to accomplish that end. An attorney who lacks or cannot reasonably obtain that competence is ethically required to retain an expert consultant who does have such competence.

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 2005. If you are an Arizona attorney and have an ethics question, call (602) 340-7285.