SANCTIONED ATTORNEYS

ROBERT F. ARENTZ

Bar No. 005376; Case Nos. 05-1161, 05-1888, 06-1137, 06-1138, 06-1212, 06-1582, 07-0085, 07-0176, 07-0177, 07-0178, 07-0231, 07-0232, 07-0239, 07-0275, 07-0278, 07-0289, 07-0412, 07-0512, 07-0569, 07-0628, 07-0639, 07-0697, 07-0887, 07-0889, 07-0890, 07-0891, 07-0892, 07-0894, 07-0895, 07-1326, 07-1342, 07-1461, 07-1561, 07-1601, 07-1885, 08-0397

Supreme Court No. SB-10-0036-D

By Arizona Supreme Court judgment and order dated June 24, 2010, as amended July 14, 2010, Robert F. Arentz, 20 E. Thomas Road, Suite 2600, Phoenix, Ariz., was suspended for 60 days, effective July 1, 2010. Mr. Arentz also was placed on probation for two years, ordered to pay restitution and the costs and expenses of the disciplinary proceedings applicable to him.

Mr. Arentz was the supervisor of the criminal division of Phillips and Associates. He was responsible for setting policy, billing, accounting and intake procedures for that criminal division. Mr. Arentz also was responsible for setting fees, assigning cases, managing caseloads and determining refunds to clients.

This proceeding encompassed findings of misconduct in six matters.

In the first matter, Phillips and Associates was retained for "pre-charging" representation of a client who was being investigated for a crime. The assigned lawyer advised the client not to speak with law enforcement, had a conversation with law enforcement and wrote a letter declining an interview on behalf of the client. The client later terminated the firm's services. An administrator attempted to dissuade the client from terminating the representation. The client was charged $6,900 for services and $4,000 was refunded, leaving $2,900 paid. The fee was found to be unreasonable for the services rendered. As the criminal supervisor, Mr. Arentz was responsible for ensuring that a reasonable fee was charged and a refund was made.

In the second matter, a family member retained Phillips and Associates in an effort to obtain a reduction in his son's sentence. The son already had entered into a plea agreement but wanted a less severe prison term than the three and a half years required by the plea agreement. The fee agreement defined the scope of services to be provided by Phillips and Associates as "mitigation of sentencing." Neither the family member nor the son was told initially that the son would have to withdraw from the plea agreement to obtain a reduction in the sentence. The son was sentenced to three and a half years per the plea agreement, and the assigned Phillips and Associate lawyer did not seek to have the sentence mitigated. The family member was misled as to the scope of the services and the ease or difficulty of attaining his goal, in part due to the firm's retention practices.

In the third matter, the client was arrested on July 14, 2005, as a suspect in an armed robbery. On the same day, the client's friend arranged for representation by Phillips and Associates for a fee of $35,000, $18,000 of which was charged on a credit card, with the remainder to come from refinancing a house. By the next day, the client was released from jail and was never charged in the crime. The client advised Phillips and Associates of this. However, the firm did not refund $16,000 of the $18,000 payment until the end of December 2005. An administrator in the firm impeded the processing of the refund request, and the firm failed to have in place policies to prevent the difficulty in obtaining a refund. Mr. Arentz supervised the refund process.

In the fourth matter, a mother hired Phillips and Associates to obtain a reduction in the sentence for her son. He had signed a plea stipulating to two and a half years in prison. The mother paid $5,000 and believed that something would be done to reduce the sentence as

the administrator told her it would. Instead, the Phillips and Associates lawyer appeared at the sentencing hearing and advised the son to accept the sentence provided for by the plea. The mother was upset, returned to speak with Phillips and Associates and requested a refund. She did not receive a refund. The mother and client were charged an unreasonable fee and were not given the proper information about their options so that an informed decision about whether to retain Phillips and Associates could be made.

In the fifth matter, the client had received a notice that his request to reinstate his driver's license had been denied due to an unadjudicated DUI. To appeal the ruling he needed to request a hearing within 15 days. Four days before the request deadline, the client's mother hired Phillips and Associates to represent her son. A bankruptcy lawyer, not a lawyer experienced in criminal matters, consulted with her. The client's mother advised Phillips and Associates of the deadline for filing a hearing on more than one occasion. Mr. Arentz and the lawyer assigned to the case believed that requesting a hearing would be futile because of the reason for the denial. However, they did not communicate their concern to either the client or the mother. The hearing was not requested timely and a warrant for the client was ultimately issued when the unadjudicated DUI was filed. Phillips and Associates wanted $18,000 to handle the case, with credit being given for $2,090 already paid. The client and his mother declined the representation and requested a refund, which Mr. Arentz denied. The client received a full refund after filing a bar complaint. Phillips and Associates should not have accepted representation without advising the client that he would not be able to reinstate his driver's license until the unadjudicated charge was cleared.

In the sixth matter, the client retained Phillips and Associates to represent him in a DUI. He agreed to pay a fee of $6,990 and allowed $3, 090 to be withdrawn from his checking account. The client met with a firm administrator and a bankruptcy attorney at intake. Later that day, the client met with a lawyer from another firm and left a message that evening with the Phillips administrator stating he had reconsidered and wanted to cancel the contract. The client was pressured not to cancel and told that stopping payment on the check was a crime. The client was in the process of becoming a United States citizen. The client called Phillips and Associates from his new lawyer's office to obtain his paperwork. During the call, a Phillips and Associates employee harassed the client, accused him of committing fraud, and lied to him about the status of the proceedings. When the employee was asked his name, he abruptly hung up. Mr. Arentz failed to give reasonable assurance that the firm employee's conduct was compatible with the professional obligations of the lawyers in the firm.

Five aggravating factors were found: dishonest or selfish motive, multiple offenses, refusal to acknowledge wrongful nature of conduct, vulnerability of victim and substantial experience in the practice of law.

Five mitigating factors were found: absence of a prior disciplinary record, full and free disclosure to the State Bar, delay in disciplinary proceedings, willingness to remedy practices, and character.

Mr. Arentz violated Rule 42, ARIZ.R.S.CT., ERs 1.5(a), 5.1(a), 5.1(b), 5.3(a), and 5.3(b).

ROSEMARY STATHAKIS COOK

Bar No. 006842; File No. 10-0603

Supreme Court No. SB-10-0051-D

By Arizona Supreme Court order, filed July 21, 2010, Rosemary Stathakis Cook, 818 N. Fifth Ave., Phoenix, Ariz., was placed on interim suspension, effective July 21, 2010. The suspension shall continue in effect until final disposition of all pending proceedings against Ms. Cook, unless earlier vacated or modified.

DANIEL INSERRA

Bar No. 017284; File Nos. 08-2282, 09-0561, 09-0880

Supreme Court No. SB-10-0066-D

By Arizona Supreme Court judgment and order dated June 16, 2010, Daniel Inserra, 29834 N. Cave Creek Road, Ste. 118-131, Cave Creek, Ariz., was suspended for 15 months, retroactive to Feb. 7, 2009. Mr. Inserra also was placed on an additional year of probation upon reinstatement to follow the year of probation previously imposed in Case No. SB-08-0166-D, for a total of two years. Mr. Inserra was ordered to pay restitution and the costs and expenses of the disciplinary proceedings.

BAR COUNSEL INSIDER

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

Paperless Ethics

After paying that pesky monthly storage fee for all those dust-laden client-file boxes, you begin to think that this "paperless office" idea you have been hearing about may not be so bad. Your first concern is the ethical considerations of doing so. Right? Well, let your heart rest easy. Others have worked it out for you.

A client file generally contains documents you receive from your client, documents you receive from others, and documents you generate. Do you have a duty to physically maintain these documents during the representation? The only documents that you have to physically maintain (*i.e.*, that you cannot destroy) are what we will call "client-property documents" and documents that for some other reason need to be maintained in their physical form (*e.g.*, evidence or a third party's property). All other documents can be converted to images, stored electronically, and then destroyed. (Of course, there are confidentiality, backup and medium obsolescence issues that need to be considered, but they are not addressed here.)

So what are client-property documents? Original documents (wills, contracts, diaries, receipts, invoices, orders, etc.) provided to you by the client fall into this category. If the client only has a copy of a document and provides that copy (as opposed to a copy of that copy) to you, that too is a client-property document. Documents (originals or copies) that the client received from others and provided to you are also client-property documents. However, if the client makes it clear that he or she is providing you with a copy of a document that he or she still has in their possession, then that is not a client-property document. Letters sent to you by the client during the representation are not client-property documents. (Attachments or enclosures to the letter require their own separate client-property document analysis.)

The best practice? Unless you need to retain client-property documents for some other reason, convert such documents to an electronic image and return them to the client. Do so with a cover letter telling the client what you have done and mention the need to protect and preserve the documents if necessary. Include this procedure in your fee agreement. This way there should never be a question about you misplacing or destroying client-property documents.

Once you understand what client-property documents are and put in place the proper procedures to protect them, you can keep the client file in all its electronic glory—much to the chagrin of your selected storage facility professional.

See Arizona Ethics Opinions 98-07, 07-02 and 08-02 for the more detailed analysis of this issue. Or call the Ethics Hotline at (602) 340-7284 for your particular concerns.

In the first matter, Mr. Inserra was retained to represent a criminal defendant by a friend of the defendant. The defendant paid Mr. Inserra $5,500. Mr. Inserra told the friend he would file something to get the client a "sooner" date and also advised that the client would be released from jail on a specific date. When the client was not released, the friend advised Mr. Inserra that the client no longer wanted Mr. Inserra to represent him and wanted his advance fee back. After that, Mr. Inserra failed to return the friend's phone calls and did not refund the fee. Mr. Inserra also failed to provide information to the State Bar that was requested during the investigation.

In the second matter, Mr. Inserra was retained by a husband and wife to represent the husband. The wife paid Mr. Inserra $2,500 toward his $4,000 fee. Mr. Inserra failed to return calls of the husband and failed to attend a hearing on Feb. 18, 2009. Instead, Mr. Inserra sent another attorney who advised the husband Mr. Inserra was suspended. Mr. Inserra did not tell the husband he had been suspended and did not refund fees that had not been earned.

In the final matter, a mother retained Mr. Inserra to represent her son in a criminal matter. Mr. Inserra charged an initial fee of $3,500 and later required an additional fee of $2,500 when the son was rearrested on new charges after being released from jail. Mr. Inserra failed to communicate with the client (son) about the status of his case, failed to timely perform the work requested and failed to perform the duties he was retained to perform. Mr. Inserra also made false statements to the client about the status of post-conviction relief and failed to return the client's file. Mr. Inserra also failed to provide information to the State Bar as requested.

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

One mitigating factor was found: full and free disclosure to the disciplinary board or cooperative attitude toward proceedings.

Mr. Inserra violated Rule 42, ARIZ.R.S.CT., ERs 1.2, 1.3, 1.4, 1.5, 1.15(d), 1.16, 8.1(b) and 8.4(d); and Rules 53(f) and 72(a) and (d), ARIZ.R.S.CT.

JAMES J. McMAHON

Bar No. 022943; File No. 09-1602

Supreme Court No. SB-10-0058-D

By Arizona Supreme Court judgment and order dated May 28, 2010, James J. McMahon, 792 N. 3d Ave., Patagonia, Ariz., was censured. He also was placed on probation for one year and ordered to pay the costs of the disciplinary proceedings.

Mr. McMahon failed to pay his State Bar of Arizona annual membership dues for 2009 and

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.

was summarily suspended from the practice of law. Mr. McMahon continued to practice law while suspended and appeared in court in several matters. When he learned of his suspension he did not communicate this fact to his clients or the courts. Mr. McMahon also failed to respond to the State Bar's investigation into the matter.

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

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

Mr. McMahon violated Rules 31(a) and (b), ARIZ.R.S.CT.; Rule 42, ARIZ.R.S.CT., ERs 1.4(a) and (b), 5.5, 8.1(b) and 8.4(d); and Rules 53(d) and (f), ARIZ.R.S.CT.

VICTORIA R. MIRANDA

Bar No. 018511; File Nos. 08-1574, 09-0058, 09-2013

Supreme Court No. SB-10-0052-D

By Arizona Supreme Court judgment and order dated June 17, 2010, Victoria R. Miranda, 532 E. Lynwood St., Phoenix, Ariz., was suspended for six months and one day effective July 19, 2010. She also was ordered to pay restitution and the costs and expenses of the disciplinary proceedings. Upon reinstatement, Ms. Miranda will be placed on probation for a period of two years.

In the first matter, Ms. Miranda was retained by a client regarding a divorce. The client's husband resided in Arkansas and filed the divorce proceedings in Arkansas. Ms. Miranda prepared documents objecting to jurisdiction in Arkansas for the client to file on her own behalf. The client, however, believed Ms. Miranda would handle the matter in Arkansas and would attempt to have the proceedings transferred to Arizona. Ms. Miranda did not adequately communicate to the client her limitations in the Arkansas case and the possible outcomes of that matter. The client requested a full refund. Ms. Miranda initially refunded part of the money paid and later refunded the balance after a fee arbitration award in favor of the client. There were additional issues concerning Ms. Miranda's fee agreement as it failed to include necessary language concerning a refund of any flat fee. Further, Ms. Miranda failed to adequately communicate the basis of the fee to the client.

In the second matter, Ms. Miranda agreed to represent a client in a divorce matter for a flat fee of $2,000. The client paid $1,000 and believed Ms. Miranda would begin work on his case. Ms. Miranda contended the representation did not begin until full payment of the fee. When the client inquired about the status of his matter, Ms. Miranda accused him of stealing money from her and threatened to have him deported if he did not return the funds. Ms. Miranda falsely claimed she had a videotape of the client stealing money from her office. Ms. Miranda provided a full refund to the client after he filed a bar charge.

In the third matter, Ms. Miranda agreed to represent a client in an immigration matter even though she was not permitted to take on new clients as she was suspended from the practice of law effective July 29, 2009. Ms. Miranda met with the client in jail, accepted payments from the client and/or her mother and gave the client forms to fill out. Ms. Miranda failed to give the client a fee agreement despite several requests from the client. The client's mother learned of Ms. Miranda's suspension from the State Bar's website and confronted Ms. Miranda with the information. The client and her mother demanded a refund of all payments. Ms. Miranda was ordered to pay restitution of $2,000 to the client's mother.

Two aggravating factors were: prior disciplinary offenses and multiple offenses.

Two mitigating factors were: personal or emotional problems and timely good-faith effort to rectify consequences of misconduct.

Ms. Miranda violated Rule 31, ARIZ.R.S.CT.; Rule 42, ARIZ.R.S.CT., ERs 1.3, 1.4, 1.5, 1.15, 1.16(d), 5.5, and 8.4(c) and (d); and Rules 53(f) and 72(d), ARIZ.R.S.CT.

KATHARINE L. ROBERTS

Bar No. 014673; File No. 10-0821

Supreme Court No. SB-10-0059-D

By Arizona Supreme Court order, filed July 21, 2010, Katharine L. Roberts, 4700 W. White Mountain Blvd., Suite B, Lakeside, Ariz., was placed on interim suspension, effective July 21, 2010. The suspension shall continue in effect until final disposition of all pending proceedings against Ms. Roberts, unless earlier vacated or modified.

DAVID B. STOCKER

Bar No. 015316; File No. 10-1058

Supreme Court No. SB-10-0071-D

By judgment and order dated June 28, 2010, the Arizona Supreme Court accepted the consent to disbarment of David B. Stocker, 7000 N. 16th St., Suite 120-617, Phoenix, Ariz., and ordered him disbarred retroactive to April 29, 2009.

PAUL M. WEICH

Bar No. 014089; File Nos. 08-0073; 08-1264

Supreme Court No. SB-10-0062-D

By Arizona Supreme Court judgment and order dated June 16, 2010, Paul M. Weich, 4802 E. Ray. Road, Suite 23-541, Phoenix, Ariz., was suspended for two years effective Dec. 29, 2009. He also was placed on probation for a period of two years and ordered to pay the costs and expenses of the disciplinary proceedings.

In both matters, Mr. Weich represented creditors in bankruptcy proceedings and received payments that belonged to the creditors. Mr. Weich negotiated the checks he received for his clients and did not forward the money to them, despite their demands. Mr. Weich did not respond to the State Bar's request for information or initially participate in the proceedings. Mr. Weich has since made full restitution to the clients.

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

One mitigating factor was found: personal or emotional problems.

Mr. Weich violated Rule 42, ARIZ.R.S.CT., ERs 1.3, 1.4, 1.15, 8.1 and 8.4 (c) and (d), and Rule 53(d) and (f), ARIZ.R.S.CT.