

## 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.

### REINSTATED ATTORNEYS

#### ROBERT ARENTZ

Bar. No. 005376; File 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 order filed September 21, 2010, Robert Arentz, 20 E. Thomas Rd., Suite 2600, Phoenix, Ariz., was reinstated as a member of the State Bar effective the date of the order.

#### MICKEY L. MAGNESS

Bar No. 003014; File No. 09-6006

Supreme Court No. SB-10-0079-R

By Arizona Supreme Court order of reinstatement, dated August 19, 2010, Mickey L. Magness, 8624 W. Mohave St., Tolleson, Ariz., was reinstated as a member of the State Bar effective the date of the order.

#### MICHAEL T. TELEP

Bar No. 011995; File No. 08-2230

Supreme Court No. SB-10-0022-D/R

By Arizona Supreme Court order dated July 29, 2010, Michael T. Telep, P.O. Box 671, Sells, Ariz., was reinstated as a member of the State Bar effective the date of the order.

### SANCTIONED ATTORNEYS

#### LES A. BOEGEMANN

Bar No. 023107; File No. 09-0342

Supreme Court No. SB-10-0077-D

By Arizona Supreme Court judgment and order dated July 30, 2010, Les. A. Boegemann, 688 W. 4th Street, Benson, Ariz., was censured. He also was assessed the costs and expenses of the disciplinary proceedings.

Mr. Boegemann was retained by a client to prepare estate-planning documents. At the time, the client was 100 years old. During a meeting with the client, the client listed beneficiaries to whom he wanted to leave large sums of money. At some point during the meeting, Mr. Bogemann asked the client something to the effect of "Do I get a bonus?" The client then made repeated offers to leave Mr. Boegemann \$50,000.00 in his will, which Mr. Boegemann declined. A couple who were watching out for the client attended this meeting and all other meetings between the client and Mr. Boegemann.

At a subsequent meeting, the client again offered to give Mr. Boegemann \$50,000. Mr. Boegemann told the client he could not draft a will leaving himself money, but could accept the money as a gift. Later that day, Mr. Boegemann, with the client's permission, withdrew \$50,000 from the client's account and set

up a new account in his own name. Mr. Boegemann did not obtain written informed consent from the client to the essential terms of the transaction or advise the client of the desirability of seeking the advice of independent counsel.

Mr. Boegemann eventually returned the \$50,000 gift to the client.

There were three aggravating factors: prior disciplinary offenses, dishonest or selfish motive, and vulnerability of victim.

There were three mitigating factors: timely good-faith effort to make restitution, cooperative attitude towards disciplinary proceedings and inexperience in the practice of law.

Mr. Boegemann violated Rule 42, ER 1.8(a), ARIZ.R.S.C.T.

#### ANDREW D. DIODATI

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

Supreme Court No. SB 10-0072-D

By Arizona Supreme Court judgment and order dated July 21, 2010, Andrew D. Diodati, 123 S. Stone Ave., Ste.6, Tucson, Ariz., was suspended for six months and one day, effective 30 days from the date of the order. Mr. Diodati also was placed on probation upon reinstatement, with the length and terms of probation to be determined at reinstatement. Mr. Diodati also was assessed the costs and expenses of the disciplinary proceedings.

Mr. Diodati was suspended for 60 days in 2008. He was reinstated on June 19, 2008, and began a one-year period of probation that required that he participate in various diversion programs and that he pay outstanding fines to Tucson City Court. Mr. Diodati failed to comply with the terms of probation. Mr. Diodati admitted to violating the terms and conditions of his probation.

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

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

Mr. Diodati violated Rule 53(c), ARIZ.R.S.C.T.

#### HARRIET KOCHEE HEMERLING

Bar No. 025533; File No. 09-1079

Supreme Court No. SB-10-0069-D

By Arizona Supreme Court judgment and order dated July 21, 2010, Harriett Kochee Hemerling, 4045 N. 7th St. Ste. 216, Phoenix, Ariz., was suspended for one year, effective 30 days from the date of the order. She also was

## Insurance Client Issues

Representing an insured client can be tricky. Not only does the attorney have to deal with the insured, but the attorney also has to deal with the insurance company. In these situations, who is the client? The insured? The insurance company? Both? It is an important question, and a wrong answer may cause the attorney to violate the Rules of Professional Conduct.

In *Paradigm Insurance Company v. Langerman Law Offices*, 24 P.3d 593 (Ariz. 2001), our Supreme Court adopted the Restatement's definition of when an attorney-client relationship is formed. That definition is:

A relationship of a client and lawyer arises when:

- (1) a person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and either
  - (a) the lawyer manifests to the person consent to do so; or
  - (b) the lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services; or

## BAR COUNSEL INSIDER

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



- (2) a tribunal with power to do so appoints the lawyer to provide the services.

RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 14 (2000).

Therefore, if an attorney is not careful, he or she may inadvertently create an attorney-client relationship not only with the insured, but also with the insurer. Such dual representations may create a conflict of interest and run afoul of ER 1.7.

Even if the attorney is careful not to create an attorney-client relationship with the insurer, does this mean he or she owes the insurer no duties? The answer is a resounding NO. "A lawyer designated by an insurer to defend an insured owes a duty of care to the insurer with respect to matters as to

which the interests of the insurer and insured are not in conflict, whether or not the insurer is held to be a co-client of the lawyer." *Paradigm*, 24 P.3d at 600 (quoting Comment G to § 51(3) RESTATEMENT) (emphasis omitted). Furthermore, the insurer has standing to sue for financial loss caused by the attorney's negligence or other wrongful acts. *Id.*

On the other hand, an attorney owes his primary duties to the insured. In a discipline matter, an attorney violated numerous ethical rules by accepting an assignment from an insurer to represent its insured, filed pleadings, and engaged in discovery, yet never communicated with the insured, thereby performing work on behalf of someone who never acquiesced to the "representation." *See In re Huser*, SB-00-0108-D (2001).

Attorneys should pay close attention when representing an insured. If the attorney is not careful, his or her actions may inadvertently create a conflicting attorney-client relationship with the insurer. Even if such a relationship is not formed with the insurer, the attorney still owes a duty of care not only to the insurance company, but also to the insured. Finally, the attorney must communicate with the insured and have the insured's permission to act on his behalf.

*As always, the State Bar's Ethics Hotline at (602) 340-7284 is available to answer any of your ethics questions.*

placed on probation for two years upon reinstatement and assessed the costs and expenses of the disciplinary proceedings.

Ms. Hemerling was conditionally admitted to practice in 2008, subject to the terms and conditions of a MAP contract that required her to abstain from using alcohol, drugs or other mind-altering chemicals for a period of two years. This was based on a DUI misdemeanor conviction on October 2, 2006, while Ms. Hemerling was in her third year of law school.

On Jan. 21, 2009, Ms. Hemerling was found unresponsive behind the wheel of her automobile and was charged with DUI, DUI with a blood alcohol concentration of 0.08 or greater, and extreme DUI. On June 11, 2009, Ms. Hemerling was convicted by a jury on all three counts. The court found she had a prior DUI conviction within 36 months, dismissed the DUI with a B.A.C. of 0.08 or greater and sentenced Ms. Hemerling to 120 days in jail and three years of probation. The confinement order ordered her to serve 15 days in jail with work-release conditions and home detention for 105 days.

On or about April 4, 2009, Ms. Hemerling was involved in an automobile collision in which she crashed her vehicle into the victim's storage shed. Ms. Hemerling left the scene. She was ultimately arrested at her home and found to have a blood-alcohol reading of 0.213.

Based on the evidence presented at the hearing, the hearing officer determined that Ms.

Hemerling committed the criminal act of aggravated DUI based on the April 4 incident, in addition to finding Ms. Hemerling committed a criminal act with the January 2009 DUI. She also violated her conditions of admission by regularly drinking alcohol from January 2009 to March 2009.

Three aggravating factors were found: pattern of misconduct, multiple offenses and illegal conduct.

Two mitigating factors were found: absence of a prior disciplinary record and personal and emotional problems.

Ms. Hemerling violated Rule 42, ER 8.4(b), ARIZ.R.S.C.T., and Rule 53(g), ARIZ.R.S.C.T.