

SANCTIONED ATTORNEYS

CHERYL C. CAYCE

Bar No. 012447; File No. 04-2103

Supreme Court No. SB-06-0177-D

By Arizona Supreme Court judgment and order dated Feb. 9, 2007, Cheryl C. Cayce, 2730 E. Broadway, Suite 250, Tucson, AZ 85716, a member of the State Bar, was suspended for 90 days and placed on probation for one year. The terms of probation include participation in the State Bar's Member Assistance and Law Office Assistance Programs. Ms. Cayce will complete six hours of continuing legal education in the area of family law and/or guardianship during the period of the probation. Ms. Cayce also was assessed the costs and expenses of the disciplinary proceedings in the amount of \$1,635.86, together with interest at the legal rate.

In a guardianship matter, Ms. Cayce filed documents with the court that were inaccurate, incomplete or misleading. She filed a guardianship petition and appeared at a hearing without giving prior notice to the opposing party and failed to take reasonable and timely steps to correct the inaccurate, incomplete and misleading evidence she had previously submitted to the court. Ms. Cayce also failed to fully inform the court of all material known facts. Her conduct was found to be knowing.

One aggravating factor was found: substantial experience in the practice of law.

Five mitigating factors were 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 the disciplinary board or cooperative attitude toward proceedings, imposition of other penalties or sanctions, and remorse.

Ms. Cayce violated Rule 42, Ariz.R.S.Ct., ERs 1.1, 1.4(a) and (b), 3.1, 3.3, 3.4, 4.1 and 4.4(a).

SEAN M. COE

Bar No. 016150; File Nos. 05-0363, 05-0416, 05-0706, 05-0789, 05-0891, 05-1344, 05-1446, 05-1756

Supreme Court No. SB-06-0154-D

By Arizona Supreme Court judgment and order dated Jan. 9, 2007, Sean M. Coe, 17752 S. Placita De Laton, Sahuarita, AZ 85629, a suspended member of the State Bar, was disbarred. He will be placed on probation for two years upon reinstatement. The terms of probation include participation in the State Bar's Law Office Management Assistance Program and Member Assistance Program, in addition to any other appropriate terms of determined upon reinstatement. Mr. Coe was ordered to pay restitution of \$2,500 to the complainant in count

five, \$7,500 to the complainant in count six, \$1,700 to the complainant in count seven, and \$7,500 to the complainant in count eight; and was assessed the costs and expenses of the disciplinary proceedings.

In this eight-count matter, Mr. Coe failed to competently and diligently represent his clients in numerous criminal matters. Many of his clients were in jail at the time of their complaints to the State Bar and/or faced upcoming criminal proceedings. Mr. Coe failed to communicate with clients, failed to appear in court and failed to respond to orders to show cause. He signed fee agreements, and accepted representation and advance fees while summarily suspended by the State Bar for noncompliance with MCLE requirements. Mr. Coe abandoned his clients' cases and failed to refund unearned fees. He failed to cooperate with the State Bar's investigation and failed to respond or otherwise participate in the disciplinary proceedings. Mr. Coe's knowing and/or intentional misconduct caused or had the potential to cause serious actual injury to his clients, the public, the legal system and the profession.

Six aggravating factors were found: prior disciplinary offenses, dishonest or selfish motive, pattern of misconduct, multiple offenses, bad-faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency and substantial experience in the practice of law. No mitigating factors were found.

Mr. Coe violated Rule 31(b), ARIZ.R.S.Ct.; Rule 42, ARIZ.R.S.Ct., ERs 1.1, 1.2, 1.3, 1.4, 1.5(d), 1.16, 3.2, 3.3, 3.4(c), 5.5, 7.3, 8.1(b) and 8.4(c) and (d); and Rules 53(c), (d) and (f), ARIZ.R.S.Ct.

GEOFFREY N. FIEGER

Bar No. 006227; File No. 04-1579

Supreme Court No. SB-07-0048-D

By Arizona Supreme Court judgment and order dated Mar. 22, 2007, Geoffrey N. Fieger, 19390 W. Ten Mile Rd., Southfield, MI 48075, a suspended member of the State Bar, was censured and assessed the costs and expenses of the disciplinary proceedings.

Mr. Fieger undertook representation in a matter to be tried in Maricopa County Superior Court despite the fact that he was suspended. Mr. Fieger presented to clients and entered into a fee agreement printed on his firm's stationery in which the letterhead stated "Michigan, Florida and Arizona Bar" directly under his name, thereby improperly holding himself out as a lawyer entitled to practice in Arizona. The fee agreement did not contain any reference to his Arizona suspension.

One aggravating factor was found: substantial experience in the practice of law.

Three mitigating factors were found: absence of a prior disciplinary record, full and free disclosure to disciplinary board or coopera-

tive attitude toward proceedings and character or reputation.

Mr. Fieger violated Rule 42, ARIZ.R.S.Ct. ER 8.4(d), and Rule 31(b), ARIZ.R.S.Ct.

JOHN DUKE HARRIS

Bar No. 007407; File Nos. 04-1246, 05-2151

Supreme Court No. SB-06-0150-D

By Arizona Supreme Court judgment and order dated Oct. 23, 2006, John Duke Harris, 1202 E. Missouri Ave., Suite 225, Phoenix, AZ 85014-2920, a member of the State Bar, was censured and placed on probation for one year. The terms of the probation include participation in the State Bar's Member Assistance Program and Trust Account Program. Mr. Harris was assessed the costs and expenses of the disciplinary proceedings.

In count one, Mr. Harris failed to maintain records as required for his client trust account and to manage his client trust account as required by the Arizona Rules of the Supreme Court. In count two, Mr. Harris violated the terms of his probation in File No. 03-1800 by failing to file timely complete quarterly reports to the State Bar's Trust Account Program.

Four aggravating factors were found: prior disciplinary offenses, pattern of misconduct, multiple offenses and substantial experience in the practice of law.

Three mitigating factors were found: absence of a dishonest or selfish motive, personal or emotional problems and delay in disciplinary proceedings.

Mr. Harris violated Rules 43(d)(2)(C) and (D) and 53(e), ARIZ.R.S.Ct.

WILLIAM D. HOWELL

Bar No. 020188; File Nos. 02-1548, 02-2379, 03-0499, 03-1213, 04-0910, 04-1282, 05-0375, 05-1984, 05-1991

Supreme Court No. SB-07-0014-D

By Arizona Supreme Court judgment and order dated Feb. 23, 2007, William D. Howell, 1906 N. 16th St., Suite 201, Phoenix, AZ 85006, a member of the State Bar, was censured and placed on probation for six months. The terms of probation require that Mr. Howell participate in the State Bar's Ethics Enhancement Program and respond to all communications from the State Bar within two working days. He also will provide quarterly reports and make diligent efforts to secure a practice monitor approved by the State Bar's Law Office Management Assistance Program pursuant to the memorandum of understanding in File Nos. 02-1548, 02-2379, 03-0499 and 03-1213. Mr. Howell was assessed the costs and expenses of the disciplinary proceedings in the amount of \$2,755.87 together with interest at the legal rate.

Mr. Howell practiced law while summarily suspended for failing to pay a \$375 late fee relating to the filing of his mandatory continuing legal education affidavit. He also violated the

conditions of probation and diversion in File Nos. 02-1548, 02-2009, 02-2379, 03-0499, 03-1213, 03-1404, 03-1444 and 04-0326.

Two aggravating factors were found: prior disciplinary offenses and multiple offenses.

Two mitigating factors were found: absence of a dishonest or selfish motive and timely good-faith effort to make restitution or to rectify the consequences of misconduct. The hearing officer also took into consideration as mitigation Mr. Howell's efforts to implement a number of LOMAP recommendations during the period of his probation.

Mr. Howell violated Rule 42, ARIZ.R.S.CT., ER 5.5(a), and Rule 53(e), ARIZ.R.S.CT.

ANDREW MANKOWSKI

Bar No. 016637; File Nos. 05-0675, 05-1026, 05-1211, 05-1345, 05-1990

Supreme Court No. SB-07-0003-D

By Arizona Supreme Court judgment and order dated Mar. 13, 2007, Andrew Mankowski, P.O. Box 11661, Glendale, AZ 85318, a suspended member of the State Bar, was suspended for six months, retroactive to April 23, 2005, to run concurrently with his suspension in File No. SB-05-0002-D, and placed on probation for two years upon reinstatement. The terms of the probation are to be determined at the time of reinstatement but will include participation in fee arbitration in File No. 05-1026. Mr. Mankowski was assessed the costs and expenses of the disciplinary proceedings of \$920.42, together with interest at the legal rate.

In four of the five counts of this case, Mr. Mankowski failed to timely respond to the State Bar's demand for information in its investigation. In count five, he knowingly engaged in the unauthorized practice of law during his suspension in File No. SB-05-0002-D. Mr. Mankowski provided legal representation to his parents in negotiating and communicating with an insurance company regarding an automobile accident.

Four aggravating factors were found: prior disciplinary offenses, pattern of misconduct, multiple offenses and substantial experience in the practice of law.

Four mitigating factors were found: absence of a dishonest or selfish motive, personal or emotional problems and remorse. A non-ABA mitigating factor was also found: self-imposed sanction. Mr. Mankowski's self-imposed extension of his suspension was found to be an alternative sanction, a means of self-regulation of his professional behavior.

Mr. Mankowski violated Rule 42, ARIZ.R.S.CT., ERs 5.5 and 8.1(b), and Rules 31(c) and 53(f), 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.



Withdrawing From Representation

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

May a lawyer properly ask his client for advance consent to the lawyer withdrawing from the client's case if the client fails to pay the lawyer's fees? May a lawyer later ethically move to withdraw based on that alleged consent in the fee agreement?

The answer to both questions is No.

ER 1.16(d) allows a lawyer to move to withdraw from representation if the client fails to fulfill a financial obligation owed to the lawyer. However, it is impossible at the onset of the representation for a lawyer and client to know whether the client will in fact consent to the lawyer's withdrawal in the future. ERs 1.2 and 1.4 make it incumbent on the lawyer to consult with the client regarding the representation and the status of the matter.

As such, the lawyer must, at the time the lawyer intends to seek withdrawal, reasonably discuss the lawyer's intent to withdraw from the representation with the client and ascertain, at that time, whether the client will consent.

Under the civil rules, a lawyer may move to withdraw on an *ex parte* basis if the application includes the client's written approval. Rule 5.1(a)(2)(A), ARIZ.R.CIV.P. A lawyer who files an *ex parte* application, alleging client consent based on advanced consent in the fee agreement, could possibly violate ER 3.3. That rule requires a lawyer to be completely truthful to the court, to not offer false evidence to the court and, in an *ex parte* proceeding, to inform the court of all material facts, regardless of whether the facts are adverse. If the client consent is based solely on advance consent in the fee agreement, then the lawyer failed to comply with ERs 1.2 and 1.4.

If, after consultation, the client will not give written consent to the lawyer withdrawing, the lawyer may file an application to withdraw, but the lawyer must file a motion and meet all of the other requirements set out in Civil Rule 5.1(a)(2)(B).

Contact the State Bar's Ethics Hotline at (602) 340-7284.

IOLTA

TRUST ACCOUNT ANSWERS AVAILABLE

The answers to the Who, What, When, Where and Why questions concerning your Interest on Lawyers Trust Account (IOLTA) are just a phone call away.

▶ When can I disburse right away on a deposit? My client really needs his money.

▶ Where does this check go? Into my trust account or my operating account?

▶ Why can't I get cash back from a deposit to the trust account?

▶ What is a monthly "three-way" reconciliation?

▶ Why can't I have overdraft protection on my trust account?

▶ I just opened my trust account. Why can't I use the starter checks I have?

▶ Who can be a signer on my trust account?

▶ What records do I really need to keep for my trust account?

▶ What amount of personal funds can I keep in the trust account?

▶ What ways can I disburse from my trust account?

▶ When can I stop keeping my trust account records?

If you call the Trust Account Hotline at (602) 340-7305, Monday through Friday, 8:00 a.m. to 4:30 p.m., a State Bar of Arizona Trust Account Examiner will provide you with this information at no cost. The Examiner will not give legal advice but will answer your questions so that you are in compliance with Rule 42, ER 1.15(a), Rule 43, and Rule 44 ARIZ.R.S.Ct.