



ATTORNEY ETHICS

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OFFICE OF DISCIPLINARY COUNSEL, SC SUPREME COURT

**The Changing Tides
of Workers' Compensation**

October 15, 2012

I. 2011- 2012 Disciplinary Opinion Summaries

Criminal Conduct

- (1) Matter of Harte. Lawyer assisted a client in hiding assets the client derived from criminal activity. Lawyer pled guilty to conspiracy to commit mail fraud and money laundering. He was sentenced to a year and a day in federal prison and restitution in the amount of \$483,350.00. Disbarred, retroactive, by agreement. (Op.#27051, October 10, 2011)
- (2) Matter of M. Brown. Lawyer was arrested following an altercation with police officers at a bar. Lawyer pled guilty to resisting arrest and was ordered to pay a fine and complete community service. Public reprimand, plus costs, Lawyers Helping Lawyers contract, by agreement. (Op.#27058, October 24, 2011)
- (3) Matter of Davis. In a real estate matter, Lawyer withheld funds to pay property taxes on four parcels of land, but failed to make the payments. He also kicked back funds to a “consultant” who did not participate in the transactions. In a second real estate matter, Lawyer collected and paid a title insurance premium on behalf of his client, but never obtained the policy. In a third matter, Lawyer obtained funds on behalf of a missing heir to an estate upon the sale of real property. Lawyer “invested” the funds with a friend in California. By the time the client was declared deceased, the funds were gone. In another matter, Lawyer failed to pay a title abstractor who obtained a \$25,000 judgment against him by default. Findings of misconduct also included Lawyer’s fourteen convictions for driving under suspension in ten years. His driver’s license was suspended for traffic and other violations twenty times during that same period. Lawyer failed to cooperate in the disciplinary investigation resulting in his interim suspension. While on suspension, Lawyer held himself out as an attorney and agreed to provide a client with a title opinion in exchange for a fee. He also notarized mortgages for a nonlawyer friend who conducted real estate closings. Lawyer was not present for the closings and did not actually witness the signatures. Disbarred, plus costs, restitution, and LEAPP Ethics School and Trust Account School. (Op.#27071, December 5, 2011)
- (4) Matter of Cooper. Lawyer was charged with criminal domestic violence of a high and aggravated nature after an alcohol- and prescription drug-related altercation with his girlfriend. In 2005, he completed pre-trial intervention. Later that year, Lawyer was charged with trespassing, simple assault, and pointing and presenting a firearm in connection with his intervention into the relationship between his teenaged son and his

son's girlfriend by attempting to get his son to return home after running away. Lawyer pled guilty to reduced charges. In 2010, Lawyer pled guilty to unlawfully obtaining prescriptions for Oxycodone. He received a six-month suspended sentence. Lawyer was also disciplined for neglecting client matters. In a criminal case, Lawyer failed to pursue a client's appeal. In another case, Lawyer delivered file documents to his client's cellmate without the client's permission. The Court considered in mitigation Lawyer's rehabilitation and cooperation with the disciplinary investigation. Definite suspension for six months, plus costs and three years of monitoring by Lawyers Helping Lawyers. (Op.#27116, April 25, 2012)

Dishonesty & False Witnessing

- (5) Matter of Nwangaza. Lawyer forged and notarized a client's signature on pleadings in a domestic matter. In an unrelated case, Lawyer made a number of mistakes in a probate matter, including missing a court date. After she was terminated by the client, Lawyer filed a billing statement with the court that she could not support with contemporaneous records. The statement included a charge for two hours for preparing the billing statement. The court cut Lawyer's bill by 90%. In a second matter, Lawyer failed to define the scope of her representation or state with specificity the calculation of her fees in her retainer agreement. Lawyer filed a motion to be relieved in which she claimed she was owed for five hours spent in mediation with the client with a member of the local bar's client relations committee. Lawyer also bounced four checks on her trust account. Lawyer did not reconcile her account or maintain the required financial documents. Definite suspension for nine months, plus costs and trust account reporting, by agreement. Lawyer is also required to read the SC Notary Public Manual. (Op.#27053, October 10, 2011)
- (6) Matter of Gagne. Lawyer agreed to continue to handle cases in association with his associate, who was leaving the firm. Lawyer then sent attorney selection letters to the clients without notifying the former associate. Several clients elected to go with the departed associate. Lawyer wrote to those clients and asked them to reconsider. In an unrelated matter, Lawyer negotiated a settlement check without the client's authority, allowing a staff person to forge the client's name. In another matter, Lawyer failed to appear at a deposition, instead sending a paralegal who failed to identify himself as such. Thirty minutes into the deposition, the opposing attorney asked the paralegal directly if he was an attorney. When the paralegal indicated he was not, the deposition was ended. Definite suspension for sixty days, by agreement. (Op.#27056, October 24, 2011)

- (7) Matter of Perrow. Lawyer was hired to help a client in a civil matter involving a former employer in November 2009. The former employer denied the claim and Lawyer learned that the client was not owed any money. However, over the next year, Lawyer continued to tell the client that the matter was progressing. In December 2010, Lawyer falsely informed the client that he had an offer to settle the case for approximately \$592.32 and that, after fees, she would get \$442.32. The client accepted the "offer" and two months later, Lawyer issued a check to her in that amount from his law office general account. Public reprimand, plus LEAPP Ethics School and Trust Account School, costs, by agreement. (Op.# 27063, November 7, 2011)
- (8) Matter of Walters. Lawyer was suspended in South Carolina for one year in 2009 misconduct related to a real estate closing and for a felony conviction for misprision. In June 2010, Lawyer applied for reinstatement. In September 2010, Lawyer was disbarred in North Carolina after he failed to answer formal charges alleging misconduct related to the felony conviction and related to assisting a client in bank fraud in connection with more than twenty real estate closings. In October 2010, Lawyer appeared before the SC Committee on Character and Fitness. At that hearing, he did not tell the committee about the NC disbarment. The SC Supreme Court learned of the NC disbarment after receiving the committee's recommendation that Lawyer be reinstated. The SC Court asked Lawyer to explain why he did not report the NC disbarment to the committee and why he believed that the Court should not impose reciprocal disbarment here in SC. On one hand, he argued that he didn't tell the committee about the NC disbarment because he was going to appeal it. On the other hand, he argued that he intentionally did not answer the NC charges because he thought it would hurt his chances at reinstatement in SC if he appeared to "not recognize the wrongfulness and seriousness of the misconduct." He also argued that the original one year suspension in SC was for the same misconduct as the NC disbarment, so reciprocal should not be imposed. The Court distinguished the misconduct that led to the NC disbarment from the misconduct that led to the suspension in SC. Petition for reinstatement denied; Reciprocal disbarment, not retroactive. (Op.# 27067, November 21, 2011)
- (9) Matter of J. Dickey. Lawyer represented a client in an auto accident claim. About a year after the accident, the client had a heart attack. Lawyer obtained a copy of the medical record related to the treatment of the heart attack, which specifically indicated that the client had no prior heart problems and did not mention the wreck. Lawyer had his

assistant create a copy of the medical record, changing it to attribute the heart attack to the wreck. Lawyer then submitted the fabricated document to the insurance company and the defense attorney. The claims were settled for policy limits. In a second matter, Lawyer failed to refund a fee following a decision of the Fee Disputes Resolution Board. Lawyer lost his appeals of the Board's award, but at the time of the hearing (eight years later) had still not paid the client. In a third matter, Lawyer failed to keep a client informed of the status of her medical malpractice case. Lawyer had appealed the award of summary judgment against his client to the Court of Appeals and the Supreme Court. The Supreme Court denied cert, but Lawyer never informed his client. She learned that her case was over from the ODC prosecutor preparing her for the disciplinary hearing, more than six years later. Definite suspension for two years, retroactive, plus costs and restitution. (Op.# 27066, November 21, 2011)

- (10) Matter of Meehan. Lawyer was publicly censured by the Supreme Court of Tennessee for submitting a false resume to a prospective employer and making false statements during the Tennessee disciplinary investigation. Our Court imposed reciprocal discipline. Public Reprimand. (Op.#27089, February 1, 2012)
- (11) Matter of Roberts. Lawyer submitted a backdated document to co-counsel in connection with a collection action. Lawyer represented that the document had been prepared and delivered to the addressee more than a year before it was actually created. Lawyer did not admit that he created the false document, but did admit that it was done under his supervision. While serving on a tax district commission, Lawyer misappropriated approximately \$40,000.00 from the tax district. Lawyer also neglecting a client in connection with several legal matters, including failing to appear at a scheduled hearing. Disbarment, retroactive, by agreement, plus costs, LEAPP Ethics School, monitoring by Lawyers Helping Lawyers. (Op.#27121, May 9, 2012)
- (12) Matter of Archer. Lawyer charged a \$3500 fee to a court-appointed client. Lawyer subsequently submitting a voucher for \$1000 to Indigent Defense. Lawyer did not report the fee he already collected from the client on the voucher form. Public reprimand, plus LEAPP Ethics School and fee disgorgement, by agreement. (Op.#27132, June 13, 2012)
- (13) Matter of Samaha. Lawyer prepared a will for Husband. Lawyer prepared a power of attorney document naming Relative as attorney-in-fact for Husband and Wife. Husband died and Relative ran off with the money. Wife hired Lawyer to help her get the money back. Lawyer did not file for conservatorship for Wife, but did have her sign documents

naming him as her trustee, attorney-in-fact, and personal representative. Lawyer did not comply with the conflicts disclosure rules. Lawyer then failed to cooperate with, and even obstructed, the Husband's probate proceedings. Lawyer admitted that he lied under oath to the probate judge when asked about the whereabouts of Wife. The Court also found that Lawyer charged an improper "asset marshaling" fee of 25% when in fact he did little to actually reclaim the assets taken by Relative. Definite suspension for one year, plus costs. (Op.#27149, August 1, 2012)

- (14) Matter of Purvis. In a domestic case, Lawyer had the client obtain written statements from four witnesses. Lawyer had his staff type the statements in affidavit form and returned them to the client for signatures. The client returned with affidavits that were signed but not notarized. The client got the witnesses on the phone to talk to Lawyer to verify their signatures. Lawyer then notarized the affidavits and submitted them to the court. Turns out that one of the affidavits was fabricated and the person Lawyer spoke to on the telephone was not the affiant. Public reprimand, plus Ethics School and notary public CLE, by agreement. (Op.#27162, August 29, 2012)
- (15) Matter of Boyd. Lawyer was suspended for six months. During his suspension, he assumed the identity of an attorney who had recently been admitted to the bar after clerking with Lawyer's former firm. Lawyer represented a client before the Workers' Compensation Commission using the assumed name. Lawyer's activities using the false identity included: correspondence with opposing counsel and the Commission; submission of forms to the Commission; signing a settlement agreement; creation of an email account; participation in a conference call with opposing counsel and the Commissioner; and, an appearance at a hearing. Lawyer even attempted to have the SC Bar change the address of the attorney whose name he was using to his own address. In several unrelated matters, Lawyer continued to practice law while on suspension, including giving clients legal advice, preparing legal documents, and accepting attorney's fees. Some of those cases included matters that Lawyer handled prior to his suspension in which he falsely represented to the clients that certain work had been done, but in fact it had not. Lawyer did not advise these clients that he was suspended. Disbarment, plus costs and Ethics School, by agreement. (Op.#27164, August 29, 2012)

Neglect of Client Matters

- (16) Matter of Reeve. Lawyer neglected several client matters after he closed his law practice. In one case, he failed to communicate with a client who experienced difficulty in getting a

mobile home title. In another, Lawyer failed to deliver a client file. Lawyer was also cited for not paying over title insurance premiums to his title insurance company. Lawyer believed that he did pay the premiums, but did not retain his Rule 417 financial records to show it. Lawyer failed to adequately cooperate in the disciplinary investigation, resulting in an interim suspension order. Definite suspension for two years, plus costs and LEAPP Ethics School and Trust Account School, by agreement. (Op.#27050, October 10, 2011)

- (17) Matter of Toney. Twenty-three complaints were filed against Lawyer alleging failing to have a written fee agreement in a personal injury case, missing a statute of limitations, allowing default in a forfeiture case, failure timely turn over client files, failure to comply with a court directive, failure to correct an erroneous affidavit file with a court, failure to appear at a child support hearing, failure to adequately communicate with numerous clients, failure to comply with multiple orders from the Resolution of Fee Disputes Board to refund fees, and failure to timely respond to ODC in twelve matters. Definite Suspension for nine months, plus costs, LEAPP Ethics School and Trust Account School, and mentoring. (Op.#27087, January 17, 2012)
- (18) Matter of Gray. Lawyer failed to diligently pursue a client's legal matter. When he was suspended for unrelated reasons, he failed to inform his client that he could not practice law. He continued the representation in spite of his suspension. Public reprimand, plus costs. (Op.#27097, February 29, 2012)
- (19) Matter of Atwater. Lawyer represented a client in a property damage claim against the city following a water main break. After three years, the case was called to trial. Lawyer and the client agreed to binding arbitration. From that point forward, Lawyer took no meaningful action on behalf of the client. When Lawyer was suspended for other reasons in 2009. At that time, the arbitration had not been held and the case had not been resolved. The Court paid particular attention to Lawyer's refusal to accept any responsibility for the extraordinary delay in the client's case and Lawyer's prior disciplinary history in determining the appropriate sanction. Definite suspension for six months, plus costs. (Op.#27117, April 25, 2012)
- (20) Matter of Katonak. In 2004, Lawyer was hired to handle a real estate purchase and quiet title matter. The matter was delayed as a result of the death of one of the owners of the property, who resided in another state. Deeds were delivered to Lawyer in 2005, but the deed signed on behalf of the deceased owner was not properly executed. Lawyer returned the deed to the wife of the deceased. He never received it and did not follow up. In 2010,

the client contacted Lawyer and was told that Lawyer had lost the file. Thereafter, Lawyer did not return the client's calls. Public reprimand by agreement. (Op.#27133, June 13, 2012)

- (21) Matter of Leevy. Lawyer seriously neglected seven client matters, including failing to file an appeal, missing a statute of limitations, taking no action on a court-appointed case, failing to adequately communicate with several clients, failing to perfect service, failing to ensure that medical providers were paid from settlement proceeds, and failing to advise clients regarding the relocation of her office. Lawyer was also sanctioned for trust account violations, including issuing a check to the Lawyer Referral Service on insufficient funds, failing to conduct monthly reconciliations, failing to maintain required financial records, and failing to deposit unearned fees in trust. Definite suspension for three years, plus LEAPP and costs. (Op.#27137, June 27, 2012)
- (22) Matter of Barr. Lawyer failed to file an appeal in a PCR matter. In another matter, Lawyer failed to diligently pursue the probate of an estate. In determining sanction, the Court considered Lawyer's prior disciplinary history, which included a two-year suspension and a public reprimand. Public reprimand, plus LEAPP Ethics School and costs, by agreement. (Op.#27144, July 18, 2012)
- (23) Matter of Brooks. Lawyer performed work for indigent clients and submitted fee vouchers to SCCID. Lawyer overbilled SCCID by double-billing, billing for paralegal work, and claiming hours he did not actually work. Lawyer attributed his excess billing (which amounted to approximately \$61,000.00) to lax recordkeeping and errors. The Court found no evidence of intentional overbilling or dishonesty. Public reprimand, plus restitution, LEAPP Ethics School, and costs, by agreement. (Op.#27151, August 1, 2012)
- (24) Matter of Swope. Lawyer failed to file a mortgage for ten months following a closing. In another matter, Lawyer failed to deliver a complete file to his client's daughter upon termination and did not adequately communicate with her about missing documents. In addition, Lawyer conducted two real estate loan closings for a client. Several years later, when the client attempted to refinance using another attorney, problems with the deeds were discovered. Lawyer was not diligent in resolving the problems. In a fourth matter, Lawyer assisted a client in a civil case. Lawyer believed that the scope of his representation was limited to filing a single document with the trial court. The client filed an appeal. The clerk of the appellate court informed Lawyer in writing that he was attorney of record and needed to pursue the appeal or move to be relieved. Lawyer did

neither. Further, Lawyer failed to respond to numerous subsequent letters from the clerk. Finally, Lawyer failed to diligently represent a client in connection with litigation involving her homeowners' association. Lawyer also failed to adequately communicate with the client. In connection with several of these complaints, Lawyer did not timely respond to disciplinary inquiries. Public reprimand, plus LEAPP Ethics School, by agreement. (Op.#27158, August 15, 2012)

- (25) Matter of Sheek. Lawyer neglected a criminal case by failing to timely file the record on appeal and failing to respond to two letters from the court, resulting in dismissal of the client's appeal. In a probate matter, Lawyer's client's appeal was dismissed after Lawyer failed to appear at a roster meeting. Lawyer also mishandled the motions for reconsideration in both cases. Another probate matter resulted in an administrative closure after Lawyer failed to close it and ignored repeated inquiries from the court. Lawyer engaged in a conflict of interest in representing both parties in a custody matter. In another custody matter, Lawyer made several mistakes in drafting a proposed order and failed to provide a copy to the opposing *pro se* party. In a criminal matter, Lawyer failed to promptly comply with his client's post-conviction requests for his file. Public reprimand, plus costs, Ethics School, and two years of law office management monitoring, by agreement. (Op.#27163, August 29, 2012)

Misappropriation and Other Trust Account Violations

- (26) Matter of Steinmeyer. Lawyer had multiple trust account violations including several instances of insufficient funds, issuing checks for payment of personal expenses from client trust funds, misappropriation from trust via checks payable to cash and electronic transfers, and failure to maintain required financial records. In a workers' compensation matter, Lawyer's client's settlement called for weekly payments. The State Accident Fund inadvertently sent Lawyer the entire amount of the settlement. Instead of returning the check, Lawyer deposited it into her checking account and disbursed the funds by weekly check to the client. Lawyer then decreased the payments to monthly. Ultimately, Lawyer failed to keep sufficient funds in the account to cover the obligation to the client and stopped making payments. Lawyer lied to ODC about this matter in the investigation, first denying receiving the check and insisting that the weekly/monthly payments were coming from the Fund, then claiming that she received the check, but returned it to the Fund. In another workers' compensation case, Lawyer stole \$60,000.00 in settlement proceeds received on behalf of a client. In another case, Lawyer settled a personal injury

claim and instead of depositing the money into the trust account of the law firm that employed her, she put it in her personal bank account, then paying it to the client directly. In a separate matter, Lawyer's assistant fabricated an ejectment order and forged a judge's signature to it. Lawyer was arrested and charged with possession with intent to distribute illegal drugs, possession of prescription drugs, open container, and DUI. She pled guilty on some of the charges and did PTI on the others. Disbarment, retroactive, plus costs, LEAPP Ethics School and Trust Account School, and restitution, by agreement. (Op.#27057, October 24, 2011)

- (27) Matter of Hursey. Lawyer was disciplined in thirteen separate matters for misconduct that included neglect of client matters, failure to supervise nonlawyer staff, failure to adequately communicate with clients, and trust account mismanagement. Lawyer neglected several real estate matters. Lawyer contracted with a paralegal service that lost files and forged his name to checks and other documents. At the time of Lawyer's interim suspension, he was short \$60,000.00 in his trust account. Complaints also involved several domestic, criminal, and civil matters. Lawyer was also cited for failing to pay a court reporter and posting nudity and profanity on a social media website associated with his law practice. Lawyer failed to cooperate with the disciplinary investigation or with the attorney appointed to protect his clients' interests. Disbarment, by default, plus costs and restitution. (Op.#27080, December 19, 2011)
- (28) Matter of McClain. Lawyer failed to supervise his wife's management of his trust account. While serving as his bookkeeper, she misappropriated approximately \$75,000.00 and used it for household expenses. Definite suspension for two years, retroactive, plus LEAPP Ethics School and restitution, by agreement. (Op.#27078, December 19, 2011)
- (29) Matter of Taylor. Lawyer served as a qualified intermediary in connection with three real estate transactions. Lawyer misappropriated or converted over \$670,000.00 of client funds. As a result, Lawyer was convicted of breach of trust with fraudulent intent and sentenced to ten years in prison. In addition, Lawyer failed to pay off loans totaling over \$430,000.00 in four unrelated real estate transactions. Lawyer also obtained a loan in his wife's name without her consent and forged her name to documents related to that loan. Lawyer did not respond to disciplinary inquiries. Disbarment, by default, plus costs and restitution. (Op.#27098, February 29, 2012)
- (30) Matter of Jordan. While Lawyer was serving a suspension for a drug conviction, the attorney appointed to protect Lawyer's clients' interests uncovered several trust account

irregularities. Investigation revealed that during a two-month period prior to his suspension, Lawyer withdrew \$8,950.00 from trust using counter withdrawal slips and checks payable to cash. Lawyer could not document that these funds were earned fees. IN addition, Lawyer issued a series of checks payable to himself totaling \$5,650.00 without being able to identify a client from which he had earned fees. As a result of Lawyer's failure to supervise the management of his trust account and failure to maintain required financial records, his legal assistant misappropriated more than \$58,000.00 by issuing checks payable to herself and to her creditors. In addition, in connection with two real estate transactions for a client, a paperwork error resulted in underpayment. Excess funds related to those transactions were not in Lawyer's trust account at the time of his suspension in the criminal matter. Finally, Lawyer borrowed \$40,000.00 from a client without the required disclosures and consents. The client had been repaid and all misappropriated funds had been restored to the trust account prior to the disciplinary hearing. The Court recognized Lawyer's good character and reputation, in particular his "sincere and diligent effort to overcome the substance abuse issues" that lead to his misconduct. Definite suspension for eighteen months, retroactive, plus costs and Lawyers Helping Lawyers monitoring for two years. (Op.#27101, March 7, 2012)

- (31) Matter of Lafaye. Lawyer failed to pay off a mortgage in connection with a residential real estate closing because he had insufficient funds in his trust account to cover it. Lawyer submitted a false affidavit to the title company attesting that the mortgage had been paid. Lawyer made monthly payments on the mortgage until a he received funds in connection with a subsequent, unrelated closing. Lawyer misappropriated the proceeds of the loan in the second closing by using the funds to pay off the first closing. Lawyer's title company had to pay more than \$365,000.00 to cover the loss in the second closing. Lawyer's trust account was short because he had been paying personal obligations with client funds for approximately sixteen years. Those personal obligations included tax bills, personal attorney's fees, a malpractice settlement, and his monthly home mortgage. Disbarment, retroactive, plus restitution and costs, by agreement. (Op.#27150, August 1, 2012)
- (32) Matter of Hemingway. Lawyer failed to conduct monthly reconciliations of his client trust account. In one personal injury matter, Lawyer failed to pay a medical bill for a client for many months, in spite of repeated requests from the medical provider. In another personal injury case, Lawyer failed to protect the interests of a lienholder after notice by paying

proceeds directly to the client. In a third matter, Lawyer failed to disburse over \$71,000.00 in insurance proceeds and cannot account for the funds. In connection with his appointment as personal representative of his mother's estate, Lawyer did not properly disburse estate funds, did not close the estate in a timely manner, and repeatedly failed to comply with the directives of the probate judge resulting in findings of contempt and incarceration. Finally, six months after the Court placed Lawyer on interim suspension, he accepted a retainer fee from a new client. Disbarment, retroactive, plus restitution, by agreement. (Op.#27152, August 1, 2012)

Incivility

Conflicts of Interest

- (33) Matter of Mullinax. During the course of representing a client in a domestic case, Lawyer had sex with her in his office and at his home. After receiving a copy of a report from a private investigator exposing the affair, Lawyer withdrew from the case and refunded the client's fee. Public Reprimand, plus LEAPP Ethics School. (Op.#27091, February 1, 2012)
- (34) Matter of Mayer. Lawyer represented a client in various legal matters. He engaged in a sexual relationship with her in between representations. In an unrelated matter, Lawyer agreed to hold proceeds of a personal injury claim on behalf a friend who had been represented by Lawyer's wife (who was also an attorney). Lawyer failed to keep the funds in trust, but rather held cash in his safe at work. Lawyer did not misappropriate the funds, but he failed to keep records of his payments to and on behalf of the client. Public Reprimand, plus costs, Ethics School and Trust Account School. (Op#27093, February 15, 2012)

Advertising

- (35) Matter of D. Dickey. Lawyer made multiple false and misleading statements on his law firm websites, including overstating his experience and past successes, falsely stating he handled matters in federal court, stating that he graduated from law school in 2005 instead of 2008, and listing approximately 50 practice areas in which he had little or no experience. Other violations included comparative statements that could not be factually substantiated, characterizations of the quality of his services (not permitted under prior version of the rules), and creating unjustified expectations. Lawyer also participated in various online directories that included exaggerations of his reputation, skill, experience, and past results; improper use of the word "specialist;" and, improper characterizations of

the quality of Lawyer's services. Public Reprimand, plus LEAPP Ethics School and Trust Account School. (Op.#27090, February 1, 2012)

Failure to Cooperate with Disciplinary Investigation

- (36) Matter of Singleton. The Commission on Lawyer Conduct referred seven complaints about Lawyer to the Office of Disciplinary Counsel for investigation. The allegations in the complaints included neglecting client matters, failing to adequately communicate with clients, failing to maintain financial records required by Rule 417, and violations of the rules related to direct mail solicitation of clients. Lawyer failed to timely respond to ODC's inquiries in each of the seven matters. Public reprimand, plus costs, LEAPP (Ethics School, Advertising School, and Trust Account School), and law office management consulting and reporting, by agreement. (Op.#27079, December 19, 2011)
- (37) Matter of Kern. The Commission on Lawyer Conduct referred a complaint about Lawyer's mishandling of client funds to the Office of Disciplinary Counsel for investigation. Lawyer failed to respond to letters from ODC and failed to appear for an interview pursuant to subpoena. As a result, Lawyer was placed in interim suspension. In addition to his failure to cooperate, Lawyer was also sanctioned for commingling client funds when he deposited a retainer into his operating account. Definite suspension for ninety days (retroactive) plus costs and LEAPP Trust Account School. (Op.#27088, February 1, 2012)

II. Recent Rule Revisions

1. Revisions to Recordkeeping Rules (9/9/11)

Rule 417 has been re-written. This is a summary of the changes. Everyone needs to read the actual rule and update recordkeeping procedures accordingly.

- Recordkeeping rules no longer apply to operating/business accounts. Only trust accounts.
- Lawyers must maintain copies of substitute checks.
- Lawyers must maintain complete, detailed records of electronic transfers from trust accounts.
- Only lawyers and those directly supervised by lawyers can be signatories on trust accounts.
- When dissolving a law firm, partners must make arrangements for maintaining financial records.
- Electronic transfers from trust accounts are limited to certain types of transactions.
- No debit cards or ATM cards for trust accounts.
- Extensive, detailed commentary is added.

2. NEW File Retention Rule (3/1/12)

Rule 1.15, RPC, Rule 407, SCACR, is amended by adding Paragraph (i) and Comments 12 and 13 to the Rule:

(i) Absent any obligation to retain a client's file which is imposed by law, court order, or rules of a tribunal, a lawyer shall securely store a client's file for a minimum of six (6) years after completion or termination of the representation unless:

(1) the lawyer delivers the file to the client or the client's designee; or

(2) the client authorizes destruction of the file in a writing signed by the client, and there are no pending or threatened legal proceedings known to the lawyer that relate to the matter.

If the client does not request the file within six (6) years after completion or termination of the representation, the file may be deemed abandoned by the client and may be destroyed unless there are pending or threatened legal proceedings known to the lawyer that relate to the matter. A lawyer who elects to destroy files shall do so in a manner which protects client confidentiality.

Comments:

[12] A lawyer who destroys a client file pursuant to Paragraph (i) must do so in a manner which protects client confidentiality, such as by shredding paper copies of the file. This rule does not affect the lawyer's obligation to return the client file and other client property upon demand in accordance with Rule 1.15 or the lawyer's obligations pursuant to Rule 1.16(d).

[13] A lawyer may not destroy a file under Paragraph (i) if the lawyer knows or has reason to know that there are legal proceedings pending or threatened that relate to the matter for which the lawyer created the files. Examples include post-conviction relief and professional liability actions against the lawyer. Nothing in the rule prohibits a lawyer from converting files to an electronically stored format, provided the lawyer is capable of producing a paper version if necessary. Attorneys and firms should create file retention policies and clearly communicate those policies to clients.

3. New Member Registration System (5/7/12)

Rule 410 – South Carolina Bar

(e) Attorney Information System (AIS). The AIS is a web-based system developed by the South Carolina Judicial Department to maintain and update information regarding members of the South Carolina Bar. Members use this system, which is accessed using a user name and password, to verify and update their contact information, and view their membership class and status. The mailing and e-mail address shown in the AIS shall be used for the purpose of notifying and serving the member.

(f) Enrollment of Members and Duties Upon Enrollment. Every person admitted to the practice of law in South Carolina shall be added to the AIS immediately upon their admission. The Clerk of the Supreme Court is authorized to release information from the admissions/application records as necessary to populate the data fields in the AIS. Each new member shall verify and update their information in the AIS within five (5) days of being admitted or licensed. Additionally, the South Carolina Bar may require a new member to provide additional information on a form provided by the South Carolina Bar.

(g) Duty of Members to Verify and Update the AIS. Persons admitted to practice law in South Carolina shall have a continuing duty to verify and update their information contained in the AIS, and must ensure that the AIS information is current and accurate at all times. At a minimum, the contact information listed on the AIS must include a mailing address, an e-mail address and a telephone number. Members must update their contact information within five (5) days of any change. Additionally, members must verify and update all of their information prior to paying their bar license fees every year. For those fields that the member cannot correct or update using the AIS, the member will make and submit a discrepancy report on the AIS so that the matter can be resolved. Members who have resigned, been disbarred or suspended, or whose admission or license has otherwise been terminated, and who do not intend to ever seek reinstatement or readmission, are not required to update their information.

4. No More Automatic Suspension for Failure to Pay License Fee/Report CLE (5/7/12)

Rule 419(b) Due Date of Fees and Reports.

(1) Annual license fees required by Rule 410, SCACR, shall be due not later than January 1.

(2) Reports of compliance with continuing legal education requirements required by Rule 408, SCACR, and the regulations of the Commission on Continuing

Legal Education and Specialization (Commission), including the required fee, shall be due not later than March 1. The reporting period for lawyers, judges and foreign legal consultants shall run from March 1 through the last day in February, annually.

Rule 419(c) Failure to Comply.

(1) Promptly after January 15, the Bar shall notify persons who have failed to pay the annual license fees and assessments, including payment of any penalty, will be suspended if they do not pay those fees by February 15.

(2) Promptly after March 15, the Commission shall notify persons who have failed to file a report of compliance and pay the annual filing fee, including payment of any penalty established by the Commission, that they will be suspended if they do not file the report of compliance and pay the filing fee and any penalty by April 15.

Rule 419(d) Suspension by Supreme Court.

(1) Promptly after February 15, the Bar shall forward a list of the persons who have not paid their license fees and penalties to the Clerk of the South Carolina Supreme Court. Those persons shall be suspended by order of the South Carolina Supreme Court and shall thereafter forward their certificate of admission or license to the Clerk of the South Carolina Supreme Court.

(2) Promptly after April 15, the Commission shall forward a list of the lawyers who have not filed reports of compliance with continuing legal education requirements and any required fee and penalty to the Clerk of the South Carolina Supreme Court. Those lawyers shall be suspended by order of the South Carolina Supreme Court and shall thereafter forward their certificate of admission or license to the Clerk of the South Carolina Supreme Court.

5. Changes to “Nonrefundable” Fee Rule (7/30/12)

Rule 1.5, RPC, Rule 407, is amended by adding Paragraph (f):

(f) A lawyer may charge an advance fee, which may be paid in whole or in part in advance of the lawyer providing those services, and treat the fee as immediately earned if the lawyer and client agree in advance in a written fee agreement which notifies the client:

- (1) of the nature of the fee arrangement and the scope of the services to be provided;
- (2) of the total amount of the fee and the terms of payment;
- (3) that the fee will not be held in a trust account until earned;
- (4) that the client has the right to terminate the lawyer-client relationship and discharge the lawyer; and
- (5) that the client may be entitled to a refund of all or a portion of the fee if the agreed-upon legal services are not provided.

Comment 4 to Rule 1.5 is amended to provide:

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

The following Comments are added to Rule 1.5:

Payment of Fees in Advance of Providing Services

[10] A lawyer may treat a fee paid in advance of providing services as the property of the lawyer and deposit the fee in the lawyer's operating account, rather than hold the fee in trust, if the client agrees in a written fee agreement which complies with Paragraph (f)(1) through (5), and the fee is reasonable under the factors listed in Rule 1.5(a). The language describing such arrangements varies, and includes terms such as flat fee, fixed fee, earned on receipt, or nonrefundable retainer, but all such fees are subject to refund if the lawyer fails to perform the agreed-upon legal services.

[11] When the lawyer has regularly represented a particular client, the written fee requirement in Paragraph (f) may be satisfied by a single agreement with the particular client that is applicable to multiple current or future matters or files, without the need for the lawyer and client to enter into a new written agreement for each individual matter.

Paragraph (c) of Rule 1.15, RPC, Rule 407, SCACR, is amended as follows:

(c) A lawyer shall deposit into a client trust account unearned legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the lawyer and the client have entered into a written agreement concerning the handling of fees paid in advance pursuant to Rule 1.5(f).

Comment 9 to Rule 1.16, RPC, Rule 407, SCACR, is amended as follows:

Assisting the Client Upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15. When permitted, a nonrefundable retainer still must comply with Rule 1.5 and not be unreasonable.

ANNUAL REPORT OF LAWYER DISCIPLINE IN SOUTH CAROLINA 2011 - 2012

COMPLAINTS PENDING & RECEIVED:

Complaints Pending June 30, 2011	1029
Complaints Received July 1, 2011 - June 30, 2012	<u>1580</u>
Total Complaints Pending and Received	<u>2609</u>

DISPOSITION OF COMPLAINTS:

Dismissed:

By Disciplinary Counsel after initial review	192
By Disciplinary Counsel after investigation	944
By Investigative Panel	157
By Supreme Court	<u>2</u>

Total Dismissed 1295

Not Dismissed:

Referred to Other Agency	3
Closed But Not Dismissed	26
Closed Due to Death of Lawyer	2
Deferred Discipline Agreement	8
Letter of Caution	206
Admonition	40
Public Reprimand	22
Suspension	77
Disbarment	55
Incapacity (reciprocal)	<u>1</u>

Total Not Dismissed 440

Total Complaints Concluded (1735)

Total complaints pending as of June 30, 2012 874

Sources of Complaints

Client or family/friend of client	57.28%
Opposing party or family/friend	14.62%
Anonymous	6.77%
Bank (overdraft notice)	6.20%
Another attorney	4.37%
Third party payee (incl. court reporters)	2.28%
Disciplinary counsel	1.46%
Self-report	1.33%
Judge	1.27%
Family/friend of lawyer	<1.00%
Ward or family/friend of ward	<1.00%
Employee	<1.00%
Resolution of Fee Disputes Board	<1.00%
Prospective Client (solicitation cases)	<1.00%
Public Official/Agency	<1.00%
Law Enforcement	<1.00%
Other	<1.00%

Case Types

Criminal	35.57%
Domestic	15.51%
Real estate	3.54%
Personal Injury	3.16%
Post-conviction relief	3.04%
Probate	2.78%
Debt collection/foreclosure	2.41%
Workers' compensation	1.77%
Employment/labor	<1.00%
Bankruptcy	<1.00%
Immigration	<1.00%
Tax	<1.00%
Other civil matters	11.46%
Miscellaneous case types	<u>1.01%</u>
Advertising & solicitation	7.66%
Trust account issues	6.52%
Criminal conduct	1.39%
Personal conduct(noncriminal)	1.01%

Practice Types

Solo practice	40.83%	Mediator/arbitrator	<1.00%
Law firm	34.90%	Guardian <i>ad litem</i>	<1.00%
Public defender	15.86%	Corporate counsel	<1.00%
Prosecutor	4.08%	Not Practicing	<1.00%
Other government	2.29%		

COMMISSION ON LAWYER CONDUCT

COMMISSION PROCEEDINGS:

Meetings of Investigative Panels	12
Formal Charges Filed	9
Disciplinary Hearings	7
Incapacity Proceedings	0
Meetings of Full Commission	1

REQUESTS FOR DISMISSAL REVIEW:

Requests for Review by Complainant	108
Dismissal Affirmed	(87)
Case Remanded for Further Investigation	<u>(0)</u>
Dismissal Review Pending	21

ATTORNEYS TO PROTECT CLIENTS' INTERESTS:

Serving as of July 1, 2011	26
Appointed	+27
Discharged	<u>(20)</u>
Serving as of June 30, 2012	<u>33</u>

LAWYERS BEING MONITORED:

New Monitor Files Opened	77
Lawyers Currently Monitored	108

OFFICE OF DISCIPLINARY COUNSEL

ATTORNEYS TO ASSIST DISCIPLINARY COUNSEL:

Complaints Assigned to Attorneys to Assist	29
Reports Filed by Attorneys to Assist	32
Outstanding Attorney to Assist Reports	14

SUPREME COURT

ORDERS*:

Dismissal	2
Letter of Caution	1
Admonition	4
Public Reprimand	15
Definite Suspension	19
Disbarment	10
Transfer to Incapacity Inactive	4
Interim Suspension	23

*These figures represent the number of orders issued by the Supreme Court, not complaints. Some orders conclude multiple complaints.

COMPLAINTS:

Complaints resolved	107
Pending as of June 30, 2012	40

