

CLIENT PROTECTION FUND QUARTERLY REPORT

The Client Protection Fund was created by the Board of Governors of the State Bar of Arizona in 1961 as required by a rule of the Supreme Court of Arizona. Its purpose is to promote public confidence in the administration of justice and to preserve the integrity of the legal profession by reimbursing clients who have sustained losses caused by the dishonest conduct of lawyers admitted and licensed to practice in Arizona.

The fund is a nonprofit charitable organization governed by a Declaration of Trust and administered by five volunteer trustees appointed by the Bar's Board of Governors. The fund receives a yearly assessment from each active and inactive member of the State Bar (paid with the annual bar dues). In addition, the fund earns interest on its invested fund balance.

More information about the fund is at www.azbar.org/cpf. Or contact the fund administrator at karen.weigand@staff.azbar.org or by phone: (602) 340-7286, toll free 866-482-9227.

The following is a brief summary of the claims paid in the third and fourth quarters of 2008:

GARY PETER KLAHR
Bar No. 00212
(\$585)

► The claimant retained Klahr to represent him in a traffic matter. The claimant alleged that Klahr contracted the work to another attorney, and then failed to inform the contract attorney of a scheduled court appearance until the day of the appearance. Neither Klahr nor the contract attorney appeared in court on behalf of the claimant. At that point, the claimant terminated the representation, but Klahr failed to inform the contract attorney. The contract attorney later appeared in court on the claimant's behalf, and Klahr charged the claimant for that appearance. Upon investigation, the Trustees found no evidence that Klahr did any work for the claimant and reimbursed \$585, the full fees paid.

JOSEPH S. DIDIO
Bar No. 019738
(\$2,010)

► The claimant retained Didio to represent him in a civil matter. The claimant alleged that the only work Didio did for him was to prepare and mail two let-

ters. Approximately six months later, the claimant received a letter from Didio stating he could no longer represent the claimant, and that a check for the unused retainer was enclosed; however, no check was enclosed or ever sent by Didio. The Trustees determined that Didio performed such an insignificant amount of work on the case that the refusal to refund the unearned fees constituted a wrongful taking of money, and reimbursed the claimant \$2,010.

GARY F. FORSYTH
Bar No. 007589
(\$600)

► The claimant retained Forsyth to represent her in a divorce and temporary support matter. The claimant alleges that after she hired Forsyth, he basically did no work for her and did not return phone calls. Upon investigation, the Trustees determined that Forsyth performed such an insignificant amount of work on the case that the refusal to refund the unearned fees constituted a wrongful taking of money, and reimbursed the claimant \$600.

RAUL GARZA, JR.
Bar No. 021090
(two claims totaling \$11,000)

► The first claimant retained Garza to represent him in a civil matter. The claimant states that soon after hiring Garza, all attempts to contact Garza were unsuccessful, and that there was no legal work done on his case. Upon investigation, the Trustees found no evidence that Garza did any work for the claimant and reimbursed \$6,000, the full fees paid.

► The claimant in the second matter retained Garza to represent him in a civil matter. The claimant alleges that Garza performed one site visit to the property, and that after the site visit, he had no further contact with Garza and never received an itemized billing statement. Upon investigation, the Trustees found no evidence that Garza did any work of value for the claimant and reimbursed \$5,000, the full fees paid.

JOHN G. MORRISON
Bar No. 006192
(\$11,666.67)

► The claimant hired Morrison to

represent her in a civil matter. The claimant states that the case settled and a check was issued to Morrison. The claimant alleges that Morrison forged her signature on the check, deposited it in his account, and never distributed her portion of the settlement to her. Upon investigation, it was determined that Morrison converted the settlement proceeds, and the Trustees reimbursed the claimant \$11,666.67.

M. JOSEPHINE SOTELO
Bar No. 012363
(two claims totaling \$6,000)

► The claimant in the first matter retained Sotelo to represent him in a DUI matter. Sotelo died approximately two months later. Upon investigation, the Trustees found no evidence that Sotelo did any work for the claimant and reimbursed \$2,500, the full fees paid.

► The second claimant retained Sotelo to represent her in a divorce and child custody matter. Sotelo died approximately one month later. Upon investigation, the Trustees found no evidence that Sotelo did any work for the claimant and reimbursed \$3,500, the full fees paid.

The following is a brief summary of the claims paid thus far in the first quarter of 2009:

ARLA H. BLASINGIM-STENZEL
Bar No. 011878
(14 claims totaling \$102,385.78)

- ▶ The claimants hired Blasingim-Stenzel to represent them in a civil matter. The case was settled and Blasingim-Stenzel received the settlement proceeds. The claimants alleged that Blasingim-Stenzel did not pay any of their medical bills, nor did they receive any of the settlement proceeds. Upon investigation, it was determined that Blasingim-Stenzel converted the settlement proceeds, and the Trustees reimbursed the claimants \$50,000.
- ▶ The claimant retained Blasingim-Stenzel to represent her in a bankruptcy matter and paid Blasingim-Stenzel a total of \$31,670.75. The claimant alleged that a portion of this money was for preparing and filing the bankruptcy and the remainder was to be used to pay creditors' claims. The claimant contended that Blasingim-Stenzel performed no legal work on her case. Upon investigation, there was no evidence that Blasingim-Stenzel did any work for the claimant, and the Trustees determined that Blasingim-Stenzel converted all of the funds. The Trustees reimbursed the claimant \$31,170.78.
- ▶ The claimant hired Blasingim-Stenzel to represent him in a civil matter. The case was settled and Blasingim-Stenzel received the settlement proceeds.

Blasingim-Stenzel forwarded a check to the claimant for a portion of the settlement, but included no accounting for the rest of the proceeds. Upon investigation, it was determined that Blasingim-Stenzel converted \$6,111 of the claimant's share of the proceeds. The Trustees reimbursed that amount to the claimant.

- ▶ The claimant retained Blasingim-Stenzel to represent him in a debt collection matter. The claimant alleged that Blasingim-Stenzel performed no legal work on his case. Upon investigation, the Trustees found no evidence that Blasingim-Stenzel did any work for the claimant and reimbursed \$1,000, the full fees paid.
- ▶ The claimants retained Blasingim-Stenzel to represent them in a bankruptcy matter and a foreclosure matter. The claimants alleged that Blasingim-Stenzel performed no legal work on their case. Upon investigation, the Trustees found no evidence that Blasingim-Stenzel did any work for the claimants and reimbursed \$2,000 to the claimants, the full fees paid.
- ▶ The claimant retained Blasingim-Stenzel to prepare a will and undertake other legal work for her. The claimant alleged that Blasingim-Stenzel performed no legal work for her. Upon investigation, the

Trustees found no evidence that Blasingim-Stenzel did any work for the claimant and reimbursed claimant \$2,204, the full fees paid.

- ▶ A total of eight claimants in unrelated claims retained Blasingim-Stenzel to represent them in bankruptcy matters. Each claimant alleged that Blasingim-Stenzel performed no legal work on his or her case. The Trustees determined that in each of the claims, Blasingim-Stenzel engaged in a pattern of practice of either performing no work on the case, or such an insignificant amount of work, that the refusal to refund the unearned fees constituted a wrongful taking of money. The Trustees reimbursed the claimants, respectively, in the following amounts: \$850, \$1,150, \$550, \$3,050, \$850, \$1,950, \$750 and \$750.

RAUL GARZA, JR.

Bar No. 021090
(two claims totaling \$15,000)

- ▶ The claimant in the first matter retained Garza to represent him in a civil matter. The claimant states that Garza did not put his retainer in a trust account. The claimant alleges that Garza did not file any pleadings with the court, failed to keep over 15 appointments with him, and finally just ceased communicating. Upon investigation, the Trustees found no evidence

that Garza did any work for the claimant and reimbursed \$5,000, the full fees paid.

- ▶ The claimants in the second matter retained Garza to represent them in a civil matter. The claimants allege that they had communication problems with Garza and that he failed to file any pleadings with the court regarding their case. The claimants also state that Garza was late to a scheduled inspection of the plaintiff's home, changed deposition dates numerous times, did not contact expert witnesses regarding preparation for deposition, and never provided the claimants with an itemized billing statement. The Trustees determined that Garza performed such an insignificant amount of work on the case that the refusal to refund the unearned fees constituted a wrongful taking of money, and reimbursed the claimant \$10,000.

PAUL M. WEICH

Bar No. 014089
(\$2,000)

- ▶ The claimant retained Weich to represent him in a collection matter. The claimant alleges that Weich was hired to appeal a justice court decision, but failed to do so, and then ceased communicating with him. Upon investigation, the Trustees found no evidence that Weich did any work for the claimant and reimbursed \$2,000, the full fees paid.

REINSTATEMENTS

ANDREW D. DIODATI

Bar No. 014394; File Nos. 04-1903, 05-0196, 06-2044

Supreme Court No. SB-07-0197-D/R

By Arizona Supreme Court judgment and order dated June 19, 2008, Andrew D. Diodati, 5631 W. Copperhead, Tucson, AZ, was reinstated as a member of the State Bar of Arizona.

ROBERT W. DUNAWAY

Bar No. 016908; File No. 07-6013

Supreme Court No. SB-08-0032-R

By Arizona Supreme Court judgment

and order dated April 22, 2008, Robert W. Dunaway, 4350 E. Camelback Rd., Ste. B-200, Phoenix, AZ, was reinstated as a member of the State Bar of Arizona.

Mr. Dunaway was suspended from the practice of law on Mar. 1, 2004, for failure to comply with MCLE requirements. During his suspension, he continued to practice law and used an impermissible trade name in his law firm. For violating ERs 5.5 and 7.5, and Rule 31(a), ARIZ.R.S.C.T., Mr. Dunaway was suspended for six months and one day retroactive to Oct. 5, 2006.

ROGER K. SPENCER

Bar No. 004618; File No. 07-6014

Supreme Court No. SB-08-0036-R

By Arizona Supreme Court judgment and order dated April 22, 2008, Roger K. Spencer, One E. Camelback Rd., Ste. 550, Phoenix, AZ, was reinstated as a member of the State Bar of Arizona and placed on probation for two years. Probation requires participating in the State Bar's Law Office Management Assistance Program and the Member Assistance Program. He was also assessed the costs and expenses of the disciplinary proceedings.

DIANA WEINERT-LANDRITH

Bar No. 009885; File Nos. 07-6008

Supreme Court No. SB-08-0071-R

By Arizona Supreme Court judgment and order dated June 26, 2008, Diana Weinert-Landrith, 8275 E. Bell, AZ, was reinstated as a member of the State Bar of Arizona. She has been placed on probation for two years with the terms being completion of the Trust Account Ethics Enhancement Program within one year of reinstatement and participating in the State Bar's Law Office Management Assistance Program and Member Assistance Program.

She also must pay the costs and expenses of the disciplinary proceedings.

RENE L. WILLIAMS

Bar No. 016825; File No. 07-6010

Supreme Court No. SB-08-0035-R

By Arizona Supreme Court judgment and order dated April 22, 2008, Rene L. Williams, 1753 E. Broadway Rd., Ste., 101-528, Tempe, AZ was reinstated as a member of the State Bar of Arizona.

SANCTIONED ATTORNEYS

ALLAN BARFIELD

Bar No. 013148; File No. 06-1929

Supreme Court No. SB-08-0064-D

By Arizona Supreme Court judgment and order dated June 4, 2008, Allan Barfield, 7912 S. Ivy Lane, Baxter Springs, KS, was suspended for six months and one day and assessed the costs and expenses of the disciplinary proceedings.

In a prior matter, Mr. Barfield had been censured and placed on probation for one year. The terms of probation included maintaining malpractice insurance and completing the State Bar's Ethics Enhancement Program. Mr. Barfield failed to comply with the terms of his probation and moved to Kansas without resolving the noncompliance issues. He failed to respond to the State Bar's letters regarding the matter.

Four aggravating factors were: prior discipline, multiple offenses, refusal to acknowledge the wrongful nature of conduct and substantial experience in the practice of law.

There were no mitigating circumstances.

Mr. Barfield violated Rule 42, ARIZ.R.S.CT., ER 8.1(b), and Rule 53(d), (e) and (f), ARIZ.R.S.CT.

GARY BEREN

Bar No. 012631; File No. 06-1200

Supreme Court No. SB-08-0065-D

By Arizona Supreme Court judgment and order dated May 15, 2008, Gary Beren, 3800 N. Central Ave., Ste. 1500, Phoenix, AZ, was censured and assessed the costs and expenses of the disciplinary proceedings.

A complaint was filed against Mr. Beren regarding his conduct while representing a client in two criminal matters. After investigation, the State Bar concluded that

he had not violated any responsibilities in his representation of the client and the allegations were dismissed. Mr. Beren's discipline results from his failure to respond to the State Bar's inquiries.

Two aggravating factors were found: prior discipline and substantial experience in practice.

Four mitigating factors were found: absence of dishonest or selfish motive, personal or emotional problems, efforts to rectify the consequences of misconduct and remorse.

Mr. Beren violated Rule 42, ARIZ.R.S.CT., ER 8.1(b), and Rule 53(d) and (f), ARIZ.R.S.CT.

SCOTT ASHTON BLAIR

Bar No. 010142; File No. 06-1317

Supreme Court No. SB-08-0084-D

By Arizona Supreme Court judgment and order dated June 26, 2008, Scott Ashton Blair, P.O. Box 8400, Scottsdale, AZ, was censured and assessed the costs and expenses of the disciplinary proceedings.

Mr. Blair was retained to assist in the structuring of a new company. At the request of the client, Mr. Blair presented a nondisclosure agreement to a third party listing himself as the owner of the new company, which was false. Respondent made a false statement of material fact or law to a third person, and/or engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

Two aggravating factors were found: prior discipline and substantial experience in the practice of law.

One mitigating factor was found: cooperative attitude toward the proceedings.

Mr. Blair violated Rule 42, ARIZ.R.S.CT., ERs 4.1 and 8.4(c).

MICHAEL A. CARRAGHER

Bar No. 003366; File No. 06-1690

Supreme Court No. SB-08-0073-D

By Arizona Supreme Court judgment and order dated May 19, 2008, Michael A. Carragher, P.O. Box 169, Globe, AZ, was censured, placed on probation for two years and assessed the costs and expenses of the disciplinary proceedings. The terms of probation include participating in the State Bar's Law Office Management Assistance Program.

Mr. Carragher was retained by a client to prepare a qualified domes-

tic relations order. He prepared and submitted a draft of the document to the plan administrator on June 14, 2004, and was informed it contained some deficiencies. Upon resubmitting the documents on July 26, 2005, with the proposed changes, Mr. Carragher was again informed that additional changes and modifications had to be made. The document had to be resubmitted two more times, on Jan. 31, 2007, and July 2, 2007, to cure deficiencies before it was finally accepted.

Two aggravating factors were found: prior discipline and substantial experience in the practice of law.

Three mitigating factors were found: absence of dishonest or selfish motive, full and free disclosure, and remoteness of prior offenses.

Mr. Carragher violated Rule 42, ARIZ.R.S.CT., ERs 1.2 and 1.3.

ROBERT M. COOK

Bar No. 002628; File Nos. 06-0426, 06-0472

Supreme Court No. SB-08-0074-D

By Arizona Supreme Court judgment and order dated May 23, 2008, Robert M. Cook, 1440 E. Missouri Ave, Phoenix, AZ, was censured, placed on probation for one year and assessed the costs and expenses of the disciplinary proceedings. The terms of probation include participating in the State Bar's Law Office Management Assistance Program and Member Assistance Program.

Mr. Cook was retained to pursue a forcible detainer action. In drafting the client's answer to the complaint, numerous responses were different from what was stated by the clients, including admissions to several allegations that the clients wanted to deny. Mr. Cook filed the answer without closely reviewing it. The opposing party filed and was granted a motion for summary judgment based in part on the submitted answer. Additionally, after the representation terminated, Mr. Cook revealed confidential information by sending a letter to the Yuma County attorney accusing the clients of committing perjury in the Superior Court.

Four aggravating factors were found: prior discipline, pattern of misconduct, multiple offenses and substantial experience in the prac-

tice of law.

Five mitigating factors were found: personal or emotional problems, timely good-faith effort to make restitution, full and free disclosure, good character or reputation, remorse.

Mr. Cook violated Rule 42, ARIZ.R.S.CT., ERs 1.1, 1.6(a) and 5.3(a) and Rule 41(g), ARIZ.R.S.CT.

RONALD G. FINCH

Bar No. 004286; File Nos. 06-1828, 06-0241, 07-1015

Supreme Court No. SB-08-0066-D

By Arizona Supreme Court judgment and order dated May 15, 2008, Ronald G. Finch, 3001 W. Indian School Rd., Ste. 301, Phoenix, AZ, was censured and placed on probation for 18 months. The terms of probation include participating in the State Bar's Law Office Management Assistance Program. Mr. Finch shall also initiate fee arbitration with his clients and be assessed the costs and expenses of the disciplinary proceedings.

In count one, Mr. Finch was retained to represent a client in an immigration matter in July 2004. The client was requesting asylum, withholding of removal and relief under the Convention Against Torture in the United States Immigration Court. At a hearing on the merits, the client's claims for relief were denied and she was ordered to be removed from the United States. Mr. Finch filed an appeal with the Board of Immigration Appeals but the decision was affirmed. The deadline to file a petition for review was April 10, 2006. Due to a miscommunication with his staff, the petition was sent by regular mail and received after the deadline. Thereafter, Mr. Finch did not file a motion to extend time for filing. The Ninth Circuit Court of Appeals dismissed the petition for lack of jurisdiction. Mr. Finch admitted that it was his ultimate responsibility to meet the April 10, 2006, deadline.

In count three, Mr. Finch was retained to represent a client in her attempt to reverse an order of removal from the United States in March 2006. Mr. Finch filed a motion to reopen the case and a hearing on the merits was scheduled for May 15, 2007. Due to a

miscommunication with his staff, the client was not informed and did not appear. Mr. Finch admitted that it was his ultimate responsibility to meet the May 15, 2007, deadline. He was given until Jan. 24, 2007, to file an application for cancellation of removal along with the motion to reopen. The application was filed six weeks late. Consequently the court denied the motion to reopen and deemed that the client had abandoned her request for cancellation of removal. Mr. Finch self reported the allegations of both counts to the State Bar.

Four aggravating factors were found: prior discipline, pattern of misconduct, multiple offenses and substantial experience in the practice of law.

Four mitigating factors were found: absence of dishonest or selfish motive, good-faith effort to rectify consequences of misconduct, cooperative attitude toward proceedings and remorse.

Mr. Finch violated Rule 42, ARIZ.R.S.C.T., ERs 1.3, 1.4, 3.2 and 8.4.

GARY F. FORSYTH

Bar No. 007586; File Nos. 05-0504, 05-0674, 05-0887, 05-1593, 05-1782, 06-0058, 06-0663, 06-1312

Supreme Court No. SB-08-0034-D

By Arizona Supreme Court judgment and order dated April 22, 2008, Gary F. Forsyth, P.O. Box 3640, Show Low, AZ, was suspended for six months and assessed the costs and expenses of the disciplinary proceedings. He shall participate in fee arbitration and be placed on probation for two years upon reinstatement. The terms of probation include participating in the State Bar's Law Office Management Assistance Program and Member Assistance Program.

In count one, while representing a client in a series of civil matters, Mr. Forsyth failed to adequately communicate with his client and to diligently pursue their legal interests.

In count two, Mr. Forsyth was appointed to represent a client in a dependency matter. Over a six-month period, while the client was incarcerated, he failed to communicate or visit with him. Mr. Forsyth also failed to respond to the client's letters requesting information about his case.

In count three, a criminal case, Mr. Forsyth continued the trial without communicating with the client. Upon termination of representation, the client demanded the return of his property and a refund of unearned fees. When agreement could not be reached regarding the fees, the client sued and won a judgment for fees and court costs.

In count four, Mr. Forsyth was appointed to represent three separate criminal defendants were incarcerated. All three defendants complained that he had not adequately communicated with them. The Superior Court removed Mr. Forsyth from representing two of the three clients.

In count five, Mr. Forsyth was retained by parents to represent their son in a felony DUI and was paid a fee of \$2,500. He filed at least two motions to continue the case without consulting the client or his parents. Upon termination of representation, the clients requested that he refund the unearned fee.

In count six, Mr. Forsyth was appointed to represent a client in 16 different criminal matters that were scheduled in various courts with many different hearing dates. The client complained that Mr. Forsyth failed to adequately communicate with him regarding the cases.

In count seven, Mr. Forsyth was retained to represent a client in a divorce and paid a fee of \$2,500. For two months, various problems arose and the client terminated representation. Thereafter a dispute arose regarding the fee and because the fee agreement contained an arbitration clause, the matter was submitted to the State Bar fee arbitration. Mr. Forsyth failed to respond to the arbitration petition.

In count eight, a dependency matter, the client requested a copy of her file from Mr. Forsyth but he refused to give her one unless she paid for it. Communication and other problems existed in the representation and the client filed a complaint with the State Bar. The State Bar advised Mr. Forsyth to reply to the client within 20 days but he did failed to do so.

Three aggravating factors were found: prior discipline, pattern of misconduct and substantial experience in the practice of law.

Four mitigating factors were

BAR COUNSEL INSIDER

Bar Counsel Insider provides practical and important information to State Bar members about ethics and the disciplinary process.



Watch Your Words

In January 2008, Rule 41(g), ARIZ.R.S.C.T., was amended to provide that lawyers avoid engaging in "unprofessional conduct." The prior version of the rule required that lawyers abstain from "offensive personality." The comment explains that "unprofessional conduct," as defined in Rule 31(a)(2)(E), during the practice of law may result in discipline, and further explains that some conduct outside the practice may also result in discipline. "[U]nprofessional conduct" is defined as "substantial or repeated violations of the Oath of Admission to the Bar or the Lawyer's Creed of Professionalism of the State Bar of Arizona." The change in the Arizona rule reflects a national trend to focus on the civility of lawyers to each other, to the court and to the public.

In Arizona, the oath of admission to the State Bar concludes: "I will at all times faithfully and diligently adhere to the rules of professional responsibility and a lawyer's creed of professionalism of the State Bar of Arizona." The creed sets forth the expectations for lawyers with respect to their clients, opposing parties and their counsel, and with respect to the public and our system of justice. The overall theme is that lawyers are expected to act in a way that reflects positively on the integrity of our profession—with honor, dignity and courtesy. (You can find the oath and creed in the annual Membership Directory, or on the State Bar's Web site).

No cases specify conduct that will be considered "unprofessional" under the new version of Rule 41(g). However, a body of case law developed under the older version remains helpful. Notwithstanding the apprehension expressed about the enforcement of Rule 41(g), both before and after the amendment to the rule, the misconduct for which lawyers have been sanctioned has largely been egregious and related, in some way, to their practice. The case law on violations includes *In re Banta* (abusive, offensive and improper conduct toward judicial officials, the courts, opposing counsel and third persons related to a representation); *In re Loss* (inappropriate comments to clients during representation including inappropriate personal contact); *In re Izen* (filed court documents containing frivolous and unsubstantiated statements and disparaging remarks about judges and opposing counsel); *In re Medansky* (verbal threat of physical violence made to opposing party); *In re Moore* (inappropriate personal contact and verbal remarks); *In re Piatt* (made sexually oriented comments to clients and solicited sexual favors in exchange for continued representation); *In re Woltman* (threatened adverse parties with physical violence); *In re Spence* (made sexually suggestive and inappropriate comments to two clients); and *In re Levy* (unwelcome sexual advances towards employee).

John Tillotson, a 17th-century English theologian and archbishop of Canterbury, said, "A good word is an easy obligation, but not to speak ill, requires only our silence, which costs us nothing." As the cases above demonstrate, that advice may be the simplest key to avoiding a violation of Rule 41(g).

Contact the State Bar's Ethics Counsel at (602) 340-7284.

found: absence of dishonest or selfish motive, personal or emotional problems, character or reputation and remorse.

Mr. Forsyth violated Rule 42, ARIZ.R.S.C.T., ERs 1.2(a), 1.3, 1.4(a) and (b), 1.16(d) and 8.1(b),

and Rule 53(d) and (f), ARIZ.R.S.C.T.

RAUL GARZA, JR.

Bar No. 021090; File No. 08-0362

Supreme Court No. SB-08-0045-D

By Arizona Supreme Court judg-

ment and order dated April 22, 2008, Raul Garza, Jr., 202 E. Earll Dr., Phoenix, AZ, was placed on interim suspension until the final disposition of all pending matters against him.

MARK N. GOODMAN

Bar No. 005124; File No. 06-0776
Supreme Court No. SB-08-0049-D

By Arizona Supreme Court judgment and order dated April 17, 2008, Mark N. Goodman, 1575 Plaza West Dr., Prescott, AZ, was censured, placed probation for one year and assessed the costs and expenses of the disciplinary proceedings. The terms of probation include participation in the State Bar's Member Assistance Program.

Mr. Goodman was retained to represent a client in a suit regarding damages to a copier. The client was awarded a judgment in the amount of \$33,844. The client signed a promissory note to Mr. Goodman for \$25,000 plus interest for unpaid fees and costs. Mr. Goodman terminated representation and assigned the promissory note to his wholly owned corporation. The representative of the client's debtor believed that Mr. Goodman was still representing the client and contacted him about settling the judgment. His actions in communicating with the debtor's representative were knowing and intentional especially because the former client made it clear that he did not want Mr. Goodman to negotiate on his behalf. The settlement funds were paid to Mr. Goodman and applied towards the promissory note.

Three aggravating factors were: prior discipline, selfish motive and substantial experience in the practice of law.

Four mitigating factors were: good-faith effort to rectify the consequences of misconduct, full and free disclosure, character and reputation and remoteness of prior offenses.

Mr. Goodman violated Rule 42, ARIZ.R.S.CT., ERs 1.9(c) and 8.4(c).

DAVID W. GREGAN

Bar No. 016196; File No. 06-0946
Supreme Court No. SB-08-0057-D

By Arizona Supreme Court judgment and order dated April 15, 2008, David W. Gregan, 4455 E.

Broadway, Suite 106, Mesa, AZ, was censured, placed on probation for two years and assessed the costs and expenses of the disciplinary proceedings. A term of probation is that Mr. Gregan must obtain six hours of mentoring by a lawyer experienced in conducting civil arbitrations to enhance Mr. Gregan's lawyering skills in conducting future civil arbitrations.

Pursuant to the arbitration provisions of the Arizona Rules of Civil Procedure, Mr. Gregan was appointed to serve as an arbitrator in a Maricopa Superior Court civil action. He refused the appointment. When Mr. Gregan's refusal was called to the court's attention, a Superior Court judge ordered him to conduct the arbitration. The judge specifically referred to *Scheehle v Jones*, 211 Ariz. 282, 120 P.3d 1092 (2005), as authority for the requirement that Mr. Gregan serve as arbitrator. Mr. Gregan still refused the appointment and consequently, the arbitration of the civil matter was delayed. The judge held Mr. Gregan in contempt of court and fined him \$300.

One aggravating factor was found: substantial experience in the practice of law.

Six mitigating factors were found: absence of prior disciplinary record, absence of dishonest or selfish motive, cooperative attitude toward proceedings, character or reputation, imposition of other penalties and remorse.

Mr. Gregan violated Rule 42, ARIZ.R.S.CT., ER 3.4(c) and 8.4(d), and Rule 53(c), ARIZ.R.S.CT.

HOANG VAN HUYNH

Bar No. 020503; File Nos. 06-1857, 07-0006

Supreme Court No. SB-08-0078-D

By Arizona Supreme Court judgment and order dated June 26, 2008, Hoang Van Huynh, 1433 W. Winchester Way, Chandler, AZ, was suspended for six months and one day and shall be placed on probation for two years upon reinstatement. He shall also be assessed the costs and expenses of the disciplinary proceedings and pay restitution. The terms of probation shall include participating in the State Bar's Law Office Management Assistance Program and Member

Assistance Program.

In count one, Mr. Huynh was appointed to represent a client in a domestic violence matter. The client made numerous attempts to contact Mr. Huynh with no response. The State Bar notified Mr. Huynh about the problems and requested a response on two occasions. He failed to respond either time.

In count two, Mr. Huynh was retained to handle personal and business issues for a company. When a personal civil complaint was filed against the client, the client informed Mr. Huynh that he wanted to contest the allegations. Mr. Huynh filed an answer but from that point on, failed to return the client's numerous telephone calls and emails. The opposing party filed a motion for summary judgment and Mr. Huynh neither informed the client of it nor filed a response. Consequently, the motion for summary judgment was granted and Mr. Huynh did not inform the client of that action nor of the subsequent judgment issued against him. The State Bar asked Mr. Huynh on three occasions to respond to the allegations of misconduct. Mr. Huynh failed to respond.

Three aggravating factors were found: pattern of misconduct, multiple offenses, and bad-faith obstruction of the disciplinary proceedings.

Two mitigating factors were found: absence of prior disciplinary record, and inexperience in the practice of law.

Mr. Huynh violated Rule 42, ARIZ.R.S.CT., ERs 1.2, 1.3, 1.4, 8.1(b) and 8.4(d), and Rule 53(d) and (f), ARIZ.R.S.CT.

EDMUND D. KAHN

Bar No. 002152; File Nos. 05-0749, 05-0778, 06-1221

Supreme Court No. SB-08-0051-D

By Arizona Supreme Court judgment and order dated June 3, 2008, Edmund D. Kahn, P.O. Box 18661, Tucson, AZ, was suspended for three years. Upon reinstatement, Mr. Kahn shall be placed on probation for one year and complete the Ethics Enhancement Program. The terms of probation are to be determined by the State Bar's Law Office Management

Assistance Program at the time of reinstatement.

In count one, while Mr. Kahn was suspended from practice in Arizona in an earlier motion, he continued to use letterhead and pleading paper depicting him as a practicing attorney and as being admitted to practice in New York and New Mexico. In fact, Mr. Kahn had been suspended from practice in New Mexico many years earlier, for nonpayment of dues. Regarding the New York State Bar, Mr. Kahn's status was based on his knowingly false certifications stating that he was retired from the practice of law.

In count two, in connection with his previous suspension, Mr. Kahn submitted a letter to his clients advising them of the suspension, in accordance with Rule 72, ARIZ.R.S.CT., but did not ensure that the letter had been sent to all appropriate individuals. In addition, the letter contained the false statement that he was admitted to practice in New York and New Mexico.

In count three, Mr. Kahn represented an insurance company as subrogee in a tort action against an unrepresented adverse party and a judgment was obtained. This judgment became uncollectible when it was not renewed after five years. The adverse party was informed by the Arizona Department of Transportation that her license was suspended because of the unpaid judgment and that she needed to get a consent form from Mr. Kahn for reinstatement. When the adverse party contacted Mr. Kahn regarding the matter, he required her to sign a promissory note for the full amount rather than inform her that as the adverse party that she should seek separate legal counsel or that the judgment had become uncollectible. Even after the judgment on the promissory note was set aside, Mr. Kahn filed an application for default, falsely stating that the adverse party had failed to plead or otherwise defend.

Four aggravating factors were found: prior discipline, pattern of misconduct, refusal to acknowledge wrongful nature of conduct and substantial experience in the practice of law.

No mitigating factors were found.

Mr. Kahn violated Rule 42, ARIZ.R.S.Ct., ERs 3.3(a)(1) & (3), 4.3, 5.3(b) & (c), 5.5(b) and 8.4(c) and Rules 31(a)(2) and 72, ARIZ.R.S.Ct.

EDWARD A. LOSS III

Bar No. 016975; File No. 06-1861
Supreme Court No. SB-08-0076-D

By Arizona Supreme Court judgment and order dated May 16, 2008, Edward A. Loss III, 5400 W. Northern Ave., Ste. 104, Glendale, AZ, was censured, placed on probation for one year and assessed the costs and expenses of the disciplinary proceedings. The terms of probation are participating in the State Bar's Law Office Management Assistance Program and Member Assistance Program.

Mr. Loss was retained to represent a client on a matter in Chandler Municipal Court. During the course of representation, Mr. Loss made inappropriate comments to and inappropriately touched the client. The client terminated the representation and filed charges against him with the State Bar.

Two aggravating factors were found: dishonest or selfish motive and substantial experience in the practice of law.

Five mitigating factors were found: absence of prior discipline, good-faith efforts to rectify the consequences, cooperative attitude toward proceedings, character or reputation and remorse.

Mr. Loss violated Rule 42, ARIZ.R.S.Ct., ER 1.7(a)(2), and Rule 41(g), ARIZ.R.S.Ct.

CARL D. MACPHERSON

Bar No. 006253; File No. 06-1378
Supreme Court No. SB-08-0079-D

By Arizona Supreme Court judgment and order dated June 26, 2008, Carl D. MacPherson, 271 N. Stone Ave., Tucson, AZ, was suspended for 30 days and placed on probation for one year. He was assessed the costs and expenses of the disciplinary proceedings. The terms of probation are participating in the State Bar's Law Office Management Assistance Program, the principal term of which is to attend an ethics program on integrity, honesty and candor toward a tribunal.

Mr. MacPherson represented a client in a family court matter. The client was also scheduled to testify in her husband's murder trial and Mr. MacPherson wanted to be present during the testimony. Mr. MacPherson told the court that he would not be available on the scheduled date because he had a doctor's appointment. Further inquiry revealed that Mr. MacPherson lied to the court because he did not have a doctor's appointment but was playing golf.

Four aggravating factors were found: prior disciplinary offenses, dishonest or selfish motive, refusal to acknowledge wrongful nature of conduct and substantial experience in the practice of law.

Three mitigating factors were found: full and free disclosure, remoteness of prior offenses and remorse. Due to evidentiary concerns, the State Bar and Mr. MacPherson entered into an agreement for discipline by consent on the above-stated terms.

Mr. MacPherson violated Rule 42, ARIZ.R.S.Ct., ERs 3.3(a) and 8.4(c) and (d).

HEATH H. MCWHORTER

Bar No. 021224; File No. 03-1960
Supreme Court No. SB-07-0190-D

By Arizona Supreme Court judgment and order dated April 29, 2008, Heath H. McWhorter, 31 S. 63rd St., Ste. 2, Mesa, AZ, was suspended for 30 days and assessed the costs and expenses of the disciplinary proceedings.

Mr. McWhorter represented a client in a domestic relations matter. During the course of representation, Mr. McWhorter and the client engaged in a personal, intimate relationship. While testifying under oath, the client denied the relationship and Mr. McWhorter did not take appropriate remedial measures.

Two aggravating factors were found: dishonest or selfish motive and multiple offenses.

Four mitigating factors were found: full and free disclosure, inexperience in the practice of law, delay in disciplinary proceedings and remorse.

Mr. McWhorter violated Rule 42, ARIZ.R.S.Ct., ERs 1.7, 3.3, 3.4, 4.1 and 8.4.

RONALD S. MATHENY

Bar No. 013951; File No. 06-0215
Supreme Court No. SB-08-0033-D

By Arizona Supreme Court judgment and order dated April 22, 2008, Ronald S. Matheny, 7150 E. Camelback Rd., Ste. 333, Scottsdale, AZ, was suspended for one year and shall be placed on probation for one year upon reinstatement. He was assessed the costs and expenses of the disciplinary proceedings. The terms of probation will be determined upon reinstatement.

Upon the death of her significant other, the beneficiary to the decedent's will contacted Mr. Matheny about probate and informed him that the decedent had living relatives. Mr. Matheny believed that the will was valid, although not witnessed, and submitted the document for informal probate. The will was rejected because it lacked witnesses. The beneficiary then added two witness names, addresses and signatures and Mr. Matheny submitted the altered will for probate. The decedent's family, through counsel, contacted Mr. Matheny regarding the validity of the will. After informing the family's counsel about the invalidity of the will, Mr. Matheny advised the court and self-reported to the State Bar.

Five aggravating factors were found: prior disciplinary offenses, pattern of misconduct, submission of false evidence, substantial experience in the practice of law and illegal conduct.

Four mitigating factors were found: absence of dishonest or selfish motive, timely good-faith effort to make restitution, cooperative attitude toward disciplinary proceedings, character or reputation and imposition of other penalties.

Mr. Matheny violated Rule 42, ARIZ.R.S.Ct., ERs 1.1, 1.2(d), 1.5(b), 1.7, 3.3, and 8.4(c) and (d).

MICHAEL J. NYSATHER

Bar No. 015222; File No. 07-0475
Supreme Court No. SB-08-0088-D

By Arizona Supreme Court judgment and order dated July 9, 2008, Michael J. Nysather, 8961 E. Bell Rd., Ste. 201, Scottsdale, AZ, was censured and placed on probation for one year. The terms of probation include participating in the

State Bar's Law Office Management Assistance Program and completion of a CLE program regarding law office management.

Mr. Nysather was retained to represent a minor in connection with injuries suffered in a motor vehicle collision. Upon reaching a settlement in the matter, the minor's mother was appointed as conservator. Mr. Nysather was ordered by the court to file the customary papers regarding the appointment and an affidavit of costs to support his charges. Because the forms and documentation submitted did not comply with the court's order, Mr. Nysather was ordered to supplement the submittals. Mr. Nysather failed to file the supplemental information on two additional occasions and was ordered personally to attend an order to show cause hearing. Mr. Nysather did not attend personally but had his partner attend instead.

Mr. Nysather and his partner failed to comply with the court's order and failed to appear for another order to show cause hearing. Ultimately the firm was sanctioned the full amount of the settlement for mishandling the litigation and violating court orders.

Three aggravating factors were found: multiple offenses, vulnerable victim and substantial experience in the practice of law.

Seven mitigating factors were found: absence of prior discipline, absence of dishonest or selfish motive, personal problems (divorce), timely good-faith efforts to rectify conduct, full and free disclosure, imposition of other sanctions and remorse.

Mr. Nysather violated Rule 42, ARIZ.R.S.Ct., ERs 1.1, 1.3, 3.2, 3.4(c), 5.1, and 8.4(d), and Rule 53(a), ARIZ.R.S.Ct.

SARA JANE ODNEAL

Bar No. 009230; File No. 06-1979
Supreme Court No. SB-08-0063-D

By Arizona Supreme Court judgment and order dated June 4, 2008, Sara Jane Odneal, 10201 S. 51st St., Ste. 205, Phoenix, AZ, was disbarred and ordered to pay restitution in the amount of \$2,500. She shall also pay the costs and expenses of the disciplinary proceedings.

Ms. Odneal was retained to help a client with a child-support matter and was paid a \$1,000 fee. At hearing the client was awarded a reasonable portion of her attorney fees and costs and Ms. Odneal was ordered to provide the court with an affidavit of attorneys' fees and costs and form of order. The client provided Ms. Odneal with receipts of fees paid and believed that she would present the information to the court. Ms. Odneal failed to present the receipts or the required forms. Ms. Odneal also failed to provide the client with an accounting of legal work performed. Thereafter, the client attempted to contact Ms. Odneal but her telephone was disconnected and she moved out of her office. The client then filed a complaint with the State Bar.

Ms. Odneal failed to respond to numerous letters sent to her by the State Bar and failed to update her address of record.

Six aggravating factors were found: prior disciplinary offenses, dishonest or selfish motive, pattern of misconduct, bad-faith obstruction of the disciplinary proceeding, deceptive practices during the disciplinary process and substantial experience in the practice of law.

One mitigating factor was found: remoteness of prior offenses.

Ms. Odneal violated Rule 42, ARIZ.R.S.CT., ERs 1.2, 1.3, 1.4(a)(3), 1.15(a), 1.16(d), 3.2, 8.1(b) and 8.4(d) and Rule 32(c)(3), ARIZ.R.S.CT.

KATHY M. O'QUINN

Bar No. 021264; File No. 06-1945

Supreme Court No. SB-08-0053-D

By Arizona Supreme Court judgment and order dated June 4, 2008, Kathy M. O'Quinn, 2942 N. 24th St., Ste. 110-308, Phoenix, AZ, was suspended for six months, retroactive to April 27, 2007, and placed on probation for two years upon reinstatement. Ms. O'Quinn violated Rules 31(b), 53(c) and 72, ARIZ.R.S.CT., when she knowingly appeared on behalf of her client at a hearing while suspended and failed to inform the Court and opposing counsel that she was suspended. The terms of probation include participating in the State Bar's Member Assistance Program.

One aggravating factor was found: prior disciplinary offenses.

Four mitigating factors were found: absence of dishonest or selfish motive, full and free disclosure, cooperative attitude toward proceedings and remorse.

CAUTION!

Nearly 16,000 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.