

**Disciplinary Opinion Summaries
(October 2007 – September 2008)**

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Office of Disciplinary Counsel**

Criminal Conduct

- (1) Matter of Sexton. Lawyer pled guilty to four counts of mail fraud and one count of conspiracy to commit money laundering in California. Lawyer was sentenced to twenty-one months in prison, three years probation, and restitution. Disbarment (retroactive) by Agreement. (Op.#26472, April 21, 2008)
- (2) Matter of Hazzard. Lawyer was held in contempt of court for failing to comply with an order to compel discovery and to pay fees to opposing counsel. The contempt sanctions included a \$700.00 payment to opposing counsel. Lawyer's check to opposing counsel bounced. Lawyer did not show up in court for the trial and did not notify his client of the court date. At a subsequent RTSC hearing, the judge suspected that Lawyer was impaired. Lawyer denied using alcohol or drugs in the 72 hours prior to the hearing. The judge ordered a drug test, which Lawyer failed. Lawyer then admitted to using cocaine. The judge found Lawyer in contempt again and sentenced him to ninety days, suspended if Lawyer entered into treatment. Lawyer did not complete the treatment and served the sentence. Lawyer was also cited for failing to pay a court reporter, neglecting a client's domestic case, and failing to pay a \$750.00 award by the SC Bar Resolution of Fee Disputes Board. Lawyer also failed to cooperate in the disciplinary investigation. By the time of the hearing, Lawyer had rehabilitated, passing over 100 drug tests (in four years) and participating in both Narcotics Anonymous and Alcoholics Anonymous. Definite Suspension of One Year (retroactive). In addition to payment of costs and restitution, the sanction was conditioned upon Lawyer's participation in a two-year monitoring contract with Lawyers Helping Lawyers, including random drug testing. (Op.#26478, May 5, 2008)
- (3) Matter of DePew. Lawyer used his deceased father's identity to obtain a fraudulent driver's license. Lawyer pled no contest to the criminal charge. Definite Suspension of Nine Months. (Op.#26440, February 25, 2008)

- (4) Matter of Rhoad. Lawyer was arrested for snorting cocaine at a frat party. He completed PTI and a counseling and treatment program. As a result, the criminal charges were dismissed. Definite Suspension for 90 Days. Lawyer had also been on interim suspension for served 5 months while the criminal charges were pending. (Op.# 26392, November 5, 2007)

See also, Matter of Williams, below.

Dishonesty

- (5) Matter of White. Lawyer settled a client's personal injury claim for \$5,500.00 without her authority. He then signed her name and her husband's name to the back of the check and deposited it into his trust account, contrary to instructions from the insurance company to hold the funds until the release was signed. Without the permission of the client, Lawyer withdrew his fee from the funds and deposited it into his trust account. Lawyer met with the client a month later and presented the release to her to sign. Because she was still having medical problems, she refused to sign and fired Lawyer. The client then had surgery for injuries sustained in the wreck and hired a new attorney. Ultimately, Lawyer returned the settlement funds he received to the insurance company, minus his fee. The client's new attorney settled the claim for \$65,000.00. At the time of the hearing, Lawyer had still not disgorged the fee he took from the initial \$5,500.00 settlement. Definite Suspension of Six Months (plus costs). (Op. #26482, May 12, 2008)
- (6) Matter of Norris. Lawyer represented an estate in a wrongful death claim on a contingency basis. Lawyer improperly charged the estate for paralegal services that should have been included in the contingency fee. Lawyer's assistant (who was also his wife) falsified a number of doctor bills and included the fraudulent amounts in his settlement statement. Although Lawyer was not aware of his wife's deception at the time, he was responsible for failing to adequately supervise her. Public Reprimand, by agreement. (Op.#26431, February 11, 2008)
- (7) Matter of Hanna. Lawyer prepared a will for a client naming himself as a beneficiary. Lawyer also purchased a vehicle from the estate without making the

required written disclosures or obtaining consent to the conflict of interest. In a domestic case, Lawyer accepted a fee, but did not diligently pursue the matter or adequately communicate with the client. Lawyer also failed to hold the fee in trust until it was earned. Lawyer filed a forged corrective deed on behalf of the grantees of real estate. When the forgery was discovered, Lawyer pursued litigation on behalf of both the grantees and the title company without the authority of the grantees and without obtaining informed consent to the conflict of interest. In a collections case, Lawyer failed to promptly disburse funds received on behalf of his client. Lawyer also failed to comply with a request for financial records from ODC. Lawyer was responsible for real estate transactions performed by the title insurance company in which funds were disbursed prior to deposit. Lawyer allowed the title insurance company to open a trust account in his name, but failed to supervise the management and reconciliation of the account. In one closing in which the property was owner-financed, Lawyer delivered the buyer's down payment/closing costs check to the title company after the closing, but then failed to ensure that the deed and mortgage were recorded. Lawyer misrepresented to the seller that the documents had been recorded. Six months later, after the buyer defaulted and the seller received a tax notice, Lawyer informed the seller that the documents had not been recorded and advised him not to record them because of the seller's failure to pay. Lawyer had not paid the down payment to the seller and could not account for the funds received from the buyer at the closing. In connection with a personal injury case, Lawyer backdated a summons and complaint that he filed one day after the expiration of the statute of limitations. The lawsuit was never served and was ultimately dismissed. Lawyer did not have malpractice insurance. He attempted to settle the matter with the client personally, but failed to make the required conflict disclosures. Lawyer neglected a number of other legal matters, some of which resulted in his indefinite suspension from practice in bankruptcy court. Lawyer was also cited for failing to respond to disciplinary inquiries. Disbarment (retroactive). (Op.#26437, January 15, 2008)

- (8) Matter of Cooper. Lawyer forged the signatures of opposing counsel and the judge on an amended qualified domestic relations order that he subsequently filed with the clerk of court. The QDRO had to be amended because the initial one Lawyer prepared (five years earlier) contained fatal defects. In a second case, Lawyer misappropriated \$16,500 paid to him in trust by a client for the purchase of a lot. The trust account check that Lawyer issued to the seller was returned for insufficient funds. Lawyer was also cited for making false statements to ODC and failing to comply with a subpoena for his bank records. Disbarment (retroactive). (Op.#26456, March 10, 2008)
- (9) Matter of Wood. Lawyer represented the wife in a domestic case. The wife gave Lawyer an unopened package addressed to her husband at the marital home. Lawyer opened the package without the consent of the husband or the husband's attorney. Lawyer later informed both opposing counsel and the judge. Public Reprimand by Agreement. (Op.#26513, June 30, 2008)
- (10) Matter of Samuels. Lawyer's wife was sued when the company that installed the couple's air conditioner did not receive payment. Lawyer filed an answer that failed to inform the court that his wife's check had not cleared the bank. The answer asserted a meritless defense of lack of jurisdiction. Lawyer included counterclaims for unfair trade practices, reckless infliction of emotional distress, and damage to his wife's credit. These counterclaims were without merit and included false representations. Lawyer included these defenses and counterclaims in amended pleadings as well. Lawyer engaged in repeated ex parte communication with the judge and behaved with incivility when talking to the representative of the plaintiff. Public Reprimand, plus Restitution. (Op.#26536, August 25, 2008)
- (11) Matter of Newton. Lawyer participated in illegal property flips in which he failed to disclose that loan proceeds from the resale of the properties were being used for the initial purchase of the properties. In some cases, Lawyer actually loaned funds from his trust account to the straw parties. Lawyer also knowingly submitted false owner occupancy certifications by the borrowers that were required for loan approval. Lawyer pled guilty to conspiracy to commit mail fraud and was

sentenced to forty months in prison. Disbarment (retroactive), by Agreement. (Op. #26402, December 10, 2007)

False Witnessing / False Swearing

- (12) Matter of Claxton. Lawyer allowed her husband to sign as witness to documents related to nine real estate closings even though he was not present when the documents were executed. Lawyer then notarized her husband's signature and attestation that he was present, knowing that it was false. Definite Suspension of Sixty Days. (Op.# 26417, January 14, 2008)
- (13) Matter of Ogburn. Lawyer conducted a closing at a client's home by himself. He signed the closing documents as one witness and later instructed his paralegal to sign as the second witness. Lawyer acknowledged that this was one of several occasions where he engaged in this practice. Definite suspension for sixty days. (Op. #26404, December 10, 2007)
- (14) Matter of Gantt. In two matters, Lawyer signed his clients' names to legal documents and then witnessed the false signatures. In each case, Lawyer represented that he was signing the documents to further his clients' objectives. In a third case, Lawyer admitted to changing the consideration on a deed in order to reduce his client's fees. Definite Suspension for Six Months, by Agreement. (Op. # 26389, November 5, 2007)

Neglect of Client Matters

- (15) Matter of Brooker. Lawyer filed a lawsuit for a client, but then took no further action. In a second case, Lawyer was retained to represent two minors in personal injury cases. He failed to inform the mother that he decided not to pursue the cases. The statutes of limitation ran on the cases. Lawyer failed to timely respond to the inquiries of the Disciplinary Counsel in these matters and a third matter. Public Reprimand by Agreement. (Op.# 26454, March 10, 2008)
- (16) Matter of McDowell. Lawyer was sanctioned for neglecting ten legal matters on behalf of various real estate, domestic, civil, probate, and adoption matters.

Lawyer was cited with numerous violations, including failing to communicate with his clients and failing to diligently pursue his clients' cases. He closed his law practice without notice or refunds to his clients. Lawyer was also cited for not properly reconciling his trust account. Definite Suspension of Two Years, by Agreement. (Op.# 26499, June 2, 2008)

- (17) Matter of Mitchum. Lawyer neglected both an employment-related lawsuit and a personal injury lawsuit filed on behalf of the same client. In the employment case, Lawyer failed to inform his client that the case had been dismissed pursuant to Rule 40(j). He also failed to restore the case within the required time period. In the personal injury case, Lawyer told the client the defendants had been served when in fact they had not been. Definite Suspension.

See also, Matter of Hazzard, Matter of Hanna, above, and Matter of Sturkey, Matter of Kelley, below.

Misappropriation and Other Trust Account Violations

- (18) Matter of Evans. Lawyer failed to properly manage her trust accounts, failed to adequately supervise her staff, and failed to conduct monthly trust account reconciliations. A number of defalcations resulted from these failures, including a shortage of \$150,000 from one closing that was not discovered for a year. There was a shortage of \$21,000 from another closing that was carried in the trust account for two years. In addition, Lawyer misappropriated approximately \$57,000 in title insurance premiums to pay personal bills, including her own mortgage. She also paid her mortgage from a client trust account four times. She claimed that this was an error and that this was repaid. She also misappropriated her employees' 401K withholdings. Lawyer also allowed staff members to sign her name to closing documents and then sign as a witness to her signature. Disbarment (retroactive) plus costs and restitution, by Agreement. (Op.#26430, February 11, 2008)
- (19) Matter of Runey. Lawyer failed to conduct monthly reconciliations of his trust account. He also failed to verify that deposits had been made before disbursing

money. Lawyer's mismanagement of his trust account resulted in ten bounced checks. Public Reprimand by Agreement (Op.# 26432, February 11, 2008)

- (20) Matter of Williams. Lawyer drafted powers of attorney for an elderly client and his wife in which Lawyer was named as attorney-in-fact. Although the powers of attorney provided that Lawyer could deal with himself in buying and selling assets, lending and borrowing money, and in "all other transactions," Lawyer failed to advise his clients of the conflict of interest and failed to obtain their consent. After the death of the wife, Lawyer stole \$400,000 from the client using his power of attorney. Lawyer settled the client's lawsuit and pled guilty to exploitation of a vulnerable adult. He was sentenced to eighteen months house arrest and restitution. Disbarment, by agreement. (Op.#26441, February 25, 2008)
- (21) Matter of Breckenridge. Lawyer failed to reconcile his trust account and failed to deposit funds before disbursement. As a result, Lawyer bounced several checks and a staff member stole money. Lawyer was also cited for neglecting a real estate case involving a mobile home. Definite Suspension for Thirty Days, by Agreement. (Op. #26515, July 14, 2008)
- (22) Matter of Feldman. Lawyer failed to ensure that deposits were credited to his account before disbursing real estate closing proceeds. He bounced two checks as a result. Lawyer admitted that he failed to reconcile his trust account as required by Rule 417. Definite Suspension for Thirty Days, by Agreement. (Op. #26516, July 14, 2008)
- (23) Matter of Perow. Lawyer violated Rule 1.15 when he disbursed real estate closing funds prior to depositing the loan proceeds into his trust account, resulting in an overdraft. In addition, Lawyer twice failed to verify receipt of wired funds into his trust account prior to disbursing funds. Apparently, the wires went into an old trust account and the checks were disbursed from the new trust account, resulting in an overdraft. Public reprimand. (Op. #26397, November 19, 2007)
- (24) Matter of Ponder. Lawyer's legal assistant embezzled more than \$230,000 from his trust account by forging 88 checks payable to herself or her family members. Lawyer had delegated the reconciliation and management of the trust account to the legal assistant. He did not adequately review the reconciliations or otherwise

supervise the legal assistant's activities. In addition, Lawyer failed to provide his bank with the directive mandated by Rule 1.15 that would have required the bank to report any checks presented on insufficient funds in his trust account to the Commission on Lawyer Conduct. Public Reprimand, by Agreement. (Op. #26401, December 10, 2007)

(25) Matter of Buchanan-Lyon. Lawyer self reported failure to maintain required trust account records and inability to account for \$18,000 in client funds. Indefinite Suspension (not retroactive to date of incapacity status), by Agreement, plus Restitution. (Op. #26390, November 5, 2007)

(26) Matter of Gay. Lawyer was sanctioned for trust account mismanagement. She admitted that she did not keep accurate records of transactions on behalf of clients and that she did not properly supervise her staff regarding trust account activities. Lawyer did not maintain the financial records required by Rule 417. Lawyer's accounting errors resulted in bank charges and negative ledger balances. She also acknowledged writing trust account checks to cash and commingling personal funds with client funds. Lawyer was also disciplined for misconduct in connection with two specific client matters. In one matter, Lawyer failed to properly document transactions processed on behalf of a client. She failed to comply with the client's request for an accounting and refused to give him copies of checks written on his behalf, claiming that they were confidential. She also failed to have the client sign a written fee agreement in a contingency case. In another matter, Lawyer allowed another attorney to take over representation in a criminal case a few days before a hearing without filing a motion to be relieved and without appearing in person at the hearing. Public Reprimand, by Agreement. (Op.# 26386, November 5, 2007)

See also, Matter of Cooper, Matter of McDowell, above, and Matter of Swan, below.

Conflicts of Interest

(27) Matter of Kelley. Lawyer represented Boyfriend in a criminal domestic violence charge in which Girlfriend was the victim. Lawyer then undertook representation of both Boyfriend and Girlfriend in a civil case involving a stop payment order on a

check. During the representation, Lawyer learned that Boyfriend altered the check and “diverted the money for his own benefit.” Lawyer failed to withdraw from the representation in the civil case. Lawyer also failed to appear at the hearing in the civil case, resulting in a default judgment. Lawyer moved to set the judgment aside, but did not pursue it. Lawyer did continue to pursue the criminal matter. He was able to negotiate a favorable plea for Boyfriend by getting Girlfriend to sign an affidavit asking that the charges be dismissed. Lawyer admitted that his representation of Boyfriend and Girlfriend was an unconsentable conflict of interest. He also admitted that he did not act competently or diligently and that he failed to keep his clients adequately informed. Public Reprimand by Agreement. (Op.#26500, June 2, 2008)

Sex with Client

(28) Matter of Hoffmeyer. Evidence presented at the hearing showed that Lawyer began a sexual relationship with a domestic client. At the time, Lawyer was aware that the client suffered with mental health issues. During the representation and the affair, the client was admitted to an in-patient treatment facility. Lawyer provided the client with financial assistance. At one point in the relationship, the client cut her wrist at Lawyer’s house. Instead of taking her to the emergency room, Lawyer stitched her up himself. There was an altercation with another woman who was present at Lawyer’s house, in which the other woman’s nose was broken. Although the details of the altercation were disputed, Lawyer prepared an agreement to pay the woman \$19,000.00 in exchange for her releasing him from liability. The document did not protect Lawyer’s client from liability, even though she might have been responsible for the injury. After a confrontation with the client’s husband, Lawyer terminated the legal representation, but continued the affair. Lawyer paid for a new attorney to represent the client. Lawyer continued to prepare legal documents related to the domestic case on the client’s behalf. Definite Suspension of Nine Months (plus costs). (Op.#26430, February 11, 2008)

Incivility

(29) Matter of Swan. Lawyer wrote an abusive letter to a Workers' Compensation Commissioner expressing outrage about a ruling in a client's case. Lawyer also violated Rule 417 when he issued a check from his trust account payable to "Cash" instead of to a named payee. A second check issued from the trust account bounced because Lawyer did not verify deposit before disbursing funds. Public Reprimand, by agreement. (Op.#24616, January 14, 2008)

Failure to Cooperate with Disciplinary Authorities

(30) Matter of Sturkey. Lawyer failed to respond in the disciplinary investigation of eight grievances. Lawyer subsequently defaulted by not answering the formal charges, which included allegations of neglecting several client matters, failing to communicate with several clients, one instance of failing to appear in court, and one instance of violating client confidentiality. Lawyer did appear at the hearing, but did not dispute the charges. Definite Suspension of Nine Months, plus costs and law office management counseling. (Op.# 26426, January 28, 3008)

(31) Matter of Rogers. Lawyer was placed on interim suspension after failing to respond to ODC in four disciplinary matters. Lawyer subsequently entered into a contract with Lawyers Helping Lawyers and began treatment for depression. Lawyer then began cooperating in the disciplinary investigation and entered into an agreement for discipline. The Court noted that ODC believed that the complaints would likely have been dismissed, but for Lawyer's failure to cooperate. Definite Suspension of Sixty Days (retroactive), by Agreement. (Op. #26403, December 10, 2007)

See also, Matter of Brooker, Matter of Hazzard, Matter of Hanna, and Matter of Cooper, above.

Unauthorized Practice of Law

(32) Matter of Barrier. Lawyer engaged in the unauthorized practice of law when he conducted residential real estate closings for a private law firm while employed as an appellate law clerk, then staff attorney. The rules of conduct for law clerks and

court staff attorneys prevents them from undertaking the practice of law for private clients. Definite Suspension for Six Months.

- (33) Matter of Bonecutter. Lawyer was administratively suspended for failing to comply with CLE requirements and for failure to pay Bar dues. He remained employed by an attorney doing clerical work for several months. He then went to work as a contract attorney for a litigation support company. After that, he went to work for a law firm, which hired him based on his representation that he was inactive, rather than suspended. Lawyer said that he was not aware of the restrictions that resulted from his administrative suspension. The Court imposed a two year suspension, made retroactive to the date of his interim suspension. (Op. #26387, November 5, 2007).
- (34) Matter of DuBre. Lawyer was employed as the managing attorney in a SC office of a NC law firm. Lawyer's responsibilities included collection matters. Pleadings and discovery in the collection matters were prepared in the NC office, which employed no SC licensed attorneys. Lawyer would receive the packets from the NC office, sign the documents, then return them to the NC office for filing and service. Lawyer acknowledged that he assisted in the unauthorized practice of law by failing to supervise the legal work associated with the collection matters and by failing to have any involvement in the matters other than signing his name to the documents. The disciplinary action arose from a complaint filed by the defendants named in one of Lawyer's collection lawsuits. The defendants served their answer *pro se* on Lawyer's firm within the required time period, but the firm filed a default motion anyway. The default was granted. The defendants contacted the firm, which subsequently had the judgment set aside. Public Reprimand, by Agreement. (Op. #26399, December 10, 2007)
- (35) Matter of Pincelli (II). Lawyer operated a real estate settlement firm in which he utilized contract attorneys to conduct closings. Lawyer admitted that the closing documents were sent to the lenders to record and disburse funds without the supervision of a licensed attorney. Approximately 3000 closings were conducted this way. There was apparently no evidence of harm resulting from the practice

and Lawyer ultimately conformed his practices to the directives of the Court.
Public Reprimand, by Agreement. (Op. # 26400, December 10, 2007)