

LAWYER REGULATION

SANCTIONED ATTORNEYS

ROBERT M. COOK

Bar No. 002628; File Nos. 11-1020, 11-3510, 12-0750, 12-1662, 12-1736, 13-0064, 13-0077, 13-0779, 13-1047

PDJ No. 2013-9095

On Nov. 4, 2013, the presiding disciplinary judge ordered Robert M. Cook, Yuma, disbarred effective immediately. Mr. Cook consented to his disbarment and to paying restitution totaling about \$108,000. In accordance with Rule 57, ARIZ.R.S.C.T., Mr. Cook acknowledged that he did not desire to contest or defend against the charges in this 9-count case.

In count one, Mr. Cook represented, in a property ownership dispute, his own corporation as a plaintiff as well as other plaintiffs

in whose property he acquired interests. His representation of his corporation was directly adverse to his other clients. Additionally, as the representative and actor for his corporation, he would have had to testify in a case in which he also is counsel, in violation of ER 3.7. There was a significant risk that representing his other clients was materially limited by his responsibilities to his corporation client or by his personal interest. None of the clients gave informed consent, confirmed in writing. By taking interests in his client's property in lieu of cash fees, Mr. Cook entered into business transactions with his clients and knowingly acquired ownership interests adverse to his clients. The terms on which he acquired the property interests

were not necessarily fair and reasonable to the clients, and were not fully disclosed in writing that the clients could reasonably understand. Not all clients were advised in writing to seek the advice of separate counsel. None of Mr. Cook's clients gave "informed consent" (as defined in ER 1.0(c)). Mr. Cook acquired interests in his clients' property, the very property that was the object of the dispute or was the subject matter of the litigation Mr. Cook conducted for his clients. He violated ERs 1.7(a) and 1.8(a) and (i) (conflicts of interest).

In count two, Mr. Cook was charged with mishandling federal court litigation in which a default judgment was entered against his client. The court determined that

Mr. Cook was as much to blame as the client for failing to timely file an answer. He failed to communicate with his client about the goings-on in the litigation and failed to communicate to her the need to notify him immediately upon being served with the complaint. Mr. Cook betrayed his own client when he blamed her for the entry of default against her and engaged in a conflict of interest by representing her in the motion to set aside default but tried to deflect blame from himself and onto her. Mr. Cook violated ERs 1.1 (competence), 1.3 (diligence), 1.4 (communication), 1.6 (confidentiality of information), and 1.7 (conflict of interest).

Counts three, four, and five involved Mr. Cook's representation of groups of investors who wanted

to recoup their lost investments. The State Bar charged Mr. Cook with gaining the investors' consent to organize as an LLC and then file for bankruptcy protection when the latter was not in their best interests. They wanted to sue their counterpart to the transaction whom they alleged defrauded them but Mr. Cook declined to do so. Mr. Cook took an unduly lengthy amount of time to accomplish routine tasks and did not adequately communicate with the investors in order to permit them to make informed decisions regarding their own case. He charged his clients a fee without advancing their interests in any material way. Some of the investors had adverse interests but Mr. Cook represented them all without obtaining informed consent in writing. He falsely told the State Bar in its screening investigation that the investors voted to drop a lawsuit they had filed which is why the case was dismissed when, in fact, the case was dismissed for Mr. Cook's failure to prosecute it in

accordance with the client's instructions. Many of the documents that Mr. Cook prepared, including court filings, were wrong, and then he failed to correct them despite pleas from the clients to do so. He falsely notified the bankruptcy court that his clients and an opposing party in adversary proceedings settled their matter. Mr. Cook violated ERs 1.1 (competence), 1.2 (scope of representation and allocation of authority between client and lawyer), 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.7 (conflict of interest), 3.1 (meritorious claims and contentions), 3.2 (expediting litigation), 3.3(a) (candor toward the tribunal), 8.1(a) (false statements to the bar in a disciplinary matter), 8.4(c) (misconduct involving dishonesty, fraud, deceit or misrepresentation) and 8.4(d) (misconduct prejudicial to the administration of justice).

In count six, Mr. Cook represented three members of a family in connection with five separate Chapter 12 bankruptcy cases

involving their family farm. He charged a flat fee of \$100,000 and created a nonsensical deed of trust designed to reflect a loan that the family obtained to finance his attorney fees. While it described the powers and duties of the trustee which, under certain circumstances, required him to take action adverse to his client, it did not identify anyone as the trustee. After the client signed it, Mr. Cook corrected the errors, named himself as trustee, and recorded it, but without telling his clients. When they later discovered the alteration, they suspected Mr. Cook of defrauding them in some way; this, however, was never proved. In December 2012 Mr. Cook told the family that he was closing his practice. After two years he had not completed the representation and referred the family to new counsel. Mr. Cook violated ERs 1.1 (competence), 1.2 (scope of representation), 1.4 (communication), and 1.7 (conflict of interest).

In count seven, Mr. Cook was retained to represent a family of

five Nebraska farmers in connection with their claim that bank fraud resulted in their having to file for bankruptcy protection. They claimed that a bank officer failed to credit their account with a large deposit resulting in the foreclosure of their farm. That bank officer later was indicted, pled guilty, and was imprisoned. Respondent filed several bankruptcy cases for the clients and became counsel for them in adversary proceedings against the bank. The bank obtained relief from the automatic stay and was about to foreclose when Mr. Cook advised the clients to enter into a global settlement with the bank. The bank reworked the financing, the clients remained on their farmland, and they dismissed the adversary proceedings. The dismissal provided that the clients released the bank from all claims of any kind. Mr. Cook did not attend the signing. The clients reached him by phone and when they asked about the release, Mr. Cook told them to sign it because

“it was not worth the paper it was written on.” Later, Mr. Cook agreed to represent the clients and about 20 others who claimed to have been bank victims in a class action against the bank for \$10,000 per person. The clients did not have all of the money needed so they agreed to give Mr. Cook \$18,000 and a diamond ring. Mr. Cook filed suit but did not include the clients as named parties. The case was dismissed on the bank’s motion. Mr. Cook did not complete the bankruptcy cases, did not obtain discharges of debts, failed to respond to the clients or communicate with them at important junctures, did not account for fees, did not return the diamond ring he acquired as a fee for filing a suit for the clients that he never did file (he sold the ring), and did not provide to the clients their case files upon their request. At one point Mr. Cook crudely commented in the presence of others about one of the family member’s mental-health problems. Mr. Cook failed to respond to the State Bar’s screening investigation. At his subsequent deposition, he promised to provide relevant information later but did not do so. Mr. Cook violated ERs 1.1, 1.2, 1.4, 1.5(a), 1.6, 1.7, 1.16(d), 3.1, 8.1(b), 8.4(c), 8.4(d), as well as Rules 41(d), (f) and (g), and 54(d).

In count eight, Mr. Cook charged his client \$55,000 to represent her and her daughter in a case against various federal entities. A number of times Mr. Cook failed to respond to requests for a case status. When he did communicate, Mr. Cook told the client that the case was going well whereas, in fact, Mr. Cook missed the deadline for filing suit. In 2011, the client terminated Mr. Cook’s services. He wrote to the client and agreed in writing to refund the fee she paid at the rate of \$5,000 per month. In December 2012, Mr. Cook wrote to the client that he was closing his practice. He again agreed to repay the fee at the rate of \$5,000 per month but has not paid. The State Bar sent the client’s charge to Mr. Cook and twice asked him to respond in writing. He failed to do so on both occasions. Mr. Cook violated ERs 1.1, 1.3, 1.5(a), 8.1(b), 8.4(c), and 8.4(d), and Rule 54(d).

In count nine, Mr. Cook represented a man in connection with his divorce. The client paid the agreed fee but Mr. Cook did not communicate to him in writing the scope of the representation or the fee to be charged. He put the client through a bankruptcy even though the client did not regard himself as bankrupt. Mr. Cook failed to notify the client of a family court hearing and was surprised later to learn that the court awarded the wife temporary support of \$1,700 per month. Those payments enabled her to keep the home. Mr. Cook told the client not to worry because “federal supersedes state” and the bankruptcy stay invalidated a state court order. When the client paychecks were significantly less than before, he realized that his wages were being garnished. He learned that

the bankruptcy stay does not apply to support orders in divorce cases. Mr. Cook filed an appeal that was dismissed for lack of jurisdiction because his notice of appeal was untimely, temporary support orders are not appealable, and the trial court did not refuse to dissolve a garnishment (which would be appealable) but, rather, refused to set aside a wage assignment (which is not appealable). After the parties operated under temporary orders for three years, the case came to trial. Mr. Cook had not conducted discovery; if he had he would have learned that the wife earned a secret income that would have altered the outcome of the trial significantly. The court ordered the client to pay the wife \$1,300 per month. She added that Mr. Cook filed several unnecessary pleadings which delayed the resolution of this case and cost the wife a considerable sum of attorney’s fees to which to respond, such as a motion to modify temporary orders and notice of appeal. The court assessed \$5,698 in attorney fees against the client due to Mr. Cook’s delays and unnecessary filings. The wife filed a motion to set aside the award as it concerned retirement accounts. The court set a hearing for April 2013. Mr. Cook closed his office in December 2012 but did not tell this to the client. Two days before the hearing, Mr. Cook had his assistant call the client to tell him that he arranged for a substitute attorney to represent him. That attorney attended court with the client but declined to represent the client further. The court continued the hearing for two weeks. The client appeared *in pro per* and the court awarded the wife half of his retirement account. The client could not understand how the wife was awarded any money from his retirement accounts because in her petition for dissolution she requested that “both parties keep their own retirement/pension benefits and that each party waives any rights to the other’s retirement/pension benefits.” The court file contains an amended petition in which the wife asked the court to divide the parties’ retirement benefits equitably; Mr. Cook did not tell this to the client. Mr. Cook failed to respond to the State Bar’s screening and reminder letters. He violated ERs 1.1, 1.3, 1.4, 1.5(b), 1.16(d), 3.1, 3.2, 8.1(b), and 8.4(d), and Rule 54(d).

In addition to his disbarment and obligation to pay restitution, Mr. Cook was ordered to pay the State Bar’s costs of \$2,909.91.

ROBERT A. GAFFNEY, JR.

Bar No. 021491; File Nos. 12-1947, 12-2732, 12-2815, 12-3069, 12-3145, 12-3177
 PDJ No. 2013-9059

By judgment and order of the presiding disciplinary judge dated Nov. 12, 2013, Robert A. Gaffney, Jr., Cleveland, Ohio, was disbarred, effective immediately. He also was assessed the costs and expenses of the disciplinary proceeding.

Mr. Gaffney's misconduct occurred during his representation of 16 court-appointed clients on appeal or in post-conviction relief proceedings. In many cases, Mr. Gaffney simply abandoned his clients prior to completing the tasks he was court ordered to fulfill. In many cases, he failed to file any pleadings on his clients' behalf and on a number of occasions filed pleadings after the court-imposed deadlines had passed. In one case, the Arizona Court of Appeals found that Mr. Gaffney had filed a "wholly deficient" *Anders* brief on a client's behalf. In that case, he also filed a motion in bad faith and lied to his client about having timely filed a motion for extension of time.

Mr. Gaffney failed to adequately consult or communicate with his clients regarding their cases, even after most had attempted to communicate with him. He also failed to notify his clients that he had moved to, or was working from, Ohio and failed to provide his clients with contact information so they could communicate with him. Without a valid mailing address, clients' letters were returned to them as undeliverable. In addition, Mr. Gaffney failed to notify the court that he had moved, which resulted in the Superior Court being unable to locate him and, in one case, he had no communication with the Court of Appeals for months. Mr. Gaffney failed to provide his clients with all of the documents they were entitled to receive, including transcripts and the files he maintained on their behalf, when he discontinued his representation of them. In some cases, Mr. Gaffney took months to provide his clients with documents they were entitled to receive, despite repeated orders by the Superior Court and the Court of Appeals. At times, the files he provided were incomplete. He also failed to comply with other orders issued by the courts.

Mr. Gaffney failed to appear at an order to show cause hearing scheduled to address the abandonment of his clients and responsibilities to the court. The Superior Court removed Mr. Gaffney as counsel for a number of clients and appointed new counsel, which further delayed the resolution of their cases.

Mr. Gaffney failed to promptly advise the Maricopa County Superior Court clerk and the Maricopa County Superior Court administrator, separately and in writing, of his new office address and law-firm affiliation when they differed from that listed with the State Bar of Arizona. He also failed to notify the State Bar within 30 days that he had a new address in Ohio and was permitted to practice law in that state.

During the State Bar's investigation into the charges of misconduct, Mr. Gaffney failed to respond to bar counsel's requests for information regarding the charges filed against him.

Aggravating factors: dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad-faith obstruction of the discipli-

nary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, vulnerability of victims, and substantial experience in the practice of law.

Mitigating factor: absence of a prior disciplinary history.

Mr. Gaffney violated Rule 42, ARIZ.R.S.Ct., specifically ER 1.1, ER 1.2(a), ER 1.3, ER 1.4(a) & (b), ER 1.15(d), ER 1.16(d), ER 3.2, ER 3.4(c), ER 8.1(b), and ER 8.4(d), and Rules 32(c)(3) and 54(c) & (d), ARIZ.R.S.Ct.

MARK A. KILLE

Bar No. 024441; File No. 13-0459

PDJ No. 2013-9093

After reviewing an agreement for discipline by consent, the presiding disciplinary judge entered a judgment and order dated Oct. 30, 2013, in which Mark A. Kille, Prescott Valley, was reprimanded. Mr. Kille also was placed on probation for one year during which time he must participate in the State Bar's Law Office Management Assistance Program and Trust Account Ethics Enhancement Program. Mr. Kille also was assessed the costs and expenses of the disciplinary proceeding in the amount of \$1,200.

Mr. Kille failed to maintain client ledgers and was not diligent in maintaining his trust account that pertained to his solo practice after he merged his solo practice with another firm in June 2012. As a result, he overdrew his trust account and negligently converted client funds for at least 11 months.

Aggravating factors: None.

Mitigating factors: Absence of a prior disciplinary record; absence of a dishonest or selfish motive; timely good-faith effort to make restitution or to rectify consequences of misconduct; full and free disclosure to disciplinary board or cooperative attitude toward proceedings; and character or reputation.

Mr. Kille violated Rule 42, ARIZ.R.S.Ct., specifically ER 1.15(a). Mr. Kille also violated Rules 43(b)(1)(A), 43(b)(1)(C), 43(b)(2)(A), 43(b)(2)(B), and 43(b)(2)(C), ARIZ.R.S.Ct.

DOUGLAS C. RHOADS

Bar No. 015265; File Nos. 11-2948, 11-3677, 12-1379

PDJ No. 2013-9051

On Nov. 6, 2013, the presiding disciplinary judge accepted the parties' agreement for discipline by consent and ordered Douglas C. Rhoads, Phoenix, suspended for six months and one day, effective 30 days from that date. Mr. Rhoads also agreed to pay restitution totaling about \$40,000, equal to the amount of sanctions assessed against him in the underlying litigation.

Count one implicated Mr. Rhoads' conduct in connection with four Yavapai County Superior Court cases, one U.S. Bankruptcy Court case, and a Yavapai County Sheriff's

Office incident involving the foreclosure and transfer of possession of his former Sedona home. Count two related to Mr. Rhoads' behavior litigating three Maricopa County Superior Court cases involving the foreclosure and transfer of possession of a client's business property. Count three pertained to Mr. Rhoads' conduct litigating a forcible entry and detainer (FED) action concerning his own Phoenix-area home. The State Bar charged that Mr. Rhoads misrepresented to various parties the outcome of one of the cases; withheld information from a court that a different judge in a different case already had ruled on the same issues involving the same parties; misused bankruptcy court filings and procedures to engage in wasteful litigation with secured creditors; violated a bankruptcy court order not to file another case within one year; falsely accused a real-estate agent of bribery and criminal trespass; persistently argued ownership issues in FED cases contrary to established case law that possession is the only litigable issue in such cases; persistently asserted a "show me the note" theory in trial and appellate courts despite established case law rejecting that theory in Arizona; acted incompetently in drafting pleadings, and in trial and appellate advocacy; and showed disrespect to opposing parties, counsel, and to the court.

Mr. Rhoads denied many of the charges but conditionally admitted that he violated Rule 42, ARIZ.R.S.Ct., specifically ERs 1.1 (lack of competence), 3.1 (assertion of frivolous and non-meritorious claims), 3.2 (failure to expedite litigation), 3.3(d) (lack of candor toward the tribunal), 3.4(a) (lack of fairness to opposing parties and counsel), 3.4(c) (disobeying court orders), 3.4(e) (allusion to irrelevant matters), 3.5(d) (disrupting a tribunal), 4.4(a) (lack of respect for rights of others), 8.2(a) (false statements concerning a judge), and 8.4(d) (conduct prejudicial to the administration of justice); and Rules 41 (c) and (g), ARIZ.R.S.Ct.

Aggravating factors: pattern of misconduct, multiple offenses, substantial experience in the practice of law, and indifference to making restitution.

Mitigating factors: absence of a prior disciplinary record, absence of a dishonest or selfish motive, personal or emotional problems, full and free disclosure to a disciplinary board or cooperative attitude toward proceedings, imposition of other penalties or sanctions, and remorse.

In addition to his suspension and obligation to pay restitution, Mr. Rhoads was ordered to pay the State Bar's costs of \$1,501.07.

CAUTION! Nearly 17,000 attorneys are eligible to practice law in Arizona. Many attorneys share the same names. All discipline reports should be read carefully for names, addresses and Bar numbers.