

from the board

STATE BAR BOARD OF GOVERNORS December Meeting Review

Below are highlights of the December 15, 2000, State Bar Board of Governors meeting. Meetings are held monthly at the Arizona Bar Center in Phoenix.

- ▶ President Kirk Karman reported that he is making presentations regarding his “virtual practice” throughout the state at the various monthly county bar association meetings.
- ▶ Secretary/Treasurer Chas Wirken reported on behalf of the Task Force on Lawyers Professional Liability Insurance. The Board voted to approve the proposed Endorsement Agreement between the State Bar, Ahern Insurance Brokerage and Kemper Insurance pertaining to the Bar-endorsed malpractice insurance program.
- ▶ Mr. Wirken further reported that 21 individuals, including 17 past Bar presidents, have submitted comments opposing the Board’s May decision to endorse the Report and Recommendations of the Task Force on the Future of the Profession regarding multidisciplinary practices (MDPs). The Board agreed to have the Task Force review said comments and provide recommendations at a future Board meeting.
- ▶ Acting Executive Director Cindy Zwick trained the Board members on security procedures within the Arizona Bar Center now that the new security system is on line.
- ▶ Ms. Zwick introduced new staff members Irene Winterburn, Administrator for Committees, Sections and the Young Lawyers Division, and Kip Micuda, the Director of the Attorney/Client Assistance Program (A/CAP). The Board congratulated Patricia Rogers, Member Services Department, on her selection by the Bar staff as Employee of the Month.
- ▶ Colleen McManus, Assistant Executive Director–Human Resources, reported that an additional 80 applications for the Executive Director position have been received as the national search continues. The Search Committee will invite those identified as highly qualified candidates to participate in an assessment center in February.
- ▶ Joe Kanefield, Chair of the Legal Services Committee, summarized proposed legislation and the Board voted to endorse legislative efforts to secure continued funding for the Elder Law Hotline (\$100,000) and free legal assistance for victims of domestic violence who have children (\$1 million) and for those without dependents (\$1 million).
- ▶ The Board voted to approve the Criminal Jury Instructions Committee’s request to feature the instructions on the Bar’s Web site. The Board also established related e-commerce fees, which are lower than purchasing the instructions in a printed format, at \$50 for an initial subscription and \$25/year for updates to the instructions.
- ▶ Allen Shayo, Assistant Executive Director–Legal, reported that in 97 percent of all matters filed with the State Bar, the Discipline staff is completing its investigative and case preparation functions within the Arizona Supreme Court’s 11-month guideline directive.
- ▶ The Board voted to reaffirm the officers’ ability to act on matters between regularly scheduled Board meetings, thus giving the Scope and Operations Committee the authority to review and amend, if appropriate, a proposed rule to establish fees for *pro hac vice* counsel and to submit it to the Supreme Court for consideration at its January administrative meeting.
- ▶ The Board requested that the staff disseminate the monthly financial statements to the financial officer of each committee and section.
- ▶ The Board voted to remove from the Consent Agenda for discussion purposes the Criminal Practice and Procedure Committee’s request for the Board to support the proposed adoption of the ABA Model Rules for Judicial Disciplinary Enforcement. After further discussion, the Board voted to endorse the ABA Model Rules with regard to the bifurcating provisions in the rules relating to the separation of the investigative and adjudication functions and to urge that lawyers be involved in all aspects of the process.
- ▶ The Board then voted to approve the remaining issues on the Consent Agenda: one summary suspension due to failure to comply with Rule 45, Ariz.R.S.Ct. (MCLE) for 1998–1999 educational year; a request vacating order of summary suspension; the Treasurer’s Report; 401(k) employee plan matching contribution; and November 17, 2000, Board Meeting minutes.
- ▶ Diane Lindstrom McClure bid farewell as the Arizona Bar Foundation’s (ABF) liaison. The Board congratulated her on a successful year as ABF President and learned that ABF President-Elect Doug Dunipace will take over this liaison role beginning in January.
- ▶ The Board learned that the following national conventions will be held in Tucson: Federal Bar Association in September 2001 and Chief Justices Conference in January 2002.
- ▶ Joe Kanefield, Immediate Past YLD President, reported that the YLD’s first holiday Christmas party for foster chil-

dren was a huge success, with each of the 130 kids receiving a present and the opportunity to reunite with siblings and family for an afternoon.

- ▶ Dean Patricia White of ASU's College of Law reported that the mandatory Professionalism Course will be presented at ASU in January, February and March, with alumni being offered a reduced registration fee, but with all proceeds going to support law school students' scholarships. The Board agreed to offer space in *Arizona Attorney* to publicize these events.
- ▶ Joe Kanefield presented the report and recommendations on behalf of the Appointments Committee, and the Board took the following action: Arizona Bar Foundation Board of Directors—reappointed Barbara Dawson and Debra Hill (both of Phoenix) and Teri Thomson-Taylor (Prescott) to second but final three-year terms and appointed Wendy Morton (Phoenix) to her first three-year term; Arizona Commission on Judicial Conduct—appointed Harold Watkins (Flagstaff) to a six-year term; Arizona Commission on Judicial Performance Review—learned that the Supreme Court had made its selections the previous day, but had the Appointments Committee's input on applications it had received. The Court appointed Jeanette Boulet and George Soltero (both of Tucson); DNA-People's Legal Services Inc. Board of Directors—reappointed Robert L. Miller (Flagstaff) as the designated Coconino County Legal Aid Office representative and appointed Faith Klepper (Phoenix) to the second State Bar seat; Maricopa County Commission on Trial Court Appointments—nominated Helene Fenlon (Phoenix) to The Hon. Jane Dee Hull to fill the Supervisorial District 2 seat for a four-year term; Pima County Commission on Trial Court Appointments—nominated Janice Wezelman (Tucson) to Governor Hull for reappointment to her first full four-year term.

SOME DAY, A LAWYER YOU KNOW WILL NEED US**The Member Assistance Program ...**

- On a *confidential* basis, offers professional or peer assistance to lawyers who suffer from chemical dependency, stress, depression or similar problems
- Is supported by the Member Assistance Committee, made up of more than 70 volunteer lawyers in your community and others throughout Arizona, who provide *confidential* peer support to their fellow lawyers
- Has a referral network of professionals to assist with all types of impairments lawyers may face

*The following confidential, no-charge information is available.
(No records will be maintained of requests):*

- ▶ Firm Packet
- ▶ Sole Practitioner Packet
- ▶ Corporate/Public Lawyer Packet
- ▶ Packet for Lawyers Practicing Outside Maricopa and Pima Counties

You may fax your order to MAP's private fax at (602) 716-9249 or mail to:
Diane M. Ellis, Director, Member Assistance Program
111 West Monroe, Suite 1800, Phoenix, Arizona 85003-1742

You also may request your packet by phone or e-mail. Diane may be reached at (602) 340-7313 (office) or (602) 793-7964 (mobile).

E-mail Diane at diane.ellis@staff.azbar.org.

Packets may be picked up at the Arizona Bar Center,
111 W. Monroe, Suite 1800 in Phoenix or the Southern Regional
Office, 320 S. Convent in Tucson.

**WANTED: JDs TO ANSWER
FAQs FOR KIDS**

Be a part of something positive for Arizona kids by volunteering your time to answer their questions about the law in an outreach project of the Arizona Bar Foundation.

Kids faced with decisions that might lead to breaking the law can look to www.LawForKids.org to see just what the law says about drugs, violence, property damage and a range of other subjects. Each page on the site is written so that kids will understand the law as it relates to the tough decisions they face. And, if kids still have a question about the law after browsing, they are able to Speak UP! and ask any question about the law directly on the site.

Here's where you can help. Volunteers answer questions submitted by kids, and answers are posted on LawForKids.org for all to see. We need volunteers to answer up to two questions per week. Questions are forwarded over e-mail and usually require just a few minutes to answer.

To help, call Jeff Schrade at 602-340-7268 or e-mail jeffrey.schrade@staff.azbar.org.

VOLUNTEER OPPORTUNITY

The State Bar Appointments Committee is accepting applications to fill an unexpired term on the **Client Protection Fund Board of Trustees**. Application forms can be obtained by calling Carrie Sherman at (602) 340-7201 or Suzanne Pease at (520) 623-9944 and can be downloaded from the Bar's Web site (www.azbar.org). Applications must be received at the State Bar office by **Friday, March 30, 2001**.

Purpose: The members of the Board of Trustees of the Client Protection Fund act as custodians of monies deposited in the fund, invest those funds and pay claims in appropriate cases.

Openings: One. Fill the unexpired term of nonlawyer Karen Rizk of Yavapai County. The other trustees are Louis M. Diesel (Coconino County), Selmer D. Lutey (Yavapai County), James B. Rolle, III (Maricopa County) and John G. Balentine (Pima County).

Restrictions/Requirements: No geographical restrictions. Any active or honorary member of the State Bar of Arizona in good standing who has actively practiced law or served in a judicial capacity in the State of Arizona for 10 years or more is eligible for appointment as a trustee. Applications from nonlawyers also will be considered and are encouraged.

Term: Fill unexpired term to June 2005.

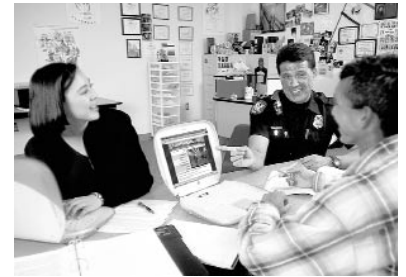
Safety and Youth Citizenship Aided by ABF Academy

Through a new Law-Related Education (LRE) program, the Arizona Bar Foundation will help prevent juvenile delinquency and create a safe school environment. The Arizona School Safety Program funds police officers and juvenile probation officers to work in Arizona schools.

Funded by a contract with the Arizona Department of Education, the LRE Academy requires each participating officer to provide 90 hours of LRE classroom instruction per semester, including the teaching of rules, laws and the legal system; the instruction actively involves students to prepare them for responsible citizenship. The officers also will provide instruction in legal rights and responsibilities and require students to practice the application of LRE in potential real-life situations.

The Academy will offer basic and advanced-level LRE courses designed to assist officers in implementing, teaching and evaluating the effects of such education on students' knowledge, skills and attitudes.

The first Basic LRE Academy will be held on February 22-23, and the first Advanced Academy will occur on March 12-13. Both events will take place at the Arizona State University Downtown Center, 502 E. Monroe Street. To volunteer to be an Academy instructor or to establish working relationships with Arizona School Safety Officers, contact Brenda Boehler, Academy Manager, at (602) 340-7231 or Brenda.Boehler@staff.azbar.org.



Information on the following attorneys is listed incorrectly in the 2000/2001 Bar Membership Directory. The information provided here is the correct version.

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SANCTIONED ATTORNEYS

NAIDA B. AXFORD

Bar No. 006292

By Supreme Court Judgment and Order dated October 10, 2000, Naida B. Axford, Tempe, Arizona, was suspended for six months and one day for conduct in violation of her duties and obligations as a lawyer, retroactive to February 11, 1997, and then placed on probation for two years. Ms. Axford was ordered to pay restitution to three clients in the amount of \$26,933.75 plus interest. Ms. Axford also was ordered to pay costs and expenses incurred by the State Bar.

Ms. Axford represented a client in a sexual discrimination matter. Ms. Axford entered into a combined hourly and contingent fee agreement, but the contingent fee was not reduced to writing. Ms. Axford failed to act with reasonable diligence and promptness in representing her client and failed to keep the client reasonably informed as to the status of the case. Ms. Axford further failed to explain the matter sufficiently to allow the client to make informed decisions regarding the representation. Ms. Axford also charged an unreasonable fee in this matter and a petition for fee arbitration was filed. Ms. Axford was directed to refund money to the client but was unable to pay the fee arbitration award. Ms. Axford contested the award, and the client ultimately obtained a judgment with sanctions being assessed against Ms. Axford.

In another matter, Ms. Axford was retained to represent a client in various employment matters. Ms. Axford took no effective action to protect the client or to pursue the client's claim against the client's former employer. Ms. Axford also failed to consult and abide by the client's decisions about the objectives of the representation, failed to act with reasonable diligence and promptness, failed to keep the client advised as to the status of the case and charged an excessive fee.

In another matter, Ms. Axford was retained to represent a client in an employment discrimination matter. Ms. Axford failed to diligently and promptly represent the client and failed to respond to requests from the client regarding the status of the client's case.

There were three aggravating factors found pursuant to the ABA Standards for Imposing Lawyer Sanctions, Section

9.22: pattern of misconduct, multiple offenses and substantial experience in the practice of law. There were three mitigating factors found pursuant to Section 9.32 of the ABA Standards: absence of a prior disciplinary record, absence of a dishonest or selfish motive and personal or emotional problems.

Ms. Axford's conduct violated Rule 42, Ariz.R.S.Ct., particularly ER 1.2, ER 1.3, ER 1.4, ER 1.5(a) and (c), ER 3.1, ER 3.2 and ER 8.4(d).

THEODORE RANDOLPH MACDONALD, II

Bar No. 004489

By Supreme Court Judgment and Order dated September 20, 2000, Theodore Randolph MacDonald, II, 1002 East Paradise Lane, Phoenix, Arizona 85022, was censured for conduct in violation of his duties and obligations as a lawyer. Mr. MacDonald was ordered to pay costs and expenses incurred by the State Bar in the amount of \$648.98, with interest at the legal rate from the date of judgment. The Disciplinary Commission also extended Mr. MacDonald's then-current probation for a period of six months.

Mr. MacDonald failed to act with reasonable diligence and promptness in representing a client in a domestic relations proceeding and failed to keep his client informed about the status of her case or respond to requests for information. Mr. MacDonald also failed to comply with a court order directing him to file appropriate documents evidencing an agreement. Initially, Mr. MacDonald failed to respond to the charges but cooperated after the formal complaint was filed. The Disciplinary Commission dismissed two counts of the formal complaint, stating that the State Bar did not prove those allegations by clear and convincing evidence.

The Disciplinary Commission applied the ABA Standards for Imposing Lawyer Sanctions and determined that one factor was present in aggravation: the existence of prior discipline. The Commission found four factors in mitigation: absence of a dishonest or selfish motive, physical or mental disability or impairment, delay in the disciplinary proceedings and interim rehabilitation.

Mr. MacDonald's conduct violated Rule 42, Ariz.R.S.Ct., particularly ER

1.3, ER 1.4, ER 3.4 and ER 8.1(b), and Rule 51(c), (h), (i) and (k), Ariz.R.S.Ct.

ROBERT LEE McFADDEN, III

Bar No. 004141

By Supreme Court Judgment and Order dated September 29, 2000, Robert Lee McFadden, III, 3550 North Central, Suite 1500, Phoenix, Arizona 85012, was suspended for two years for conduct in violation of his duties and obligations as a lawyer. Mr. McFadden was ordered to pay restitution to five clients in the amount of \$5,245. Mr. McFadden also was ordered to pay costs and expenses incurred by the State Bar of \$1,085.40 with interest at the legal rate from the date of the judgment.

Mr. McFadden's misconduct arose from his failure to perform services for which he was retained. Mr. McFadden failed to communicate with his clients and failed to respond to their repeated inquiries. Mr. McFadden also failed to return unearned retainers and failed to return clients' original documents and files needed to protect their legal rights. Mr. McFadden further engaged in the practice of law while suspended for nonpayment of bar dues and noncompliance with mandatory continuing legal education requirements. Mr. McFadden failed to respond or cooperate in the State Bar investigation of these matters.

There were three aggravating factors found pursuant to the ABA Standards for Imposing Lawyer Sanctions, Section 9.22: multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency and substantial experience in the practice of law. There was one mitigating factor found pursuant to Section 9.32 of the ABA Standards: absence of a prior disciplinary record.

Mr. McFadden's conduct violated Rule 42, Ariz.R.S.Ct., particularly ER 1.2, ER 1.3, ER 1.4, ER 1.16(d), ER 5.5, ER 8.1(b) and Rule 51(h) and (i), Ariz.R.S.Ct.

ROBERT J. ROBERSON

Bar No. 004349

By Supreme Court Judgment and Order dated September 14, 2000, Robert J. Roberson, 150 Court, Yuma, Arizona 85364, was censured for conduct in viola-

discipline update

tion of his duties and obligations as a lawyer, by consent agreement. Mr. Roberson was ordered to pay costs and expenses incurred by the State Bar of \$734 with interest at the legal rate from the date of the judgment.

Mr. Roberson was appointed to represent a client in a postconviction relief matter. Mr. Roberson failed to communicate and advise his client of the appointment, failed to diligently pursue the case and failed to advise the client as to the status of the case. The client's postconviction issues were preserved by subsequent counsel. Mr. Roberson failed to respond to State Bar inquiries concerning this matter. The Hearing Officer determined that Mr. Roberson's lack of diligence caused or potentially could have caused the client harm.

There were four aggravating factors found pursuant to the ABA Standards for Imposing Lawyer Sanctions, Section 9.22: prior disciplinary offenses, pattern of offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency and substantial experience in the practice of law. There were two mitigating factors found pursuant to Section 9.32 of the ABA Standards: absence of selfish or dishonest motive and full and free disclosure to disciplinary board or cooperative attitude toward proceeding.

Mr. Roberson's conduct violated Rule 42, Ariz.R.S.Ct., particularly ER 1.3, ER 1.4 and ER 8.1(b).

JOHN E. SAVOY

Bar No. 000654

By Supreme Court Judgment and Order dated August 28, 2000, John E. Savoy, 5206 East Fresno Drive, Phoenix, Arizona 85018, was censured for conduct in violation of his duties and obligations as a lawyer, by consent agreement. Mr. Savoy was ordered to pay costs and expenses incurred by the State Bar of \$664.10 with interest at the legal rate from the date of the judgment.

While suspended, Mr. Savoy prepared a last will and testament for a client and subsequently transmitted the documents to devisees from the will under his legal letterhead. Mr. Savoy received no compensation for this service because the client was a longtime friend and was aware of Mr. Savoy's suspension. Mr. Savoy was

clearly negligent in failing to supervise the actions of his longtime secretary.

There were no aggravating factors found pursuant to the ABA Standards for Imposing Lawyer Sanctions, Section 9.22. There were two mitigating factors found pursuant to Section 9.32 of the ABA Standards: absence of selfish or dishonest motive and full and free disclosure to disciplinary board or cooperative attitude toward proceeding.

Mr. Savoy's conduct violated Rule 42, Ariz.R.S.Ct., particularly ER 5.5 and Rule 51(h) and (i), Ariz.R.S.Ct.

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.

ethics opinions

Opinion No. 2000-10

November 2000

When a law firm pays a fee to a staffing agency for services rendered in connection with the temporary employment of a lawyer, ER 5.4(a), Ariz.R.S.Ct. 42, is not violated if the fee is independent of any amounts actually received from the client. This remains true even when the agency compensates the temporary lawyer out of the sum received from the law firm. [ER 5.4]

Opinion No. 2000-11

November 2000

The Opinion discusses the ethical duty of "confidentiality" when a lawyer is requested by a subpoena to disclose information related to his representation of a client when the client does not authorize the disclosure. [ERs 1.6(a), 8.4]

Need an Opinion?

Check out the State Bar Web site at www.azbar.org/EthicsOpinions/ for a listing of the ethics opinions issued from 1985 through 2000.

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

NEW PEOPLE, NEW PLACES

Brown & Bain has hired two new attorneys as partners. **Stephen C.**

Newmark, most recently from Quarles & Brady Streich Lang, joined the Phoenix office as a member and will practice in the areas of state and local taxation as well as wills, trusts and estates.



Stephen C. Newmark

Newmark contributes regularly to Lawyers.com on taxation issues and is a faculty member at the National Business Institute, Inc., and Lorman Education Systems. **D.**

Douglas Metcalf joined the firm's Tucson office as a member and will concentrate on business litigation,



D. Douglas Metcalf

including commercial, employment, tax and white-collar defense. Metcalf previously worked as a prosecutor for the U.S. Department of Justice in Washington, DC.

The shareholders of **Hebert Schenk, P.C.**, announced that **Alfred Ricciardi and Cathey Joseph** have been elected shareholders. Ricciardi has been with the firm since 1999 and practices litigation and arbitration with an emphasis on commercial, personal injury, construction, environmental, real estate and product liability law. Joseph specializes in real estate and commercial law and is involved in the firm's estate and asset protection planning practice. She has been with the firm since January 2000.

Fennemore Craig has added eight new attorneys to its Phoenix office. **Charles H. Houston III, Kristopher L. Harman, James M. Shinn, Darcy R. Renfro, Chadd M. Tierney** and **Susan S. Moon** have joined the firm as associates. Father and daughter lawyers, **Charles T. Stevens** and

Susan Stevens-Matthews, joined the firm from Stevens & Liebow, P.C. The elder Stevens joined as Of Counsel in the legislative counsel, government affairs, administrative law, estate planning and probate practice areas. The younger Stevens joined as an associate in the governmental relations, environmental law and administrative law practice areas.

AWARDS & HONORS

Arizona Judge **Mary M. Schroeder** has become the first woman to be named Chief Judge of the Ninth U.S. Circuit Court of Appeals. As chief judge, Schroeder will preside over the nation's largest judicial circuit, which includes nine states, Guam and the Northern Mariana Islands. Schroeder was appointed to the Ninth Circuit by President Carter in 1979. Prior to that, she served on the Arizona Court of Appeals and was the youngest woman appellate judge in the United States at the time. She was also a trial attorney with the U.S. Department of Justice and a partner at Lewis & Roca.

Helen Perry Grimwood, an attorney in the Phoenix law firm Osborn Maledon, P.A., has been elected vice president of the National Conference of Women Bar Associations, an umbrella group of such associations across the country dedicated to the advancement of women lawyers. She also was inducted as a Fellow of the American Bar Foundation for demonstrating outstanding dedication to the welfare of the community, the traditions of the profession and the maintenance and advancement of the objectives of the American Bar Association. Grimwood is a civil litigator whose practice focuses on a range of financial and complex litigation.

Arizona Court of Appeals Judge **Susan Ehrlich** was an Athenaeum speaker at Claremont McKenna College in California. She addressed the federalization of criminal law, the subject of her law review article in the *Arizona State Law Journal*. Gov. Rose Mofford appointed Ehrlich to the Court of

Appeals in 1989. She worked in the Justice Department's Civil Division Appellate Section in Washington, DC before becoming the first Appellate Section Chief of the U.S. Attorney's Office in the District of Arizona.

Julie LaForge, of Julie LaForge, P.L.L.C., was elected Executive Council member of the Creditors' Rights Section of the Commercial Law League of America. The League, founded in 1895, is the first organization of bankruptcy and commercial law professionals. LaForge practices in commercial litigation and creditors' rights representation in Tempe.

The University of Arizona Law School's Community Service Board won the Volunteer Lawyer's Program of Tucson's V.I.P. Award for 2000. The award recognizes groups or organizations that significantly assist in providing services to people who otherwise could not afford them. The Community Service Board is comprised of faculty and students of the James E. Rogers College of Law.

Rita A. Meiser, a partner at Jennings, Strouss & Salmon, P.L.C., has been named to the board of directors of Aid to Adoption of Special Kids. The organization provides specialized



Rita A. Meiser

services to help place special-needs children with well-prepared foster and adoptive families. Meiser also has been appointed as one of the directors of the agency's Campaign

Cabinet, which is establishing a comprehensive adoption and foster care center. She practices adoptions, health law and labor and employment law in Phoenix.

RECENTLY DECEASED

Roger H. Lichty, Denver, CO