

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

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

**RICHARD TIMOTHY MACKEY a.k.a
Tim Mackey,
Bar No. 016254**

Respondent.

PDJ-2015-9012

FINAL JUDGMENT OF DISBARMENT

[State Bar File Nos. 14-1904, 14-2093,
14-2150, 14-2241]

FILED JANUARY 28, 2015

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Consent to Disbarment filed on January 26, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the same. Accordingly:

IT IS HEREBY ORDERED accepting the Consent to Disbarment. Respondent, **Tim Mackey, State Bar No. 016254**, is hereby disbarred from the State Bar of Arizona and his name is hereby stricken from the roll of lawyers, effective immediately.

Respondent is no longer entitled to the rights and privileges of an Arizona lawyer, but remains subject to the jurisdiction of this Court. Respondent shall immediately comply with the requirements relating to notification of clients and others and file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED that no further disciplinary action shall be taken in reference to the matters that are the subject of the charges upon which the consent to disbarment and this judgment of disbarment are based.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00 within thirty (30) days of the date of entry of this judgment. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 28th day of January, 2015.

William J. O'Neil

**WILLIAM J. O'NEIL
PRESIDING DISCIPLINARY JUDGE**

Copies of the foregoing mailed and emailed
this 28th day of January, 2015, to:

Candace H. Kent
Counsel for Respondent, Tim Mackey
Kent & Ryan, PLC
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Phoenix, Arizona 85003
Email: kent@kentandryan.com

Meredith L. Vivona,
Independent Bar Counsel
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Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: JAlbright

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

In the Matter of a Member of the
State Bar of Arizona,

Richard Timothy Mackey, a.k.a Tim
Mackey No. 016254,

Respondent.

Case No.: PDJ-2015-

State Bar of Arizona File Nos. 14-1904,
14-2093, 14-2150, 14-2241

CONSENT TO DISBARMENT

I, Tim Mackey, residing at 5223 N. 24th St. #204 Phoenix, Arizona 85016, voluntarily consent to disbarment as a member of the State Bar of Arizona and consent to the removal of my name from the roster of those permitted to practice before this court, and from the roster of the State Bar of Arizona.

I acknowledge that charges have been made against me. I have read the charges. I further acknowledge that I do not desire to contest or defend the charges, but wish to consent to disbarment. I have been advised of and have had an opportunity to exercise my right to be represented in this matter by a lawyer. I consent to disbarment freely and voluntarily and not under coercion or intimidation. I am aware of the rules of the Supreme Court with respect to discipline, disability, resignation and reinstatement, and I understand that any future application by me

for admission or reinstatement as a member of the State Bar of Arizona will be treated as an application by a member who has been disbarred for professional misconduct, as set forth in the charges made against me. The misconduct of which I am accused is described in the charges bearing the number referenced above, a copy of which is attached hereto as **Exhibit "A."**

I agree to pay the costs assessed against me in connection with this matter within thirty (30) days from the date of service of the Judgment of Disbarment. The State Bar's Statement of Costs and Expenses is attached hereto as **Exhibit "B."** A proposed form of Judgment of Disbarment is attached hereto as **Exhibit "C."**

Executed this 16th day of January 2015, at Phoenix, Arizona.


Richard Timothy Mackey,
Respondent

SUBSCRIBED AND SWORN TO before me this 16th day of 01, 2015, by Richard Timothy Moriarity, who satisfactorily proved his identity to me.


Notary Public

My Commission expires:
1/8/18

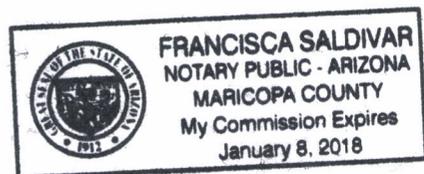


EXHIBIT A

Tim Mackey, Respondent

State Bar of Arizona File Nos. 14-1904, 14-2093, 14-2150, 14-2241

Statement of Charges

On February 5, 2014, Respondent entered into an Agreement for Discipline by Consent in PDJ-2014-9010, State Bar Nos. 13-0855 and 13-1679. Respondent admitted that his conduct, as set forth in the Agreement, violated Ariz. Sup. Ct. Rule 42, ER(s) 1.3, 1.4 and 8.4(c). On February 21, 2014, the Presiding Disciplinary Judge entered a Final Judgment & Order. The Order suspended Respondent from the practice of law for six months, effective March 24, 2014. The Order further mandated that Respondent "shall immediately comply with the requirements relating to notification of clients and others."

Respondent knowingly failed to communicate his suspension to all of his client, opposing counsel and others, specifically including the complainants in State Bar Files Nos. 14-1904, 14-2093, 14-2150 and 14-2241. In fact, despite the February 21, 2014 Final Judgment & Order suspending Respondent from the practice of law for six months, Respondent deliberately continued to practice law during his six month suspension. Specifically, after March 24, 2014, Respondent held himself out to the public as a lawyer; continued to charge and accept payments from clients; caused documents to be filed on behalf of his clients in the Bankruptcy Court of the District of Arizona; and Respondent provided clients with legal advice.

To effectuate his unauthorized practice of law, Respondent permissibly obtained the electronic court filing ("ECF") account of another lawyer. Thereafter, without the ECF account holder's knowledge or permission, Respondent submitted a request to the Bankruptcy Court changing the primary contact email address for the ECF account from the email address of the attorney of record, to an email address controlled entirely by Respondent. Thereafter, Respondent caused numerous fraudulent filings to be made in the Bankruptcy Court by filing documents under the ECF account holder's name, but without the ECF account holder's knowledge or permission and without the permission of his clients.

Respondent falsely stated to Independent Bar Counsel that he did not engage in the practice of law during his suspension.

On ~~December 15~~ ^{January 13, 2015}, 2014, with the advice of counsel, Respondent pled guilty to one count charging the Respondent with a violation of Title 18, United States Code, Section 1001(a)(2), False Statements, a Class D felony offense. The elements of the

offense require the government to prove: (1) that Respondent made a false statement, in this case in matters pending before the Bankruptcy Court of the District of Arizona; that Respondent acted willfully; and (3) that the false statement was material to the activities or decisions of the Bankruptcy Court. The factual basis for the plea that Respondent agreed to includes:

On or about February 21, 2014 the Supreme Court for the State of Arizona issued a Final Judgment and Order suspending defendant Richard Timothy Mackey, a.k.a. Tim Mackey, a licensed attorney (hereinafter defendant), from the practice of law in the State of Arizona for a period of 6 months. The suspension was effective 30 days from the date of the Order. Prior to the commencement of the suspension, defendant entered into an agreement with another attorney licensed to practice in the State of Arizona (hereinafter the "attorney of record") and a law firm located in Phoenix, Arizona, in which the attorney of record was a shareholder (hereinafter the "law firm"). As part of the agreement, the licensed attorney and the law firm agreed to hire defendant as an independent contractor paralegal and represent some of the defendant's clients after they entered into a new representation and fee agreement with the law firm. On or about March 24, 2014, immediately after the defendant started working for the law firm, defendant caused the application for, and establishment of, an electronic court filing (hereinafter "ECF") account with the Bankruptcy Court under the attorney of record's name with the attorney of record's approval. The purpose of the establishment of this account was to permit the attorney of record to represent defendant's current clients who had cases pending in the Bankruptcy Court at some point in the future. Once the ECF account was established, solely in the name of the attorney of record, the attorney of record could then file documents in cases pending before the Bankruptcy Court and receive copies of documents, orders and notices related to cases pending before the Bankruptcy Court via his designated primary contact email address. On or about March 27, 2014, after the ECF account was established, defendant submitted a request to the Bankruptcy Court seeking the change of the primary contact email address for the ECF account from the e-mail address for the attorney of record to a secondary e-mail address held and controlled by the defendant. This change was made by the Bankruptcy Court upon the defendant's instruction without the knowledge or authorization of the attorney of record or any attorney in his law firm. The change did not alter the name of the attorney of record on file in the Bankruptcy Court's ECF filing system. The email address change request contained a false statement due to the fact that the attorney of record did not make the request, nor did he authorize that the change request be submitted on his behalf.

...

The email address change request contained a false statement, as defendant then and there knew, due to the fact that the attorney of record did not make the request, nor did he authorize that the change be submitted on his behalf. The false statement with respect to the change was material because it was not authorized by the attorney of record, and then allowed the defendant, while using the attorney of record's name to secretly practice law and represent clients before the Bankruptcy Court without authorization by the Bankruptcy Court or a license to do so. If the Bankruptcy Court had known that the attorney of record had not submitted or authorized the submission of the e-mail address change request, the e-mail address change would not have been made by the Court.

After defendant was suspended from the practice of law as of on or about March 23, 2014, and before his unauthorized practice of law was detected by the Bankruptcy Court, the attorney of record, and the law firm, defendant represented ten different clients in cases pending before the Bankruptcy Court. None of the clients had been advised by Defendant that he had been suspended from the practice of law.

As of the date that Respondent signed this Consent to Disbarment, Respondent had not yet been sentenced for his violation of Title 18, United States Code, Section 1001(a)(2), False Statements, a Class D felony offense.

Respondent violated the following Supreme Court rules:

Rule 42, Ariz. R. Sup. Ct., ER 1.4, Communication

A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in ER 1.0(e), is required by these Rules; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law. It was incumbent on Respondent to notify all clients of his suspension from the practice of law effective March 24, 2014 not just pursuant to Rule 72, Ariz. R. Sup. Ct., but also Rule 42 Ariz. R. Sup. Ct., ER 1.4. Respondent's failure to communicate this information to his clients deprived them of an opportunity to discontinue the representation.

Rule 42, Ariz. R. Sup. Ct., ER 3.4, Fairness to Opposing Party and Counsel

A lawyer shall not: knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists. Rule

72, Ariz. R. Sup. Ct. and the Final Judgment & Order of February 21, 2014 obligated Respondent to provide notice to his clients and others of his suspension. Respondent failed to comply with the February 21, 2014 order.

Rule 42, Ariz. R. Sup. Ct., ER 5.5(a), Unauthorized Practice of Law

A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. Respondent violated this Rule by counseling clients, providing legal advice, accepting payment for services and causing documents to be filed in the Bankruptcy Court after his March 24, 2014 suspension.

Rule 42, Ariz. R. Sup. Ct., ER 5.5(b)(2), Unauthorized Practice of Law

A lawyer who is not admitted to practice in this jurisdiction shall not: (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Respondent violated this Rule by continuing to counsel clients, provide legal advice, accept payment for services and cause documents to be filed in the Bankruptcy Court after his March 24, 2014 suspension.

Rule 42, Ariz. R. Sup. Ct., ER 8.4(a), Misconduct

It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct. Respondent violated the Rules of Professional Conduct as set forth herein including Rules 42, Ariz. R. Sup. Ct., ERs 1.4, 3.4, 5.5(a) and 5.5(b)(2).

Rule 42, Ariz. R. Sup. Ct., ER 8.4(b), Misconduct

It is professional misconduct for a lawyer to (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. On December 15, 2014, with the advice of counsel, Respondent pled guilty to one count charging the Respondent with a violation of Title 18, United States Code, Section 1001(a)(2), False Statements, a Class D felony offense. As part of the factual background supporting the plea, Respondent acknowledged that he knowingly made a materially false statement to the Bankruptcy Court which allowed him to represent "ten different clients in cases pending before the Bankruptcy Court" during the time he was suspended from the practice of law.

Rule 42, Ariz. R. Sup. Ct., ER 8.4(c), Misconduct

It is professional misconduct for a lawyer to (c) engage in conduct involving dishonestly, fraud, deceit or misrepresentation. On December 15, 2014, with the advice of counsel, Respondent pled guilty to one count charging the Respondent with a violation of Title 18, United States Code, Section 1001(a)(2), False Statements, a Class D felony offense. As part of the factual background supporting the plea,

Respondent acknowledged that he knowingly made a materially false statement to the Bankruptcy Court which allowed him to represent “ten different clients in cases pending before the Bankruptcy Court” during the time he was suspended from the practice of law.

Rule 42, Ariz. R. Sup. Ct., ER 8.4(d), Misconduct

It is professional misconduct for a lawyer to (d) engage in conduct that is prejudicial to the administration of justice. Respondent’s conduct, as described above and in the factual portion of his December 15, 2014 plea agreement, was prejudicial to the administration of justice where he caused numerous fraudulent documents to be filed causing confusion, delay and added expense to several of his client’s cases.

Rule 54, Ariz. R. Sup. Ct., Grounds for Discipline

(g) Conviction of a crime. A lawyer shall be disciplined as the facts warrant upon conviction of a misdemeanor involving a serious crime or any felony. “Serious crime” means any crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, theft or moral turpitude. A conspiracy, a solicitation of another or any attempt to commit a serious crime, is a serious crime. Receipt by the state bar of a certified copy of the judgment of conviction, or other information of conviction of a lawyer, except that the sole issue to be determined shall be the extent of the discipline to be imposed. In any discipline proceeding based on the conviction, proof of conviction shall be conclusive evidence of the attorney’s guilt of the crime.

Although Respondent has not yet been sentenced, on December 15, 2014, with the advice of counsel, Respondent pled guilty to one count charging the Respondent with a violation of Title 18, United States Code, Section 1001(a)(2), False Statements, a Class D felony offense. To prove this crime, the government was required to prove among other things, that Respondent made a material false statement. Respondent, in fact, acknowledged that he knowingly made a materially false statement to the Bankruptcy Court which allowed him to represent “ten different clients in cases pending before the Bankruptcy Court” during the time he was suspended from the practice of law. Respondent’s crime, violation of Title 18, United States Code, Section 1001(a)(2), False Statements, involved “interference with the administration of justice, false swearing, misrepresentation, fraud.” As such, it is a “serious crime” within the meaning of Rule 54, Ariz. R. Sup. Ct.

Rule 72(a), Ariz. R. Sup. Ct., Notice to Clients, Adverse Parties, & Other Counsel

Within ten days after the date of an order or judgment issued by the presiding disciplinary judge . . . a respondent suspended . . . shall notify the following persons by registered or certified mail, return receipt requested, of the order or judgment, and of the fact that the lawyer is disqualified to act as lawyer after the effective date of the same: (1) all clients . . . (3) any opposing counsel in pending matters. . . . Respondent failed to provide the notice required by this rule to all of his clients and opposing counsel in pending matters.

EXHIBIT B

Statement of Costs and Expenses

In the Matter of a Suspended Member of the State Bar of Arizona,
Tim Mackey, Bar No. 016254, Respondent

File No(s). 14-1904, 14-2093, 14-2150, and 14-2241

Administrative Expenses

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

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

**General Administrative Expenses
for above-numbered proceedings** **\$1,200.00**

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

Staff Investigator/Miscellaneous Charges

Total for staff investigator charges \$ 0.00

TOTAL COSTS AND EXPENSES INCURRED **\$ 1,200.00**



Sandra E. Montoya
Lawyer Regulation Records Manager

1-7-15

Date

EXHIBIT C

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

In the Matter of a Member of the State Bar
of Arizona,

Richard Timothy Mackey, a.k.a Tim
Mackey No. 016254,

Respondent.

Case No.: PDJ-2015-

State Bar of Arizona File Nos. 14-1904,
14-2093, 14-2150, 14-2241

FINAL JUDGMENT AND ORDER

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Consent to Disbarment filed on _____, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the same. Accordingly:

IT IS HEREBY ORDERED accepting the consent to disbarment. Respondent, Tim Mackey, State Bar No. 016254, is hereby disbarred from the State Bar of Arizona and his name is hereby stricken from the roll of lawyers, effective immediately.

Respondent is no longer entitled to the rights and privileges of an Arizona lawyer, but remains subject to the jurisdiction of this Court. Respondent shall immediately comply with the requirements relating to notification of clients and others and file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED that no further disciplinary action shall be taken in reference to the matters that are the subject of the charges upon which the consent to disbarment and this judgment of disbarment are based.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$_____ within thirty (30) days of the date of entry of this judgment.

DATED this ____ day of _____, 2015.

William J. O'Neil, Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk,
Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this ____ day of _____, 2015.

Copies of the foregoing mailed and emailed
this ____ day of _____, 2015, to:

Candace H. Kent
Counsel for Respondent, Tim Mackey
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830 N. 6th Avenue
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Sandra.montoya@staff.azbar.org
By: _____