

## SANCTIONED ATTORNEYS

### SHERMAN R. BENDALIN

Bar No. 002344; File No. 04-0972  
Supreme Court No. SB-06-0175-D

By Arizona Supreme Court judgment and order dated Dec. 28, 2006, Sherman R. Bendalin, 393 East Palm Lane, Phoenix, AZ 85004-1532, a member of the State Bar, was censured and placed on probation for one year. The terms of probation include participating in the State Bar's Trust Account Ethics Enhancement Program. Mr. Bendalin was assessed the costs and expenses of the disciplinary proceedings in the amount of \$1,413.75, together with interest at the legal rate.

In a Social Security claim matter, Respondent failed to diligently resolve his client's questions about the resolution of her claims and failed to timely refund money she had overpaid in attorney's fees. Respondent failed to keep the client reasonably informed or adequately explain the status of her matter and failed to promptly comply with her reasonable requests for information.

Respondent admitted to commingling client funds with those in his firm's operating account and failed to promptly pay funds to clients or provide timely accountings, resulting in a further investigation of Respondent's procedures for safekeeping client funds. The investigation revealed that Respondent failed to ensure that employees and others assisting him were competent and properly supervised, failed to maintain internal controls within his office to safeguard funds held in trust, failed to record all transactions promptly and accurately, failed to maintain accurate account ledgers and failed to perform monthly three-way reconciliations.

Respondent on his own initiative began to review his trust account records and improve management procedures prior to the client filing a charge with the State Bar. Respondent's conduct was found to be negligent.

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

Five mitigating factors were found: absence of a prior discipli-

nary record, timely good-faith effort to make restitution or to rectify consequences of misconduct, full and free disclosure to the disciplinary board or cooperative attitude toward proceedings, character or reputation and remorse.

Mr. Bendalin violated Rule 42, ARIZ.R.S.C.T., ERs 1.3, 1.4 and 1.15, and Rules 43 and 44, ARIZ.R.S.C.T.

### ERIC M. CASPER

Bar No. 009947; File No. 05-2180  
Supreme Court No. SB-06-0176-D

By Arizona Supreme Court judgment and order dated Feb. 9, 2007, Eric M. Casper, 5778 W. Corrine Dr., Glendale, AZ 85304, a member of the State Bar, was suspended for six months and one day. Mr. Casper also was assessed the costs and expenses of the disciplinary proceedings.

Mr. Casper failed to sign and return a memorandum of understanding despite repeated requests from the State Bar over four months, constituting a material breach of the terms of an order of

diversion entered against him. An order of informal reprimand, probation and costs was filed after the order of diversion was vacated. Mr. Casper failed to comply with the requirements of the informal reprimand, and an order of non-compliance was entered. Subsequently, an Order of Probable Cause was entered. Mr. Casper failed to respond or otherwise participate in the disciplinary proceedings despite repeated notice. Mr. Casper's knowing misconduct caused injury or potential injury to the legal system and the profession.

Two aggravating factors were found: pattern of misconduct and bad-faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency. No mitigating factors were found.

Mr. Casper violated Rule 53(e), ARIZ.R.S.C.T.

### JERRY L. COCHRAN

Bar No. 004539; File No. 04-0037  
Supreme Court No. SB-06-0066-D

By Arizona Supreme Court judg-

ment and order dated May 16, 2006, Jerry L. Cochran, 2999 N. 44th St., Suite 600, Phoenix, AZ 85018, a member of the State Bar, was censured and assessed the costs and expenses of the disciplinary proceedings.

Mr. Cochran represented a client in a civil litigation matter in Utah without being licensed to practice in that state. Mr. Cochran's filing of an answer in Utah was found to be negligent but thereafter he continued to practice law in Utah intentionally by not immediately notifying the court and opposing counsel of his inability to practice or requesting temporary admission.

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

Seven mitigating factors were found: absence of a prior disciplinary record, absence of a dishonest or selfish motive, timely good-faith effort to make restitution and to rectify consequences of misconduct, full and free disclosure to a

## BAR COUNSEL INSIDER

### The No-Contact Rule

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

At first blush, ER 4.2 looks pretty straightforward: "In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so."

It doesn't take long to find out that it's not quite so straightforward. For starters, although the rule specifically refers to "party," the rule really means "any person, whether or not a party to a formal proceeding." ER 4.2, cmt. 3 (emphasis added).

Despite some popular misconceptions, it also isn't limited to litigation. It applies in every "matter," whether that's a real-estate transaction, a commercial contract, a criminal case or negotiations between neighbors over a barking dog. If you are representing a client, you can't communicate with another represented person in that matter.

You can't communicate even *indirectly* with a represented person in that matter. ER 4.2 "is intended to protect represented parties from undue influence and pressure from an opposing counsel. Even the receipt of a copy of a demand

letter, notice of a deposition, or motion for sanctions could unreasonably intimidate an opposing party to make decisions without adequate advice from their attorney." Ariz. Ethics Op. 02-02. As a result, for example, even if you suspect that your opposing counsel hasn't given his client your settlement offer, you can't send a letter to opposing counsel and copy the opposing client, unless opposing counsel or law authorizes you to do so. *Id.*

Finally, some lawyers may believe ER 4.2 only prohibits the lawyer from initiating contact with a represented person. After all, if the represented person wants to talk and freely contacts you, why can't you communicate? Communication is a two-way street, however. It doesn't matter who dialed the phone, sent the e-mail or the letter or stopped by whose table at the restaurant. The risk of undue influence and pressure still exists. If a represented person contacts you, you should (politely) decline and advise that you are prohibited from communicating with a represented person. And then stop communicating.

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



**Opinion No. 07-01** (June 2007)

A lawyer has no *per se* duty to provide information about a client's case or upcoming trial to the client's family or friends. The lawyer may provide this information if the client gives informed consent or consent is impliedly authorized in order to carry out the representation. Depending on the circumstances, however, the lawyer's ethical duty to provide competent representation to his/her client may require such contact. It is a balancing test. This opinion assumes that the client is a competent adult.

**Opinion No. 07-02** (June 2007)

In appropriate cases, a lawyer may keep current and closed client files as electronic images in an attempt to maintain a paperless law practice or to more economically store files.

After digitizing paper documents, a lawyer may not, without client consent, destroy *original* paper documents that belong to or were obtained from the client. After digitizing paper documents, a lawyer may destroy *copies* of paper documents that were obtained from the client unless the lawyer has reason to know that the client wants the lawyer to retain them. A lawyer has the discretion to decide whether to maintain the balance of the file solely as electronic images and destroy the paper documents.

**Need an Opinion?**

Check out the State Bar Web site at [www.myazbar.org/Ethics/](http://www.myazbar.org/Ethics/) for a listing of the ethics opinions issued between 1985 and 2007, as well as Arizona's Rules of Professional Conduct.

If you are an Arizona attorney and have an ethics question, call our ethics counsel, Patricia A. Sallen, at the ethics hotline: (602) 340-7284.

disciplinary board and cooperative attitude toward proceedings, good character and reputation, imposition of other penalties or sanctions, and remorse.

Mr. Cochran violated Rule 42, ARIZ.R.S.C.T., ER 5.5(a).

**DAVID E. LIPARTITO**

Bar No. 010048; File No. 05-0695  
Supreme Court No. SB-06-0164-D

By Arizona Supreme Court judgment and order dated Nov. 27, 2006, David E. Lipartito, 177 N. Church, Suite 700, Tucson, AZ 85701, a member of the State Bar, was censured and placed on probation for one year. The terms of probation include participation in the State Bar's Ethics Enhancement Program. Mr. Lipartito was assessed the costs and expenses of the disciplinary proceedings in the amount of \$600, together with interest at the legal rate.

In a civil litigation matter, Mr. Lipartito failed to file responses to the court's orders to show cause, failed to respond to opposing party's motions to dismiss and failed to expedite litigation, resulting in the case being dismissed with prejudice. He also failed to withdraw from the representation when he was unable to locate and communicate with the clients. Mr. Lipartito's misconduct was found to be negligent.

Two aggravating factors were found: multiple offenses and substantial experience in the practice of law.

Three mitigating factors were found: absence of a prior disciplinary record, absence of a dishonest or selfish motive and full and free disclosure to the disciplinary board

or cooperative attitude toward the proceedings.

Mr. Lipartito violated Rule 42, ARIZ.R.S.C.T., ERs 1.3, 1.16, 3.2 and 8.4(d).

**REX L. MARTIN**

Bar No. 002845; File No. 05-1928  
Supreme Court No. SB-06-0174-D

By Arizona Supreme Court judgment and order dated Dec. 28, 2006, Rex L. Martin, 2938 Camino Del Rio, Bullhead City, AZ 86442, a member of the State Bar, was censured and placed on probation for two years. The terms of probation include participating in the State Bar's Member Assistance Program. Mr. Martin was assessed the costs and expenses of the disciplinary proceedings in the amount of \$600, together with interest at the legal rate.

In a commercial real estate matter, Mr. Martin was paid an advance fee to establish a corporation. The clients subsequently decided not to purchase the property, and Mr. Martin agreed to return the entire advance fee because he had not done any work regarding the incorporation. Mr. Martin failed to return the advance fee until after the clients had filed a complaint with the State Bar and formal disciplinary proceedings had commenced. His mental state was negligent in failing to respond to clients, failing to return the advanced fee and failing to cooperate with the State Bar.

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

Four mitigating factors were found: absence of dishonest or self-

ish motive, personal or emotional problems, remorse and remoteness of prior offenses.

Mr. Martin violated Rule 42, ARIZ.R.S.C.T., ERs 1.3, 1.4, 1.5(b), 1.15, 1.16 and 8.1(b), and Rule 53(d) and (f), ARIZ.R.S.C.T.

**ELLIOT J. PESKIND**

Bar No. 003096; File No. 03-1564  
Supreme Court No. SB-06-0148-D

By Arizona Supreme Court judgment and order dated Oct. 13, 2006, Elliot J. Peskind, 7047 E. Greenway Pkwy., Suite 155, Scottsdale, AZ 85254, a member of the State Bar, was censured and placed on probation for one year. The terms of probation include participating in the State Bar's Trust Account Ethics Enhancement Program. Mr. Peskind was ordered to pay restitution in the amount of \$3,160 and assessed the costs and expenses of the disciplinary proceedings in the amount of \$1,330.25, together with interest at the legal rate.

In a divorce matter, Mr. Peskind failed to properly safeguard third-party funds until the interests of the third party and his client were severed and/or their dispute resolved. He failed to provide an accounting and return the funds to the third party when requested. Mr. Peskind failed to properly withdraw from representation when the client demanded he act in violation of the rules and laws of Arizona. He failed to maintain required trust account records and perform monthly three-way reconciliations. Mr. Peskind initially failed to furnish information and respond to inquires and requests during the State Bar's investigation.

Three aggravating factors were found: vulnerability of victim, substantial experience in the practice of law and indifference to making restitution.

One mitigating factor was found: absence of a prior disciplinary record.

Mr. Peskind violated Rule 42, ARIZ.R.S.C.T., ERs 1.15, 1.16 and 8.1(b), and Rules 43, 44 and 53(d) and (f), ARIZ.R.S.C.T.

**MARY VALENTINE SCHAFFER**

Bar No. 017474; File No. 04-1881  
Supreme Court No. SB-06-0158-D

By Arizona Supreme Court judgment and order dated Jan. 9, 2007, Mary Valentine Schaffer, P.O. Box 30335, Tucson, AZ 85751, a member of the State Bar, was suspended for 120 days and placed on probation for two years. The terms of probation include participation in the State Bar's Member Assistance Program. Ms. Schaffer was assessed the costs and expenses of the disciplinary proceedings in the amount of \$977.11, together with interest at the legal rate.

In a matter before the Pima County Superior Court, Ms. Schaffer failed to notify clients and knowingly continued to practice law while summarily suspended by the State Bar for failure to comply with MCLE requirements. Ms. Schaffer also initially failed to respond to the State Bar's requests for information relating to her failure to comply with MCLE requirements and practicing law while suspended.

Four aggravating factors were found: a pattern of misconduct, multiple offenses, bad-faith obstruction of the disciplinary pro-

ceeding by intentionally failing to comply with rules or orders of the disciplinary agency and substantial experience in the practice of law.

One mitigating factor was found: absence of prior disciplinary record.

Ms. Schaffer violated Rule 42, ARIZ.R.S.Ct., ERs 1.4, 5.5, 8.1(b) and 8.4(d), and Rules 31(b) and 53(c), (d) and (f), ARIZ.R.S.Ct.

#### **MARGO A. SHORR**

Bar No. 016752; File No. 04-1095

Supreme Court No. SB-06-0161-D

By Arizona Supreme Court judgment and order dated Nov. 21, 2006, Margo A. Shorr, 13835 N. Tatum, Suite 9, Phoenix, AZ 85032, a member of the State Bar, was censured and placed on probation for one year. The terms of probation include participation in the State Bar's Trust Account Ethics Enhancement Program ("TAEEP"). The period of probation will conclude after she attends TAEEP. If Ms. Shorr remains a sole practitioner, the probation will continue for one year with participation in the State Bar's Trust Account Program. Ms. Shorr was assessed the costs and expenses of the disciplinary proceedings in the amount of \$1,116.25, together with interest at the legal rate.

In a domestic-relations matter, Ms. Shorr failed to timely sign the stipulation for substitution of counsel and forward the case file to the client's new attorney. She also failed to provide the client with a requested final billing statement until after formal disciplinary proceedings had commenced. An investigation of Ms. Shorr's trust account documents found that she had commingled client funds, failed to safeguard client funds, failed to maintain complete client ledgers, failed to maintain an audit trail for transferred funds, and overdrew her trust account on several occasions.

Two aggravating factors were found: bad-faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency and substantial experience in the practice of law.

Three mitigating factors were found: absence of a prior disciplinary record, absence of dishonest or selfish motive and personal or emotional problems.

Ms. Shorr violated Rule 42, ARIZ.R.S.Ct., ERs 1.3, 1.4, 1.15 and 1.16, and Rules 43 and 44, ARIZ.R.S.Ct.

#### **ROGER K. SPENCER**

Bar No. 004618; File No. 04-1931

Supreme Court No. SB-06-0123-D

By Arizona Supreme Court judgment and order dated Oct. 23, 2006, Roger K. Spencer, 4647 N. 32nd St., Suite B150, Phoenix, AZ 85018-3351, a member of the State Bar, was suspended for one year effective 30 days from the date of the order. He will be placed on probation, with a practice monitor for two years upon reinstatement, with the length and terms of which to be

determined at the time of reinstatement. Mr. Spencer also was assessed the costs and expenses of the disciplinary proceedings.

From Oct. 1, 2001, through Sept. 30, 2004, Mr. Spencer made improper transfers of costs and/or fees resulting in billings to clients for fees and costs that should have been billed to other clients. Mr. Spencer knowingly engaged in a pattern of misappropriation of client funds and caused clients to pay for legal services and costs that they had not received.

Four aggravating factors were found: a pattern of misconduct, multiple offenses, dishonest or selfish motive and substantial experience in the practice of law.

Five mitigating factors were found: absence of prior disciplinary record, personal or emotional problems, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, mental disability, and remorse.

Mr. Spencer violated Rule 42, ARIZ.R.S.Ct., ERs 1.4, 1.5, 4.1 and 8.4(c).

#### **SUSAN V. STERMAN**

Bar No. 016312; File No. 05-1326

Supreme Court No. SB-06-0173-D

By Arizona Supreme Court judgment and order dated Dec. 28, 2006, Susan V. Sterman, 523 N. Beaver St., Flagstaff, AZ 86001-1627, a member of the State Bar, was censured. Ms. Sterman was assessed the costs and expenses of the disciplinary proceedings in the amount of \$691, together with interest at the legal rate.

Ms. Sterman, who was not licensed to practice law in California, contacted the Tulane County, California, child-support division, negotiated an issue concerning child-support arrearages owed by her husband and signed a stipulation as "Attorney for Father."

No aggravating factors were found. One mitigating factor was found: full and free disclosure to the disciplinary board or cooperative attitude toward proceedings.

Ms. Sterman violated Rule 42, ARIZ.R.S.Ct., ER 5.5.

#### **JOSEPH H. WORISCHECK**

Bar No. 001317; File No. 06-0403

Supreme Court No. SB-06-0139-D

By Arizona Supreme Court judgment and order dated Sept. 15, 2006, Joseph H. Worischeck, 9004 S. Lakeshore Dr., Tempe, AZ 85254, a member of the State Bar, was disbarred by consent from the practice of law. Mr. Worischeck was assessed the costs and expenses of the disciplinary proceedings in the amount of \$600.

**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.