

PUBLIC MATTER

1 STATE BAR OF CALIFORNIA
 2 OFFICE OF THE CHIEF TRIAL COUNSEL
 3 JAYNE KIM, No. 174614
 4 CHIEF TRIAL COUNSEL
 5 JOSEPH R. CARLUCCI, No. 172309
 6 DEPUTY CHIEF TRIAL COUNSEL
 7 MELANIE J. LAWRENCE, No. 230102
 8 ASSISTANT CHIEF TRIAL COUNSEL
 9 RIZAMARI C. SITTON, No. 138319
 10 SUPERVISING SENIOR TRIAL COUNSEL
 11 ANAND KUMAR, No. 261592
 12 DEPUTY TRIAL COUNSEL
 13 845 South Figueroa Street
 14 Los Angeles, California 90017-2515
 15 Telephone: (213) 765-1714

FILED
 MAR 02 2015
 STATE BAR COURT
 CLERK'S OFFICE
 LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

14	In the Matter of:)	Case No. 14-J-00470
15	DOUGLAS CARROL RHOADS,)	NOTICE OF DISCIPLINARY CHARGES
16	No. 165389,)	
17	A Member of the State Bar.)	

NOTICE - FAILURE TO RESPOND!

19 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE**
 20 **WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT**
 21 **THE STATE BAR COURT TRIAL:**

- 22 (1) **YOUR DEFAULT WILL BE ENTERED;**
- 23 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**
WILL NOT BE PERMITTED TO PRACTICE LAW;
- 24 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;
- 25 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. Douglas Carrol Rhoads ("Respondent") was admitted to the practice of law in the
4 State of California on June 29, 1993, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6 PROFESSIONAL MISCONDUCT IN A FOREIGN JURISDICTION

7 2. On or about November 6, 2013, the Supreme Court of Arizona ordered that
8 Respondent be disciplined upon findings that Respondent had committed professional
9 misconduct in that jurisdiction as set forth in the Agreement For Discipline By Consent, filed on
10 November 5, 2013, and Final Judgment and Order, filed on November 6, 2013.

11 3. A certified copy of the final order of disciplinary action of the foreign jurisdiction
12 is attached, as Exhibit 1, and incorporated by reference.

13 4. A copy of the statutes, rules or court orders of the foreign jurisdiction found to
14 have been violated by Respondent is attached, as Exhibit 2, and incorporated by reference.

15 5. Respondent's culpability as determined by the foreign jurisdiction indicates that
16 the following California statutes or rules have been violated or warrant the filing of this Notice of
17 Disciplinary Charges: Business and Professions Code sections 6068(b) (failing to maintain the
18 respect due to courts and judicial officers), 6068(c) (failing to maintain those actions only that
19 appear to him as legal or just), and 6068(d) (failing to employ only those means which are
20 consistent with the truth and misleading a judge or judicial officer by artifice or false statement
21 of fact).

22 ISSUES FOR DISCIPLINARY PROCEEDINGS

23
24 6. The attached findings and final order are conclusive evidence that Respondent is
25 culpable of professional misconduct in this state subject only to the following issues:

26 A. The degree of discipline to impose;

27

28

1 B. Whether, as a matter of law, Respondent's culpability determined in the
2 proceeding in the other jurisdiction would not warrant the imposition of discipline in the State of
3 California under the laws or rules binding upon members of the State Bar at the time the member
4 committed misconduct in such other jurisdiction; and

5 C. Whether the proceedings of the other jurisdiction lacked fundamental
6 constitutional protection.

7 7. Respondent shall bear the burden of proof with regard to the issues set forth in
8 subparagraphs B and C of the preceding paragraph.

9
10 **NOTICE - INACTIVE ENROLLMENT!**

11 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**
12 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**
13 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**
14 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**
15 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**
16 **INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**
17 **ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**
18 **RECOMMENDED BY THE COURT.**

19 **NOTICE - COST ASSESSMENT!**

20 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC**
21 **DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS**
22 **INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING**
23 **AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND**
24 **PROFESSIONS CODE SECTION 6086.10.**

25 Respectfully submitted,
26
27 THE STATE BAR OF CALIFORNIA
28 OFFICE OF THE CHIEF TRIAL COUNSEL

23 DATED: February 27, 2015

23 By: 
24 ANAND KUMAR
25 Deputy Trial Counsel

David L. Sandweiss, Bar No. 005501
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone: (602) 340-7272
Email: LRO@staff.azbar.org

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
NOV 05 2013
FILED 
BY _____

Douglas C. Rhoads, Bar No. 015265
Rhoads & Associates PLC
2302 E. Delgado St.
Phoenix, AZ 85022-5838
Telephone: 602-499-7709
Email: dougrhoads@cox.net
Respondent

Kyle Andrew Kinney
4110 N. Scottsdale Rd., Ste. 330
Scottsdale, AZ 85251-4423
Telephone: 480-650-2292
Email: kyle@kinneylaw.net
Limited appearance counsel for Respondent

**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

**IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,**

**DOUGLAS C. RHOADS,
Bar No. 015265,**

Respondent.

PDJ-2013-9051

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar Nos. 11-2948, 11-3677,
and 12-1379

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Douglas C. Rhoads, *in proper personam* and with the assistance of counsel Kyle Andrew Kinney who appears on Respondent's behalf for the limited purpose of aiding in concluding this Agreement for Discipline by Consent, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an adjudicatory hearing on the complaint, unless otherwise ordered, and waives all motions,

defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.1, 3.1, 3.2, 3.3(d), 3.4(a), 3.4(c), 3.4(e), 3.5(d), 4.4(a), 8.2(a), and 8.4(d); and Rules 41 (c) and (g), Ariz. R. Sup. Ct. The State Bar conditionally agrees to dismiss the charges that Respondent violated ERs 3.3(a), 4.1(a), and 8.4(c). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Suspension for six months and one day, restitution of unpaid judgments or other assessments connected with the underlying litigated matters in the gross sum of \$39,938.22, and probation to be imposed upon reinstatement on terms to be determined at his reinstatement hearing. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 23, 1993.

COUNT ONE of THREE (State Bar File No. 11-2948/Bradley)

Case I. Yavapai County Superior Court V1300 CV820090494 *J.P. Morgan Chase Bank v. Rhoads*

¹ Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

2. On August 31, 2009, attorney Chris Perry appearing as counsel of record for JPMorgan Chase Bank ("JPMorgan"), sued Respondent and his wife in a forcible entry and detainer action ("FED") relating to their home in Sedona ("Sedona property").

3. Mr. Perry was unable to serve Respondent and Mrs. Rhoads personally because they rarely occupied the Sedona property (their primary residence was in Phoenix) so he obtained an order to allow substitute service.

4. After several hearings at which procedural matters were discussed, on November 13, 2009, the process server filed an Amended Certificate of Service in which she stated that she served the documents by mailing and posting "after attempting personal service."

5. However, at a hearing on November 17, 2009, Judge Bluff stated on the record that the Amended Proof of Service "has not been filed" and dismissed the case without prejudice. Judge Bluff was concerned that whatever happened thereafter in the case would be reversed on appeal, and denied Mr. Perry's subsequent motion to reinstate.

6. Judge Bluff did not dismiss the case on its merits.

7. Were this matter to proceed to a contested hearing Respondent would contend that Chris Perry merely claimed to represent JPMorgan but did not establish that he actually represented JPMorgan. The State Bar would contend that Respondent's contention is irrelevant.

**Case II. Yavapai County Superior Court V1300 CV820090550
Rhoads v. Washington Mutual Bank, J.P. Morgan Chase Bank, et. al.**

8. On September 21, 2009, Respondent and Mrs. Rhoads sued Washington Mutual Bank ("WAMU"), JPMorgan, and various other companies, or

individual agents or employees thereof. Respondent and Mrs. Rhoads asserted state and federal statutory and common law claims and sought money damages, declaratory relief, injunctive relief, attorney's fees, costs, and interest, all generally for events leading up to and including the July 2009 JPMorgan trustee's sale of the Sedona property.

9. Respondent filed a Notice of *Lis Pendens* regarding the Sedona property and obtained summonses for all named defendants. Respondent did not serve any defendant or take any action to secure his alleged right to title to the Sedona property.

10. On September 3, 2010, the court issued a minute entry warning that the case would be dismissed for failure to serve process. On August 30, 2011, Judge Campbell issued an order dismissing the case.

11. Were this matter to proceed to a contested hearing, Respondent would contend that the Yavapai County Superior Court case was removed to the United States District Court for the District of Arizona by the Defendants; Respondent was not licensed to practice in the United States District Court for the District of Arizona at that time; Defendants waived service by removing the case to Federal Court prior to serving the complaint; and the Yavapai County Superior Court lacked jurisdiction upon removal to Federal Court. The State Bar would contend that Respondent's contention is irrelevant.

**Case III. U.S. Bankruptcy Court case no. 2:10-bk-17533-RTB,
Douglas and Shannon Rhoads, debtors**

12. On June 4, 2010, Respondent filed for Chapter 11 bankruptcy protection. On his "Schedule A-Real Property-Amended" (on which "real property" is defined very broadly) Respondent did not list the Sedona property.

13. Respondent did list a tenant at the Sedona property on Schedule G (executory contracts and unexpired leases); Chase Bank as the creditor of a repossession, foreclosure sale, transfer or return of the Sedona property on his Statement of Financial Affairs; and Chase Bank as a creditor holding a secured claim against the Sedona property on his amended Schedule D.

14. There were motions to lift the bankruptcy stay, and adversary proceedings, in the bankruptcy case but none involving the Sedona property. Respondent did not claim on his bankruptcy schedules that he owned the property; he acknowledged in his schedules that Chase Bank owned the property via a non-judicial foreclosure sale.

15. The bankruptcy case was dismissed several times for Respondent's failure to meet a deadline only to be reinstated by his after-the-fact compliance.

16. On June 1, 2012, Judge Baum dismissed the case with prejudice. In his dismissal order Judge Baum wrote that:

a. Respondent was ordered to file a reorganization plan and disclosure statement by February 13, 2012, but failed to do so;

b. no plan or disclosure statement was ever filed;

c. Respondent used the Chapter 11 proceeding to engage in extensive litigation with his secured creditors; and finally

[T]he court concludes that the case should be dismissed with prejudice barring another filing for a period of one year from the date of this order. Therefore,

IT IS ORDERED DISMISSING THIS CASE WITH PREJUDICE FOR A PERIOD OF ONE YEAR FROM THE DATE OF THIS ORDER.

17. Were this matter to proceed to a contested hearing, Respondent would contend and/or testify that in his bankruptcy schedules he did not claim title to the property; he disputed Chase Bank's claim of title to the property; he did not file a

reorganization plan because he could not identify the real parties in interest; it was his bankruptcy counsel who failed to meet the deadlines, and that he did not intend to violate any court rule or order; and he could not submit a viable Chapter 11 disclosure statement and/or plan of reorganization until his Adversary Proceedings had been resolved as any plan of reorganization would be dependent on him and Mrs. Rhoads obtaining title to already foreclosed real properties so that they could use the properties to generate rental income to fund a plan of reorganization. The State Bar would contend that Respondent's contentions are irrelevant to this lawyer discipline case.

**Case IV. Yavapai County Sheriff's Office ("YCSO")
Incident 11-02562**

18. Lender Processing Services using J.P. Morgan Chase Bank hired Judy Kelley of Russ Lyon/Sotheby's to secure the Sedona property following the foreclosure. On August 9, 2011, Ms. Kelley appeared at the property with a locksmith and changed the locks. A neighbor saw this and called Respondent in Phoenix. Respondent called the YCSO and reported the incident as a trespass.

19. A deputy arrived at the property, took the new keys from Ms. Kelley, and gave them to the neighbor. The neighbor handed the deputy a note that she said Respondent asked her to write and give to the deputy. It said, "Don't have a Writ of Restitution", "subject to a bankruptcy", and "trustees deed upon sale is void-ruled by Judge Bluff."

20. The deputy secured the house and the scene, and then called Respondent. According to the deputy's report, Respondent "explained that he had gone to Yavapai County Superior Court and Judge Bluff ruled against the bank and the property was still his."

21. The deputy obtained relevant documents from Respondent and Ms. Kelley, and forwarded them to Deputy County Attorney Jack Fields. Mr. Fields' charging unit declined to prosecute Ms. Kelley on the ground that there was no reasonable likelihood of a conviction.

22. Were this matter to proceed to a contested hearing, Respondent would contend that Lender Processing Services, using J.P. Morgan Chase Bank's, NA's name, instructed Ms. Kelley to take the actions that she did; such actions violated the automatic bankruptcy stay and were done without a Writ of Restitution; Respondent still was in lawful, peaceful possession of the Sedona Property because there was an automatic stay in effect and no writ of restitution had been issued by any court granting possession of the Sedona property to anyone other than Respondent and Mrs. Rhoads; Respondent was told and believes that JP Morgan Chase did not pay consideration at the sale did not prosecute the action, or own the claim to his Sedona property; and Respondent sought to dismiss the claim or have it transferred to the general civil calendar, but Judge Bluff dismissed the counterclaim without prejudice. The State Bar would contend that Respondent's contentions are irrelevant to this discipline case and/or are based on inadmissible hearsay and speculation.

**Case V. Yavapai County Superior Court V1300 CV201180481,
Rhoads v. Judy Kelley (Injunction Against Harassment)**

23. On August 22, 2011, Respondent filed a Petition for Injunction Against Harassment against Judy Kelley. On his written petition, Respondent identified Ms. Kelley as "Defendant Realtor who broke into my home."

24. Respondent also identified a Chapter 11 Bankruptcy case, 2:10-bk-17533 as a relevant pending action because of the automatic stay.

25. In his factual allegations, Respondent wrote that Ms. Kelley told his tenants to vacate by April 15, 2011, and paid them to breach his lease; that he told Ms. Kelley that the property was part of Bankruptcy estate and that Judge Bluff "denied" J.P. Morgan Chase Bank's forcible entry and detainer action; that Ms. Kelley and Red Rock Locks "trespassed" and "broke into" his home; that a sheriff's deputy "removed" Ms. Kelley and her agents from the property; and that he submitted a report to the Yavapai County Attorney's office for investigation of criminal damage, breaking and entering, and criminal trespass. Respondent asked for an order compelling Ms. Kelley to stay away from his Sedona home address as well as his Phoenix law office address.

26. Were this matter to proceed to a contested hearing, Respondent would contend that neither Ms. Kelley nor J.P. Morgan Chase Bank had obtained a Writ of Restitution, as a consequence of which he retained the right of possession. Accordingly, he had a good faith basis to refer to Ms. Kelley's actions as a trespass. Furthermore, from his experience Respondent has learned that when realtors change locks on foreclosed homes, they steal things and sell them on Craigslist. Hence, he had a good faith basis to describe Ms. Kelly's actions as a break-in of his home. In neither case did he intend to mislead law enforcement or the court by characterizing the situation as he did.

27. Respondent appeared in Judge Bluff's court on August 22, 2011, for the *ex parte* initial hearing. Respondent explained how loan companies and document preparation services fabricated legal-appearing documents to deceitfully claim title to innocent people's homes, and reminded Judge Bluff of the FED action in his court "that was dismissed." Respondent also claimed that his home was part

of his bankruptcy estate. Were this matter to proceed to a contested hearing, Respondent would offer evidence that he listed the Sedona property on his bankruptcy schedules as the subject of both a bank repossession and a Schedule G month-to-month lease with tenants. Although he did not list the home on his Schedule A schedule of owned real property he did properly include the home in his bankruptcy estate, and did not intend to mislead the court regarding the ownership status of the home.

28. Judge Bluff ruled that there was insufficient evidence to issue an injunction against harassment that day, and set the matter for a hearing. Judge Bluff believed that Ms. Kelley may have had a proper purpose in doing what she did.

29. The hearing occurred on September 1, 2011. Through statements or testimony, Respondent asserted at the hearing that "they (J.P. Morgan) lost their claim" to my home in this court but on later questioning elaborated that the FED case was dismissed without prejudice for lack of personal service and not on the merits.

30. Respondent also testified that he told the investigating deputy sheriff that he still had the "right of possession" and denied leading him to believe that he had won the FED action on the merits.

31. While cross-examining Ms. Kelley, Respondent established that she took checks with her to the Sedona property to compensate the to-be-evicted tenants for moving expenses. Because the sheriff's deputy appeared at the scene, Ms. Kelley never actually gave the tenants the checks, so she retained them in her

file. Ms. Kelley showed the checks to Respondent during her testimony and they ultimately found their way to the court clerk.

32. Respondent tried to establish that Ms. Kelley regularly tried to bribe tenants in other homes to leave. Were this matter to proceed to a contested hearing, Respondent would contend that he had a reasonable basis for describing Ms. Kelley's actions as bribery since by interfering with the tenancy she violated the automatic bankruptcy stay and showed no regard for the rule of law.

33. Judge Bluff ruled that Respondent's questions were irrelevant and constituted a fishing expedition for hoped-for evidence to use in a subsequent damages suit. Judge Bluff explained that what Ms. Kelley did or did not do in other cases was unrelated to what she did in this case, and her conduct toward tenants had nothing to do with alleged harassment of Respondent.

34. Despite sustaining Complainant's several objections to Respondent's several consecutive irrelevant questions, Respondent persisted until Judge Bluff firmly redirected him.

35. At the close of Respondent's case, Judge Bluff denied his petition. A basis for Judge Bluff's ruling was that he did not consider Respondent's exhibits because Respondent never moved them into evidence. Respondent moved immediately to reopen his case to offer the exhibits but Judge Bluff denied his request.

36. Judge Bluff ordered all marked exhibits returned to their owners. Respondent took Ms. Kelley's checks and put them in his case file. Respondent and Complainant grappled for Ms. Kelley's checks. Judge Bluff ordered Respondent to give the checks to Ms. Kelley. Respondent asked if he could copy the checks; Judge

Bluff said no and again ordered Respondent to return the checks to Ms. Kelley. Respondent asked his witness, who had remained in the courtroom, if he could use her cell phone to photograph the checks. Judge Bluff again ordered Respondent to return the checks to Ms. Kelley. Respondent took the checks from his file and gave them to Ms. Kelley. Judge Bluff admonished Respondent, "I don't appreciate your pulling that in my courtroom, Mr. Rhoads." Respondent replied: "She (referring to the court clerk) said they were my exhibits."

37. Were this matter to proceed to a contested hearing, Respondent would testify that he assumed the checks were actually his courtesy copies of the originals since he believed that Ms. Kelley's attorney earlier had offered the originals into evidence. The copies that he took were not marked as exhibits.

38. Complainant moved for an award of \$500 in attorney's fees pursuant to A.R.S. §12-1809.N. That statute permits a court to award attorney's fees in an injunction against harassment case against any party. Although Complainant correctly cited the proper statute in his motion, he mistakenly quoted language from a different attorney's fees statute, A.R.S. 12-341.01, which allows recovery of attorney's fees in any contested action arising out of a contract. Respondent resisted the motion on the ground that although Complainant cited the correct statute he quoted the wrong language. In his reply, Complainant acknowledged the error but contended that he still was correct in substance, and asked Judge Bluff to add \$200 for having to file a reply. The court awarded Complainant \$500 in attorney's fees.

39. Were this matter to proceed to a hearing, Respondent would contend that the two year statute of limitations had run out on Chase Bank's claim; Ms.

Kelley paid tenants with Lender Processing Services checks to breach the lease on the Sedona property in violation of the automatic stay of which she was aware; that the "checks" Ms. Kelley showed to Respondent in court were not the actual checks but color copies of them, and that the actual checks had been given to his tenants and negotiated; Ms. Kelley did not give Respondent courtesy copies of the check copies; he had a good faith belief that the questions he asked Ms. Kelley established motive, intent and opportunity as well as course of conduct. The State Bar would contend that Respondent's contentions are nonmeritorious and irrelevant to this discipline case.

**Case VI. Yavapai County Superior Court V1300 CV201280402,
*J.P. Morgan Chase Bank v. Rhoads***

40. On September 28, 2012, J.P. Morgan Chase Bank filed a second FED action (see Case I. above), this time through different counsel. After a series of procedural steps occurred, the bank won and obtained an eviction order.

41. On December 10, 2012, shortly before move-out day, Respondent filed for bankruptcy protection again. Respondent's bankruptcy filing was within the one-year moratorium against bankruptcy filings that Judge Baum imposed against Respondent (see Case III. above). Were this matter to proceed to a contested hearing, Respondent would contend that he believed that Judge Baum's order placing a one-year moratorium against bankruptcy filings applied only to Chapter 11 filings, whereas the December 10, 2012, filing was a Chapter 13 case.

42. Judge Baum dismissed that bankruptcy case and the FED action proceeded. The bank ultimately obtained judgment on February 13, 2013.

43. Among Respondent's court filings were a counterclaim for Abuse of Process and Racketeering, a response to the bank's Motion for Judgment on the

Pleadings that ran for 69 pages, a List of Witnesses and Exhibits that occupied 551 pages, a Notice of Filing for Bankruptcy of 226 pages, and a Motion to Dismiss of 315 pages. Respondent's filings included exhibits irrelevant to right-to-possession which is the sole issue in an FED case.

44. Were this matter to proceed to a contested hearing, Respondent would testify that he wanted to educate the court about the fraudulent practices endemic to the mortgage collection industry. There is no page limitation for lists of witnesses and exhibits. Respondent would further contend that case law permits a party to litigate title issues in an FED case if notice of a foreclosure or trustee sale is deficient due to fraud. See *Main I Ltd. Partnership v. Venture Capital Const. and Dev. Corp.*, 154 Ariz. 256, 741 P.2d 1234 (App. Div. 1 1987), cited as precedent in the Memorandum Decision of *U. S. Bank v. Grainger*, No. 1 CA-CV 11-0608 (App. Div. 1 2012). He did not intend to violate any court order or rule. Finally, Respondent would contend that the Arizona Rules of Procedure for Eviction Actions were amended in 2009 to add foreclosure cases to the types of cases (generally, landlord/tenant cases) formerly treated by those rules. The amendments are ambiguous as to what issues could be litigated; therefore, Respondent did not intentionally or knowingly violate court rules. The State Bar would contend that Respondent's assessment of the foregoing legal authorities is and was incorrect.

45. Were this matter to proceed to a contested hearing, Respondent would contend that the firm of McCarthy Holthus & Levine claimed to represent J.P. Morgan Chase Bank in the above-described second FED action but did not establish that it actually represented the bank; he had been told by JP Morgan Chase counsel from Bryan Cave that the property did not appear on the JP Morgan Chase system

and that they could not settle the claim; newly discovered evidence in his Chapter 13 bankruptcy case would show that there had been fraud on the Court; and his filings in the second FED case included exhibits he believed in good faith supported the claims for RICO and abuse of process relevant to right-to-possession which is the sole issue in an FED case except in cases of fraud or concealment. The State Bar would contend that Respondent's contentions are either incorrect, based on inadmissible hearsay, or irrelevant to a lawyer discipline case.

COUNT TWO of THREE (File no. 11-3677/Judicial Referral)

46. In February 2005 Neville James ("James") as trustee for the James Family Trust ("Trust") financed an apartment complex at 2525 S. McClintock Dr. in Tempe ("Tempe property") with a \$1M loan from IMPAC. The loan was documented by a promissory note and secured by a deed of trust and assignment of rents. In August 2010 IMPAC assigned its rights under the note and deed of trust to Deutsche Bank ("Deutsche"). Deutsche later assigned its rights to KR Capital, LLC ("KR") but remained the named party in subsequent Superior Court litigation.

47. In May 2010 James allegedly defaulted on the note and by August allegedly owed about \$27,500. Throughout the ensuing litigation James denied that he missed any payments or otherwise committed any material breach of contract.

Case VII. Maricopa County Superior Court Case No. CV2010-026702

48. On September 2, 2010, Deutsche, through its contractor CFC Transactions, LLC ("CFC"), sued James for an appointment of a receiver to manage and preserve the Tempe property, pursuant to the terms of the note, while it prepared for a trustee's sale and nonjudicial foreclosure. Were this matter to proceed to a contested hearing Respondent would contend that the litigation was

initiated by a collection agent using the name Deutsche without valid authority, through its purported contractor CFC.

49. Deutsche later amended the complaint to include two additional breaches of contract: a) James filed for bankruptcy protection in November 2009 (2:09-bk-29616-SSC, by attorney Raymond Miller, although it was dismissed for failure to prosecute before Deutsche filed this suit), and b) James, acting for the Trust, transferred the Tempe property in March 2010 to Pleasantview, LLC ("Pleasantview"). Both of the foregoing two events constituted breaches of the note and/or deed of trust.

50. James filed an answer, counterclaim, and third-party complaint *pro se*. The case was assigned to Judge Foster who set a hearing on the receivership matter for November 5, 2010. James obtained counsel (not Respondent) for the hearing.

51. Judge Foster determined that James breached the contract by transferring title of the Tempe property and by filing for bankruptcy protection. Judge Foster authorized appointment of a receiver.

52. On December 13, 2010, James filed for bankruptcy protection again (2:10-bk-39612-SSC, through attorney Bill King) ("2nd bankruptcy").

53. Over time, Judge Foster held conferences regarding the status of the 2nd bankruptcy case. On September 17, 2011, the 2nd bankruptcy case was dismissed. On September 9, 2011, Pleasantview filed a bankruptcy petition (2:11-bk-25833-JMM, also by attorney Bill King) ("3rd bankruptcy") in which it claimed that it owned the Tempe property, and that the automatic stay precluded a trustee's sale.

54. On September 21, 2011, attorney Guy Roll entered an appearance for James in Superior Court.

55. On September 28, 2011, Judge James Marlar in the 3rd bankruptcy case entered an order granting creditor KR's motion for relief from the automatic stay regarding the Tempe property. Judge Marlar included findings in his order that the 3rd bankruptcy petition was filed in bad faith as part of a scheme to hinder, delay or defraud creditors that included an attempt to transfer part ownership of the Tempe property, and three serial bankruptcy filings.

56. On October 6, 2011, Mr. Roll filed a Motion for Temporary Restraining Order ("TRO") without notice, to enjoin the trustee's sale scheduled for October 12. Mr. Roll hand-delivered the motion to the court but mailed it to Deutsche's lawyer. On October 7, Judge Foster denied the motion on the ground that it did not comply with Rule 65(d), Ariz. R. Civ. P.; Mr. Roll did not indicate the efforts made to give notice of the motion or reasons why notice should not be required. Judge Foster scheduled a return hearing for October 11, 2011, at 8:45 a.m.

57. On October 11, Judge Foster conducted a return hearing and ruled that the motion for TRO was fundamentally without notice. Judge Foster further determined that the court in the 3rd bankruptcy case found that James tried to fraudulently transfer the property to avoid creditors. Judge Foster denied the motion for TRO to enjoin the trustee's sale.

Case VIII. Maricopa County Superior Court Case No. CV2011-099616

58. Later on the same day that Judge Foster denied James' Motion for TRO to enjoin the October 12, 2011, trustee's sale in CV2010-026702, Mr. Roll filed a Motion for TRO against Deutsche and related entities in the Southeast Judicial

District of Maricopa County Superior Court. The only named plaintiff in the Southeast Judicial District filing was Pleasantview. In his motion, Mr. Roll disclosed the proceedings in Judge Foster's court and James' two bankruptcy petitions.

59. Mr. Roll claimed that since Pleasantview was the titled owner of the property and that James' family trust was the named plaintiff in CV2010-026702, Judge Foster's court had no personal jurisdiction over Pleasantview.

60. The case was assigned to Judge Ditsworth but there is no indication in the court file that it was called to his attention or that he acted on it. The trustee's sale proceeded on October 12, 2011; an LLC owned by Alon Shnitzer bought the property.

61. On October 28, 2011, Respondent filed a Notice of Substitution of Counsel, identified the plaintiffs as Pleasantview and James, and identified himself as attorney for the plaintiffs. Respondent also filed a complaint for damages, preliminary injunction, declaratory relief, fraud, rescission of the trustee's sale, quiet title, and accounting. Respondent's claims were characterized as the "show me the note" legal theory that already had been rejected by the Arizona Court of Appeals and federal courts in Arizona. Were this matter to proceed to a contested hearing, Respondent would contend that a case implicating the "show me the note" legal theory was pending review in the Supreme Court of Arizona and *Hogan* ruled ownership is required to foreclose.

62. On November 1, 2011, Respondent filed a petition for an Order to Show Cause ("OSC") re: preliminary injunction. Respondent asked the court to grant a TRO and later, generally, to convert the TRO into a preliminary injunction. Respondent did not seek to enjoin the trustee's sale which already had occurred.

Rather, Respondent alleged that his clients did not breach the terms of the note or deed of trust, and that Shnitzer was a strawman propped into place to flip the property and launder a dirty mortgage created out of whole cloth by the multiple defendants.

63. Respondent uncivilly asserted that there appeared to be *ex parte* communication, collusion and potential criminal conduct.

64. Respondent alleged further that after the trustee's sale Shnitzer and his agents trespassed on the Tempe property, harassed 78 year-old James, intimidated tenants and caused physical damage. Respondent asked the court to order the defendants to refrain from trespassing, initiating court action, marketing the property, and to provide monthly financial accountings.

65. Respondent disclosed nothing to Judge Ditsworth about any of the proceedings before Judge Foster. Were this matter to proceed to a contested hearing, Respondent would contend that Mr. Roll's earlier disclosure in his Motion for TRO directed to Judge Ditsworth was sufficient to alert Judge Ditsworth of the proceedings before Judge Foster, and shows that Respondent did not try to deceive either judge; however, Respondent was negligent in not filing an additional copy with Judge Ditsworth's Judicial Assistant.

66. On November 2, 2011, at 11:34 a.m., Judge Ditsworth signed an order granting Respondent's petition for TRO, and scheduled an OSC on the preliminary injunction for November 22.

67. Later on November 2, 2011, at 4:59 p.m., counsel for Shnitzer and Deutsche filed a joint expedited motion to consolidate Judge Foster's case with Judge Ditsworth's. They contended not only that there was an identity of parties,

facts, evidence, and issues but, also, that Judge Foster already had heard evidence and ruled on disputed contentions.

68. On November 3, 2011, counsel for Shnitzer and Deutsche filed a joint response to Respondent's petition for OSC re: preliminary injunction. In addition to attacking the substance of Respondent's petition, they also informed Judge Ditsworth that in the other suit Judge Foster already had declined to issue a TRO after rejecting many of the same allegations.

69. On November 3, 2011, Judges Ditsworth and Foster discussed the motion to consolidate. Judge Foster granted the motion to consolidate and presided over further proceedings. In an unsigned minute entry dated November 3, 2011, Judge Ditsworth vacated the TRO; his Judicial Assistant ("JA") emailed notice to counsel of that fact at 10:06 a.m. Judge Ditsworth signed a formal written order on November 4, 2011, in which he set aside the TRO and vacated all events previously scheduled in his court.

70. Judge Ditsworth stated in his order that he granted Respondent's Petition for OSC re: Preliminary Injunction based, in part, on Respondent's failure to mention any related case or cases. Once he learned that Judge Foster already had ruled on the same issues, and saw the motion to consolidate, Judge Ditsworth conferred with Judge Foster and decided to set aside the TRO.

71. Were this matter to proceed to a contested hearing, Respondent would contend that Shnitzer and Deutsche's motion to consolidate the two cases was granted *ex parte* without a hearing, and he had no hearing or opportunity to respond before Judge Ditsworth decided to set aside the TRO.

Case IX. Consolidated Actions CV2010-026702 and CV2011-099616

72. On November 3, 2011, after receiving Judge Ditsworth's JA's email, Mr. Shnitzer filed and served a Forcible Entry and Detainer action ("FED") against James and Pleasantview (see "**Case X. Maricopa County Superior Court case no. CV2011-056306**" below).

73. Respondent filed a "Motion to Show Cause Why Federal National Mortgage Association [("Fannie Mae") *sic*] is Not in Contempt of Court" and sought sanctions alleging that Mr. Shnitzer violated Judge Ditsworth's TRO.

74. Mr. Shnitzer opposed Respondent's motion and filed a cross motion for sanctions alleging that Respondent filed a frivolous motion.

75. On November 9, 2011, Respondent filed an emergency motion for stay pending appeal. He did not identify the event to be stayed. Respondent also filed a notice of appeal of Judge Ditsworth's November 4, 2011, order. Were this matter to proceed to a contested hearing, Respondent would contend that he did not identify the event to be stayed in his motion for stay because it was identified in the Notice of Appeal; a stay is a ministerial duty of the trial court based upon the previous orders and case filings, and he had a good faith belief that it was warranted.

76. Respondent uncivilly reported what could be criminal conduct and material misrepresentations to the Court.

77. Mr. Shnitzer and Deutsche filed a joint response contending that Respondent's request for an undefined stay was a *de facto* repeat request for a TRO that two courts already had refused to issue. They further argued that Judge Ditsworth's order was not an appealable order; hence, not even a more clearly defined stay pending an appeal was warranted. Were this matter to proceed to a contested hearing, Respondent would contend that Judge Ditsworth's order was a

signed order which would have a dispositive effect on the case and cause irreparable injury to Mr. James.

78. On November 15, 2011, Judge Foster issued the following minute entry:

Having reviewed the record, the Request for Stay is denied for most of the reasons stated in the Defendant's Response. The Order in question was not an appealable Order. The stay sought would be a *de facto* Temporary Restraining Order against the execution of the orders of Commissioner Doody who apparently heard these issues in a Forcible Detainer action and denied them.

It is further noted that the nominal Plaintiff in this case, Mr. Neville James, has been well aware of this Court's prior rulings which denied him injunctive relief on at least two occasions when he appeared as the nominal Plaintiff and Trustee of the Trust. Yet, he and his prior counsel, Mr. Roll, apparently filed yet another action seeking the same injunctive relief under the name of a different Plaintiff. Mr. Rhoads substituted in as counsel for Mr. Roll and went before Judge Ditsworth to obtain a Temporary Restraining Order based on the default of the same note and Deed of Trust and the same property that was the subject matter of this Court's prior denials. It is the understanding of this Court that neither Mr. Roll nor Mr. Rhoads advised Judge Ditsworth of this Court's prior rulings. Consequently, when Judge Ditsworth learned of this Court's prior denials of the injunctive relief, he vacated the Temporary Restraining Order.

This Court strongly admonishes Plaintiffs' counsel for a lack of candor to the Court. Mr. Roll knew and Mr. Rhoads knew, or should have known, of the Court's prior rulings when Mr. Roll filed a new action in Mesa Court and Mr. Rhoads went before Judge Ditsworth and failed to advise him of the prior denials of injunctive relief. The ruse is quite clear: Name a new Plaintiff to be able to claim it is not the same matter so we have no duty to advise the new Judge. This Court finds such behavior to be lacking in candor at best and deceitful at worst.

IT IS ORDERED denying relief.

IT IS FURTHER ORDERED referring the circumstances of this matter to the State Bar of Arizona for investigation of possible ethical violations by counsel for the Plaintiff.

79. Judge Foster then recused from any further activity in the cases. They were re-assigned to Judge Mark Brain. Thereafter, Judge Brain denied Respondent's

motion for OSC re: Fannie Mae (*sic*) adding that there was no basis under Rule 11 for that motion because Judge Ditsworth's order does not say what Respondent claims it said (*i.e.*, Respondent's claim that "this Court expressly ordered that the TRO remained in effect until the afternoon of November 3, 2011" and that it prohibited an FED action).

80. Were this matter to proceed to a contested hearing, Respondent would contend that he took the appropriate steps to perfect an appeal as the unsigned minute entry of November 3, 2011 was not a final judgment for purposes of appeal and that Respondent was first required to seek emergency relief from the trial court prior to requesting such relief with the Court of Appeals pursuant to ARCAP 7 (C).

81. Judge Brain granted Mr. Shnitzer's motion to strike, and Mr. Shnitzer and Deutsche's motion to dismiss. In dismissing the case on January 3, 2012, Judge Brain wrote:

Rule 8 requires a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." The complaint is anything but. It is a long and rambling creature with no real discernible point (except, of course, that James wants relief). It also contains certain claims that appear spurious. For example:

- It complains that the loan was "securitized almost from the inception" (paragraph 81), and claims that this was due to some (apparently sinister) intent that plaintiff "not know the true source of funding" (paragraph 89). In contrast, the Deed of Trust confirms, at paragraph 32, that "[t]he Note or a partial interest in the Note (together with this Instrument and the other Loan Documents) may be sold one or more times without prior notice to Borrower."

- It relies on a "show me the note" theory (paragraph 27) that has been rejected time and time again, most recently in *Hogan v. Washington Mutual Bank, N.A.*, 227 Ariz. 561, 261 P.3d 445 (App. 2011).

Suffice it to say that the Court has attempted to make sense of the complaint, but like counsel for everyone except, apparently, Mr. James, it cannot. The Complaint violates Rule 8, and for that reason

alone must be dismissed. In addition, it goes without saying that a pleading which is incoherent fails to state a cause of action upon which relief may be granted, so the complaint must also be dismissed on this ground.

Moreover, Rule 9(b) requires allegations of fraud to be stated with particularity, which generally means the time, place and substance of the misrepresentations, the identity of the person making the misrepresentation, and what was obtained. Count 2 states the legal elements of fraud (paragraph 74), but makes no effort to tie those elements to particular factual allegations. The fraud claim fails to comply with Rule 9(b), and must be dismissed.

There are other issues with the complaint. For example, the statute of limitations for a consumer fraud claim (which appears to be what Count 3 attempts to plead) is one year, and it is obvious that many of the events set forth in the complaint occurred well outside that window. Likewise, there appears to be no legal basis for an accounting under the circumstances. But the Court has struggled long enough to understand this complaint, and declines to expend further effort doing so.

82. On March 21, 2012, Judge Brain ruled on "a veritable blizzard of paperwork" submitted after he granted the motion to dismiss. He denied Respondent's motion for reconsideration, motion for leave to file an amended complaint (the proposed complaint failed to meet the standards of Rules 8 and 9(b), Ariz. R. Civ. P., which was a basis to dismiss the earlier complaint), and Respondent's motion to set aside Judge Ditsworth's November 4, 2011, order (while cast as a Rule 60 motion, it was in fact a motion for reconsideration). Judge Brain also granted applications for attorney's fees and costs against James, Pleasantview, and Respondent totaling approximately \$28,500.

83. Were this matter to proceed to a contested hearing, Respondent would contend that Defendants in the action have levied Mr. James' account for \$22,000 and are holding excess proceeds from the purported sale of over \$200,000.00.

84. On May 1, 2012, Respondent filed a Rule 60 motion to vacate judgment. In his Rule 60 motion Respondent alleged among other things that the adverse parties and their counsel acted dishonestly and fraudulently to cheat James out of his property, and that the various judges who presided over the cases unfairly let them get away with it. Respondent's motion referred to a separate motion he filed for change of judge for cause, but the docket contained no such motion.

85. On June 18, 2012, Judge Brain issued a minute entry stating: "The only colorable issue raised by the pending motion is whether counsel should be sanctioned. The motion is DENIED."

86. On August 3, 2012, attorney Ray Miller succeeded Respondent as counsel for James. On November 29, 2012, the court of appeals dismissed James' appeal for failure to file an opening brief.

Case X. Maricopa County Super. Ct. Case No. CV2011-056306 (FED Action)

87. Respondent appeared for and defended James and Pleasantview in court on November 8, 2011. Commissioner John Doody granted the FED that day.

88. On November 10 Respondent filed a notice of appeal and a motion for stay pending appeal. Respondent began his motion: "Defendant, Plaintiffs, by and through counsel undersigned, having appealed from the Court's November 8, 2011, signed Order to filed in the above captioned matter pursuant to ARS §12-2101(5)b [*sic*]."

89. Respondent contended that the FED judgment was entered without notice, valid proof of service, an opportunity to respond, an evidentiary hearing, and while a TRO was on appeal, in violation of procedural and substantive due

process. On November 14, 2011, Commissioner Doody denied Respondent's request for a stay.

90. On November 29, 2011, Respondent filed a memorandum in support of stay pending appeal. In his memorandum, among other already rejected contentions Respondent falsely claimed that the FED action was commenced while a TRO was in effect. After a hearing, Commissioner Doody again denied Respondent's request for a stay. Were this matter to proceed to a contested hearing, Respondent would testify that the FED action filed on November 3, 2011 was in violation of the TRO because the minute entry was not signed (*i.e.* final) until a day later on November 4, 2011.

91. On October 25, 2012, the Court of Appeals issued its unanimous Memorandum Decision affirming Commissioner Doody's decision. Among other things, it decided:

a. Respondent failed to meet the essential requirements of Rule 13, Ariz. R. Civ. App. P., in his opening and reply briefs, "because there are virtually no citations to the record and many of the arguments are without legal authority. Furthermore, [Respondent] include[d] numerous extraneous references to items not in the record."

b. "Appellants assert numerous other arguments as well However, Appellants cite no relevant legal authority to support these arguments nor do they cite any factual support in the record. They are merely "bald assertion[s]" and therefore we will not consider them. [Citation omitted]. Moreover, most of these alleged errors arose largely due to Mr. Rhoads' lack of candor with the trial court. Had he been candid with the court about the nature of the companion proceedings, these alleged errors would likely not have occurred. We therefore summarily reject the arguments raised by Appellants that are not supported by competent authority, and in particular, those assertions that flow from Rhoads' lack of candor with the superior court judges. See Ariz. Supreme Court Rule 41(c), 42 E.R. 3.3, 8.4(c) and (d) (requiring attorneys to exercise candor with the court); see also *Hmielewski v. Maricopa County*, 192 Ariz. 1, 5, ¶ 21, 960 P.2d 47, 51 (App. 1997)."

c. Respondent argued "merit of title" issues in an FED action which is forbidden since FED actions are limited to determining the right of possession. He was aware of this prohibition because he made this and other similar frivolous arguments in other appeals and was chastised or sanctioned for it. The known cases are *Deutsche Bank Nat. Trust Co. v. Hines*, 1 CA-CV 10-0140, 2010 WL 5060715 (Dec. 7, 2010, rev. den. May 24, 2011); *M&I Bank v. Izzo*, 1 CA-CV 10-0136, 2011 WL 345825 (Feb. 3, 2011); *Citibank, N.A. v. Coleman*, 2 CA-CV 2010-0113, 2011 WL 378866 (Feb. 4, 2011); *U.S. Bank Nat. Ass'n. v. Myers*, 1 CA-CV 0780, 2011 WL 6747428 (Dec. 22, 2011); and *Deutsche Bank Nat. Trust Co. v. Rhoads*, 1 CA-CV 10-0401, 2011 WL 6653469 (Dec. 20, 2011, rev. den. April 24, 2012). Respondent filed his opening brief in the James/Pleasantview case on March 7, 2012 and his reply brief on May 11, 2012, both after all of the foregoing cases were decided and, thus, with knowledge of their holdings.

92. Respondent did not file a Motion for Reconsideration or Petition for Review of the Court of Appeals decision. On January 29, 2013, Commissioner Doody entered "Judgment on Mandate" for \$8,302.16 against Respondent for prosecuting a frivolous appeal.

Case XI. Confrontation on November 1, 2011

93. After the October 12, 2011, foreclosure sale Mr. Shnitzer went to the Tempe property to change the locks on some of the common areas and the rental office. James threatened Mr. Shnitzer so the latter sought and obtained an injunction against harassment on October 28, 2011, and served it on James on October 31.

94. Mr. Shnitzer alleged that James broke into the rental office and removed important business records. James also damaged a wall between a bathroom in the fitness center and the office, and directed tenants to continue to pay him rent at an alleged loss to Mr. Shnitzer of \$16,000 prior to receiving a Writ of Restitution.

95. Mr. Shnitzer tried to regain access to the rental office on November 1, 2011. Respondent was there and the ensuing events were video-taped. Were this matter to proceed to a contested hearing, the State Bar would offer evidence that Respondent shoved a maintenance man trying to change a lock, told a security officer that "they" created false documents, and refused to obey the officer's command to leave. Respondent would offer evidence that he asked a maintenance man trying to change a lock to leave as the police had instructed; he had brief contact; and he told one of the four armed private security officers dressed like Sheriffs that "they" created false documents, and refused to obey the Tempe Police Officer's command to leave.

COUNT THREE (File no. 12-1379/Judicial Referral)

Case XII. FED Action RE: Paradise Valley Property

96. On February 25, 2010, an action for Forcible Entry and Detainer ("FED") was filed against Respondent in Maricopa County Superior Court. Deutsche Bank ("bank") was the named plaintiff and attorneys at Pite Duncan LLP were identified as plaintiff's counsel of record. Were this matter to proceed to a contested hearing, Respondent would contend that the action was filed by attorneys at Pite Duncan LLP, using the name of Deutsche Bank as the ostensible plaintiff, and that the true plaintiffs were collection agents. The action alleged that the bank bought Respondent's former home on E. Crystal Ln. in Paradise Valley at a non-judicial foreclosure trustee's sale and that, after giving notice, Respondent refused to vacate the home.

97. Were this matter to proceed to a contested hearing, Respondent would contend that Pite Duncan attorneys told respondent that there was "no evidence of

consideration paid at the sale," that they did not have a written fee agreement, and "that they did not know who their client was." The State Bar would contend that Respondent's contention is irrelevant to this discipline matter and based on inadmissible hearsay and speculation.

98. On March 20, 2010, Respondent filed a notice of peremptory change of judge. At the trial on April 5, 2010, Commissioner Cunanan denied Respondent's motion to dismiss and granted the bank's motion for judgment on the pleadings. Effective April 26, Commissioner Cunanan issued a Writ of Restitution and on April 27 he denied Respondent's motion for reconsideration.

99. On April 28, 2010, Respondent filed a notice of appeal. Division One of the Court of Appeals issued a Memorandum Decision on December 20, 2011, affirming the trial court. In its decision, the court revealed that Respondent's attorney contended at oral argument that the bank's trustee's deed was a forgery, but Respondent did not raise that contention at the trial court level.

100. Respondent also attacked the bank's trustee's deed on the "show me the note" theory that has been rejected by state and federal courts in Arizona and throughout the U.S. Even if the "show me the note" theory were recognized, it is not properly raised in an FED action where the only issue is right to possession—the validity of title is irrelevant and is to be determined in a quiet title action.

101. Were this matter to proceed to a contested hearing, Respondent would contend that homeowner claims are regularly summarily dismissed as "show me the Note" while the *Stauffer* decision validates the ARS 33-420 argument that fabricated recorded documents constitutes a valid claim.

102. The case was remanded to Superior Court on January 31, 2012. The remanded case was assigned to Commissioner Vatz. On February 23, 2012, Respondent filed another notice of peremptory change of judge. On February 24, Commissioner Vatz denied Respondent's notice of peremptory change of judge and set Respondent's emergency motion to quash the writ of restitution for a hearing on February 29, 2012.

103. On February 28, Respondent filed a motion for change of judge and an affidavit seeking Commissioner Vatz's recusal for cause. Respondent alleged that Commissioner Vatz could not provide a fair and impartial hearing based on his bias, prejudice, or interest. Respondent alleged further that in "a previous hearings" [sic] for FED actions Commissioner Vatz refused to consider evidence that plaintiffs lacked authority or standing, refused to allow into evidence purported proof that banks had "perverse incentives" to foreclose, refused to allow evidence in FED cases that fabricated documents were being recorded and presented in court, and that Commissioner Vatz had already made up his mind in other cases and was unwilling to fairly consider evidence of felony indictments and a large settlement in favor of homeowners negotiated by the attorney general.

104. Respondent's motion for change of judge for cause was referred to Civil Presiding Judge Oberbillig who denied it, stating "Disagreement with the ruling of a judicial officer is no grounds for disqualification."

105. The court conducted oral argument on March 5, 2012, on Respondent's emergency motion to quash the writ of restitution. Respondent notified the court that the Court of Appeals' remand on January 31, 2012, was erroneous because

Respondent had filed a Petition for Review by the Supreme Court that still was pending. On that basis, Commissioner Vatz granted Respondent's motion to quash.

106. At the March 5, 2012, hearing, Respondent behaved unprofessionally. For example, he asked permission to "make a record" on the motion to quash but instead sought to relitigate his motion for change of judge for cause even though Judge Oberbillig already denied it. Respondent asked Commissioner Vatz to explain why he would not recuse, raising the same arguments Judge Oberbillig already rejected. Were this matter to proceed to a contested hearing, Respondent would contend that setting a record regarding his motion for change of judge was appropriate because Judge Oberbillig is not an appellate judge and Respondent was setting a record should he decide to appeal his case on the grounds that Commissioner Vatz should have recused himself.

107. Respondent's tone was disruptive, disrespectful, and confrontational, at one point interrupting opposing counsel, standing, turning, and taking an aggressive half-step in his direction. Commissioner Vatz had to order Respondent to be seated and direct his comments and objections to the court. Were this matter to proceed to a contested hearing, Respondent would contend that owing to his physical stature, the relative positioning of furniture and the podium in the courtroom, and his simple shifting in his chair, it may have appeared that he made an aggressive move toward opposing counsel when, in fact, all he did was try to stand and address the Court.

108. Although Commissioner Vatz felt that he and Respondent's opposing counsel may have had a duty to refer Respondent to the State Bar, he chose to hear from opposing counsel and Respondent first. So, he scheduled a status

hearing for March 19, 2012. On March 19, 2012, Respondent did not appear. Court staff tried to reach him by phone but got only Respondent's voice mail. Opposing counsel confirmed that Commissioner Vatz's perceptions from March 5 were accurate, and Commissioner Vatz referred Respondent to the bar.

109. Later in the day on March 19, 2012, Respondent called the court and claimed that he did not receive the March 5 notice that scheduled the March 19 hearing. The court clerk confirmed that the March 5 minute entry was sent to Respondent electronically on March 9 and by mail on March 12. The mailed copy was not returned to the clerk as of the time that Commissioner Vatz issued his March 19 minute entry; however, both the March 5 and 19 minute entries were later returned to the clerk's office marked "undeliverable" to the intended address.

110. Were this matter to proceed to a contested hearing, Respondent would contend that he did not receive notice of the March 19, 2012 hearing, he was in Sedona at the time, the hearing was conducted *ex parte*, and the entire matter was still pending before the Supreme Court.

111. On April 24, 2012, the Arizona Supreme Court denied Respondent's Petition for Review. On May 15, 2012, the Court of Appeals remanded the matter to the Superior Court. On June 18, 2012, the bank filed a motion for sanctions against Respondent. It alleged that Respondent's behavior unnecessarily increased the bank's legal burden litigating the FED case by:

- a. engaging in threatening behavior (as found by Commissioner Vatz);
- b. asserting frivolous objections in bad faith (such as by claiming that opposing counsel did not really represent the bank and requesting a copy of opposing counsel's fee agreement; and by asserting the "show me the note" theory that Respondent well-knew had been debunked in Arizona, including in at least one case in which he was threatened with sanctions for failing to cite local contrary authority);

c. misstating and mischaracterizing facts (such as by claiming that the trustee's deed was a forgery, and by denying that the Court of Appeals found he waived the argument anyway), and

d. intentionally obstructing the speedy and just resolution of the case (such as by alleging that Deutsche Bank had disavowed all of its fraud; by insinuating that opposing counsel represented an "illegitimate collection agent that is getting 23 percent off the top"; by claiming that the bank engaged in document fabrication; and by suggesting that opposing counsel and his law firm were dishonest).

The claims were supported by references to the record.

112. Respondent did not respond to the motion. On July 23, 2012, Commissioner Vatz granted the bank's motion for sanctions and assessed attorney fees of \$1,000.00. Were this matter to proceed to a contested hearing, Respondent would contend that he called Commissioner Vatz office and attempted to make a telephonic appearance to contest the sanctions, but that he was not allowed to do so and was negotiating in good faith with the real party in interest with the authority and responsibility to settle the claim having reached a preliminary settlement with JP Morgan Chase as servicer for the FDIC.

113. On July 26, 2012, Respondent filed an affidavit in which he accused Commissioner Vatz and all other court commissioners and judges of bias, prejudice, and undisclosed financial interests in FED cases. Respondent's affidavit is a rant and does not rationally explain what the undisclosed financial interests are. Were this matter to proceed to a contested hearing, Respondent would contend that the Court Registry Investment System administered by JP Morgan Chase and Federal Reserve monetizes Court cases, Code of Federal Regulations Collection Agency Designation includes the judiciary, and CCR Registration of the Arizona and Maricopa County Court Administration for Government Service Administration Payments could create the appearance of a conflict of interest.

114. The Court Clerk issued a new Writ of Restitution and Respondent filed another appeal. On August 31, 2012, Respondent filed a "Writ Returned, Refused for Cause, Without Dishonor and Without Recourse", in which he stated:

Defendant, Douglas Rhoads, having become aware of extreme bias and prejudice relating to Comm. Benjamin Vatz and having received a Writ of Restitution from a fictitious plaintiff that is the result of fraud upon the Court and false recording [*sic*]. Defendant has come to an agreement with the real parties in interest to settle the claim and resolve the controversy for \$2,400,000.00 (two million four hundred thousand dollars) relating to claims against 4834 East Crystal Lane, Paradise Valley, AZ 85253.

115. On September 25, 2012, the Court of Appeals returned the case to Superior Court, ruling that the appeal had been abandoned for failure to pay the filing fee.

116. Were this matter to proceed to a contested hearing, Respondent would contend that after the remand, he negotiated a settlement agreement with JP Morgan Chase, NA counsel at Bryan Cave for the subject property, but the settlement was not completed because of the interference of Lender Processing Services and Pite Duncan because they wanted their collection fees from the government.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and is submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 3.1, 3.2, 3.3(d), 3.4(a), 3.4(c), 3.4(e), 3.5(d), 4.4(a), 8.2(a), and 8.4(d); and Rules 41 (c) and (g), Ariz. R. Sup. Ct.

RESTITUTION

Respondent agrees to pay restitution in the following gross amounts:

- a. \$37,126.22 to 2525 S. McClintock, LLC;
- b. \$2,312.00 to Deutsche Bank; and
- c. \$500.00 to Judy Kelley.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: Suspension for six months and one day, restitution of unpaid judgments or other assessments connected with the underlying litigated matters in the gross sum of \$39,938.22, and probation to be imposed upon reinstatement on terms to be determined at Respondent's reinstatement hearing. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the

misconduct, and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard* 3.0.

Duties violated—Respondent conditionally admits that he violated his duties to his clients (ER 1.1) and the legal system (ERs 3.1, 3.2, 3.3(d), 3.4(a), 3.4(c), 3.4(e), 3.5(d), 4.1(b), 4.4(a), 8.2(a), and 8.4(d)).

Mental State—Respondent conditionally admits that he variously acted negligently and knowingly in connection with the foregoing violations.

Actual or Potential Injury—Respondent caused actual harm and potential serious harm to his clients, opposing parties and counsel, and the courts.

The applicable *Standards* include:

ER 1.1

Standard 4.53-Reprimand is generally appropriate when a lawyer:

(a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or

(b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

ERs 3.1, 3.2, 3.4, 4.4, 8.4(d)

Standard 6.22-Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

ERs 3.3, 4.1, 8.2, 8.4(d), Rules 41(c) and (g)

Standard 6.12-Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

The *Standards* do not account for multiple charges of misconduct. The ultimate sanction should at least be consistent with that for the most serious instance of misconduct among a number of violations. *Standards*, "II. Theoretical Framework".

Thus, the presumptive sanction is suspension.

Aggravating and mitigating circumstances

The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

Standard 9.22 - Aggravating factors include:

- (c) a pattern of misconduct;
- (d) multiple offenses;
- (i) substantial experience in the practice of law; and
- (j) indifference to making restitution.

In mitigation:

Standard 9.32 - mitigating factors include:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems (see "Discussion" below);
- (e) full and free disclosure to a disciplinary board or cooperative attitude toward proceedings;
- (k) imposition of other penalties or sanctions; and
- (l) remorse.

Discussion

The main component of Respondent's mitigation is "personal or emotional problems." Those problems are addressed in the reports and communications between Respondent and Dr. Jamie Picus, PsyD, filed under seal but incorporated herein by this reference.

It was evident to bar counsel and to the settlement conference judge during the two settlement conference meetings, and in follow-up conversations, that there was an emotional element to Respondent's behavior. Bar counsel and the settlement judge suggested to Respondent that he consider undergoing a

psychiatric or psychological evaluation to determine if such an evaluation would produce mitigation evidence for him. Respondent met with Dr. Picus for an evaluation, and followed up with her on the telephone and by email, enabling her to express opinions about what drove Respondent's behaviors.

In summary, the sealed materials document that Respondent suffered personal and family traumas dating back to childhood that left him, first with the perception of an unjust world and, more recently, an unjust system with misplaced incentives. Over time, he became personally and emotionally over-invested in justice-related issues, and adopted his clients' struggles and sorrows as his own. Financial stresses brought on by the bursting real estate bubble exacerbated his mental state and left him frustrated, angry, overwhelmed, and disillusioned. With the benefit of hindsight, Respondent recognizes that he was negligent in offending judges in both his oral and written presentations, lost objectivity, and pushed too far-"for that I am sorry."

While the State Bar does not believe that Dr. Picus' records explain everything about Respondent's behavior, they do explain a lot. Respondent's "personal and emotional problems" are entitled to considerable weight as a mitigating factor, without which the bar would not consent to a suspension as short as six months and one day.

Respondent adds to this discussion the following: As a showing that Respondent recognizes his faults he stopped taking new homeowner cases a year ago and is attempting to remediate his conduct. Respondent has already wrapped up all of his existing cases except for two, which are pending modifications and Motions for Reconsideration with the Arizona Court of Appeals. Respondent gave

serious consideration with withdrawing his Motions for Reconsideration, however, his clients insisted the cases be maintained until the modifications are finalized at which time the cases will be dismissed. Respondent believes that in these instances where the homeowners were making modified payments when foreclosed and have been paying monthly to the clerk since, the Motions for Reconsideration are appropriate because after denying Respondent the requested relief in the underlying appeals, the Arizona Court of Appeals published the decision of *Stauffer v. US Bank*, 1 CA-CV-12-0073 issued on August 20, 2013 and Respondent believes that the same issues are applicable.

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Between Respondent's suspension, restitution, the requirement that he demonstrate fitness and rehabilitation as part of his reinstatement, and his consent to have probationary terms attached to his reinstatement (to be determined at his reinstatement hearing), this proposed agreement suffices to meet the objects of lawyer discipline.

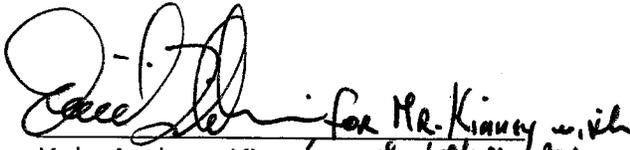
CONCLUSION

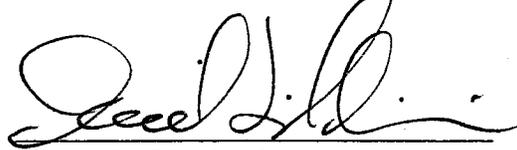
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of suspension for six months and one day, restitution of unpaid judgments or other

assessments connected with the underlying litigated matters in the gross sum of \$39,938.22, probation to be imposed upon reinstatement on terms to be determined at Respondent's reinstatement hearing, and the imposition of costs and expenses of these proceedings. A proposed form of order is attached hereto as Exhibit "B."

DATED this 5th day of November, 2013.

STATE BAR OF ARIZONA


for Mr. Kinney with
the latter's permission
Limited appearance counsel
for Respondent

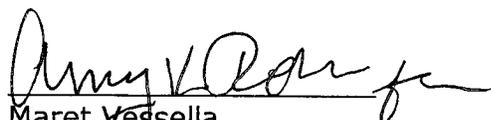

David L. Sandweiss
Senior Bar Counsel

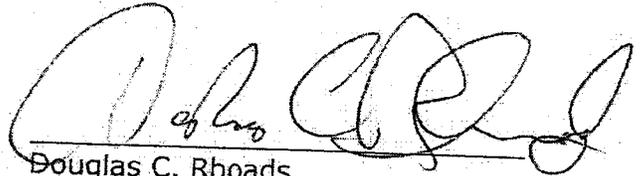
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.

DATED this 5th day of November, 2013.

Douglas C. Rhoads
Respondent

Approved as to form and content


Maret Vessella
Chief Bar Counsel



Douglas C. Rhoads
Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this ____ day of _____, 2013.

Copies of the foregoing mailed/emailed
this ____ day of _____, 2013, to:

Douglas C. Rhoads
Rhoads & Associates PLC
2302 E. Delgado St.
Phoenix, AZ 85022-5838
Email: dougrhoads@cox.net
Respondent

Kyle Andrew Kinney
4110 N. Scottsdale Rd., Ste. 330
Scottsdale, AZ 85251-4423
Email: kyle@kinneylaw.net
Limited appearance counsel for Respondent

Copy of the foregoing emailed
this ____ day of _____, 2013, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 5th day of November, 2013.

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this 5th day of November, 2013, to:

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Phoenix, AZ 85022-5838
Email: dougrhoads@cox.net
Respondent

Kyle Andrew Kinney
4110 N. Scottsdale Rd., Ste. 330
Scottsdale, AZ 85251-4423
Email: kyle@kinneylaw.net
Limited appearance counsel for Respondent

Copy of the foregoing emailed
this 5th day of November, 2013, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy of the foregoing hand-delivered
this 5th day of November, 2013, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

By: [Signature]

DLS:dds

The foregoing instrument is a full, true, and
correct copy of the original on file in this office.
Certified this 21st day of January 2014
By [Signature]
Disciplinary Clerk
Supreme Court of Arizona

EXHIBIT "A"

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Douglas C. Rhoads, Bar No. 015265, Respondent

File Nos. 11-2948, 11-3677, and 12-1379

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

General Administrative Expenses for above-numbered proceedings

\$1,200.00

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Staff Investigator/Miscellaneous Charges

11-2948

12/07/11	AZ Certified Reporter, Lisa Chaney, transcript of proceedings on JP Morgan vs. Rhoads	\$ 31.50
01/19/12	Janet Rice Invoice # 010312, Transcripts of proceedings	\$ 161.00
02/15/13	Computer investigation reports (PACER)	\$ 30.27
02/19/13	Computer investigation reports (PACER)	\$ 46.00
02/20/13	Computer investigation reports (PACER)	\$ 8.50
08/16/13	Travel and mileage to/from settlement conference (1)	\$ 10.01
09/13/13	Travel and mileage to/from settlement conference (2)	\$ 7.01

12-1379

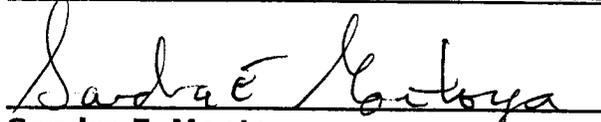
03/22/13	Travel and mileage to pick up CD	\$ 6.78
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Total for staff investigator charges

\$ 301.07

TOTAL COSTS AND EXPENSES INCURRED

\$1,501.07


Sandra E. Montoya
Lawyer Regulation Records Manager

10-21-13
Date

EXHIBIT "B"

**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

**IN THE MATTER OF A MEMBER OF THE
STATE BAR OF ARIZONA,**

**Douglas C. Rhoads,
Bar No. 015265,**

Respondent.

PDJ-2013-9051

FINAL JUDGMENT AND ORDER

State Bar Nos. 11-2948, 11-3677,
and 12-1379

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on _____, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Douglas C. Rhoads**, is hereby suspended from the practice of law in Arizona for six months and one day, for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from this Order or _____, 2013.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation on terms to be determined at his reinstatement hearing.

IT IS FURTHER ORDERED that Respondent shall pay restitution in the following gross amounts:

- a. \$37,126.22 to 2525 S. McClintock, LLC;
- b. \$2,312.00 to Deutsche Bank; and
- c. \$500.00 to Judy Kelley.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

IT IS FURTHER ORDERED that, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$_____.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of \$_____.

DATED this ____ day of _____, 2013.

The Honorable William J. O'Neil
Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this ____ day of _____, 2013.

Copies of the foregoing mailed/emailed
this ____ day of _____, 2013, to:

Douglas C. Rhoads
Rhoads & Associates PLC
2302 East Delgado Street
Phoenix, Arizona 85022-5838
Email: dougrhoads@cox.net
Respondent

Kyle Andrew Kinney
4110 N. Scottsdale Rd., Ste. 330
Scottsdale, Arizona 85251-4423
Email: kyle@kinneylaw.net
Limited appearance counsel for Respondent

Copy of the foregoing hand-delivered/emailed
this _____ day of _____, 2013, to:

David L. Sandweiss
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

By: _____

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

**IN THE MATTER OF A MEMBER OF THE
STATE BAR OF ARIZONA,**

**DOUGLAS C. RHOADS,
Bar No. 015265**

Respondent.

PDJ-2013-9051

FINAL JUDGMENT AND ORDER

State Bar Nos. 11-2948, 11-3677,
and 12-1379

FILED NOVEMBER 6, 2013

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on November 5, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Douglas C. Rhoads**, is hereby suspended from the practice of law in Arizona for six (6) months and one (1) day, for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from this Order.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation on terms to be determined at his reinstatement hearing.

IT IS FURTHER ORDERED that Respondent shall pay restitution in the following gross amounts:

- a. \$37,126.22 to 2525 S. McClintock, LLC;
- b. \$2,312.00 to Deutsche Bank; and

c. \$500.00 to Judy Kelley.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

IT IS FURTHER ORDERED that, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,501.07. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 6 day of November, 2013.

William J. O'Neil

**The Honorable William J. O'Neil
Presiding Disciplinary Judge**

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 6 day of November, 2013.

Copies of the foregoing mailed/emailed
this 6 day of November, 2013, to:

Douglas C. Rhoads
Rhoads & Associates PLC
2302 East Delgado Street
Phoenix, Arizona 85022-5838
Email: dougrhoads@cox.net
Respondent

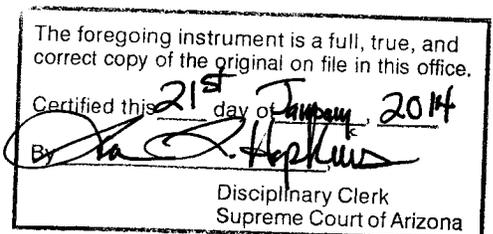
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Limited appearance counsel for Respondent

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Email: lro@staff.azbar.org

Sandra Montoya
Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: MSmith



Ariz. Rules of Prof'l Conduct R. 1.1

ARIZONA COURT RULES ANNOTATED
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*** This document reflects changes received by the publisher through December 17, 2013 ***
*** Annotations are current through October 1, 2013 ***
*** This is a full Rules update with rule amendments and annotations. ***

ARIZONA RULES OF PROFESSIONAL CONDUCT
CLIENT-LAWYER RELATIONSHIP

Ariz. Rules of Prof'l Conduct R. 1.1 (2013)

Review Court Orders which may amend this Rule.

ER 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

HISTORY: Effective December 1, 2003 by R-02-0045.

NOTES:
COMMENT

LEGAL KNOWLEDGE AND SKILL. [1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which lawyer is unfamiliar. A newly-admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impracticable. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be

achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also ER 6.2.

THOROUGHNESS AND PREPARATION. [5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See ER 1.2(c).

MAINTAINING COMPETENCE. [6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

[7] A lawyer, whether appointed or retained, who represents a defendant in a capital case shall comply with the standards for appointment of counsel in capital cases set forth in the Arizona Rules of Criminal Procedure.

LexisNexis 50 State Surveys, Legislation & Regulations

Attorneys Admitted Elsewhere

JUDICIAL DECISIONS

ANALYSIS

- ⚡Attorney-Client Relationship.
- ⚡Competent Representation.
- ⚡Failure to Perform Services.
- ⚡Incompetent Representation.
- ⚡Ineffective Counsel.
- ⚡Standard of Proof.

⚡ATTORNEY-CLIENT RELATIONSHIP.

There was no attorney-client relationship between respondent, in his capacity as director of the Arizona drug control district, and Pima County, his employer. In re Grimble, 157 Ariz. 448, 759 P.2d 594 (1988).

A lawyer is not required to take a client, but once the lawyer does take on the representation of a client, then these rules become a part of the lawyer's contract with his client. In re Hegstrom, 153 Ariz. 286, 736 P.2d 370 (1987).

⚡COMPETENT REPRESENTATION.

Neither failure to achieve a successful result nor mere negligence in the handling of a case will

necessarily constitute a violation of this rule. In re Curtis, 184 Ariz. 256, 908 P.2d 472 (1995).

Neglect in investigating the facts and law necessary to present a client's claim crosses the fine line between simple neglect and conduct warranting discipline. In re Curtis, 184 Ariz. 256, 908 P.2d 472 (1995).

Attorney held to have violated the competence requirement. In re Castro, 164 Ariz. 428, 793 P.2d 1095 (1990).

A lawyer should no more take a case for which he is not competent than a medical doctor should perform surgery for which the doctor is unprepared to perform. In re Cardenas, 164 Ariz. 149, 791 P.2d 1032 (1990).

An attorney must exhibit a minimal standard of competence on behalf of his client. State v. Espinosa-Gamez, 139 Ariz. 415, 678 P.2d 1379 (1984).

✦FAILURE TO PERFORM SERVICES.

Attorney, who abandoned his law practice without informing the client that he was discontinuing representation, left the state without informing client of his whereabouts, and failed to respond, in violation of this rule, ER 1.2, ER 1.3, ER 1.4, ER 1.15, ER 1.16(d), ER 8.1, and Supreme Court Rule 51(h) and (i), exhibited a pattern of misconduct and bad faith obstruction of the disciplinary proceeding warranting disbarment. In re Peartree, 180 Ariz. 518, 885 P.2d 1083 (1994).

Where attorney accepted representation, took initial action, then ignored the client until forced to address the matter again, the attorney's conduct exhibited lack of competence, lack of diligence, failure to adequately communicate with clients, failure to safekeep a client's property, failure to properly terminate representation of a client, and failure to respond to inquiries from the state bar. In re Evans, 175 Ariz. 404, 857 P.2d 1258 (1993).

Disbarment was appropriate for a lawyer who knowingly failed to perform services for client and engaged in a pattern of neglect with respect to client matters, and caused serious or potentially serious injury to clients. In re Feeley, 176 Ariz. 196, 859 P.2d 1329 (1993).

Where, as a result of attorney's inaction, the client was subjected to substantial interest and penalties by federal and state taxing authorities, the attorney had handled a matter without adequate preparation and neglected client's legal matter. In re Douglas, 158 Ariz. 516, 764 P.2d 1 (1988).

✦INCOMPETENT REPRESENTATION.

Attorney who pursued an unsupported civil RICO lawsuit assigned to her by her boss violated this standard. The attorney had no litigation experience and no familiarity with RICO, and did not take steps to acquire the needed knowledge and skill necessary for the representation. In re Alexander, -- Ariz. --, 659 Ariz. Adv. Rep. 19, 300 P.3d 536, 2013 Ariz. LEXIS 127 (2013).

Censure and two years of probation was proper where attorney miscalculated the dates that notices of appeal were due to be filed, which resulted in the dismissal of two appeals, and where checks from the attorney's trust account were rejected by the bank for insufficient funds, the attorney's client trust account records were in error, and the attorney did not perform monthly reconciliations of the trust account after the attorney thought the errors in the trust account were corrected. In re Dalke, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 203 (Oct. 24, 2002).

Where attorney decided, despite his lack of a thorough understanding of the bankruptcy repercussions of his actions, to advise his client to take over a business that was subject to the jurisdiction of the bankruptcy court, the attorney failed to have the requisite competence to represent his client in such a takeover. *Little Pat, Inc. v. Conter (In re Soll)*, 181 Bankr. 433 (Bankr. D. Ariz. 1995).

Where attorney represented client in personal injury action despite no prior experience in civil matters, and made no effort to become competent, made no effort to educate himself as to the matter, nor did he consult with a lawyer of established competence, he was incompetent to take the case and remained incompetent in violation of this rule. *In re Cardenas*, 164 Ariz. 149, 791 P.2d 1032 (1990).

After reviewing the circumstances surrounding the representation defendant received, the supreme court concluded that it fell below the required standard and that there was a reasonable probability that defendant's trial would have had a different result if the defendant had been given a competent defense. *State v. Tapia*, 151 Ariz. 62, 725 P.2d 1096 (1986).

INEFFECTIVE COUNSEL.

Attorney was disbarred for numerous violations including failure to pay another attorney his share of the fees, delaying a case, overdrawing the trust account on multiple occasions, settling a case for thousands of dollars less than the client authorized, and failing to cooperate with the state bar during its investigation. *In re Edson*, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 68 (May 2, 2001).

Where attorney's client faced a mandatory prison sentence ranging from 12 to 22 years, not reading the grand jury transcript, not examining physical evidence, and not discussing the possibility of lesser included offenses could not be reconciled with any sensible defense strategy, and the attorney's preparation was clearly deficient. *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993).

Actions warranted six month suspension of practice, enrollment in law office management assistance program and restitution to client, where attorney failed to provide competent representation in violation of this rule. *In re Carrasco*, 176 Ariz. 459, 862 P.2d 219 (1993).

Attorney was censured, where attorney's defense of a client against child molestation charges was so ineffective, that a different result may well have been achieved if the client had not been represented by ineffective counsel. *In re Offenhartz*, 173 Ariz. 382, 843 P.2d 1274 (1992).

Where defendant objected to his appointed attorney because he was from county defender's office, and a previous attorney he had from that office was found incompetent, there was an insufficient basis for a finding of ineffective representation. *State v. Harrison*, 165 Ariz. 557, 799 P.2d 898 (Ct. App. 1990).

Defendant's argument that because his Colorado counsel was not a member of the Arizona bar his representation was per se ineffective was without merit; it was inconsistent with the constitutional test of ineffective assistance of counsel, requiring a showing of deviation from professional norms and prejudice. *State v. Jorbin*, 151 Ariz. 496, 728 P.2d 1246 (Ct. App. 1986).

It is not ineffective assistance of counsel for an attorney to decide not to bring a motion to challenge an identification, when he decides that trial strategy dictates a rigorous cross-examination of the witness in an attempt to discredit his story, rather than attempting to suppress his testimony altogether. *State v. Roberts*, 144 Ariz. 572, 698 P.2d 1291 (Ct. App. 1985).

Actions which appear to be a choice of trial tactics will not support an allegation of ineffective assistance of counsel. *State v. Espinosa-Gamez*, 139 Ariz. 415, 678 P.2d 1379 (1984).

In prosecution for theft and aggravated assault, appellate court determined that the defendant's trial counsel's failure to adequately prepare an insanity defense and request a Dessureault hearing amounted to ineffective assistance of counsel. *State v. Edwards*, 139 Ariz. 217, 677 P.2d 1325 (Ct. App. 1983).

STANDARD OF PROOF.

Clear and convincing evidence established respondent's violations of this section. In re *Brady*, 186 Ariz. 370, 923 P.2d 836 (1996).

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Ariz. Rules of Prof'l Conduct R. 3.1

ARIZONA COURT RULES ANNOTATED
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*** This document reflects changes received by the publisher through December 17, 2013 ***
*** Annotations are current through October 1, 2013 ***
*** This is a full Rules update with rule amendments and annotations. ***

ARIZONA RULES OF PROFESSIONAL CONDUCT
ADVOCATE

Ariz. Rules of Prof'l Conduct R. 3.1 (2013)

Review Court Orders which may amend this Rule.

ER 3.1. Meritorious claims and contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous, which may include a good faith and nonfrivolous argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

HISTORY: Effective December 1, 2003 by R-02-0045.

NOTES:
COMMENT

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and is never static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith and nonfrivolous arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is not in good faith, however, if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person, and is frivolous if the lawyer is unable either to make a nonfrivolous argument on the merits of the action taken or a good faith and nonfrivolous argument for an extension, modification or reversal of existing law.

[3] Although this Rule does not preclude a lawyer for a defendant in a criminal matter from defending the proceeding so as to require that every element of the case be established, the defense attorney must not file frivolous motions.

[4] The lawyer's obligations under this Rule are subordinate to federal or state constitutional

law that entitles a defendant in a criminal matter to the assistance of counsel in presenting an appeal that otherwise would be prohibited by this Rule.

LexisNexis 50 State Surveys, Legislation & Regulations

Attorneys Admitted Elsewhere

JUDICIAL DECISIONS

ANALYSIS

⚡In General.

⚡Frivolous Claims.

⚡Good Faith.

⚡Improper Motive.

⚡Proper Motive.

⚡IN GENERAL.

Attorney who represented client in a post-dissolution domestic relations action was censured where relying solely on information provided by client, he filed a pleading alleging that the judge, guardian ad litem and previous trial attorney had been paid off by opposing counsel allowing them to satisfy their mortgages; he later found out that the mortgage payoffs of the judge in the case, as well as in his client's former trial attorney, resulted from ordinary and proper refinance arrangements. In re Coker, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 33 (Mar. 5, 2002).

The attorney has a specific duty to avoid claims for which there is no justification. Johnson v. Brimlow, 164 Ariz. 218, 791 P.2d 1101 (Ct. App. 1990).

⚡FRIVOLOUS CLAIMS.

Attorney who was assigned by her boss to a pending RICO civil lawsuit violated this provision where she was told the suit would be unsuccessful, she failed to do adequate research to determine the merit of the claims and she opposed dismissal of the lawsuit even though she was aware it was frivolous. In re Alexander, -- Ariz. --, 659 Ariz. Adv. Rep. 19, 300 P.3d 536, 2013 Ariz. LEXIS 127 (2013).

The common theme in both procedural and ethical rules is the examination of whether a claim is frivolous by considering both the objective legal reasonableness of the theory and the subjective motive of the proponent of the claim. In re Levine, 174 Ariz. 146, 847 P.2d 1093 (1993).

Attorney's actions in delaying dismissal of suit for months after he had acknowledged he had no claim against defendant violated this rule and ER 4.4. In re Levine, 174 Ariz. 146, 847 P.2d 1093 (1993).

Sanctions against attorney were appropriate where the appealing was frivolous for its failure to raise any reasonable issue regarding a meritorious claim. Johnson v. Brimlow, 164 Ariz. 218,

791 P.2d 1101 (Ct. App. 1990).

Where the attorney raised a doubtful \$20 claim to \$75 and had requested punitive damages in order to bring the claim in superior court and to intimidate and harass the "client" from whom he sought payment, the attorney had violated this rule. In re Wetzell, 143 Ariz. 35, 691 P.2d 1063 (1984), cert. denied, 469 U.S. 1213, 105 S. Ct. 1184, 84 L. Ed. 2d 331 (1985).

GOOD FAITH.

Prosecutor, who made assertions regarding the professionalism and honesty of mental health professionals testifying as to the competence of a criminal defendant, did so without a good faith basis in law or in fact for the assertions, contrary to Ariz. R. Prof. Conduct 3.1. In re Zawada, 208 Ariz. 232, 430 Ariz. Adv. Rep. 24, 92 P.3d 862, 2004 Ariz. LEXIS 76 (2004).

Although the objective reasonableness of a legal claim is the standard to determine whether it is frivolous under this rule, the rule also requires a subjective good faith motive by the client and a subjective good faith argument by the lawyer. In re Levine, 174 Ariz. 146, 847 P.2d 1093 (1993).

The "good faith argument" has come to mean an argument that responsible lawyers would regard as being seriously arguable. In re Levine, 174 Ariz. 146, 847 P.2d 1093 (1993).

IMPROPER MOTIVE.

Supreme court dismissed suit by insurer against an attorney for intentional interference with contract, rejecting insurer's argument that suit was the only remedy against the attorney; the supreme court found that lawyers who engage in deceit face severe consequences under this rule and related rules, which provides ample deterrence. Safeway Ins. Co. v. Guerrero, 210 Ariz. 5, 446 Ariz. Adv. Rep. 51, 106 P.3d 1020, 2005 Ariz. LEXIS 19 (2005).

If an improper motive or a bad faith argument exists, an attorney will not escape ethical responsibility for bringing a legal claim that may otherwise meet the objective test of a nonfrivolous claim. In re Levine, 174 Ariz. 146, 847 P.2d 1093 (1993).

Habitual filing of actions against adjudicatory officers, witnesses and opposing counsel is both vexatious and harassing; it is a tactic calculated to intimidate. In re Ronwin, 139 Ariz. 576, 680 P.2d 107 (1983).

PROPER MOTIVE.

Where the evidence showed that attorney acted to an advantage for his client and where he was not motivated to merely harass or injure, this rule did not apply. In re Bowen, 160 Ariz. 558, 774 P.2d 1348 (1989).

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Ariz. Rules of Prof'l Conduct R. 3.2

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ARIZONA RULES OF PROFESSIONAL CONDUCT
ADVOCATE

Ariz. Rules of Prof'l Conduct R. 3.2 (2013)

Review Court Orders which may amend this Rule.

ER 3.2. Expediting litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

NOTES:
COMMENT

[1] Dilatory practices bring the administration of justice into disrepute. Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

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Attorneys Admitted Elsewhere

JUDICIAL DECISIONS

ANALYSIS

⚡Attorney Discipline.

⚡Client's Interests.

⚡Expediting Litigation.

⚡ATTORNEY DISCIPLINE.

Attorney was censured and placed on probation for two years where, inter alia, he did not fully cooperate with opposing counsel pursuant to a court order which resulted in taxable costs in the

amount of \$6,445 being assessed against his clients and in another case he had failed to file an answer to a motion for default on behalf of his client as he claimed he did not know one was due. In re Mettler, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 93 (June 14, 2002).

✦CLIENT'S INTERESTS.

A client's interest does not end with the entry of a judgment but ends with the completion of the legal action. The legal action was complete when the satisfaction of judgment was filed; therefore attorney violated this rule's requirement that a lawyer "make reasonable efforts to expedite litigation consistent with the interests of the client." In re Shannon, 179 Ariz. 52, 876 P.2d 548 (1994).

✦EXPEDITING LITIGATION.

Attorney censured for failure to act with diligence, failure to expedite litigation, and failure to maintain adequate communication. In re Gawlowski, 177 Ariz. 311, 868 P.2d 324 (1994).

Seven month suspension was appropriate where attorney failed to act with diligence and promptness in representing his client, and failed to make reasonable efforts to expedite litigation consistent with the interests of his client, in violation of this rule and where attorney violated rule 3.4 when he knowingly disobeyed several court orders, given attorney's previous sanctions. In re Miranda, 176 Ariz. 202, 859 P.2d 1335 (1993).

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Ariz. Rules of Prof'l Conduct R. 3.3

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ARIZONA RULES OF PROFESSIONAL CONDUCT
ADVOCATE

Ariz. Rules of Prof'l Conduct R. 3.3 (2013)

Review Court Orders which may amend this Rule.

ER 3.3. Candor toward the tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by ER 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

NOTES:

COMMENT

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See ER 1.0(m) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is

testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause; the lawyer must not mislead the tribunal by false statements of law or fact or evidence that the lawyer knows to be false.

REPRESENTATION BY A LAWYER. [3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare ER 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in ER 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with ER 1.2(d), see Comment [10] to that Rule. See ER 8.4(b), Comment [2].

LEGAL ARGUMENT. [4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

OFFERING EVIDENCE. [5] Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. Counsel first must attempt to persuade the accused to testify truthfully or not at all. If the client persists, counsel must proceed in a manner consistent with the accused's constitutional rights. See *State v. Jefferson*, 126 Ariz. 341, 615 P.2d 638 (1980); *Lowery v. Cardwell*, 575 F.2d 727 (9th Cir. 1978). The obligation of the advocate under the Rules of Professional Conduct is subordinate to such constitutional requirements. See also Comment [9].

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be

inferred from the circumstances. See ER 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

REMEDIAL MEASURES. [10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client or another witness called by the lawyer offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by ER 1.6. It is for the tribunal then to determine what should be done - making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See ER 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus, the client could in effect coerce the lawyer into being a party to fraud on the court.

PRESERVING INTEGRITY OF ADJUDICATIVE PROCESS. [12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

DURATION OF OBLIGATION. [13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

EX PARTE PROCEEDINGS. [14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the

conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

WITHDRAWAL. [15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by ER 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see ER 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by ER 1.6.

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Attorneys Admitted Elsewhere

JUDICIAL DECISIONS

ANALYSIS

- ⚡In General.
- ⚡Censure.
- ⚡Deception of Court.
- ⚡False Evidence.
- ⚡False Information.
- ⚡Knowing Misconduct.
- ⚡Notice to Attorney.
- ⚡Standard of Proof.
- ⚡Withholding Information.

⚡IN GENERAL.

The duty of candor on the part of an attorney does not directly affect the task of arguing issues on appeal, as long as the attorney does not misstate the facts or the law. *Denise H. v. Arizona Dep't of Economic Sec.*, 193 Ariz. 257, 972 P.2d 241 (Ct. App. 1998).

Counsel does not violate any ethical norm by urging a defense as long as he or she relies on the sound, non-perjurious evidence introduced at trial and does not rely on the perjurious

testimony. *State v. Lee*, 142 Ariz. 210, 689 P.2d 153 (1984).

✦CENSURE.

Attorneys who violated their duties of candor and truthfulness in the course of settlement proceedings were censured rather than suspended. *In re Fee*, 182 Ariz. 597, 898 P.2d 975 (1995).

✦DECEPTION OF COURT.

Simply filing a non-opposition notice was insufficient to discharge an attorney's duty of candor. The opposing party had raised a claim contradicting an avowal of service, and the duty of candor to a tribunal required counsel to fully disclose her knowledge about whether the application for default judgment avowed to have been mailed on a certain date actually was delayed. *Champlin v. Bank of Am., N.A.*, 231 Ariz. 265, 653 Ariz. Adv. Rep. 23, 293 P.3d 541, 2013 Ariz. App. LEXIS 18 (Ct. App. 2013).

Attorneys, who entered a collusive agreement with opposing counsel to dismiss an action after the plaintiff's case in chief, were suspended from practice for six months. The agreement had to be disclosed to judge and all litigants in the case, and the attorneys violated Ariz. R. Prof. Conduct 3.3(a)(1), 8.4(c), and (d). *In re Alcorn*, 202 Ariz. 62, 378 Ariz. Adv. Rep. 101, 41 P.3d 600, 2002 Ariz. LEXIS 43 (2002).

Court did not abuse its discretion by imposing sanctions against attorneys for plaintiffs and a defendant in a malpractice action who conducted what the trial court characterized as a "sham" trial, and executed an agreement kept secret from the court. *Hmielewski v. Maricopa County*, 192 Ariz. 1, 960 P.2d 47 (Ct. App. 1997).

Attorney's felony conviction for perjury was conclusive evidence of his guilt for the purposes of discipline proceeding warranting disbarment. *In re Savoy*, 181 Ariz. 368, 891 P.2d 236 (1995).

Attorney violated this rule where attorney used his own revision of client's draft answers to interrogatories, intending that the court consider his revised answers as representing client's position on the issues raised in the interrogatories, despite knowing that client had not seen the revised answers to the interrogatories, some of which were directly contrary to client's draft answers. Attorney submitted these interrogatories even after learning that client was claiming that attorney had changed the answers to the interrogatories without knowledge or consent. *In re Shannon*, 179 Ariz. 52, 876 P.2d 548 (1994).

Three-year suspension of attorney was appropriate and proportional, where attorney, in an attempt to deceive the court and cause hardship to his tenant, altered an installment promissory note falsely responded to inquiries from the state bar. *In re Rosenzweig*, 172 Ariz. 511, 838 P.2d 1272 (1992).

Failure to disclose plea agreement to judge was deceitful and wrong. *State v. Draper*, 158 Ariz. 315, 762 P.2d 602 (Ct. App. 1988), modified on other grounds, 162 Ariz. 433, 784 P.2d 259 (1989).

✦FALSE EVIDENCE.

In succumbing to his client's demand that he call witnesses whose veracity and credibility counsel strongly doubted, counsel did not fulfill his duty to make tactical, strategic decisions; therefore, he fell below minimal standards and failed to provide effective assistance. *State v. Lee*, 142 Ariz. 210, 689 P.2d 153 (1984).

FALSE INFORMATION.

Attorney disregarded the duties owed to a client by signing the client's name to a verification and making false statements to the court about the personal injury case. *In re Moak*, 205 Ariz. 351, 416 Ariz. Adv. Rep. 19, 71 P.3d 343, 2003 Ariz. LEXIS 81 (2003).

An attorney, in a response to the state bar, made false statements of material fact, by stating that client had signed documents when in fact attorney had signed the document for her client and then notarized it. *In re Miranda*, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 91 (June 10, 2002).

Attorney was disbarred and ordered to pay costs of the disciplinary hearing where attorney failed to adequately represent his clients, failed to notify parties of his suspension, caused considerable delays in proceedings of his clients due to his lack of diligence, made false statements of material fact to the court, committed a criminal act by his use of methamphetamine, and failed to cooperate with the State Bar in the investigation of the matter. *In re Bradshaw*, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 17 (Mar. 15, 2000).

By virtue of his conviction of perjury, attorney violated paragraph (a)(1) by making a false statement of material fact to a tribunal; violated ER 8.4(b) by committing a criminal act that reflects adversely on his honesty, trustworthiness, and/or fitness as a lawyer; violated ER 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and violated ER 8.4(d) by engaging in conduct prejudicial to the administration of justice. Additionally, his conviction of a felony violated Supreme Court Rule 51(a). *In re Savoy*, 181 Ariz. 368, 891 P.2d 236 (1995).

Attorney who sought permission of the Superior Court of Maricopa County to appear pro hac vice and submitted an affidavit that he was an active member of the Utah and California bar associations, but was at that time suspended from both of those bar associations, warranted censure. *In re Olsen*, 180 Ariz. 5, 881 P.2d 337 (1994).

By indicating to both the judge and the defense attorney that the victim witness had not appeared for the trial, attorney violated this rule and ER 4.1(a), which provides that a lawyer shall not knowingly make a false statement of material fact or law to a tribunal or third person; engaging in conduct that involves dishonesty, deceit, or misrepresentation and that is prejudicial to the administration of justice violates ER 8.4. *In re Hansen*, 179 Ariz. 229, 877 P.2d 802 (1994).

Lawyer's conduct violated this rule when he knowingly submitted false information to the State Optometry Board, and because his conduct involved dishonesty and deceit, it also violated ER 8.4(c). *In re Tatham*, 171 Ariz. 169, 830 P.2d 1215 (1992).

KNOWING MISCONDUCT.

Supreme court dismissed suit by insurer against an attorney for intentional interference with contract, rejecting insurer's argument that suit was the only remedy against the attorney; the supreme court found that lawyers who engage in deceit face severe consequences under Ariz. R. Civ. P. 11 and this rule. *Safeway Ins. Co. v. Guerrero*, 210 Ariz. 5, 446 Ariz. Adv. Rep. 51, 106 P.3d 1020, 2005 Ariz. LEXIS 19 (2005).

A mere showing that the attorney reasonably should have known her conduct was in violation of this rule was insufficient to show that she actually had violated it, since this rule requires knowing misconduct. *In re Tocco*, 194 Ariz. 453, 984 P.2d 539 (1999).

NOTICE TO ATTORNEY.

The disciplinary commission erred in failing to provide advance notice to the attorney of the infraction she was ultimately found to have committed. In re Tocco, 194 Ariz. 453, 984 P.2d 539 (1999).

STANDARD OF PROOF.

Clear and convincing evidence established respondent's violations of this section. In re Brady, 186 Ariz. 370, 923 P.2d 836 (1996).

WITHHOLDING INFORMATION.

Attorney was suspended for 6 months and placed on probation for 2 years where the attorney refused to reveal the whereabouts of client who was under a court order to appear and surrender his passport. In re Sivic, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 83 (May 31, 2001).

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ARIZONA RULES OF PROFESSIONAL CONDUCT
ADVOCATE

Ariz. Rules of Prof'l Conduct R. Attorney was suspended fo (2013)

Review Court Orders which may amend this Rule.

ER 3.4. Fairness to opposing party and counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by opposing party;

(e) in trial allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

HISTORY: Effective December 1, 2003 by R-02-0045.

NOTES:
COMMENT

[1] The procedure of the adversary system contemplates that the evidence in a case is to be

marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

[3] With regard to paragraph (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

[4] Paragraph (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also ER 4.2.

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Attorneys Admitted Elsewhere

JUDICIAL DECISIONS

ANALYSIS

⚡Assertion Unsupported by Admissible Evidence.

⚡Assertions of Personal Knowledge.

⚡Compliance with Discovery Request.

⚡Concealment of Documents.

⚡Disobedience.

⚡Fairness to Opposing Party.

⚡Notification of Counsel.

⚡Violation of Court Order.

⚡Violation Not Proven.

⚡ASSERTION UNSUPPORTED BY ADMISSIBLE EVIDENCE.

Prosecutor's conduct violated Ariz. R. Prof. Conduct 3.4(e), prohibiting trial tactics unsupported by admissible evidence, where he made assertions regarding the mendacity of mental health professionals in general. In re Zawada, 208 Ariz. 232, 430 Ariz. Adv. Rep. 24, 92 P.3d 862, 2004 Ariz. LEXIS 76 (2004).

✦ ASSERTIONS OF PERSONAL KNOWLEDGE.

A lawyer is prohibited, both by judicial precedent and by the canons of ethics, from asserting his personal knowledge of the facts in issue before a tribunal, unless he is testifying as a witness. State v. Salcido, 140 Ariz. 342, 681 P.2d 925 (Ct. App. 1984).

Although attorneys are given wide latitude in their arguments to the jury, an attorney may not refer to evidence which is not in the record, nor may he "testify" as to matters not in evidence. State v. Salcido, 140 Ariz. 342, 681 P.2d 925 (Ct. App. 1984).

In criminal cases, a prosecutor has a special obligation to avoid improper suggestions, insinuations, and especially assertions of personal knowledge. State v. Salcido, 140 Ariz. 342, 681 P.2d 925 (Ct. App. 1984).

✦ COMPLIANCE WITH DISCOVERY REQUEST.

Where attorney, who had been previously informally reprimanded, failed to respond to discovery requests, failed to notify his client of vital information regarding her case, entered into a stipulation without clients' consent, and failed to cooperate with arbitrator, he was suspended for 90 days, assigned to practice under a monitor, required to complete additional continuing legal education classes, and to pay costs to the state bar. In re Ziman, 174 Ariz. 61, 847 P.2d 106 (1993).

A statutory suspension followed by a two-year period of probation was warranted, where attorney failed to adequately communicate with his clients or keep them informed of the developments in their case, failed to comply with discovery which necessitated a motion to compel, and in addition he failed to timely respond to the state bar complaint and as a result he had to be subpoenaed for a deposition. In re Cassalia, 173 Ariz. 372, 843 P.2d 654 (1992).

✦ CONCEALMENT OF DOCUMENTS.

Attorney was censured where the attorney negligently misrepresented to an expert that portions of his file were non-discoverable and negligently advised the expert to remove documents from his file, thereby resulting in concealing documents from the opposing party. In re Hoyt, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 51 (Apr. 6, 2001).

✦ DISOBEDIENCE.

Attorney, who had been suspended for six months for failing to comply with mandatory continuing legal education requirements, was suspended for another year for practicing while suspended and ordered to undergo an independent medical evaluation, because she presented bar counsel with a dead rat during her deposition to demonstrate that she "smelled a rat" in connection with her suspension for failing to comply with mandatory continuing legal education requirements. In re Axford, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 189 (Oct. 31, 2002), cert. denied, 538 U.S. 1057, 123 S. Ct. 2219, 155 L. Ed. 2d 1106 (2003).

✦ FAIRNESS TO OPPOSING PARTY.

Where the prosecutor's remarks indicated to the jury that defendant had sought a plea bargain from the state, which the state refused, those remarks might be grounds for discipline against the prosecutor. *State v. Valdez*, 160 Ariz. 9, 770 P.2d 313 (1989).

For ethical, as well as, legal reasons, an attorney should not imply to the jury that opposing counsel may not believe in the defense presented. *State v. Hallman*, 137 Ariz. 31, 668 P.2d 874 (1983).

✦NOTIFICATION OF COUNSEL.

Censure and restitution ordered where attorney failed to notify court and opposing counsel that his client had filed a bankruptcy petition causing them to spend unnecessary time on litigation that had been stayed and where attorney failed to pay the sanctions ordered by the court for his behavior. *In re Manning*, 177 Ariz. 496, 869 P.2d 172 (1994).

✦VIOLATION OF COURT ORDER.

Attorney was given a six month and one day suspension, and ordered to pay the costs of disciplinary proceedings for knowingly failing to comply with the rules of the tribunal, failing to carry out court ordered duties as an arbitrator, knowingly failing to appear as ordered at a hearing, and failing to comply with requests for information from the State Bar. *In re Merchant*, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2000 Ariz. LEXIS 87 (August 25, 2000).

Seven-month suspension was appropriate where attorney failed to act with diligence and promptness in representing his client, and failed to make reasonable efforts to expedite litigation consistent with the interests of his client, and where attorney violated this rule when he knowingly disobeyed several court orders, given attorney's previous sanctions. *In re Miranda*, 176 Ariz. 202, 859 P.2d 1335 (1993).

When a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding, suspension is the appropriate disciplinary action. *In re Ames*, 171 Ariz. 125, 829 P.2d 315 (1992).

When a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding, censure is the appropriate disciplinary action. *In re Ames*, 171 Ariz. 125, 829 P.2d 315 (1992).

Censure with two years probation was the appropriate sanction where a lawyer's failure to comply with discovery requests and orders caused harm to plaintiffs due to a delay in the resolution of their claims; the lawyer, an officer of the court, had an obligation to comply with discovery orders, showed disrespect for the system, and wasted judicial time by requiring rulings on discovery matters. *In re Gabriel*, 172 Ariz. 347, 837 P.2d 149 (1992).

✦VIOLATION NOT PROVEN.

Attorney who was assigned to serve as lead counsel in a civil RICO lawsuit did not violate (c) of this rule because, although she might have been negligent by maintaining the RICO lawsuit in ignorance of Ariz. Sup. Ct. R. 48(*l*), no evidence established that she actually knew of her violation. *In re Alexander*, -- Ariz. --, 659 Ariz. Adv. Rep. 19, 300 P.3d 536, 2013 Ariz. LEXIS 127 (2013).

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Ariz. Rules of Prof'l Conduct R. 3.5

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ARIZONA RULES OF PROFESSIONAL CONDUCT
ADVOCATE

Ariz. Rules of Prof'l Conduct R. 3.5 (2013)

Review Court Orders which may amend this Rule.

ER 3.5. Impartiality and decorum of the tribunal

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official of a tribunal by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment; or

(d) engage in conduct likely to disrupt a tribunal.

HISTORY: Effective December 1, 2003 by R-02-0045.

NOTES:
COMMENT

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the ABA Model Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

[2] During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, court-appointed arbitrators, masters or jurors, unless authorized to do so by law or court order. Lawyers should refer to the Code of Judicial Conduct, Canon 3B(7) for authorized ex parte communications.

[3] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer

may not engage in improper conduct during the communication.

[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See ER 1.0(m).

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Attorneys Admitted Elsewhere

JUDICIAL DECISIONS

ANALYSIS

✚Ex Parte Communication.

✚Prohibited Remarks.

✚EX PARTE COMMUNICATION.

Ex parte communications between the chief legal counsel for the Department of Water Resources and the judge in a proceeding for the adjudication of water rights came within the ambit of those authorized by § 45-256 and were thus permissible under paragraph (b). *San Carlos Apache Tribe v. Bolton*, 194 Ariz. 68, 977 P.2d 790 (1999).

Where improper ex parte conference took place between judge and plaintiff, without objection by defense counsel, where the essential fairness of the entire proceeding was not left in question and no appreciable doubt was cast upon the integrity of the judicial process, judgment for plaintiff would be upheld. *McElhanon v. Ong Hing*, 151 Ariz. 403, 728 P.2d 273 (1986), cert. denied, 481 U.S. 1030, 107 S. Ct. 1956, 95 L. Ed. 2d 529 (1987).

The reluctance of an attorney to refuse to confer in an ex parte conference when "requested" to do so by the trial judge would not be condoned on appeal. *McElhanon v. Ong Hing*, 151 Ariz. 403, 728 P.2d 273 (1986), cert. denied, 481 U.S. 1030, 107 S. Ct. 1956, 95 L. Ed. 2d 529 (1987).

Evidence held sufficient to support attorney's guilt as to improper ex parte communication with a judge. *In re Riley*, 142 Ariz. 604, 691 P.2d 695 (1984).

✚PROHIBITED REMARKS.

Where the prosecutor's remarks indicated to the jury that defendant had sought a plea bargain from the state, which the state refused, those remarks might be grounds for discipline against the prosecutor. *State v. Valdez*, 160 Ariz. 9, 770 P.2d 313 (1989).

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Arizona Revised Statutes Annotated

Rules of the Supreme Court of Arizona (Refs & Annos)

V. Regulation of the Practice of Law

D. Lawyer Obligations

Rule 42. Arizona Rules of Professional Conduct

Transactions with Persons Other than Clients

17A A.R.S. Sup.Ct.Rules, **Rule 42, Rules** of Prof.Conduct, ER 4.1

ER 4.1. Truthfulness in Statements to Others

Currentness

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by ER 1.6.

Credits

Amended June 9, 2003, effective Dec. 1, 2003.

Editors' Notes

COMMENT [2003 AMENDMENT]

Misrepresentation

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see ER 8.4.

Statements of Fact

[2] This **Rule** refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or Fraud by Client

[3] Under ER 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in ER 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by ER 1.6. If disclosure is permitted by ER 1.6, then such disclosure is required under this **Rule**, but only to the extent necessary to avoid assisting a client crime or fraud.

LAW REVIEW AND JOURNAL COMMENTARIES

Reflections on professionalism, quality of life, and the disclosure **rule**: A response to Richard Plattner's petition to modify Ethical **Rules** 3.0, 3.3(a)(2), **4.1**, and 1.6. Elliot Talenfeld, 26 Ariz.St.L.J. 797 (1994).

Threatening a **disciplinary** complaint. David D. Dodge. 46-NOV Ariz.Att'y 10.

NOTES OF DECISIONS

Criminal or fraudulent conduct

Any conduct engaged in by attorney which she "should have known" was unethical could not violate attorney ethical **rules** prohibiting attorney from counseling or assisting client in behavior known by her to be criminal or fraudulent, or ethical **rules** prohibiting knowing participation in certain other conduct. In re Tocco (1999) 194 Ariz. 453, 984 P.2d 539. Attorney And Client ¶ 37.1

Concealment

Attorney charged with violation of provision of Supreme Court **Rule** prohibiting concealment of that which an attorney was required by law to reveal to a client was notified by such charge that he might also be found guilty of having violated provision of the same **rule** prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation, and therefore finding that conduct for which attorney was charged violated the latter provision did not violate attorney's due process rights. Matter of Swartz (1981) 129 Ariz. 288, 630 P.2d 1020. Constitutional Law ¶ 4273(3)

False statements

Any error by the **Disciplinary** Hearing Panel with regard to how client, who retained attorney to represent her before the state Board of Behavioral Health Examiners regarding a complaint against her professional counseling license, learned of a hearing, and whether or not the client signed a fee agreement, was immaterial to the violations of the **Rules** of Professional Conduct alleged against attorney, and therefore, was harmless. In re Isler (2014) 233 Ariz. 534, 315 P.3d 711. Attorney and Client ¶ 57

Attorney's conduct in failing to submit a written acceptance on behalf of client to the Board of Behavioral Health Examiners to proceed by formal interview rather than a formal hearing with regard a complaint against client's professional counseling license, and then, after falsely telling the Board he had been retained only the week before, moving to continue the hearing, stating that he had a prior commitment, and then leaving the hearing, forcing his client to represent herself, constituted a violation of the **Rules** of Professional Conduct that governed competence, scope of representation and allocation of authority between client and lawyer, diligence, truthfulness in statements to others, and misconduct. In re Isler (2014) 233 Ariz. 534, 315 P.3d 711. Attorney and Client ¶ 42; Attorney and Client ¶ 44(1)

In attorney **disciplinary** proceedings against prosecutor, hearing officer's findings that prosecutor intentionally presented false testimony of detective in capital murder trials was not clearly erroneous, and supported finding that prosecutor intentionally

violated rule requiring candor toward the tribunal, made false statement of material fact or law, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, and engaged in conduct prejudicial to the administration of justice. In re Peasley (2004) 208 Ariz. 27, 90 P.3d 764, certiorari denied 125 S.Ct. 322, 543 U.S. 928, 160 L.Ed.2d 227. Attorney And Client ¶ 42

Attorney's assertion before hearing committee in disciplinary proceeding that she had performed research and found legal authority for her position on issues forming basis of charges against her could not serve as basis for additional disciplinary charges, where state bar did not amend its complaint and attorney was not informed of Disciplinary Committee's concerns with her assertions. In re Tocco (1999) 194 Ariz. 453, 984 P.2d 539. Attorney And Client ¶ 52

17A A. R. S. Sup. Ct. **Rules, Rule 42, Rules** of Prof. Conduct, ER 4.1, AZ ST S CT **RULE 42 RPC ER 4.1**

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Ariz. Rules of Prof'l Conduct R. 4.4

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ARIZONA RULES OF PROFESSIONAL CONDUCT
TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Ariz. Rules of Prof'l Conduct R. 4.4 (2013)

Review Court Orders which may amend this Rule.

ER 4.4. Respect for rights of others

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden any other person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender and preserve the status quo for a reasonable period of time in order to permit the sender to take protective measures.

HISTORY: Effective December 1, 2003 by R-02-0045.

NOTES:

COMMENT

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of others. It is impracticable to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from others and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

[2] Paragraph (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that a document was sent inadvertently, then this Rule requires the lawyer to stop reading the document, to make no use of the document, and to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this Rule, "document" includes e-mail or other electronic modes of transmission subject to being read or put into readable form.

[3] Some lawyers may choose to return a document unread, for example, when the lawyer learns before receiving the document that it was inadvertently sent to the wrong address. Where a lawyer is not required by applicable law to do so, the decision to return such a document voluntarily is a matter of professional judgment ordinarily reserved to the lawyer.

See ERs 1.2 and 1.4.

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Attorneys Admitted Elsewhere

JUDICIAL DECISIONS

ANALYSIS

⚡Delay.

⚡Inappropriate Methods.

⚡Violation not Shown.

⚡DELAY.

Attorney's actions in delaying dismissal of suit for months after he had acknowledged he had no claim against defendant violated rule 3.1 and this rule. In re Levine, 174 Ariz. 146, 847 P.2d 1093 (1993).

⚡INAPPROPRIATE METHODS.

In making surreptitious tape recordings, respondent violated this rule. In re Wetzel, 143 Ariz. 35, 691 P.2d 1063 (1984), cert. denied, 469 U.S. 1213, 105 S. Ct. 1184, 84 L. Ed. 2d 331 (1985).

When counsel misplaced evidence, he was not entitled to submit a false substitute in its place, because to do so was a violation of this rule. In re Wetzel, 143 Ariz. 35, 691 P.2d 1063 (1984), cert. denied, 469 U.S. 1213, 105 S. Ct. 1184, 84 L. Ed. 2d 331 (1985).

⚡VIOLATION NOT SHOWN.

Attorney did not violate this rule in relation to a civil RICO lawsuit she was assigned to handle by her boss because she did not serve as one of her boss's senior advisors, she was not involved in the decision to initiate the lawsuit, and she did not ask to be assigned to the case; at most, the evidence showed that she was motivated to pursue the RICO lawsuit in order to please her boss, thereby furthering her career. In re Alexander, -- Ariz. --, 659 Ariz. Adv. Rep. 19, 300 P.3d 536, 2013 Ariz. LEXIS 127 (2013).

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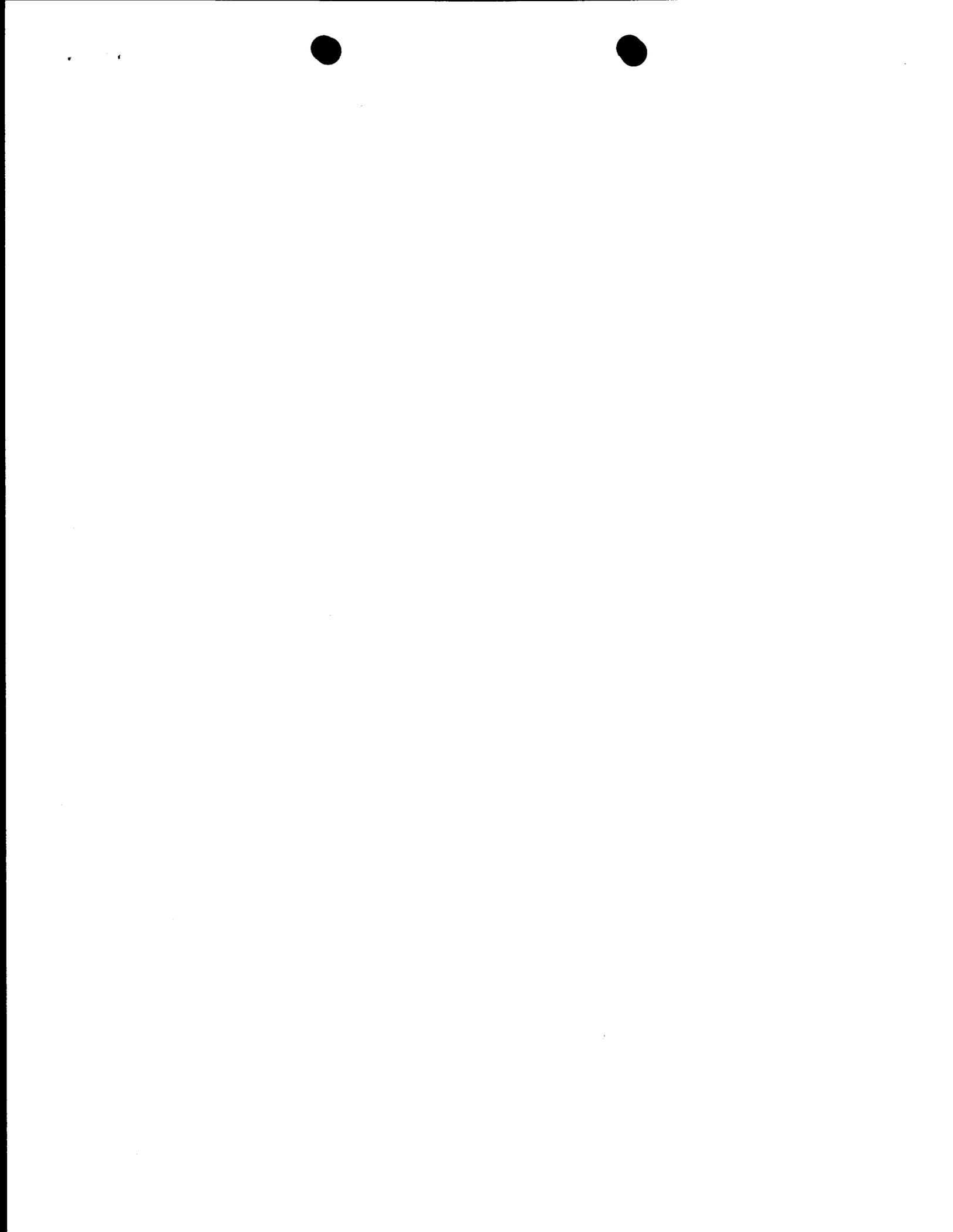
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Ariz. Rules of Prof'l Conduct R. 8.2

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ARIZONA RULES OF PROFESSIONAL CONDUCT
MAINTAINING THE INTEGRITY OF THE PROFESSION

Ariz. Rules of Prof'l Conduct R. 8.2 (2013)

Review Court Orders which may amend this Rule.

ER 8.2. Judicial and legal officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

HISTORY: Effective December 1, 2003 by R-02-0045.

NOTES:
COMMENT

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

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Attorneys Admitted Elsewhere

JUDICIAL DECISIONS

ANALYSIS

↓In General.

↓Free Speech.

↓Public Comments.

↕IN GENERAL.

Generally, and also during a judicial campaign, a lawyer may accurately criticize a sitting judge, but may not impugn the integrity of the judicial system or question the decisions of the judge. In re Riley, 142 Ariz. 604, 691 P.2d 695 (1984).

Any grievance a lawyer may have concerning ethical misconduct by a sitting judge should be submitted to the commission on judicial qualifications; going public by a member of the bar is not the appropriate method to redress misconduct by a judge. In re Riley, 142 Ariz. 604, 691 P.2d 695 (1984).

↕FREE SPEECH.

Even if not a candidate for judicial office, a lawyer is held to a narrower standard of free speech than a nonlawyer when discussing the judiciary. In re Riley, 142 Ariz. 604, 691 P.2d 695 (1984).

Freedom of speech does allow fair comment even by a lawyer candidate concerning a judge opponent. In re Riley, 142 Ariz. 604, 691 P.2d 695 (1984).

Candidates for judicial office have a First Amendment right to criticize an incumbent judge for such matters as intemperate behavior, injudicious actions, lack of judicial temperament, unpredictability, and unnecessary delay in rendering decisions. In re Riley, 142 Ariz. 604, 691 P.2d 695 (1984).

↕PUBLIC COMMENTS.

A lawyer may be disciplined if his public comments threaten a significant state interest; the good standing of the judicial system is such a significant interest. In re Riley, 142 Ariz. 604, 691 P.2d 695 (1984).

Attorney's comments questioning the decisions of the court and the administration of justice is not allowed, even in a campaign for judicial office. In re Riley, 142 Ariz. 604, 691 P.2d 695 (1984).

Lawyers may make fair comment on the judge's fitness so long as the comment does not call into question decisions of the court or question the integrity of the judicial system. In re Riley, 142 Ariz. 604, 691 P.2d 695 (1984).

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Ariz. Rules of Prof'l Conduct R. 8.4

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ARIZONA RULES OF PROFESSIONAL CONDUCT
MAINTAINING THE INTEGRITY OF THE PROFESSION

Ariz. Rules of Prof'l Conduct R. 8.4 (2013)

Review Court Orders which may amend this Rule.

ER 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable Code of Judicial Conduct or other law.

(g) file a notice of change of judge under Rule 10.2, Arizona Rules of Criminal Procedure, for an improper purpose, such as obtaining a trial delay or other circumstances enumerated in Rule 10.2(b).

HISTORY: Effective December 1, 2003 by R-02-0045; amended in final form June 8, 2004, effective October 1, 2004.

NOTES:
COMMENT

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client of action the client is lawfully entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses

involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer who in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. This does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, gender identity, or socioeconomic status, or other similar factors, are issues in the proceeding. A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that *no valid obligation exists*. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

COURT COMMENT TO EXPERIMENTAL 2001 AMENDMENT TO ER 8.4(G) Arizona is one of only a few states that allow by judicial rules a party to notice a change of judge without cause. The purpose of the rule is to allow a party to ask for a new judge when a party may perceive a bias that does not rise to disqualification under the rules allowing a challenge for actual bias or prejudice. Historically, the reasons for exercising a challenge were not inquired into. Just as peremptory challenges of jurors lead to abuses of race or gender based disqualification, however, the peremptory notice of judge has been abused by some to obtain trial delay.

The rule was amended in 2001 on an experimental basis to make clear that filing a notice of change of judge for an improper purpose, such as trial delay or other circumstances enumerated in Rule 10.2(b), is unprofessional conduct. The Court adopted this amendment and the amendments to Rule 10.2, Rules of Criminal Procedure, in an effort to address abuse of Rule 10.2. If such abuse is not substantially reduced as a result of the amendments at the conclusion of the one-year experiment on June 30, 2002, the Court at that time will abolish the peremptory change of judge in most criminal cases as recommended in a proposal by the Arizona Judicial Council. See R-00-0025.

COURT COMMENT TO 2004 AMENDMENT Arizona is one of a minority of states that allow a party to file a notice of change of judge without cause. The purpose of the rule is to allow a party to ask for a new judge when a party may perceive a bias that does not rise to disqualification under the rules allowing a challenge for actual bias or prejudice.

Arizona's rule permitting peremptory change of judge has historically been viewed as "salutary" on the grounds that "it is not necessary to embarrass the judge by setting forth in detail the facts of bias, prejudice or interests which may disqualify him nor is it necessary for judge, litigant and attorney to involve themselves in an imbroglio which might result in everlasting bitterness on the part of the judge and the lawyer." *Anonymous v. Superior Court*, 14 Ariz. App.

502, 504, 484 P.2d 655 (1971).

However, just as peremptory challenges of jurors led to abuses of race or gender-based disqualification, the peremptory notice of judge has been subject to abuse, including attempts through "blanket" challenges to bring pressure upon judges and thereby undermine judicial independence. *State v. City Court of City of Tucson*, 150 Ariz. 99, 722 P.2d 267.

The rule was amended in 2004 to make clear that filing a notice of change of judge for an improper purpose, such as trial delay or other circumstances enumerated in Rule 10.2(b), is unprofessional conduct. The Court adopted this amendment and the amendments to Rule 10.2, Rules of Criminal Procedure, in an effort to address abuse of Rule 10.2 while preserving the traditional benefits of the right to peremptory change of judge.

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Attorneys Admitted Elsewhere

JUDICIAL DECISIONS

ANALYSIS

- ⚡In General.
- ⚡Purpose.
- ⚡Applicability.
- ⚡Administration of Justice.
- ⚡Attorney Disbarred.
- ⚡Breach of Fiduciary Duty.
- ⚡Business Advice.
- ⚡Censure.
- ⚡Compensation for Extra-Judicial Activities.
- ⚡Concealment of Documents.
- ⚡Contract Attorney.
- ⚡Cooperation with State Bar.
- ⚡Criminal Conduct.
- ⚡Deceitful Conduct.
- ⚡Failure to Perform Services.
- ⚡Fraudulent Conduct.
- ⚡Full Disclosure Required.
- ⚡Improper Communications with Judge.

- ⚡Knowing Acts of Dishonesty.
- ⚡Lack of Candor.
- ⚡Malpractice.
- ⚡Mental Illness.
- ⚡Misrepresentation.
- ⚡Negotiator or Representative.
- ⚡Perjury.
- ⚡Prejudicial Conduct.
- ⚡Previous Misconduct.
- ⚡Standard of Proof.
- ⚡Violation of Court Agreement.

⚡IN GENERAL.

Attorney was suspended for 120 days and placed on probation for 2 years where he admitted that he had failed to act with diligence and promptness in his representation of his clients in collection matters, that with respect to a number of important matters, that with respect to a number of important matters, failed to keep the clients reasonably informed, failed to comply with reasonable requests for information and failed to promptly comply with requests for information, and had kept his accounts and records poorly. In re Giles, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 191 (Nov. 1, 2002).

Attorney should have been disbarred because of numerous, significant complaints against him; for example, he negligently made a false statement of fact to the court in requesting court awarded attorney's fees when his client had entered into a contingency fee agreement, and he shared legal fees with nonlawyers; however, he was suspended for 4 years and 11 months; the attorney discipline commission took into account the psychological effect of the shock of his father's incarceration as a mitigating factor because it resulted in the attorney's inability to function competently. In re Winski, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 174 (Sept. 30, 2002).

The plaintiff's claims of fraud and intentional infliction of emotional distress against opposing counsel failed to comprise recognized causes of action. Although the plaintiffs were foreclosed from bringing a fraud claim against opposing counsel, they had other remedies available to them which they did not utilize. Linder v. Brown & Herrick, 189 Ariz. 398, 943 P.2d 758 (Ct. App. 1997).

By virtue of his conviction of perjury, attorney violated ER 3.3(a)(1) by making a false statement of material fact to a tribunal; violated subsection (b) of this rule by committing a criminal act that reflects adversely on his honesty, trustworthiness, and/or fitness as a lawyer; violated subsection (c) of this rule by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and violated subsection (d) of this rule by engaging in conduct prejudicial to the administration of justice. Additionally, his conviction of a felony violated Supreme Court Rule 51(a). In re Savoy, 181 Ariz. 368, 891 P.2d 236 (1995).

✦PURPOSE.

The purpose of lawyer discipline is not to punish the lawyer but to protect the public, the profession, and the administration of justice. In re Allen, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 33 (Apr. 26, 2000).

The goal of disciplinary proceedings is different than the goal of criminal proceedings; the goal in disciplinary proceedings is to protect the public in the future, not to punish the offender. In re Rivkind, 164 Ariz. 154, 791 P.2d 1037 (1990).

The object of disciplinary proceedings is not to punish the lawyer, but to protect the public and deter similar conduct by other lawyers. In re Rivkind, 164 Ariz. 154, 791 P.2d 1037 (1990).

✦APPLICABILITY.

Actions warranted six month suspension of practice, enrollment in law office management assistance program and restitution to client where attorney violated many rules, including this rule, which prohibits conduct involving dishonest or misrepresentation. In re Carrasco, 176 Ariz. 459, 862 P.2d 219 (1993).

A lawyer does not cease to be bound by the ethical code merely because he is an officer or director of a company. Although a lawyer is not guilty of an ethical violation every time a business loses money or fails, a lawyer is bound not to engage in "conduct involving dishonesty, fraud, deceit, or misrepresentation," whether he has one hundred clients or none and whether he acts as a principal or as an agent. In re Kersting, 151 Ariz. 171, 726 P.2d 587 (1986).

✦ADMINISTRATION OF JUSTICE.

Attorney working for the office of the county attorney violated (d) of this rule by maintaining a civil RICO lawsuit against sitting judges, and impeded the administration of justice by demonstrating to all judges in the county that they risked having to defend against a civil damages lawsuit if they made rulings that displeased the county attorney's office. In re Alexander, -- Ariz. --, 659 Ariz. Adv. Rep. 19, 300 P.3d 536, 2013 Ariz. LEXIS 127 (2013).

✦ATTORNEY DISBARRED.

Suspended attorney was disbarred where because of prior discipline, he clearly was on notice that his sexual misconduct, which involved exploitation and extortion, and the practice of meeting with clients in his home, was inappropriate, and he still had not returned the nude photos of one of his clients, despite repeated requests to do so and he offered to show the nude photographs to bar counsel. In re Piatt, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 192 (Oct. 31, 2002).

Suspended attorney was disbarred where, he admitted he revealed the current identity and whereabouts of his client who was involved in a federal witness protection program and further admitted he knew the client's identity was confidential. In re Piatt, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 192 (Oct. 31, 2002).

✦BREACH OF FIDUCIARY DUTY.

Attorney disbarred for consistently refusing or failing to communicate with clients; terminating representation of a client without taking steps reasonably practical to protect the client's interests; repeatedly lying to the state bar about his involvement in the forgery of client's signature; counseling, encouraging, and participating in the preparation of a forged document;

and for failing to respond to and cooperate with the state bar's investigations. In re Redeker, 177 Ariz. 305, 868 P.2d 318 (1994).

Where lawyer settled clients' cases without their permission or knowledge; failed to notify his clients that he had received settlement funds on their behalf, and failed to deliver the funds to his clients; converted his clients' money to his own use; and allowed two of his clients' cases to be dismissed for lack of prosecution; disbarment was the appropriate sanction. In re LaLonde, 172 Ariz. 60, 834 P.2d 146 (1992).

Where lawyer failed to adequately research New York law, and failed to make reasonable inquiry into the factual allegations he made to the court regarding the adoption of the children, and where transfer of funds to his own general account was against his client's wishes, but lawyer believed, albeit mistakenly, that he was legally entitled to keep those funds, a public censure, in addition to a probationary period with a practice monitor, was warranted. In re Garnice, 172 Ariz. 29, 833 P.2d 700 (1992).

By failing to ascertain the client's objectives and negotiating a settlement without authority, attorney intentionally breached a fiduciary duty to a client, the most important ethical duty a lawyer owes. In re Zang, 166 Ariz. 426, 803 P.2d 419 (1990).

Respondent's slipshod and sloppy accounting practices violated this rule. In re Grumble, 157 Ariz. 448, 759 P.2d 594 (1988).

A 90-day suspension was warranted where attorney failed to exercise even minimal care over his various trust accounts. In re Scanlan, 144 Ariz. 334, 697 P.2d 1084 (1985).

✦BUSINESS ADVICE.

When a judge gives business advice to a person or entity other than one closely held by the judge or members of the judge's family, he or she serves as an advisor in violation of Canon 4D (3), even when the advice is limited to one contract. In re Fleischman, 188 Ariz. 106, 933 P.2d 563 (1997).

✦CENSURE.

Respondent judge, disciplined for sexual harassment of female attorneys who appeared before him, violated this rule by placing his own sexual desires above his obligation to exhibit the highest standards of honesty and integrity; the judge was censured, permanently enjoined from holding judicial office in Arizona, and his license to practice law was suspended. In re Abrams, 227 Ariz. 248, 257 P.3d 167, 2011 Ariz. LEXIS 76 (2011).

Attorney who, either directly or de facto, represented a client and the tenants of that client without discussing the potential conflict of interest that existed between them was censured and ordered to pay costs. In re Clark, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 21 (Feb. 13, 2002).

Attorneys who violated their duties of candor and truthfulness in the course of settlement proceedings were censured rather than suspended. In re Fee, 182 Ariz. 597, 898 P.2d 975 (1995).

✦COMPENSATION FOR EXTRA-JUDICIAL ACTIVITIES.

A stream of income flowing directly to a superior court judge and his estate over a period of years as a result of a business contract that he negotiated while holding judicial office created the appearance that performance of his judicial duties could have been influenced or

compromised and further gave the obvious appearance of judicial impropriety. In re Fleischman, 188 Ariz. 106, 933 P.2d 563 (1997).

When a judge receives compensation or reimbursement for expenses for extra-judicial activities that are prohibited by the Code of Judicial Conduct, he or she has violated Canon 4(H)1, regardless of the amount of compensation. In re Fleischman, 188 Ariz. 106, 933 P.2d 563 (1997).

✦ CONCEALMENT OF DOCUMENTS.

Attorney was censured and given one year probation where the attorney negligently misrepresented to an expert that portions of his file were non-discoverable and negligently advised the expert to remove documents from his file, thereby resulting in concealing documents from the opposing party. In re Hoyt, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 51 (Apr. 6, 2001).

✦ CONTRACT ATTORNEY.

Violation of Ariz. R. Prof. Conduct 8.4(c) did not create a per se presumption of ineffective assistance of counsel, and a prisoner failed to show that use of contract counsel was inappropriate or that there was a displacement of the adversarial process. Cohen v. United States, -- F. Supp. 2d --, 2010 U.S. Dist. LEXIS 28556 (D. Ariz. Mar. 24, 2010).

✦ COOPERATION WITH STATE BAR.

Where attorney retained for divorce proceeding failed to return client's telephone calls and failed to transfer the file to subsequent counsel, which caused the client to incur additional attorney's fees and costs and attorney later failed to respond and cooperate with the State Bar in the investigation of said matters, he was suspended for violations of subsection (d) of this Rule, ER 1.4, ER 1.16(d), ER 8.1(b), and Arizona Supreme Court Rule 51(h) & (i). In re Sill, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 32 (Apr. 26, 2000).

✦ CRIMINAL CONDUCT.

Attorney was suspended from practice for six months after he pled guilty to felony drug offenses and the supreme court found that he had knowingly made a false statement of material fact in connection with the disciplinary matter. In re Vice, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 46 (Mar. 28, 2002).

Where attorney pled guilty to attempted aggravated assault (a class 4 felony) and unlawful flight from a pursuing law enforcement vehicle (a class 5 felony), the attorney was suspended for three years and ordered to pay costs and expenses of disciplinary proceedings. In re Farley, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2000 Ariz. LEXIS 135 (Dec. 18, 2000).

Attorney was disbarred and ordered to pay costs of the disciplinary hearing where attorney failed to adequately represent his clients, failed to notify parties of his suspension, caused considerable delays in proceedings of his clients due to his lack of diligence, made false statements of material fact to the court, committed a criminal act by his use of methamphetamine, and failed to cooperate with the State Bar in the investigation of the matter. In re Bradshaw, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 17 (Mar. 15, 2000).

Attorney's criminal negligence in an automobile accident which caused the death of two innocent people and substantial illegal drug use reflected "adversely on a lawyer's fitness to practice law." In re Horwitz, 180 Ariz. 20, 881 P.2d 352 (1994).

The criminal acts committed by the attorney being disciplined (securities law violations committed in ignorance) did not reflect adversely on his honesty, trustworthiness or fitness as a lawyer. In re Beren, 178 Ariz. 400, 874 P.2d 320 (1994).

Six-month suspension followed by a two-year period of probation upon reinstatement was the appropriate sanction where lawyer was arrested for driving while under the influence and driving with a suspended license and convicted of aggravated driving, a class five felony. In re Keefe, 172 Ariz. 394, 837 P.2d 1129 (1992).

Discipline in cases of felony convictions is now determined on a case-by-case basis. In re Rivkind, 164 Ariz. 154, 791 P.2d 1037 (1990).

Disbarment was neither required nor appropriate where attorney knowingly engaged in illegal use of drugs but was not involved in the sale, distribution, or importation of drugs, and there was compelling rehabilitation evidence; therefore, two-year suspension was an adequate and appropriate sanction. In re Rivkind, 164 Ariz. 154, 791 P.2d 1037 (1990).

✦ DECEITFUL CONDUCT.

Attorney was censured for representing couple regarding renovations to their home and then, while the wife was on a trip, signing a lease with the husband to rent the house and threatening the wife by filing a forcible detainer to have her removed. In re Herbert, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 37 (Mar. 5, 2002).

Where attorney was suspended from the practice of law yet continued to practice law during the suspension period, falsely stated that he did not engage in the practice of law during the suspension, and failed to cooperate with the State Bar investigation, the attorney's conduct violated this Rule, ER 5.5, ER 8.1, and Supreme Court Rule 51 subsections (e),(h), (i), and (k). In re Royston, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 50 (May 31, 2000).

Member of the state bar of Arizona, was disbarred for accepting retainers in at least ten cases he never intended to pursue. In re Wurtz, 177 Ariz. 586, 870 P.2d 404 (1994).

Actions warranted six month suspension of practice, enrollment in law office and restitution to client where attorney violated many rules, including this rule, which prohibits conduct involving dishonesty or misrepresentation. In re Carrasco, 176 Ariz. 459, 862 P.2d 219 (1993).

Attorney was censured and ordered to pay costs to the state bar where attorney signed his clients' name on powers of attorney naming himself as attorney, even though the attorney did not intend any personal gain. In re Charles, 174 Ariz. 91, 847 P.2d 592 (1993).

Attorney's conduct violated ER 1.1 when he failed to provide client with competent representation; ER 1.2 when he failed to consult with client regarding a summary judgment; ER 1.3 by his failure to act with reasonable diligence in representing client; ER 1.4 when he failed to keep client reasonably informed; ER 8.1(a) when he falsely stated that he had, in fact, responded to client's former attorney; ER 8.1(b) when he failed to respond to the state bar's inquiries into the matter; and this rule by engaging in conduct involving dishonesty. In re Riddle, 175 Ariz. 379, 857 P.2d 1233 (1993).

A six-month suspension was appropriate where attorney pleaded guilty to conspiracy to commit promotion of gambling. In re Schwartz, 176 Ariz. 455, 862 P.2d 215 (1993).

Lawyer's conduct violated ER 3.3(a)(1) when he knowingly submitted false information to the State Optometry Board, and because his conduct involved dishonesty and deceit, it also violated this rule. In re Tatham, 171 Ariz. 169, 830 P.2d 1215 (1992).

Where lawyer entered into a scheme or artifice to defraud his employer, disbarment was the appropriate sanction. In re Bruno, 172 Ariz. 27, 833 P.2d 698 (1992).

Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client. In re Zang, 166 Ariz. 426, 803 P.2d 419 (1990).

Where respondent indicated to another attorney that a response had been filed when in fact this had not been done, this was not acceptable conduct for an attorney and violated this rule. In re Douglas, 158 Ariz. 516, 764 P.2d 1 (1988).

Respondent violated ethical rules by wrongfully accepting settlement money he knew had been tendered in error. In re Zang, 154 Ariz. 134, 741 P.2d 267 (1987), cert. denied, 484 U.S. 1067, 108 S. Ct. 1030, 98 L. Ed. 2d 994 (1988).

Where the attorney agreed to represent a woman in an uncontested divorce for a set fee, this rule was violated when the attorney asked for additional money for services not provided. In re Wetzel, 143 Ariz. 35, 691 P.2d 1063 (1984), cert. denied, 469 U.S. 1213, 105 S. Ct. 1184, 84 L. Ed. 2d 331 (1985).

✦FAILURE TO PERFORM SERVICES.

Attorney was suspended for two years and ordered to pay restitution where the attorney's admitted misconduct arose from his failure to communicate with his clients and his failure to diligently pursue their legal matters, which caused harm to his clients, some in the form of adverse rulings. Additionally, attorney failed to respond or cooperate with the State Bar in the investigation of these matters. In re Summers, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 7 (Feb. 15, 2000).

Attorney was given a six month and one day suspension, and ordered to pay the costs of disciplinary proceedings for knowingly failing to comply with the rules of the tribunal, failing to carry out court ordered duties as an arbitrator, knowingly failing to appear as ordered at a hearing, and failing to comply with requests for information from the State Bar. In re Merchant, - Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2000 Ariz. LEXIS 87 (August 25, 2000).

Member of the state bar of Arizona was disbarred for abandoning his practice to the detriment of his clients. In re Peartree, 178 Ariz. 114, 871 P.2d 235 (1994).

Censure and restitution ordered where attorney failed to notify court and opposing counsel that his client had filed a bankruptcy petition causing them to spend unnecessary time on litigation that had been stayed and where attorney failed to pay the sanctions ordered by the court for his behavior. In re Manning, 177 Ariz. 496, 869 P.2d 172 (1994).

Disbarment was appropriate for attorney whose actions included conversion of funds, failure to perform work for which he was retained and for which he accepted retainers, failure to pursue the clients' cases with diligence and competence, failure to maintain communication with clients, misrepresentation to clients concerning the status of their case, failure to return client files and property, practice of law after being placed on interim suspension, threatening adverse parties with physical violence, failure to remit money received on the clients' behalf, and allowing clients' cases to be dismissed or delayed. In re Woltman, 178 Ariz. 548, 875 P.2d 781 (1994).

Censure was proper discipline for attorney who did not intentionally allow the client's case to be dismissed, but unwisely relied on a process serving company to handle location and service of the parties in a responsible manner. In re Boettcher, 176 Ariz. 314, 861 P.2d 599 (1993).

Disbarment was appropriate for a lawyer who knowingly failed to perform services for client and engaged in a pattern of neglect with respect to client matters, and caused serious or potentially

serious injury to clients, where attorney was previously suspended for matters arising out of circumstances similar to the incidents in this matter. In re Feeley, 176 Ariz. 196, 859 P.2d 1329 (1993).

A 90-day suspension was appropriate for attorney who, in corporate sale, failed to provide shareholder with the fully executed supplemental escrow instructions, failed to inform shareholder that the supplemental instructions had been altered after his signature, and submitted those altered instructions to the escrow company. In re Duckworth, 176 Ariz. 199, 859 P.2d 1332 (1993).

A statutory suspension followed by a two-year period of probation was warranted, where attorney failed to adequately communicate with his clients or keep them informed of the developments in their case, failed to comply with discovery which necessitated a motion to compel, and in addition he failed to timely respond to the state bar complaint, and as a result he had to be subpoenaed for a deposition. In re Cassalia, 173 Ariz. 372, 843 P.2d 654 (1992).

Disbarment was appropriate where a lawyer knowingly neglected viable claims against multiple defendants, and agreed to an inadequate insurance settlement without authority, causing serious injury to his client. In re Zang, 166 Ariz. 426, 803 P.2d 419 (1990).

Disbarment was the proper sanction, where respondent engaged in numerous acts of misconduct that centered on his lack of diligence in handling several clients' matters, to the injury of those clients. In re MacAskill, 163 Ariz. 354, 788 P.2d 87 (1990).

Failure to properly inform himself of the law regarding the legal status of the amount of the Air Force lien reflected adversely on attorney's fitness to practice law, and was a violation of this rule. In re Burns, 139 Ariz. 487, 679 P.2d 510 (1984).

✦FRAUDULENT CONDUCT.

Attorney was censured where the attorney engaged in fraudulent conduct by having his secretary sign deeds as a witness, even though the clients did not sign the deeds in the secretary's presence. In re Lamont, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 20 (Feb. 2, 2001).

Attorney violated this rule by providing false opinion letters to the Navajo Tribe, enabling his clients to profit from an undisclosed double sale and escrow, and thus would be disbarred. In re Duckworth, 185 Ariz. 197, 914 P.2d 900 (1996).

✦FULL DISCLOSURE REQUIRED.

When a judge is charged with a violation of the Code of Judicial Conduct, complete disclosure and cooperation with the Commission is absolutely required in order to preserve the integrity of the judicial system. In re Fleischman, 188 Ariz. 106, 933 P.2d 563 (1997).

✦IMPROPER COMMUNICATIONS WITH JUDGE.

Evidence held sufficient to support attorney's guilt as to improper ex parte communication with a judge. In re Riley, 142 Ariz. 604, 691 P.2d 695 (1984).

✦KNOWING ACTS OF DISHONESTY.

Where judge was convicted of seven felony offenses involving knowing acts of dishonesty, specifically filing false tax returns and structuring currency transactions to avoid treasury

reporting requirements, the judge was suspended for six months. *In re Scholl*, 200 Ariz. 222, 345 Ariz. Adv. Rep. 16, 25 P.3d 710, 2001 Ariz. LEXIS 57 (2001).

✦ LACK OF CANDOR.

Attorney was suspended for 30 days and ordered to pay costs and expenses where the attorney demonstrated a willful lack of candor to the trial court and was also found to be less than candid with the Hearing Officer in the discipline hearing. *In re Coffee*, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 79 (May 31, 2001).

✦ MALPRACTICE.

Attorney's negligence in allowing the statute of limitations to run may have been malpractice, but it was not an ethical violation. *In re Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1988).

✦ MENTAL ILLNESS.

Mental illness, whether it is a result of alcoholism or otherwise, is not sufficient to preclude the imposition of sanctions. *In re Loftus*, 171 Ariz. 672, 832 P.2d 689 (1992).

A finding of M'Naghten insanity is a complete defense to crime. *In re Hoover*, 161 Ariz. 529, 779 P.2d 1268 (1989).

✦ MISREPRESENTATION.

Violation of Ariz. R. Prof. Conduct 8.4(c) does not create a per se presumption of ineffective assistance of counsel; use of contract counsel was not necessarily inappropriate, nor was there a displacement of the adversarial process. *Cohen v. United States*, -- F. Supp. 2d --, 2010 U.S. Dist. LEXIS 28556 (D. Ariz. Mar. 24, 2010).

Attorney who sought permission of the Superior Court of Maricopa County to appear pro hac vice and submitted an affidavit that he was an active member of the Utah and California bar associations, but was at that time suspended from both of those bar associations, warranted censure. *In re Olsen*, 180 Ariz. 5, 881 P.2d 337 (1994).

When a lawyer knowingly engages in any conduct (other than criminal) that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law, censure is an appropriate disciplinary action. *In re Tatham*, 171 Ariz. 169, 830 P.2d 1215 (1992).

Where attorney being investigated for ethical violations appeared before the disciplinary committee and testified falsely under oath, disbarment was proper. *In re Fresquez*, 162 Ariz. 328, 783 P.2d 774 (1989).

Where respondent intentionally misrepresented the date his client acquired an interest in certain property so that he could claim depreciation allowances to which he was not entitled, thus defrauding the federal and state governments, attorney violated this disciplinary rule. *In re Spear*, 160 Ariz. 545, 774 P.2d 1335 (1989).

When attorney discovered that the statute of limitations had run on client's case, he had a duty to inform client rather than offer client a settlement out of attorney's own funds; the client was entitled to know the source of the funds and should have been advised to confer with another attorney. Respondent by silence misrepresented the actual state of client's affairs in violation of this rule. *In re Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1988).

Where attorney attempted to frustrate discovery, disobeyed court orders, wrongly appropriated partnership assets, and misrepresented the value of property to be posted as security, the hearing committee found that attorney's conduct involved dishonesty, fraud, deceit or misrepresentation, and was prejudicial to the administration of justice and adversely reflected on fitness to practice law. *In re Douglas*, 158 Ariz. 516, 764 P.2d 1 (1988).

Respondent's refusal to inform his client of a mistaken payment or to return the portion of his fee that was based on the erroneous payment constituted ethical misconduct. *In re Zang*, 154 Ariz. 134, 741 P.2d 267 (1987), cert. denied, 484 U.S. 1067, 108 S. Ct. 1030, 98 L. Ed. 2d 994 (1988).

Respondent violated this rule when he helped land development company to effect substitutions by failing to disclose some material facts and actively misrepresenting others. *In re Kersting*, 151 Ariz. 171, 726 P.2d 587 (1986).

In falsely denying to the disciplinary committee that he had ex parte communications with a judge, the attorney was found guilty of misrepresentation, conduct prejudicial to the administration of justice and false statements. *In re Riley*, 142 Ariz. 604, 691 P.2d 695 (1984).

Where what the attorney submitted at his disciplinary hearing was not an affidavit, but was simply the statement to which he hoped a witness would attest, the attorney violated this rule. *In re Wetzel*, 143 Ariz. 35, 691 P.2d 1063 (1984), cert. denied, 469 U.S. 1213, 105 S. Ct. 1184, 84 L. Ed. 2d 331 (1985).

When counsel misplaced evidence, he was not entitled to submit a false substitute in its place; to do so was a violation of this rule and ER 4.4. *In re Wetzel*, 143 Ariz. 35, 691 P.2d 1063 (1984), cert. denied, 469 U.S. 1213, 105 S. Ct. 1184, 84 L. Ed. 2d 331 (1985).

✦NEGOTIATOR OR REPRESENTATIVE.

When a judge acts as a negotiator or a representative of a person or entity and advises that person or entity regarding a contractual relationship, he or she is practicing law in violation of Canon 4G. *In re Fleischman*, 188 Ariz. 106, 933 P.2d 563 (1997).

✦PERJURY.

Attorney's felony conviction for perjury was conclusive evidence of his guilt for the purposes of discipline proceeding warranting disbarment. *In re Savoy*, 181 Ariz. 368, 891 P.2d 236 (1995).

✦PREJUDICIAL CONDUCT.

A prosecutor prejudiced the administration of justice when she obtained a grand jury indictment knowing the statute of limitations had run, and when she improperly sought to interview judges to inquire into the judges' mental processes and intimidate the judges. *In re Member of the State Bar of Ariz.*, -- Ariz. --, 309 P.3d 886, 2013 Ariz. LEXIS 169 (2013).

Disciplinary Commission erred when it accepted the hearing officer's finding of fact, yet rejected the finding that an attorney acted negligently, not intentionally or knowingly, when he transferred assets of his sole proprietorship into a professional corporation, then told another creditor of the transfer, thus, prejudicially affecting his client's judgment against the attorney; nevertheless, the attorney did violate Ariz. Sup. Ct. R. 42, ER 8.4(d). *In re Clark*, 207 Ariz. 414, 422 Ariz. Adv. Rep. 3, 87 P.3d 827, 2004 Ariz. LEXIS 44 (2004).

Attorney, who had been suspended for six months for failing to comply with mandatory

continuing legal education requirements, was suspended for another year for practicing while suspended and ordered to undergo an independent medical evaluation, because she presented bar counsel with a dead rat during her deposition to demonstrate that she "smelled a rat" in connection with her suspension for failing to comply with mandatory continuing legal education requirements. In re Axford, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 189 (Oct. 31, 2002), cert. denied, 538 U.S. 1057, 123 S. Ct. 2219, 155 L. Ed. 2d 1106 (2003).

Confidential agreement between attorneys that was not communicated to the judge and allowed the plaintiff to proceed with his case in chief without limitation just so he could educate the judge on the facts for a later hearing was prejudicial to the administration of justice as it wasted the time of the court, the jury, and the witnesses. In re Alcorn, 202 Ariz. 62, 378 Ariz. Adv. Rep. 101, 41 P.3d 600, 2002 Ariz. LEXIS 12 (2002).

Attorney was censured and ordered to pay costs for violations of ER 1.2, ER 1.3, ER 1.4, and ER 8.4 where the attorney improperly handled a plea agreement in a drug case, coercing the defendant to plead guilty. In re Bickart, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2000 Ariz. LEXIS 117 (Nov. 22, 2000).

Respondent was guilty of unethical conduct for wrongfully settling a property damage claim with two insurers, thereby prejudicing the first insurer's subrogation rights. In re Zang, 154 Ariz. 134, 741 P.2d 267 (1987), cert. denied, 484 U.S. 1067, 108 S. Ct. 1030, 98 L. Ed. 2d 994 (1988).

PREVIOUS MISCONDUCT.

Disbarment is generally appropriate when a lawyer has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. In re Zang, 166 Ariz. 426, 803 P.2d 419 (1990).

Respondent's almost two-year delay in compliance with a former clear and direct court order violated these rules. In re Arrick, 161 Ariz. 16, 775 P.2d 1080 (1989).

STANDARD OF PROOF.

Clear and convincing evidence established respondent's violations of this section. In re Brady, 186 Ariz. 370, 923 P.2d 836 (1996).

VIOLATION OF COURT AGREEMENT.

Where the parties had agreed not to contact the media, the prosecutor's actions in giving a personal were improper as a transgression of rules relating to trial publicity; in addition, by posing for photos to accompany the article after having agreed not to contact the media, the prosecutor blatantly violated an agreement with the trial court. State v. Bracy, 145 Ariz. 520, 703 P.2d 464 (1985), cert. denied, 474 U.S. 1110, 106 S. Ct. 898, 88 L. Ed. 2d 932 (1986).

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Ariz. Sup. Ct. R. 41

ARIZONA COURT RULES ANNOTATED
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*** This document reflects changes received by the publisher through December 17, 2013 ***
*** Annotations are current through October 1, 2013 ***
*** This is a full Rules update with rule amendments and annotations. ***

RULES OF THE SUPREME COURT
V. REGULATION OF THE PRACTICE OF LAW
D. LAWYER OBLIGATIONS

Ariz. Sup. Ct. R. 41 (2013)

Review Court Orders which may amend this Rule.

Rule 41. Duties and obligations of members

The duties and obligations of members shall be:

- (a) Those prescribed by the Arizona Rules of Professional Conduct adopted as rule 42 of these rules.
- (b) To support the constitution and the laws of the United States and of this state.
- (c) To maintain the respect due to courts of justice and judicial officers.
- (d) To counsel or maintain no other action, proceeding or defense than those which appear to him legal and just, excepting the defense of a person charged with a public offense.
- (e) To employ for the purpose of maintaining causes confided to him such means only as are consistent with truth, and never seek to mislead the judges by any artifice or false statement of fact or law.
- (f) To maintain inviolate the confidences and preserve the secrets of a client.
- (g) To avoid engaging in unprofessional conduct and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the justice of the cause with which the member is charged.
- (h) Not to encourage either the commencement or continuation of an action or proceeding from any corrupt motive of passion or interest, and never to reject for any consideration personal to himself the cause of the defenseless or oppressed.

HISTORY: Amended Sept. 7, 1984, effective Feb. 1, 1985, amended by R-05-0021, effective January 1, 2008.

NOTES:

SOURCE: Section 41(a): former rule 29 (a).

Sections 41(b)-(h): formerly items 1 through 7 in an undesignated subsection following Code of Professional Responsibility DR 9-102 when it was appended to former rule 29(a).

Counsel does not violate any ethical norm by urging a defense, as long as he or she relies on the sound, non-perjurious evidence introduced at trial and does not rely on the perjurious testimony. *State v. Lee*, 142 Ariz. 210, 689 P.2d 153 (1984).

⚡RESPECT DUE TO COURTS.

Court did not abuse its discretion by imposing sanctions against attorneys for plaintiffs and a defendant in a malpractice action who conducted what the trial court characterized as a "sham" trial, and executed an agreement kept secret from the court. *Hmielewski v. Maricopa County*, 192 Ariz. 1, 960 P.2d 47 (Ct. App. 1997).

⚡SEXUAL HARASSMENT.

Respondent judge, disciplined for sexual harassment of female attorneys who appeared before him, violated this rule by placing his own sexual desires above his obligation to exhibit the highest standards of honesty and integrity; the judge was censured, permanently enjoined from holding judicial office in Arizona, and his license to practice law was suspended. *In re Abrams*, 227 Ariz. 248, 257 P.3d 167, 2011 Ariz. LEXIS 76 (2011).

Attorney was representing client in a domestic matter and was censured for, inter alia, making inquiries of client concerning personal matters of a sexual nature and embracing her upon arrival and departure, which made the client uncomfortable. *In re Moore*, -- Ariz. --, -- P.3d --, 2002 Ariz. LEXIS 36 (Mar. 5, 2002).

It does not matter that the words "sexual harassment" do not appear in the Rules of Professional Conduct, ER 1.7(b) prohibits a lawyer from representing a client if that representation is going to be materially limited by the lawyer's own interests; clearly sexual harassment by a lawyer serves the lawyer's interest and not the client's. *In re Piatt*, 191 Ariz. 24, 951 P.2d 889 (1997).

Lawyer who asked inappropriate questions and made obscene comments to his female clients was properly publicly censured, placed on supervised probation and required to complete counseling with the prospect that noncompliance could lead to revocation of probation, suspension or disbarment. *In re Piatt*, 191 Ariz. 24, 951 P.2d 889 (1997).

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DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 14-J-00470

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a)) - in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.

By U.S. Certified Mail: (CCP §§ 1013 and 1013(a)) - in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.

By Overnight Delivery: (CCP §§ 1013(c) and 1013(d)) - I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').

By Fax Transmission: (CCP §§ 1013(e) and 1013(f)) Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

By Electronic Service: (CCP § 1010.6) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 9414 7266 9904 2010 0873 73 at Los Angeles, addressed to: (see below)

(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: (see below)

Table with 4 columns: Person Served, Business-Residential Address, Fax Number, Courtesy Copy to. Row 1: Douglas C. Rhoads, Rhoads & Associates, 2302 E. Delgado Street, Phoenix, AZ 85022, Electronic Address.

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: February 27, 2015

SIGNED:

Handwritten signature of Jason Peralta over a horizontal line, with the printed name 'Jason Peralta Declarant' below it.