

E T H I C S   O P I N I O N S

**Opinion No. 06-03** (July 2006)

An attorney who limits the scope of representation and coaches the client or ghost-writes papers must direct the client to be truthful and candid in the client's activities. Although an attorney is not required to disclose to opposing counsel that the attorney is providing limited-scope representation, the attorney must maintain client confidentiality if doing so.

**Opinion No. 06-04** (July 2006)

In the context of a prepaid legal services program, attorneys may not release confidential or privileged information to a third-party auditor without the client's informed consent. Because billing information often contains confidential information, contractual provisions requiring an attorney to allow, without exception, third parties to review the client file and billing records violate ER 1.6(a).

An attorney may agree to represent a client under a prepaid legal services agreement that limits the presumptive compensation allowable for "basic" legal services if the attorney complies with ER 1.8(f)(2), including determining that the limit on payment does not interfere "with the lawyer's independence of professional judgment or with the client-lawyer relationship." When agreeing to accept third-party payments, the attorney must be careful to abide by the client's "decisions concerning the objectives of representation and ... whether to settle a matter." ER 1.2(a). An attorney's agreement to limit compensation from a third party does not limit the attorney's duty provide a diligent and thorough representation of the client.

Provisions in a prepaid legal services contract between a client and the issuing trust do not excuse a lawyer's compliance with applicable ethical rules. An attorney may not enter into a contract that requires the attorney to violate his or her ethical duties.

**Need an Opinion?**

Check out the State Bar Web site at [www.myazbar.org/Ethics/](http://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.

NEW

## BAR COUNSEL INSIDER



*Welcome to a new column written by lawyers from the State Bar Lawyer Regulation Office. We launched the column last month, and it will pass along tips and pointers about specific ethical issues that they encounter on a regular, or at least frequent, basis. Through this column, we hope to provide helpful and interesting information about ethics, discipline and other related programs in the State Bar to help all members build stronger and smarter practices.*

The Lawyer Regulation Department of the State Bar of Arizona developed the Attorney/Consumer Assistance Program (A/CAP) to be the first State Bar program to accept informal inquiries regarding a lawyer's conduct. That program can help you handle disputes with your client—or even with other attorneys—efficiently.

Inquiries can be made by telephone or in writing. Inquiries handled telephonically remain confidential and do not result in any public record. Telephone inquiries also do not become a part of the discipline file if a written inquiry is subsequently filed. Telephone inquiries are confidential to encourage the submission of disputes or problems at a time when they can be addressed without the need for a formal screening investigation. If intervention by an A/CAP attorney is deemed appropriate, he will first discuss the matter with the inquiring party and then call the client or other lawyer to discuss possible methods of resolving the dispute or problem.

Clients, lawyers, judges and anyone else concerned about an attorney's conduct can make an inquiry with the State Bar. Most telephone inquiries are made by clients and former clients and often deal with a lack of communication, concern about the reasonableness of an attorney's fee, or the failure to

## BAR COUNSEL INSIDER (continued)

provide a former client with a copy of the file upon termination of the lawyer-client relationship.

Attorneys can use the services of A/CAP when it is apparent that they are beginning to experience difficulties with clients or other lawyers. A/CAP can be most beneficial when disputes or problems have not yet grown to the point where attorneys are having difficulty communicating with their clients or other lawyers. Attorneys should consider the positive impact that the involvement of a neutral party can have on the situation.

An A/CAP attorney can help resolve problems before a written inquiry—most often referred to as a “written complaint”—has been filed with the State Bar. Once a written inquiry is filed with the Bar, the matter eventually will become a public record. Not only can the existence of closed or dismissed inquiries be disclosed to an inquiring party, but anyone can review the State Bar file, with the exception of work product and the State Bar’s working file.

If you encounter a situation in which you believe the assistance of an A/CAP attorney would be useful, call the program at (602) 340-7280. If you are asked to leave a voice-mail message, provide all important dates, times, places, court file numbers and details so that we understand the specific nature of your inquiry.

*If you have specific questions regarding this column or A/CAP, call (602) 340-7280. And you can always contact the State Bar’s Ethics Hotline at (602) 340-7284.*

## SANCTIONED ATTORNEY

### MARK S. CLARK

Bar No. 018280; File No. 05-4002

Supreme Court No. SB-06-0041-RD

By Arizona Supreme Court judgment and order dated May 24, 2006, Mark S. Clark, 5075 N. La Canada Dr. #157, PMB 319, Tucson, AZ 85704, a resigned member under suspension of the State Bar of Arizona and licensed to practice in Massachusetts, was disbarred. This reciprocal discipline was imposed based on a judgment and order dated August 17, 2005, retroactive to January 18, 2002, by the Commonwealth of Massachusetts Supreme Judicial Court of Suffolk County.

### 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.