

SUPREME COURT OF ARIZONA

In the Matter of a Member of the ) Arizona Supreme Court  
State Bar of Arizona ) No. SB-18-0036-AP  
)  
DON W. CARTIER, ) Office of the Presiding  
Attorney No. 33047 ) Disciplinary Judge  
) No. PDJ20179126  
)  
)  
\_\_\_\_\_ ) **FILED 02/05/2019**

**DECISION ORDER**

Respondent Don W. Cartier appealed the Hearing Panel's May 25, 2018 Decision and Order Imposing Sanctions.

**A. ER 5.3**

In Count 1, the State Bar claimed that Respondent's paralegal conducted an initial consultation without Respondent being present and Respondent did not provide Client R. with a firm engagement letter or fee agreement. Also, it claimed that Respondent forwarded to Client R. an internal email that mentioned the name of Respondent's Client M.

A review of the evidence indicates that the paralegal worked for Respondent as an independent contractor and also maintained her own "doc prep" business; she sent Client R. an important email from the doc prep email address while still working for Respondent. The professional association between Respondent and the paralegal was brief and there were indications they had differing views of her role in his practice. There was no charge or finding that Respondent failed to provide the terms of representation in writing in violation

of ER 1.5. In light of these circumstances, the Court rejects the finding that Respondent violated ER 5.3.

**B. ER 1.6**

Respondent improvidently forwarded an email to Client R. that included his task list for Client M. This action implicated ER 1.6(e) which requires a lawyer to make reasonable efforts to prevent inadvertent or unauthorized disclosure of client information.

Comment 4 notes:

Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person.

The Court concludes that Respondent violated ER 1.6(a) and (e).

**C. Rule 32(c) (3)**

In Count 2, the State Bar claimed that Respondent failed to keep his address current with the State Bar. The State Bar investigation involved letters to Respondent in February, April and May 2017 to the address on record with the State Bar which is Respondent's residential address. The Panel found that Respondent failed to keep his address current. We reject this finding although we affirm the finding that he failed to timely respond to the State Bar's investigation.

**D. Rule 43**

The Court affirms the Panel's finding that Respondent failed to exercise due professional care with regards to his trust account as

required under Rule 43(b)(1). He failed to maintain accurate ledgers records under Rule 43(b)(2)(B) and did not perform three-way reconciliations under Rule 43(b)(2)(C). He withdrew fees from uncollected funds in violation of Rule 43(b)(4), resulting in an IOLTA overdraft notification and charged Client S. a \$50 fee which Respondent was unable to establish was an actual bank charge above the \$27 assessed against the client's funds or was otherwise agreed to by the client. He disbursed trust account funds by cashier's check in violation of Rule 43(b)(5). He paid himself fees from Client R.'s retainer the day before all his fees were earned. The day after refunding Client R.'s unused retainer, he filed his Certificate of Compliance with the State Bar in which he represented that he was not required to maintain a trust account--notwithstanding the fact that he had an IOLTA account--in violation of Rule 43(d). He did not provide documents to support trust account withdrawals and did not record trust account transactions between January and April of 2017. The Court affirms the Panel's findings that Respondent knowingly violated Rule 43.

**E. ERs 7.1 and 8.4(c)**

In Count 3, the State Bar claimed that Respondent, who was admitted to the Missouri Bar in 2015 and the Arizona Bar in 2016, misrepresented his credentials on his website, including two claims that he had 25 years of experience, that he was a "seasoned" litigator, and that he had successfully participated in three

significant legal proceedings. Respondent claimed the website developer had inserted the "25-year" language in a template and Respondent was unaware of this statement. He also claimed that in this context, he was using the word "seasoned" to describe "the variety of areas of practice he will engage." He claimed to have co-chaired two litigation matters before he was admitted to the Arizona State Bar, and he negotiated the third matter on behalf of a family member before he was admitted to practice.

The Court affirms the Panel's findings that these representations violated ER 7.1 which prohibits false or misleading statements about a lawyer or the lawyer's services. The Court also affirms the Panel's finding that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of ER 8.4(C).

The Court agrees with Respondent that any consideration of documents outside the record should not be the basis for any finding of a violation or of an aggravating factor in support of a sanction. The Court therefore rejects any finding that Respondent mischaracterized his actions in the Client R. matter based on the Panel's consideration of documents outside the record.

**F. Aggravation and Mitigation**

The Court affirms the following aggravating factors:  
(b) dishonest or selfish motive; (c) a pattern of misconduct;  
(d) multiple offenses; and (g) refusal to acknowledge wrongful nature

of conduct.

The Court rejects the following aggravating factors: (e) bad faith obstruction of the disciplinary process and (f) submission of false evidence, false statements or other deceptive practices during the disciplinary process. Respondent is correct that, in this case, his declining to finalize a settlement after filing a notice of settlement should not be considered an aggravating factor. Likewise, Respondent's presentation of his own version of events does not in this case warrant findings of bad faith obstruction or submission of false information.

The Court affirms the mitigating factors of (a) absence of a prior disciplinary record and (f) inexperience in the practice of law.

#### **G. Sanction**

Although inexperience in the practice of law may explain certain lapses in judgment and negligent errors, Respondent not only violated multiple rules pertaining to his trust account, he also affirmatively certified in his 2017 annual fee statement that he was not required to maintain a trust account, although he had an IOLTA account open at the time. Likewise, the Court agrees that it was fraudulent for a two-year lawyer to publicly represent himself as a seasoned litigator with 25 years of experience.

"The purpose of lawyer discipline is not to punish the offender, but to protect the public, the profession, and the administration of

justice." *Matter of Carrasco*, 176 Ariz. 459, 462 (1993)

The Panel concluded Respondent's mental state was knowing if not intentional. State of mind is a fact question. *In re Non-Member of State Bar of Arizona, Van Dox*, 214 Ariz. 300, 304 ¶¶ 14-15 (2007) ("The 'clear error' standard requires that the Commission give "great deference" to a hearing officer's factual findings."). The Court affirms the finding that Respondent's violations of Rule 42 and ERs 1.7 and 8.4 were knowing.

Looking to injury or potential injury, Respondent was unable to support account charges he collected from Client S.'s retainer, created an overdraft by withdrawing trust funds in violation of Rule 43(b)(4), and paid himself for fees before they were earned, establishing injury to his clients. Posting patently false representations concerning a lawyer's experience on a public website likewise carries an inherent risk of harm to the public. Filing a false Trust Account and IOLTA Compliance certification evidences a distressing disregard for the State Bar's public-protection function, again endangering the public.

The Court affirms the imposition of a suspension for six months and one day and probation for two years upon reinstatement to include participation in the State Bar's Membership Assistance Program and Law Office Management Assistance Program.

**IT IS ORDERED** affirming the decision and sanction of the hearing panel as set forth in this order.

DATED this 5<sup>th</sup> day of February, 2019.

/s/

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SCOTT BALES  
Chief Justice

TO:

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