

# bar community

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from the board

## STATE BAR BOARD OF GOVERNORS September Meeting Review

Below are highlights of the September 21, 2001, State Bar Board of Governors meeting. Meetings are held monthly at the Arizona Bar Center in Phoenix.

- ▶ The Board paused for a moment of silence at the beginning of their meeting in memory of those lost in the tragedy that befell the country on September 11, 2001. President Nick Wallwork reported that more than \$6,000 had been donated to date to the Disaster Relief Fund by members of the legal community and the Bar Center staff.
- ▶ President Wallwork reported that he, President-Elect Ernest Calderón and Executive Director Cynthia Zwick had met with Attorney General Janet Napolitano and other community and law enforcement leaders to address hate crime issues.
- ▶ President Wallwork reported that the Arizona Supreme Court has approved the proposed dues structure and Client Protection Fund contributions schedule as proposed by the Board for years 2002 through 2005.
- ▶ President Wallwork reported that he has appointed a Task Force on Persons With Disabilities in the Legal Profession that will study discrimination issues and propose solutions.
- ▶ Ms. Zwick introduced recent Employees of the Month chosen to be honored by the Bar Center staff: Ann Hetzler, Special Services Department (May), Fred Valdez, Arizona Bar Foundation (June), and Leigh Ann Mauger, Lawyer Regulation Department (July).
- ▶ Ms. Zwick reported that she is restructuring some of the departments within the Bar Center to develop a team-based organization. She added that she envisions the development of a Public Service Center, which would be a centralized source of information to assist the members and the public.
- ▶ Ms. Zwick reported that the Arizona Bar Foundation's lawforkids.org Web site won first place in the National State Courts Competition.
- ▶ Judge Robert Van Wyck, Chair of the Consumer Protection Committee, presented the Committee's Report and Recommendations regarding the unauthorized practice of law issue. The Board voted to disseminate the report to the membership requesting input by the end of November, allowing the Board to take final action on this matter at its December meeting.
- ▶ Noreen Sharp and Terri Skladany of the Attorney General's Office summarized that Office's new program—The Senior Service Center—designed to assist seniors with future health care issues, living wills, medical directives and other important matters.
- ▶ Attorney Edmund Kahn provided oral argument as to why he should not be suspended for not paying his dues, citing objections to the Bar's various expenditures from the General Fund. General Counsel Allen Shayo provided a rebuttal, and the Board ultimately voted that Mr. Kahn had failed to show good cause in this matter.
- ▶ Arthur Garcia appeared on behalf of the Los Abogados Bar Association to provide feedback on the resolution recently passed by the ABA that supports enactment of legislation to authorize needed permanent and temporary judgeships for the five district courts situated along the border between the United States and Mexico. The Board will continue to gather information from relevant parties on this issue.
- ▶ Matthew Silverman, Director of Communications, disseminated draft results of the Bar's survey, which will be marketed as a desktop reference on the economics of law practice in Arizona. Members can purchase the report for \$50.
- ▶ Robbin Coulon, President-Elect of the Arizona Women Lawyers Association, reported on plans for the 22nd annual AWLA Convention to be held in Scottsdale November 2 and 3. Keynote speakers are U.S. District Court Judge Mary H. Murguia and LaDoris H. Cordell, Vice Provost for Campus Relations and Special Counselor to the President at Stanford University.
- ▶ Kenneth Countryman, President of the Young Lawyers Division, reported that YLD affiliates across the country are assisting victims of the World Trade Center disaster. Susan Wissink, the Maricopa County Bar's YLD President, has been named Disaster Legal Services Coordinator for the ABA's YLD and is organizing this major effort.
- ▶ The Board approved the Consent Agenda: Bankruptcy Section Report regarding attorney liability provisions addressed in pending federal bankruptcy reform legislation, and the minutes of the August Board meeting.
- ▶ Discipline Committee Chair Chas Wirken reported that the committee is considering an "immunity from complaint" rule for Bar counsel and hearing officers due to potential retaliatory issues.
- ▶ Treasurer Helen Grimwood reported that the Bar's auditor is assisting the staff in enhancing internal control management issues.
- ▶ The Board voted to expend \$1,000 in support of the Asian American Bar Association's national conference, which will be held in Scottsdale in November and be hosted by the local affiliate.

The State Bar Appointments Committee is currently accepting applications from *active members in good standing* to fill the following upcoming vacancies. Application forms are due at the State Bar office by Friday, Nov. 16, 2001, and can be obtained by calling Carrie Sherman at the Arizona Bar Center at (602) 340-7201 or Suzanne Pease or Meredith Dinniman at the Bar's Tucson office at (520) 623-9944. An application also can be downloaded from the Bar's Web site—www.azbar.org (click on *Appointments Committee News*).

**ARIZONA BAR FOUNDATION BOARD OF DIRECTORS**

**Purpose:** This 19-member board (4 of whom are public members) provides direction to Bar Foundation activities including: the Interest on Lawyers' Trust Accounts (IOLTA) program; grants for indigent legal services and the administration of justice; and Law-Related Education programs.

**Openings:** Four, of which Board member Michael Tucker (Phoenix) is eligible for reappointment.

**Restrictions/Requirements:** The board meets approximately six times per year. Board members serve on Foundation Committees as well. Fund-raising is an integral part of the Board members' responsibilities.

**Terms:** Three years.

**CITY OF SCOTTSDALE JUDICIAL APPOINTMENTS ADVISORY BOARD\***

**Purpose:** Recommends to the Scottsdale City Council the best-qualified persons to become full-time City Judges, evaluates the performance of incumbent full-time City Judges and advises the City Council about retaining them in office.

**Openings:** One. Board member Steven M. Goldstein is eligible for reappointment to a three-year term.

**Restrictions/Requirements:** Active member of the State Bar of Arizona who resides in the City of Scottsdale.

**Term:** Three years.

\*The Scottsdale City Council will review the city ordinance governing this Board at its September meeting. Please contact Carrie Sherman (602-340-7201) at the State Bar after Oct. 1, 2001 for an update on this vacancy.

**COMMISSION ON APPELLATE COURT APPOINTMENTS**

**Purpose:** This nonpartisan commission is chaired by the Chief Justice of the Arizona Supreme Court. Primary responsibility is to screen, interview and select judicial candidates for submission to the governor for final selection to fill judicial vacancies.

**Openings:** Two. Commissioners James Moeller and Robert Schmitt are eligible for reappointment to a full four-year term.

**Restrictions/Requirements:** Active members of the State Bar admitted to practice before the Arizona Supreme Court for not fewer than five years. Members who reside in Pima County or who are registered Democrats are precluded from applying for these two positions. The commission meets as necessary when judicial openings occur.

**Terms:** Four years.

**CONFLICT CASE COMMITTEE**

**Purpose:** The mission of this newly forming 11-member committee is to timely process, investigate and prosecute all aspects of disciplinary cases involving a member of the State Bar's Board

of Governors, State Bar staff, a Supreme Court Disciplinary Hearing Officer or a member of the Court's Disciplinary Commission.

**Openings:** Eleven.

**Restrictions/Requirements:** Active and judicial members of the State Bar. Former members of the Board of Governors, Supreme Court Disciplinary Hearing Officer panel and Disciplinary Commission shall be eligible for appointment only after a four-year absence from the Board, Court position or Commission.

**Terms:** Staggered; four members shall be initially appointed for three-year terms; four members for two-year terms; three members for one-year terms.

**DNA-PEOPLE'S LEGAL SERVICES BOARD OF DIRECTORS\***

**Purpose:** The State Bar of Arizona is allotted three seats on this 21-member Board, which provides direction to the largest Native American legal services program in the country.

**Openings:** One. Board member Judge James Padish is eligible for reappointment.

**Restrictions/Requirements:** The Board meets four times per year, usually on a Saturday, in Window Rock, AZ. Expenses are reimbursed by DNA.

**Term:** Two years.

\*The DNA Board is expected to take action on proposed bylaw amendments at its September meeting. Please contact Carrie Sherman (602-340-7201) at the State Bar after Oct. 1, 2001 for an update on this vacancy.

**MARICOPA COUNTY COMMISSION ON TRIAL COURT APPOINTMENTS**

**Purpose:** This nonpartisan commission is chaired by the Chief Justice of the Arizona Supreme Court. Primary responsibility is to screen, interview and select judicial candidates for submission to the governor for final selection to fill judicial vacancies.

**Openings:** Two. Commissioners John Tuchi and Urcinio Salaiz are eligible for reappointment to full four-year terms.

**Restrictions/Requirements:** Applicants must reside in Supervisorial District 1 or 5 in Maricopa County and be admitted to practice before the Arizona Supreme Court for not fewer than five years. There are no restrictions as to one's political party affiliation for these openings. To learn what district you reside in in Maricopa County, call the Elections Department at 602-506-1511. The commission meets as necessary when judicial openings occur.

**Terms:** Four years.

**PIMA COUNTY COMMISSION ON TRIAL COURT APPOINTMENTS**

**Purpose:** See Maricopa County Commission above.

**Opening:** One. Commissioner Stanton Bloom is eligible for reappointment to a full four-year term.

**Restrictions/Requirements:** Applicants must reside in Supervisorial District 5 in Pima County and be admitted to practice before the Arizona Supreme Court for not fewer than five years. There are no restrictions as to one's political party affiliation for this opening. To learn what district you reside in in Pima County, call the Elections Division at 520-740-4260. The commission meets as necessary when judicial openings occur.

**Term:** Four years.

The following attorneys have submitted applications for certification or recertification as Certified Specialists. If you would like to submit confidential peer review on any applicant, please contact Marnie Leinberger, the MCLE/BLS Administrator, at [Marnie.Leinberger@staff.azbar.org](mailto:Marnie.Leinberger@staff.azbar.org). You also may send comments to: The Board of Legal Specialization, State Bar of Arizona, 111 West Monroe, Suite 1800, Phoenix, Arizona 85003.

**BANKRUPTCY LAW***Initial*

Adam B. Nach

*Recertification*Robert J. Berens  
David A. Chamberlain  
Michael McGrath  
Randy Nussbaum**CRIMINAL LAW***Initial*Ralph E. Ellinwood  
Donna Lee Elm*Recertification*Richard C. Bock  
Richard D. Coffinger  
Joseph P. DiRoberto  
Vincent J. Frey  
Marc E. Hammond  
James W. Hazel  
Robert J. Hirsh  
Richard B. Jones  
Michael D. Kimerer  
James C. Martin  
Lee M. Novak  
Jeffrey D. Ross  
Teresa A. Sanders  
Steven P. Sherick  
Thomas A. Thinnes  
Michael L. Vaughn  
Mark N. Weingart  
Mary Wisdom**ESTATE & TRUST LAW***Initial*Eugene C. Gieseler  
Nathan B. Hannah**FAMILY LAW***Initial*Laura C. Belleau  
William D. Bishop  
Zachary J. Markham  
Jeffrey G. Pollitt  
Leonice A. Richard  
David L. Rose  
Susan M. Schauf  
Stellisa Scott*Recertification*Dean C. Christoffel  
Margrit E. Cromwell  
Angela Sinner Hallier  
Wendell G. Wilson**INJURY & WRONGFUL DEATH LITIGATION***Initial*

Peter Collins

*Recertification*Wayne C. Arnett  
Daryl A. Audilett  
C. Alan Bowman  
Robert J. Bruno  
James P. Cunningham  
Thomas F. Dasse  
Paul Michael Duda  
Herbert L. Ely  
Charles E. Fleury  
Robert L. Greer  
William T. Keane  
Stephen I. Leshner  
Bruce G. Macdonald  
Daniel P. Massey  
Paul J. McGoldrick  
William J. Monahan  
John G. Morrison  
Fred J. Pain  
Anthony J. Palumbo  
Daniel J. Radacosky  
Leslie L. Rakestraw  
Joseph P. Rocco  
Randy L. Sassaman  
Kevin B. Sweeney  
Albert E. Van Wagner  
H. Micheal Wright**REAL ESTATE LAW***Initial*Kathleen D. Collins  
Jeffrey D. Gross  
Brian J. Jordan  
Marion E. Mulcahy  
Patricia A. Premeau*Recertification*Kevin T. Ahern  
Joseph M. Atkinson  
David R. Baker

Becky A. Bartness  
Raymond W. Brown  
J. Scott Burns  
Jerry L. Cochran  
Tony S. Cullum  
Tanis A. Duncan  
David A. Durfee  
Janet B. Hutchison  
Irving Hymson  
Raoul T. Jacques  
Paul B. Kertman  
Marc R. Lieberman  
K. Michelle Lind  
Steven L. Lisker  
James R. Nearhood  
W. Ralph Pew  
Mark B. Raven  
Susan M. Schauf  
S. L. Schorr  
Robert L. Shaw  
Margaret L. Steiner  
Paul V. Wentworth  
Michael N. Widener  
Joyce Kline Wright

#### **TAX LAW**

##### ***Recertification***

Beth S. Cohn  
John F. Daniels  
Anthony V. Ehmann  
Sidney Lex Felker  
Eugene C. Gieseler  
David N. Heap  
Neil H. Hiller  
K. Layne Morrill  
Stephen C. Newmark  
Scott K. Oberg  
Daniel H. O'Connell  
Steven W. Phillips  
Ronold P. Platner  
Les Raatz  
Cynthia L. Shupe  
Douglas R. Vande Krol  
Marlan C. Walker  
Gordon G. Waterfall

#### **WORKERS' COMPENSATION LAW**

##### ***Initial***

Stephen M. Venezia

##### ***Recertification***

Christopher O. Anderson  
John F. Day  
David W. Earl  
Robert J. Forman  
Gary M. Israel  
Alan M. Schiffman  
J. Victor Stoffa

**MARK YOUR CALENDAR****CLE OPPORTUNITIES  
ABOUND****NOVEMBER**

- 11/8-9 Juvenile Law in a Nutshell (Tucson)**  
**11/9 Trials of the Century**  
**11/25-26 Juvenile Law in a Nutshell (Phoenix)**  
**11/16 Difficult Issues Facing Estate Planners**

**DECEMBER**

- 12/6 DUI**  
**12/6 Professionalism (Tucson)**  
**12/7 Ethical Morning at the Movies**

For more information or to register, go to [www.azbar.org/CLE](http://www.azbar.org/CLE), or call (602) 340-7339.

**CLE DATE CHANGE FOR  
A DON'T-MISS EVENT!**

*Larry Cohen on ... The Nuts and Bolts of Deposition Practice* has been moved from its November date to:

Friday, October 26, 2001  
 9:00 a.m. to 5:00 p.m.  
 Registration is at 8:30 a.m.  
 Radisson Resort and Spa Scottsdale,  
 7171 N. Scottsdale Road

**Why Go?**

National speaker Larry Cohen has presented courses to thousands of State Bar attorneys. If you've heard him once, you'll want to hear him again. This is a basic skills course for all attorneys, including those who want to refresh and refine their talents.

Larry is a certified specialist in injury and wrongful death litigation who has focused in his more than 16 years of practice on serious medical injury and psychological damage cases, including brain injury cases. He received his J.D. from Northwestern University and has been admitted to practice in Arizona since 1985. He has a master's and a Ph.D. from

Syracuse University. He practices at The Cohen Law Firm.

The handouts for this course, as for all his seminars, are original works that will be a valuable resource for those attending. Questions and comments will be solicited throughout the presentation to encourage audience participation and to enhance the interactive nature of this program.

Cost to State Bar members is \$160. Call (602) 340-7322 in Phoenix or (520) 623-9944 in Tucson, or visit our Web site at [cle.azbar.org](http://cle.azbar.org).

**UPCOMING YOUNG  
LAWYERS  
DIVISION EVENTS****NOVEMBER EVENTS**

- Nov. 8 7:30 am: State/Pima YLD CLE Breakfast, Lodge on the Desert, Tucson (contact Traci Riccitello, 520-792-3836)  
 Nov. 12 12:00 pm: Maricopa YLD Board Meeting, 303 E. Palm Lane, Phoenix (Susan Wissink, 602-916-5319)  
 Nov. 21 5:30 pm: Pima YLD Board Meeting, 177 N. Church, Tucson (Steve Portell, 520-882-1209)  
 Nov. 24 10:00 am: State YLD Executive Council Meeting, Phoenix (Keri Silvyn, 520-749-9795)

**Also This Month:**

State YLD **Generation X-cellence**, Phoenix (Cari Gerchick, 602-318-9055) and **Teens Speak Out**, Tucson (contact Jeff Jacobson, 520-740-5600)

**DECEMBER EVENTS**

Look for the State YLD **Arizona Kids Holiday Party** (Mike Dana in Phoenix, 602-229-5291, or Wade Swanson in Tucson, 520-882-1211) and the Maricopa YLD **Gift of Life** (Phoebe McGlynn, 602-382-6310).

**DUI LAWS ARE  
THE BAR FOCUS**

University of Arizona professor Ira W. Schiffman, Esq., will be the featured speaker at the Scottsdale Bar Association October meeting. He will give an overview of DUI laws and speak on recent DUI Law developments.

The Nov. 13 meeting will be held at the restaurant of the McCormick Ranch Golf Club, 7505 E. McCormick Parkway, Scottsdale. For reservations, contact Jill Miller at (480) 481-3047.

**RETRACTION****JOHN H. COTTON**

Bar No. 012456, File No. 98-0412

The July/August 2001 Discipline Update on page 36 of *Arizona Attorney* erroneously reported that there were five (5) aggravating factors and only two (2) mitigating factors found by the Disciplinary Commission pursuant to the *ABA Standards for Imposing Lawyer Sanctions* with respect to the discipline matter of attorney John H. Cotton. This information was incorrect. According to the Disciplinary Commission's Report of December 18, 2000, only two (2) factors were found in aggravation and there were three (3) factors in mitigation. The findings by the Commission regarding aggravating and mitigating factors are quoted below:

The Commission then considered aggravating and mitigating factors in the case, pursuant to Standards 9.22 and 9.32, respectively. Two (2) factors are present in aggravation, 9.22(c) (pattern of misconduct) and 9.22(i) (substantial experience in the practice of law). Three (3) factors were offered in mitigation, 9.32(a) (no prior disciplinary record), 9.32(b) (absence of dishonest or selfish motive) and 9.32(d) (timely, good faith effort to rectify the consequences of his misconduct).

The Commission and the Hearing Officer accepted and applied these mitigating factors.

The State Bar apologizes for this inadvertent mistake and any inconvenience the notice may have caused Mr. Cotton and related parties.

**REINSTATED MEMBER****JAMES D. COFFEE**

Bar No. 004480, File No. 98-2616

By Supreme Court Judgment and Order dated August 23, 2001, James D. Coffee, P.O. Box 915, Gualala, CA 95445, was reinstated pursuant to Rule 71(c) after completing his suspension ordered on May 31, 2001.

**SANCTIONED ATTORNEYS****JAMES D. COFFEE**

Bar No. 004480, File No. 98-2616

By Supreme Court Judgment and Order dated May 31, 2001, James D. Coffee, P.O. Box 915, Gualala, CA 95445, was suspended for 30 days by consent. Mr. Coffee was also ordered to pay costs and expenses incurred by the State Bar of \$804.10, together with interest at the legal rate from the date of the judgment.

Mr. Coffee's misconduct arose from a knowing and material misrepresentation made to the court while under oath. The trial

court found Mr. Coffee's failure to update his pleadings relating to a spousal support reduction request and supporting financial affidavit to be willful. When specifically asked by the judge if there were any assets that were not listed on the financial affidavit, Mr. Coffee stated that there were none, even though he knew he had \$50,000 in an out-of-state bank account. Mr. Coffee did not believe that account to be relevant, as he believed it was sole and separate property. Costs and attorneys' fees were ordered pursuant to Rule 11(a), ARIZ.R.CIV.P.

There were two aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (b) dishonest of selfish motive and (i) substantial experience in the law. There were two mitigating factors found pursuant to Section 9.32 of the ABA Standards: (a) absence of a prior disciplinary record and (j) delay in the disciplinary proceedings.

Mr. Coffee's conduct violated Rule 42, ARIZ.R.S.CT., particularly ER 3.3, ER 4.1 and ER 8.4(c).

#### **CHADWICK M. CORD**

Bar No. 015680, File Nos. 98-1579, 98-1859 and 99-0042

By Supreme Court Judgment and Order dated May 2, 2001, Chadwick M. Cord, 4300 North Miller Road, Suite 123, Scottsdale, AZ 85251, was suspended for three months. Upon reinstatement, Mr. Cord shall be placed on probation for two years with a practice monitor being appointed. Mr. Cord was also ordered to pay costs and expenses incurred by the State Bar of \$2,612.60, together with interest at the legal rate from the date of the judgment.

Mr. Cord's misconduct arose from the misuse of his trust account over a two-year period. Mr. Cord used his trust account as his general account and commingled personal funds with client funds. Mr. Cord paid numerous personal expenses, including continuing legal education expenses and health club membership dues, from this account. Mr. Cord further incurred several overdrafts on the account, which brought this matter to the attention of the State Bar.

There were no aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22. There were four mitigating factors found pursuant to

Section 9.32 of the ABA Standards: (a) absence of a prior disciplinary record, (b) absence of a dishonest or selfish motive, (e) full and free disclosure to the disciplinary board or cooperative attitude toward proceed and (f) inexperience in the practice of law.

Mr. Cord's conduct violated Rule 42, ARIZ.R.S.CT., particularly ER 1.15 and Rules 43, 44 and 51(h), ARIZ.R.S.CT.

#### **MICHAEL A. EDSON**

Bar No. 010223, File Nos. 99-0979, 99-1699 and 00-0038

By Supreme Court Judgment and Order dated May 2, 2001, Michael A. Edson, 125 East Mabel, Tucson, AZ 85705, was disbarred for conduct in violation of his duties and obligations as a lawyer. Mr. Edson was also ordered to pay restitution to two clients totaling \$17,230.11. Mr. Edson was also ordered to pay costs and expenses incurred by the State Bar of \$1,554.14, together with interest at the legal rate from the date of the judgment.

In the first four counts, Mr. Edson took over a case from another attorney and, upon transfer of the case, Mr. Edson and the previous attorney agreed that the previous attorney would be paid for his costs and fees from the final settlement. Mr. Edson settled the case for more than \$10,000 less than what the client had authorized. Mr. Edson sent a check to the previous attorney drawn on his trust account. The previous attorney believed the amount of the check was less than the amount agreed upon. The previous attorney wrote to Mr. Edson contesting the amount and received no response. The trust account check bounced several times, but the previous attorney was eventually able to cash it.

Counts 5 through 7 dealt solely with Mr. Edson's trust account. The trust account was overdrawn on May 12, 1999. Mr. Edson advised that the account was overdrawn due to an office employee's error. Mr. Edson further advised that the account was closed and he was overseeing a new trust account. Thereafter, the State Bar requested Mr. Edson to provide documentation to support those assertions, and Mr. Edson did not respond. Two more inquiries were made for information with no response. During the Bar's investigation, another check was returned unpaid on Mr. Edson's trust account because there were not enough funds in the account to cover the check.

In Counts 8 and 9, Mr. Edson represented a client in a personal injury claim. Mr. Edson did not diligently pursue the case and did not respond to the client's requests for documents. When the case settled, Mr. Edson told his client that he hoped the check would

arrive soon because he had written his mortgage payment against his share of the settlement. The client complained to the State Bar, and Mr. Edson never responded to the Bar's inquiries.

There were seven aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (b) dishonest or selfish motive, (c) pattern of misconduct, (d) multiple offenses, (e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules and orders of the disciplinary agency, (g) refusal to acknowledge the wrongful nature of conduct, (i) substantial experience in the practice of law and (j) indifference to making restitution. There was one mitigating factor found pursuant to Section 9.32 of the ABA Standards: (a) absence of prior disciplinary record.

Mr. Edson's conduct violated Rule 42, ARIZ.R.S.CT., particularly ER 1.1, ER 1.2, ER 1.3, ER 1.4, ER 1.15, ER 1.16(d), ER 8.1(b) and Rules 43, 44 and 51(h) and (i), ARIZ.R.S.CT.

#### **RALPH GEORGE ESTRADA**

Bar No. 002042, File Nos. 97-0936, 98-2580, 99-0357, 99-0591, 99-1231, 99-1248, 99-1873, 99-2407, 99-2411, 00-0036, 00-0129, 00-0148, 00-0149, 00-0153, 00-0206, 00-0224 and 00-0350

By Supreme Court Judgment and Order dated May 2, 2001, Ralph George Estrada, 1111 West McDowell, Phoenix, AZ 85007, was disbarred for conduct in violation of his duties and obligations as a lawyer. Mr. Estrada was also ordered to pay restitution to 12 clients totaling \$200,234.32 and to reimburse the Client Protection Fund for any claims paid up to the maximum of \$100,000. Mr. Estrada was also ordered to pay costs and expenses incurred by the State Bar of \$1,142.70, together with interest at the legal rate from the date of the judgment.

In one case, Mr. Estrada converted more than \$100,000 of client funds that were to be paid pursuant to a life insurance policy. In several other instances, Mr. Estrada received settlement checks on behalf of personal injury clients, forged the clients' signatures and kept their money for himself. When the clients would inquire as to the status of their cases, Mr. Estrada would lie and tell them the case had not yet settled. Mr. Estrada also overdraw his trust account, refused to turn over files, accepted retainers and then did not do any work on the case, did not communicate with the clients, failed to notify medical lien providers regarding the status of outstanding cases, failed to provide itemized accountings for retainers and payments, failed to notify clients that cases settled and, in 8 of the 17

#### **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, ages, addresses and Bar numbers.

**Opinion No. 2001-07**

(September 2001)

If a lawyer obtains client consent and certain other conditions are met, a lawyer may set up a line of credit with a third-party lender to advance a client's court costs and litigation expenses and pass on the line of credit's interest charges to the client as a client cost. [ER 1.8(e)]

**Opinion No. 2001-08**

(September 2001)

When a client moves and fails to communicate with his lawyer, the lawyer may withdraw from the representation if the lawyer uses reasonable efforts to: (1) locate the client to inform him of the withdrawal; and (2) protect the client's interests upon withdrawal, including maintaining client confidences and safeguarding client property. [ERs 1.4, 1.6, 1.15, 1.16(b)]

**Opinion No. 2001-03**

(Withdrawn—September 2001)

Upon reconsideration of Opinion No. 2001-03, the Committee on the Rules of Professional Conduct has concluded that the Opinion's conclusion rests upon the Committee's interpretation of the requirements of ARIZ.R.CRIM.P. 15.1(a)(7). The scope of that provision of the Arizona Rules of Criminal Procedure has not yet been interpreted by Arizona courts. Because the interpretation of substantive law is not the role of the Committee, and because Arizona courts have not yet ruled upon the extent of the affirmative duty of the provision of the Arizona Rules of Criminal Procedure at issue, the Opinion is hereby withdrawn.

**Need an Opinion?**

Check out the State Bar Web site at [www.azbar.org/EthicsOpinions/](http://www.azbar.org/EthicsOpinions/) for a listing of the ethics opinions issued between 1985 and 2001.

If you are an Arizona attorney and have an ethics question, please contact Lynda Shely, Director of Ethics, at (602) 340-7284.

cases, failed to cooperate with the State Bar's investigations.

There were eight aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (b) dishonest or selfish motive, (c) pattern of misconduct, (d) multiple offenses, (e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules and orders of the disciplinary agency, (g) refusal to acknowledge the wrongful nature of conduct, (h) vulnerability of victims, (i) substantial experience in the practice of law and (j) indifference to making restitution. There was one mitigating factor found pursuant to Section 9.32 of the ABA Standards: (a) absence of prior disciplinary record.

Mr. Estrada's conduct violated Rule 42, ARIZ.R.S.CT., particularly ER 1.1, ER 1.2, ER 1.3, ER 1.4, ER 1.5, ER 1.6, ER 1.15, ER 1.15(b), ER 1.16, ER 1.16(d), ER 3.2, ER 3.3, ER 3.4(c), ER 4.1, ER 4.2, ER 5.3, ER 5.5, ER 5.5(b), ER 8.1, ER 8.4, ER 8.4(c) and (d) and Rules 43, 44, 51(e), (h),

(i) and (k) and 63, ARIZ.R.S.CT.

**WAYNE ELMER LEGG**

Bar No. 000996

File Nos. 92-1569, 93-1493, 93-1867 and 94-2277

By Supreme Court Judgment dated March 7, 2001, Wayne Elmer Legg, P.O. Box 3200, Buckeye, AZ, was disbarred from the practice of law in Arizona. The Supreme Court of Arizona accepted Mr. Legg's Consent to Disbarment and ordered him to pay costs and expenses incurred by the State Bar in the amount of \$811.81, with interest at the legal rate from the date of the judgment.

The charges of misconduct filed with the State Bar prior to Mr. Legg's submission of his consent to disbarment included alleged violations of ER 1.2, ER 1.5, ER 1.7, ER 1.8, ER 1.14, ER 1.15, ER 1.16, ER 3.1, ER 3.3, ER 4.1, ER 4.4, ER 5.5 and ER 8.4. The State Bar was also aware that Mr. Legg had been convicted of five counts of fraudulent schemes and artifices and eight counts of theft, some of which were related to the

charges of misconduct previously filed with the State Bar.

**BERT L. ROOS**

Bar No. 006960, File Nos. 97-0623 and 97-1321

By Supreme Court Judgment and Order dated May 31, 2001, Bert L. Roos, 5050 North 1st Avenue, Suite 412, Phoenix, AZ 85015, was suspended for 90 days for conduct in violation of his duties and obligations as a lawyer, by consent. Mr. Roos was also placed on probation for 18 months to include attending the State Bar's Trust Account Ethics Enhancement Program, having a practice monitor and has a LOMAP component. Mr. Roos was also ordered to pay costs and expenses incurred by the State Bar of \$1,104.50, together with interest at the legal rate from the date of the judgment.

In Count 1, on two separate occasions Mr. Roos' trust account was overdrawn as he wrote checks on the account without sufficient funds in the trust account to cover the amount of the checks.

In Count 2, Mr. Roos settled a personal injury matter for a client. Thereafter, Mr. Roos disbursed to the client her portion and retained an amount to pay the client's medical providers. There was a dispute between the client and her medical providers regarding the amount owed for services. At all times between the date of the settlement and the time the payments were made to the providers, Mr. Roos should have had the retained amount in his trust account. Prior to the medical providers being paid, Mr. Roos' trust account balance fell below the amount he was holding to pay those providers.

There were three aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (a) prior disciplinary offenses, (d) multiple offenses and (i) substantial experience in the law. There were three mitigating factors found pursuant to Section 9.32 of the ABA Standards: (d) timely good faith effort to rectify the consequences of his misconduct, (e) cooperative attitude towards proceeding and (j) delay in the disciplinary proceedings.

Mr. Roos' conduct violated Rule 42, ARIZ.R.S.CT., particularly ER 1.15, ER 1.15(b) and ER 8.4 and Rules 43 and 44, ARIZ.R.S.CT.

**JOHN P. SILKEY, SR.**

Bar No. 005505, File Nos. 98-2062 and 99-0217

By Supreme Court Judgment and Order dated May 31, 2001, John P. Silkey, Sr., P.O. Box 11394, Chandler, AZ 85248, was suspended for 60 days for conduct in violation of his duties and obligations as lawyer. Upon

reinstatement, Mr. Silkey shall be placed on probation for one year with a LOMAP audit. Mr. Silkey was also ordered to pay costs and expenses incurred by the State Bar of \$2,425.60, together with interest at the legal rate from the date of the judgment.

In Count 1, Mr. Silkey improperly managed his IOLTA trust account by failing to maintain complete records of handling, maintenance and disposition of trust account funds. Mr. Silkey on numerous occasions allowed for negative account balances to occur and for insufficient funds notices to be issued. Mr. Silkey also failed to keep his personal and business assets separate from his trust account, by commingling personal and/or operational funds from those of his trust funds. Mr. Silkey failed to respond to the State Bar's investigation of this matter.

In Count 2, Mr. Silkey was alleged to have entered into a loan agreement with a former client and then failed to repay the entire loan amount. Mr. Silkey failed to respond to the State Bar's investigation of this matter. However, due to the unavailability of the witness, the State Bar only proceeded on the violations for the nonresponse to the Bar's investigation of this matter.

There were four aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (c) pattern of misconduct, (d) multiple offenses, (e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency and (i) substantial experience in the practice of law. There were four mitigating factors found pursuant to Section 9.32 of the ABA Standards: (a) absence of a prior disciplinary record, (b) absence of a dishonest or selfish motive, (c) personal or emotional problems and (l) remorse.

Mr. Silkey's conduct violated Rule 42, ARIZ.R.S.Ct., particularly ER 1.15(a) and Rules 43(a), 44(a) and 51(h) and (i), ARIZ.R.S.Ct.

#### **CHERYL L. SIVIC**

Bar No. 012355, File No. 97-2444

By Supreme Court Judgment and Order dated May 31, 2001, Cheryl L. Sivic, 2101 East Broadway, Suite 261, Tempe, AZ 85282, was suspended for six months and one day, for conduct in violation of her duties and obligations as a lawyer. Upon reinstatement, Ms. Sivic shall be placed on two years' probation. In addition, Ms. Sivic was also ordered to pay costs and expenses incurred by the State Bar of \$1,063.70, together with interest at the legal rate from the date of the judgment.

Ms. Sivic was summarily suspended for



nonpayment of dues and noncompliance with MCLE requirements on April 28, 2000, and, to the date of the opinion, she remained suspended.

Ms. Sivic was retained by a client in the fall of 1997 for a domestic relations matter concerning the custody of his son. The client sought emergency custody of his son contending that the mother was planning to leave the country with the child. Custody was granted to the client although he was under indictment for kidnapping his son. The parties were ordered to surrender their passports. The mother complied, but Ms. Sivic's client did not. An Order to Show Cause hearing was scheduled for October 23, 1997, and the client did not appear. The court ordered that his passport be turned in by noon of that day and ordered both parties to return on October 27, 1997. Ms. Sivic told the court that her client would comply. The client, however, did not appear and when the court directed Ms. Sivic to disclose the whereabouts of her client, she first cited attorney-client privilege in refusing to answer. The court advised Ms. Sivic that the grounds were inappropriate, and she then refused to answer citing her Fifth Amendment privilege. More than a year later, a private investigator who worked for Ms. Sivic was deposed and stated that Ms. Sivic told him within a couple of days of October 17, 1997 (prior to her court appearance) that the client had left the country.

There were two aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (b) dishonest of selfish motive and (i) substantial experience in the law. There was one mitigating factor found pursuant to Section 9.32 of the ABA Standards: (a) absence of a prior disciplinary record.

Ms. Sivic's conduct violated Rule 42, ARIZ.R.S.Ct., particularly ER 3.3, ER 3.4, ER 4.1 and ER 8.4.

#### **BERNARD M. STRASS**

Bar No. 013684

File Nos. 98-2111 and 98-2550

By Supreme Court Judgment and Order dated May 9, 2001, Bernard M. Strass, 3420 East Shea Boulevard, Suite 200, Phoenix, AZ 85028 was censured for conduct in violation of his duties and obligations as a lawyer, upon consent. In addition, Mr. Strass was placed on probation for one year with a LOMAP audit. Mr. Strass also was ordered to pay costs and expenses incurred by the State Bar of \$869.05, together with interest at the legal rate from the date of the judgment.

In Count One, Mr. Strass was retained by a client to represent the client in a breach of

contract action. The client and Mr. Strass entered into a contingency fee agreement that further stated that any attorney's fees awarded would go to Mr. Strass. This original contingency fee agreement was modified nearly four years later between the client and Mr. Strass. However, the modified agreement was not clear when funds should have been distributed to the client. A dispute arose as to when attorney's fees would be paid under the modified contract. Mr. Strass failed to keep trust account records of the funds received and did not keep duplicate deposit slips to identify funds received. Mr. Strass negligently misled the trial court by asking for an award of attorney's fees without advising the court of the contingency fee agreement. In several instances, Mr. Strass failed to act with reasonable diligence and promptness while representing the client.

In Count Two, Mr. Strass was retained by a client to handle collections on delinquent accounts. Mr. Strass handled collections from fall 1993 through fall 1996 under a contingency fee agreement. The agreement stated that any attorney's fees awarded would be Mr. Strass', which would potentially permit a double payment of attorney's fees. In two instances, Mr. Strass negligently failed to pay his clients the full amount the clients were entitled to because he did not believe at that time any money was still owed to the clients. Mr. Strass later decided to stop doing collection work. When the clients later asked for a full accounting from Mr. Strass, he could not give it because an ex-employee who had handled the collection matters had the account records and the ex-employee had deleted the information from his computer. Mr. Strass failed to properly supervise nonlawyer assistants regarding keeping client information confidential.

Mr. Strass' conduct violated Rule 42, ARIZ.R.S.Ct., particularly ER 1.3, ER 1.5(a) and (c), ER 1.6(a), ER 1.15(a) and (b), ER 5.3(b) and (c), ER 8.4(c) and Rules 43(d) and 44(b), ARIZ.R.S.Ct.

#### **CHRIS G. WEISLING**

Bar No. 013708

File Nos. 96-3086, 97-2674 and 98-0538

By Supreme Court Judgment and Order dated March 23, 2001, Chris G. Weisling, 8139 West Greer, Peoria, AZ was suspended for two years retroactive to March 10, 1997, by consent. In addition, Mr. Weisling was ordered to participate in binding arbitration through the State Bar Fee Arbitration Program with one of the complainant clients. Mr. Weisling was ordered to repay the Client Protection Fund for any claims paid, not to exceed the cap of \$100,000. Mr. Weisling

also was ordered to pay costs and expenses incurred by the State Bar of \$628.21, together with interest at the legal rate from the date of the judgment.

Mr. Weisling represented a client at trial in two separate criminal matters in October 1995. During the representation, the client attempted to communicate with Mr. Weisling regarding possible plea negotiations and/or offers that had been made in regard to his matters. Mr. Weisling failed to communicate with the client regarding any plea offers extended to him and failed to provide copies of any possible plea offers. Mr. Weisling did not take action on either of his client's cases. Specifically, Mr. Weisling did not interview relevant witnesses, failed to cooperate with the client's private investigator and failed to undertake any investigation in the client's matters. In mid-1996, the client terminated Mr. Weisling's services and requested that Mr. Weisling send his file to his new attorney. Mr. Weisling failed to respond to the client's or the new attorney's requests that he transfer the file to the new attorney. Mr. Weisling also failed to respond to requests for information from the State Bar.

In another matter, Mr. Weisling was retained for representation in a post-conviction relief matter in January 1995. The client paid Mr. Weisling \$2,283.85 for his services. The client attempted to contact Mr. Weisling on numerous occasions in regard to his case. The client had no communication from Mr. Weisling on his case for more than a year after Mr. Weisling was retained, and Mr. Weisling failed to take any action on behalf of the client. The client made numerous requests to Mr. Weisling that his file be returned to him, and Mr. Weisling advised the client that the client's file was lost when Mr. Weisling moved his office. Mr. Weisling failed to respond to the State Bar's request for information.

There were four aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (a) prior disciplinary offenses, (c) pattern of misconduct, (d) multiple offenses and (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. There were three mitigating factors found pursuant to Section 9.32 of the ABA Standards: (b) absence of a dishonest or selfish motive, (c) personal or emotional problems and (f) inexperience in the practice of law.

Mr. Weisling's conduct violated Rule 42, ARIZ.R.S.Ct., particularly ER 1.2, ER 1.3, ER 1.4, ER 1.15(b), ER 1.16(d), ER 3.2, ER 8.1(b) and ER 8.4(d) and Rule 51(h) and (i), ARIZ.R.S.Ct. ▀