

REINSTATED ATTORNEY

MICHAEL L. GERTELL

Bar No. 009458; File Nos. 98-1952 and 98-2503

By Supreme Court Judgment and Order dated Oct. 8, 2002, Michael L. Gertell, 5134 North Central, Suite 203, Phoenix, AZ 85012, was reinstated pursuant to Rule 71(c), ARIZ.R.S.Ct., after completing his suspension ordered on Mar. 28, 2002.

SANCTIONED ATTORNEYS

EDMOND R. ANDERSON, JR.

Bar No. 003126; File No. 99-1378

By Supreme Court Judgment and Order dated Mar. 28, 2002, Edmond R. Anderson, Jr., 1801 Parkway Ct., #5, Normal, IL 61761, was disbarred for conduct in violation of his duties and obligations as a lawyer. Mr. Anderson was ordered to contact the LOMAP Director to arrange for a complete audit of his trust account and to pay costs and expenses incurred by the State Bar in the sum of \$2,750.07, together with interest at the legal rate.

Mr. Anderson was suspended from the practice of law on Feb. 1, 1997, for non-compliance with Mandatory Continuing Legal Education requirements and remained suspended at the time the conduct in this case occurred. Although suspended, Mr. Anderson referred a number of "clients" to an individual and failed to inform that individual that he had been suspended from the practice of law in Arizona. Mr. Anderson admitted at the hearing that he had represented various individuals in negotiations with insurance companies in order to settle personal injury cases, but argued that "settling personal injury cases is not a big lawyer function." The Commission found that Mr. Anderson held himself out as a lawyer and engaged in the unauthorized practice of law while suspended.

In addition, in mid-1999, the Bar received information from Bank of America that Mr. Anderson's trust account had been overdrawn. Although suspended, Mr. Anderson maintained an operating IOLTA account; however, he did not maintain it in

accordance with trust account rules and guidelines. Moreover, Mr. Anderson commingled client and personal funds.

There were four aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (b) dishonest or selfish motive, (c) pattern of misconduct, (g) refusal to acknowledge wrongful nature of conduct, and (i) substantial experience in the practice of law. There was one mitigating factor found pursuant to Section 9.32 of the ABA *Standards*: (a) absence of prior disciplinary record.

Mr. Anderson's conduct violated Rule 42, ARIZ.R.S.Ct., particularly ER 1.15, ER 3.4(c), ER 5.5(a), ER 8.4(c), and Rules 31(a) and (c), 43, 44, 46(h), and 51(e) and (k), ARIZ.R.S.Ct.

MICHAEL D. BINGHAM

Bar No. 006064; File No. 00-1769

By Supreme Court Judgment and Order dated April 25, 2002, Michael D. Bingham, 3837 East Cortez, Phoenix, AZ 85028, was suspended for six months and one day for

conduct in violation of his duties and obligations as a lawyer. Mr. Bingham was ordered to pay costs and expenses incurred by the State Bar in the sum of \$1,137.64, together with interest at the legal rate, in this matter.

Mr. Bingham was administratively suspended from the practice of law on April 28, 2000, for nonpayment of dues and on June 14, 2000, for noncompliance with Mandatory Continuing Legal Education.

By order of the Maricopa County Superior Court dated March 17, 1999, Mr. Bingham was appointed to serve as an arbitrator. Pursuant to Rule 4 of the Uniform Rules of Arbitration, the arbitration hearing was to commence on or before July 15, 1999. Mr. Bingham failed to set or conduct a hearing prior to that date. By order dated Aug. 26, 1999, Mr. Bingham was to set a date and time for the hearing on or before Sept. 13, 1999, which he failed to do. Plaintiff's counsel filed motions to extend time on the inactive calendar on Dec. 7, 1999, Mar. 1, 2000, and June 28, 2000, and also requested a new arbitrator be appointed. The court granted each continuance, and each time ordered Mr. Bingham to set or conduct the arbitration hearing on or before a specified date, which Mr. Bingham failed to do. Finally, by order dated July 10, 2000, the court removed Mr. Bingham as an arbitrator and ordered that he appear on Aug. 11, 2000, at an order to show cause hearing for failing to comply with his duties as an arbitrator. Mr. Bingham failed to appear. Mr. Bingham also failed to respond to the State Bar's inquiries into this matter.

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

Mr. Bingham's conduct violated Rule 42, ARIZ.R.S.C.T., particularly ER 8.1(b) ER 8.4(d) and Rule 51(e), (h), (i) and (k), ARIZ.R.S.C.T.

ARLA H. BLASINGHAM-STENZEL

Bar No. 011878; File No. 02-1900

By Supreme Court Judgment and Order dated Dec. 5, 2002, Arla H. Blasingham-Stenzel, 8751 North 51st Avenue, Suite 101, Glendale, AZ, was placed on interim suspension pursuant to Rule 52(c), ARIZ.R.S.C.T., until the final disposition of all pending proceedings.

LIONEL C. ESTRADA

Bar No. 002354; File Nos. 99-0358, 99-1280, 99-1593, 00-0903, 00-1970 and 00-1238

By Supreme Court Judgment and Order dated Mar. 5, 2002, Lionel C. Estrada, 115 West McDowell, Suite 3, Phoenix, AZ 85003, was censured, by consent, for conduct in violation of his duties and obligations as a lawyer. Mr. Estrada was also placed on probation for one year and ordered to attend the State Bar's Ethics Enhancement Program and participate in the LOMAP program. Mr. Estrada was ordered to pay costs and expenses in the amount of \$915.21 incurred by the State Bar, together with interest at the legal rate from the date of the judgment.

In Counts One and Three, in approximately 33 matters total, Mr. Estrada failed to respond to status inquiries of medical providers and failed to advise the medical providers that clients' cases had settled. The medical providers were not timely paid. Mr. Estrada asserts that his managing partner and brother, George Estrada, opened all mail and Mr. Estrada did not see the correspondence. Although Mr. Estrada was hospitalized or otherwise seriously ill during the time, as a partner he had a duty to advise third-party medical providers that cases had settled as well as a duty to be aware of the functioning of his firm.

In Count Five, Mr. Estrada's firm represented a patient who was being treated by a medical provider. A paralegal from Mr. Estrada's office contacted the provider to request additional records to provide to the insurance company. During that conversation, the paralegal also informed the provider that the case would settle quickly and the provider would be paid soon. On several occasions, the provider contacted the paralegal to inquire about the status of the case and was informed the case had not yet settled. Soon thereafter, the provider contacted the insurance company and was advised the case had already settled. The provider finally spoke to the paralegal, who informed him the case had indeed settled, but that Mr. Estrada had not released any funds because the client was going through a divorce and did not want his soon to be ex-wife to receive any of the funds. On June 24, 1999, Mr. Estrada sent the provider checks totaling \$2,500, which was \$1,454 short of the amount owed. Mr. Estrada asserts that the client was a client of his managing partner and therefore Mr. Estrada never had reason to communicate or negotiate with the provider. Mr. Estrada further contends that any negotiations occurred without his knowledge or consent. Although

Mr. Estrada was hospitalized or otherwise seriously ill during the time, as a partner, he had a duty to advise the third-party medical provider that case had settled.

In Count Seven, Mr. Estrada was hired to represent a client in a child support matter. The client paid Mr. Estrada a retainer of \$750, after which time he failed to communicate with the client. Mr. Estrada acknowledged he did not work diligently on the client's case and that she was entitled to a refund. Mr. Estrada did ultimately return the money to the client.

In Count Eight, a client hired one of Mr. Estrada's partners, Cynthia McCormick. The client's case was dismissed for lack of proper service, an error that was not rectified. McCormick failed to inform the client that the case had been dismissed, and the client did not find out until three years later. Mr. Estrada's managing partner agreed to pay the client pennies on the dollar, but did not. When the client was not paid, she sued Mr. Estrada and his managing partner. An arbitrator ordered Mr. Estrada and the managing partner to pay the client more than \$22,000. The judgment has not been paid. Mr. Estrada indicates that he did not agree to pay the client for the malpractice and that he was unaware of the agreement made by his managing partner. Mr. Estrada indicates he found out about the agreement sometime after it was made. At that time the managing partner told Mr. Estrada he would take care of making payments to the client. Mr. Estrada had a duty to ensure the agreement his partner made on his behalf was carried out.

In Count Nine, Mr. Estrada's law firm was hired to represent approximately 50 patients of Priority Medical Center (PMC). A majority of the cases settled; however, PMC was not notified of the settlement of the cases and was not paid for all of the cases that settled.

Counts Two, Four and Six address Mr. Estrada's failure to respond to State Bar inquiries, in one of which Mr. Estrada's brother asked for an extension without Mr. Estrada's knowledge.

There were three aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (d) multiple offenses, (e) bad faith obstruction of the disciplinary proceeding 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 dis-

honest or selfish motive, (h) physical disability and (l) remorse.

Mr. Estrada's conduct violated Rule 42, ARIZ.R.S.Ct., particularly ER 1.3, ER 1.4, ER 1.15, ER 1.16, ER 5.1 and ER 8.1 and Rule 51 (h) and (i), ARIZ.R.S.Ct.

MICHAEL L. GERTELL

Bar No. 009458; File Nos. 98-1952 and 98-2503

By Supreme Court Judgment and Order dated Mar. 28, 2002, Michael L. Gertell, 5134 North Central, Suite 203, Phoenix, AZ 85012, was suspended for four months upon consent for conduct in violation of his duties and obligations as a lawyer. Mr. Gertell will also be placed on probation for two years and ordered to participate in LOMAP and to take the Trust Account Ethics Enhancement Program. Mr. Gertell was ordered to pay costs and expenses incurred by the State Bar in the sum of \$1,160.26, together with interest at the legal rate, in this matter.

In Count One, Mr. Gertell's trust account became overdrawn by \$81.57 on Dec. 2, 1998, and by \$220.57 on Dec. 4, 1998. As a result of the overdrafts, the State Bar's staff examiner determined Mr. Gertell received a settlement check on a personal injury lawsuit, but before depositing it, Mr. Gertell disbursed to himself attorney fees from the settlement proceeds. Shortly thereafter, Mr. Gertell was required to return the settlement check to the insurance carrier, thereby exposing client funds in the trust account. Mr. Gertell contends the overdrafts resulted from an error in settling a personal injury claim and admits that he did not handle his trust account with proper care during 1998. Gertell's client subsequently retained new counsel, and, on Feb. 5, 1999, Mr. Gertell refunded \$4,907.25 to the client. Mr. Gertell admits he did not provide regular billing statements but contended that he had discussed the amount of attorney's fees incurred pursuant to the divorce action with the client on at least one occasion; however, his verbal communications with the client were deemed insufficient.

He attributes this lack of care to staffing issues and the high volume of filing fees, both of which caused confusion in the maintenance of his trust account. Further problems arose when Mr. Gertell failed to allow funds to clear before requesting disbursements and telephonic transfers from his trust account. Although there was potential injury to clients, no actual injury occurred. It was found that respondent also failed to maintain proper client ledger cards, duplicate deposit slips or the equivalent; failed to maintain clear client descriptions on the trust account

Opinion No. 02-06

(September 2002)

A lawyer may form a business entity for various individuals and be counsel only for the yet-to-be-formed entity, if appropriate disclosures and consents occur. Alternatively, a lawyer may represent all of the incorporators, collectively, with appropriate disclosures. [ERs 1.6, 1.7, 1.13]

Opinion No. 02-07

(September 2002)

A law firm must remove from the firm's name the name of one of the partners of the firm once the partner is transferred to disability inactive status by the Supreme Court. [ERs 7.1, 7.5]

Opinion No. 02-08

(September 2002)

A lawyer may ethically sponsor a booth at a business exposition and engage in face-to-face contacts with visitors to the exposition, so long as the contact is initiated by the visitor, not the lawyer, in an atmosphere free of coercion and deception, and so long as there is no reason to believe that visitors to the exposition will be characterized by any particular vulnerability. [ER 7.3] [Overrules Ariz. Op. 91-04]

Need an Opinion?

Check out the State Bar Web site at www.azbar.org/EthicsOpinions/ for a listing of the ethics opinions issued between 1985 and 2002. If you are an Arizona attorney and have an ethics question, contact Lynda Shely, Director of Ethics, at (602) 340-7284.

ledger; failed to wait for funds to be collected in the account before drawing corresponding disbursements; and engaged in telephonic transfers from the trust account in violation of the Supreme Court Rules.

In Count Two, Mr. Gertell agreed to represent an existing client in a divorce proceeding and signed a fee agreement on Nov. 3, 1997. In April 1998, Mr. Gertell received two checks for settlement of personal injury claims for the client and her daughter and deposited those funds in his trust account. Mr. Gertell then wrote a check to his client and one to himself for authorized attorney's fees. The remaining funds—approximately \$11,000—were to be held in trust pending the client's divorce and the court's determination of a proper distribution of the other party's community property interest. On May 29, 1998, Mr. Gertell's client was awarded the remaining retained funds. Mr. Gertell was under the impression he was to use the funds to cover his fees and disburse the remainder to his client at the conclusion of the divorce. Mr. Gertell admits that on both April 27, 1998, and April 29, 1998, his trust account dipped to as low as \$961.81, well below the \$11,000 of client funds that should have been held in the trust account

until the judge decided the dispute over the community property interest.

There were four 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 and (i) substantial experience in the practice of law. There were three mitigating factors found pursuant to Section 9.32 of the ABA *Standards*: (a) absence of prior disciplinary record, (e) full and free disclosure to the disciplinary board or cooperative attitude toward proceedings and (l) remorse. In addition, the Commission found that 9.32(d) (timely good faith effort to make restitution or to rectify consequences) also applied.

Mr. Gertell's conduct violated Rule 42, ARIZ.R.S.Ct., particularly ER 1.4, ER 1.15 and Rules 43 and 44, ARIZ.R.S.Ct.

JOHN P. MOORE

Bar No. 003442; File No. 00-1461

By Supreme Court Judgment and Order dated Mar. 5, 2002, John P. Moore, 1300 East Missouri, Suite A-100, Phoenix, AZ 85014, was censured by consent for conduct in violation of his duties and obligations as a lawyer. Mr. Moore was also ordered to pay

costs and expenses in the amount of \$716.10 incurred by the State Bar for these proceedings, together with interest at the legal rate from the date of the judgment.

Mr. Moore represented a female client in a domestic relations matter. Shortly after the commencement of representation, Mr. Moore began making inquiries of his client concerning personal matters of a sexual nature and embracing her upon arrival and departure, which made the client uncomfortable. Following a settlement conference, the client indicated she planned to have breast augmentation surgery and asked Mr. Moore if she could expend community money on such a procedure. Mr. Moore advised the client about that issue and asked if he could view her body prior to and following the procedure. Mr. Moore continued to ask specific questions of a sexual nature regarding the client's proposed surgery, as well as engaging in other general commentary of a sexual nature. Mr. Moore, on at least three occasions following these conversations, contacted the client at her residence and asked her to meet him at his office before or after business hours. The client declined and terminated the representation because of her belief that Mr. Moore had interests in her that went beyond the normal attorney-client relationship. Whether or not the client expressed discomfort with Mr. Moore's conduct during the course of the representation was not relevant to a determination that Respondent engaged in a conflict of interest.

There were two aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (b) dishonest or selfish motive and (i) substantial experience in the practice of law. There were three mitigating factors found pursuant to Section 9.32 of the ABA *Standards*: (a) absence of prior disciplinary record, (e) full and free disclosure to the disciplinary board and cooperative attitude toward proceedings and (l) remorse.

Mr. Moore's conduct violated Rule 42, ARIZ.R.S.CT., particularly ER 1.7 and Rule 41 (g), ARIZ.R.S.CT.

J. J. OAKLEY

Bar No. 010687; File No. 99-1186

By Supreme Court Judgment and Order dated April 19, 2002, J. J. Oakley, 2400 Cyclorama Drive, Prescott, AZ 86303, was censured for violation of his duties and obligations as a lawyer. Mr. Oakley was also ordered to pay costs and expenses incurred by the State Bar in the amount of \$1,420.91, together with interest at the legal rate.

Mr. Oakley represented two parents that had previously obtained and recorded three judgments against their son. Two of the judgments had been satisfied, and Mr. Oakley was to attempt collection of the third judgment. Mr. Oakley's clients initially paid a \$3,000 retainer. Mr. Oakley did little or no work between August and mid-November 1998, failed to completely follow the directions of his clients and, when he did, his actions were delayed. Although the clients were not pleased with the rate at which Mr. Oakley was handling their case, they paid an additional \$3,000 to Mr. Oakley in February 1999. Mr. Oakley failed to respond to at least one letter sent to him by his clients, failed to return a number of telephone calls and failed to promptly return other calls. The clients terminated Mr. Oakley's representation on Mar. 31, 1999, and retained new counsel, who promptly filed a writ of garnishment on the clients' behalf.

Mr. Oakley also failed to respond to Bar counsel's inquiries into allegations of misconduct, despite having made two requests for an extension. As a result, Mr. Oakley's deposition was taken.

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 practice of law. There was one mitigating factor pursuant to Section 9.32 of the ABA *Standards*: (l) remorse.

Mr. Oakley's conduct violated Rule 42, ARIZ.R.S.CT., particularly ER 1.2, ER 1.3, ER 1.4, ER 1.5, ER 8.1(b) and ER 8.4(d), and Rule 51 (h) and (i), ARIZ.R.S.CT.

JAANICEA RUTH SPROULL

Bar No. 005756; File Nos. 97-0992, 97-1376 and 97-1809

By Supreme Court Judgment and Order dated Mar. 28, 2002, Jaanicea Ruth Sproull, 1232 East Broadway, Suite 210, Tempe, AZ 85282, was suspended for five years for conduct in violation of her duties and obligations as a lawyer. Upon reinstatement, Ms. Sproull shall be placed on probation for two years and participate in the MAP program, have a Practice Monitor for the duration of the probation and attend the State Bar's Ethics Enhancement Program. Ms. Sproull was also ordered to reimburse the Client Protection Fund for any claims paid out by the Fund up to the maximum amount of \$100,000. Ms. Sproull was ordered to pay costs and expenses incurred by the State Bar in the sum of \$4,127.89, together with interest at the legal

rate, in this matter.

In Count One, Ms. Sproull tape-recorded opposing counsel without opposing counsel's consent in violation of ER 8.4(c).

In Count Two, Ms. Sproull represented a corporate client in employment matters, particularly sexual harassment. After the breakup of a romantic relationship between Ms. Sproull and the corporation's executive director, Ms. Sproull sued the client, the executive director and others. In the course of the litigation Ms. Sproull revealed confidential information relating to the client that she acquired during her representation and attempted to use it to the disadvantage of the client.

In Count Three, Ms. Sproull's client agreed to settle a case by paying up to \$10,000. However, Ms. Sproull settled the case for \$18,000. Ms. Sproull also removed a pleading from the office of the firm where she was then employed after the firm had taken her off the case. She then filed the pleading with the court and misrepresented that she had authority to file the pleading on behalf of the firm.

There were six 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 proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, (g) refusal to acknowledge the wrongful nature of the conduct and (i) substantial experience in the practice of law. There were two mitigating factors found pursuant to Section 9.32 of the ABA *Standards*: (a) absence of prior disciplinary record and (c) personal or emotional problems.

Ms. Sproull's conduct violated Rule 42, ARIZ.R.S.CT., particularly ER 1.2, ER 1.4, ER 1.6, ER 1.9, ER 3.3, ER 4.1, ER 4.2, ER 8.4 and ER 8.4(c).

TRANSFER TO DISABILITY INACTIVE STATUS

LAMONTE L. HANSEN

Bar No. 005220; File No. 02-5001

By Supreme Court Judgment and Order dated Nov. 22, 2002, Lamonte L. Hansen, 107 South Third Street, Williams, AZ, pursuant to Rule 59(b), ARIZ.R.S.CT., was transferred to disability inactive status for an indefinite period and until further order of the Disciplinary Commission.