

SANCTIONED ATTORNEYS

SCOTT ASHTON-BLAIR

Bar No. 010142; File No. 99-1018

By Supreme Court Judgment and Order dated Dec. 19, 2001, Scott Ashton-Blair, P.O. Box 8400, Scottsdale, AZ 85252, was suspended for 60 days for conduct in violation of his duties and obligations as a lawyer. Mr. Ashton-Blair also was ordered to pay restitution to a client in an amount to include the unpaid interest on a borrowed sum of \$20,000 at 10 percent per annum less his \$1,000 fee. Mr. Ashton-Blair was ordered to reimburse the Client Protection Fund for any claims paid out not to exceed the maximum permissible payment of \$100,000. Mr. Ashton-Blair also was ordered to pay costs and expenses incurred by the State Bar together with interest at the legal rate in this matter.

The misconduct in this matter arose when Mr. Ashton-Blair entered into a business transaction with a client by receiving a loan from the client. Initially, Mr. Ashton-Blair did not pay back the loan and the client contacted the State Bar. After inquiry from the State Bar, Mr. Ashton-Blair paid the loan but not the accrued interest. It was uncontested that Mr. Ashton-Blair complied with Rule 42, ARIZ.R.S.C.T., ER 1.8(a)(1), which requires the transaction and terms to be fair and reasonable to the client and fully disclosed and transmitted in writing to the client in a manner that could be reasonably understood by the client. However, Mr. Ashton-Blair's conduct was found by clear and convincing evidence to have violated Rule 42, ARIZ.R.S.C.T., ER 1.8(a)(2) and (3), which require that the client be given a reasonable opportunity to seek the advice of independent counsel in the transaction and require that the client consents in writing. Contrary to Mr. Ashton-Blair's interpretation of ER 1.8(a)(3), the Disciplinary Commission determined that the requirement of 1.8(a)(3) that "the client consents in writing" means the client must consent in writing to the conflict, not just to the terms of the business transaction.

There were four aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (b) dishonest or selfish motive, (g) refusal to acknowledge the wrongful nature of the conduct, (h) vulnerability of the client and (j) indifference to making restitution. There were two mitigating factors found pursuant

to Section 9.32 of the ABA *Standards*: (a) absence of prior disciplinary record and (e) cooperative attitude toward the proceedings.

E. BERNARD BUFFENSTEIN

Bar No. 009416; File Nos. 99-0848 and 99-1636

By Supreme Court Judgment and Order dated Feb. 26, 2002, E. Bernard Buffenstein, 6030 East Ridge Road, Cave Creek, AZ 85331, was suspended for 30 days by consent for conduct in violation of his duties and obligations as a lawyer. Upon reinstatement, Mr. Buffenstein will be placed on probation for one year, ordered to take the State Bar Trust Account Ethics Enhancement Program, to engage a practice monitor and participate in the LOMAP program. Mr. Buffenstein also was ordered to pay costs and expenses incurred in these proceedings, together with interest at the legal rate from the date of the judgment.

Upon notification of an overdraft on Mr. Buffenstein's trust account, the State Bar commenced an investigation. The investigation revealed Mr. Buffenstein failed to keep individual client ledger cards or duplicate deposit slips, failed to keep personal funds separate from client funds and failed to place adequate or complete information in his check register and on his checks.

Mr. Buffenstein failed to respond to two State Bar inquiries requesting information regarding his trust account and failed to respond to a charge filed. The delayed answer asserted that the cause for the delay was stress in his personal and professional life.

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 were two mitigating factors found pursuant to Section 9.32 of the ABA *Standards*: (a) absence of prior disciplinary record and (b) absence of dishonest or selfish motive.

Mr. Buffenstein's conduct violated Rule 42, ARIZ.R.S.Ct., particularly ER 1.15(a), ER 8.1(b) and Rules 43, 44(a), 44(b)(3) and 51(h) and (i), ARIZ.R.S.Ct.

CARROLL A. CLARK

Bar No. 006563; File No. 99-2285

By Supreme Court Judgment and Order dated Feb. 13, 2002, Carroll A. Clark, 1241 East Broadway, Suite 4, Mesa, AZ 85204, was censured for conduct in violation of his

duties and obligations as a lawyer by consent agreement. Mr. Clark was ordered to pay costs and expenses incurred by the State Bar in the amount of \$2,698.28, together with interest at the legal rate, in this matter.

In Count One, Mr. Clark participated in the representation of a client, a landlord, with another attorney. Later, a judgment creditor issued a Writ of Garnishment against two of the client's tenants. Mr. Clark agreed to prepare answers for both tenants. Mr. Clark represented, either directly or *de facto*, the client and the tenants without discussing the potential conflict of interest that existed between the clients.

In Count Two, on Dec. 15, 1999, Mr. Clark initially indicated to the State Bar that he did not represent the landlord client in Count One because no formal agreement to represent the client or fee agreement existed. The Disciplinary Commission agreed that Mr. Clark provided the client with legal advice and prepared documents on the client's behalf. Mr. Clark provided an incomplete explanation of services provided to the client and thereby misrepresented the extent of his representation.

There were three aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (a) prior disciplinary history, (b) dishonest or selfish motive and (i) substantial experience in the practice of law. There were two mitigating factors found pursuant to Section 9.32 of the ABA *Standards*: (l) remorse and (m) remoteness of prior offense.

Mr. Clark's conduct violated Rule 42, ARIZ.R.S.CT., particularly ER 1.7, ER 8.1 and ER 8.4(c) and (d).

DAVID G. DAVIES

Bar No. 001037; File No. 97-2663

By Supreme Court Judgment and Order dated Dec. 12, 2001, David G. Davies, 5110 North 40th Street, Suite 236, Phoenix, AZ 85018, was suspended for 30 days for conduct in violation of his duties and obligations as a lawyer. Mr. Davies was ordered to reimburse the Client Protection Fund for any claims paid out not to exceed the maximum permissible payment of \$100,000. Mr. Davies also was ordered to pay costs and expenses incurred by the State Bar in the amount of \$3,502.87, together with interest at the legal rate, in this matter.

The Disciplinary Commission found that Mr. Davies' conduct in the matter violated ER 1.7(b), ER 1.8(c) and ER 8.4(d), Rule 42, ARIZ.R.S.CT. In particular, the Disciplinary Commission found that pur-

suant to a long-term client and friend's wishes and without undue influence, Mr. Davies prepared a testamentary trust and subsequent amendments to that trust for the client that designated Mr. Davies himself as one of the beneficiaries of her estate. When Mr. Davies prepared the original trust in 1978, doing so was not a per se violation of the Code of Professional Responsibility, in effect at the time. However, on Nov. 11, 1991, and on Sept. 28, 1995, both dates subsequent to the adoption of the Rules of Professional Conduct, embodied in Rule 42 ARIZ.R.S.CT., Mr. Davies prepared amendments at the client's request to the client's testamentary trust substantially increasing Mr. Davies' share in her estate. Although a close personal friendship and longstanding lawyer-client relationship existed between the two, Mr. Davies was not related to the client and an ER 1.8(c) conflict is a per se violation, not waivable by the client. Furthermore, Mr. Davies did not advise his client that she should seek independent counsel.

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

JOSEPH A. HERBERT

Bar No. 012493; File No. 00-0241

By Supreme Court Judgment and Order dated Mar. 5, 2002, Joseph A. Herbert, 4747 North 7th St., Suite 400, Phoenix, AZ 85014, was censured by consent for conduct in violation of his duties and obligations as a lawyer. Mr. Herbert also was placed on probation for six months and ordered to attend the State Bar's Ethics Enhancement Program as well as complete an additional three hours of CLE in the area of conflict of interest. Mr. Herbert also was ordered to pay costs and expenses in the amount of \$937.30 incurred

by the State Bar for these proceedings, together with interest at the legal rate from the date of the judgment.

Mr. Herbert commenced representing a husband and wife concerning renovations to their home. In 1998, on behalf of his clients, Mr. Herbert filed a lawsuit; the defendants counterclaimed, and in September 1999 a jury ruled against both sides. At about that time, Mr. Herbert entered into negotiations with the husband regarding the possible leasing of the client's home and through his LLC did enter into a lease of the home, on Sept. 20, 1999. Although the property was jointly owned, only the husband signed the lease. The lease was signed at a time that the husband and wife were estranged. Meanwhile, in the aforementioned lawsuit, the defendant lodged a form of judgment and intent to seek attorney fees, to which Mr. Herbert objected on behalf of his clients.

Because the clients were estranged, the wife was somewhat surprised when she appeared at her home from a long sojourn in Italy to be notified by the attorney for the LLC, Mr. Levy, to vacate the premises, and that if she did not, he would file a forcible detainer action to have her removed. The wife retained counsel who pointed out in a letter to Mr. Levy and Mr. Herbert that the wife was unaware of the lease and that since Mr. Herbert represented both the husband and wife, he owed them a fiduciary duty to discuss any business dealings he had transacted for or on their behalf. Four days after the receipt of this letter, Mr. Herbert filed pleadings in the lawsuit on behalf of the clients, and several days after that, Mr. Levy filed a forcible detainer action against the wife.

The wife's counsel, in another letter, again pointed out the problems with Mr. Herbert's position and informed Mr. Herbert that the property was held by the husband and wife as joint tenants, and as such, the lease would only be valid if both joint tenants signed the lease, citing current case law. In a letter dated Nov. 29, 1999, Mr. Herbert advised the clients that the lease was executed by and between them and his LLC and that he fully apprised each regarding the transaction. Since a dispute had arisen, the letter went on to say that Mr. Herbert now felt he must withdraw as counsel for the husband and wife. After a contested hearing on the forcible detainer, the court granted the wife's motion to dismiss and awarded her attorneys' fees. The court also found the forcible detainer complaint to be without substantial justification.

There were two aggravating factors found pursuant to the ABA *Standards for Imposing*

Lawyer Sanctions, Section 9.22: (a) prior disciplinary record and (i) substantial experience in the practice of law. There was only one mitigating factor found pursuant to Section 9.32 of the ABA *Standards*: (c) full and free disclosure to the disciplinary board and cooperative attitude toward proceedings.

Mr. Herbert's conduct violated Rule 42, ARIZ.R.S.CT., particularly ER 1.7(b), ER 3.1 and ER 8.4(d).

CHARLES SAINT GEORGE KIRKLAND

Bar No. 018821; File Nos. 98-1746, 98-2263 and 99-1151

By Supreme Court Judgment and Order dated Feb. 13, 2002, Charles Saint George Kirkland, 2200 West Bethany Home Road, Suite 6, Phoenix, AZ 85015, was censured for conduct in violation of his duties and obligations as a lawyer by consent agreement. Mr. Kirkland also was placed on two years' probation with a LOMAP component. Mr. Kirkland was ordered to pay costs and expenses incurred by the State Bar in the amount of \$2,106.74, together with interest at the legal rate, in this matter.

In Count One, in early October, Mr. Kirkland opened a trust account in the name of "Arizona Casualty Claim Authority, Inc. (ACCA) by Charles Saint George Kirkland, The Legal Store." From Oct. 5, 1998, through May 21, 1999, Mr. Kirkland and a client used the trust account as an operating account for ACCA and failed to follow the appropriate trust account guidelines, including, but not limited to, inappropriately titled checks and inappropriate deposits and transfers. Moreover, in response to the State Bar inquiries, Mr. Kirkland made negligent misrepresentations. Although he did not believe he was operating his law firm under a trade name, he did not keep his law firm solely separate from the business of The Legal Store, giving the appearance of practicing under a trade name. Finally, Mr. Kirkland filed suit against the attorney who represented a former partner of ACCA claiming that in his capacity as attorney he engaged in tortious conduct against ACCA.

In Count Two, despite having been previously investigated by the State Bar in September 1998 and in March 1999, during 1999, through The Legal Store Web site, Mr. Kirkland held himself out to the public as a lawyer who practiced under the trade name "The Legal Store."

Counts Three and Four were dismissed.

In Count Five, on July 22, 1998, while practicing under the trade name The Legal Store, Mr. Kirkland accepted a \$2,000 retainer. The client signed a fee agreement that referenced retention of The Legal Store. On

CAUTION:

Nearly 16,000 attorneys are eligible to practice law in Arizona. Many attorneys share the same names. All reports should be read carefully for names, addresses and Bar numbers.

Oct. 15, 1998, Mr. Kirkland filed a Motion for Leave to Withdraw, falsely stating to the court that his client had failed and refused to pay for legal services rendered in accordance with the retainer agreement. The retainer had not been exhausted at the time Mr. Kirkland filed his motion. The client had requested a refund of the entire retainer, claiming inadequate representation. Mr. Kirkland provided billing statements to the client demonstrating that \$1,670 had been earned. Mr. Kirkland refunded the remainder of the retainer to the client.

There were two aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (c) a pattern of misconduct and (d) multiple offenses. There were four mitigating factors found pursuant to Section 9.32 of the ABA *Standards*: (a) absence of prior disciplinary record, (d) timely good faith effort to rectify consequences of his misconduct, (e) cooperative attitude toward proceedings and (f) inexperience in the practice of law.

Mr. Kirkland's conduct violated Rule 42, ARIZ.R.S.Ct., particularly ER 1.5, ER 3.1, ER 5.4(b), ER 7.1, ER 7.1(f), ER 7.5 and ER 8.4(a), (c) and (d).

T. MICHAEL RYAN

Bar No. 012337; File No. 01-1084

By Supreme Court Judgment and Order dated Jan. 14, 2002, T. Michael Ryan, 149 Southeast 3rd Avenue, Suite 700, Hillsboro, OR 97123, was suspended for 180 days for conduct in violation of his duties and obligations as a lawyer. Mr. Ryan was ordered to reimburse the Client Protection Fund for any claims paid out not to exceed the maximum permissible payment of \$100,000. Mr. Ryan also was ordered to pay costs and expenses incurred in this matter in the amount of \$600, together with interest at the legal rate.

This matter involved reciprocal discipline pursuant to Rule 58, ARIZ.R.S.Ct. Mr. Ryan entered into a Stipulation for Discipline with the Oregon State Bar. Mr. Ryan was suspended in Oregon for failing to pay his Professional Liability Fund premium as required in order to practice in that state. Mr. Ryan continued to practice law during the period of time he was suspended, and failed to inform his clients, opposing parties or the court that he had been suspended. In response to the Oregon State Bar's investigation, Mr. Ryan asserted that he had not learned of his suspension until May 7, 1998, when this was not true. In a separate matter, Mr. Ryan neglected a client in a bankruptcy proceeding, including failing to promptly

advise the client of, and deliver to the client, funds received on the client's behalf.

There were three aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (d) multiple offenses, (f) submission of false evidence, false statements or other deceptive practices during the disciplinary process 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 (b) absence of a dishonest or selfish motive.

Mr. Ryan's conduct violated Rule 42, ARIZ.R.S.Ct., particularly ER 1.3, ER 1.15(b), ER 5.5 and ER 8.4(c).

MEYER L. ZIMAN

Bar No. 002624; File No. 99-1931

By Supreme Court Judgment and Order dated Feb. 26, 2002, Meyer L. Ziman, 2999 North 44th Street, Suite 225, Phoenix, AZ 85018, was suspended for 30 days for conduct in violation of his duties and obligations as a lawyer. Mr. Ziman also was ordered to pay costs and expenses in the amount of \$674 incurred by the State Bar, together with interest at the legal rate from the date of the judgment.

Mr. Ziman assumed the representation from another attorney of one of two individuals who had been injured in a motor vehicle accident. Mr. Ziman agreed to pay the other attorney \$500 for the time he had spent representing the client who subsequently hired Mr. Ziman. Mr. Ziman settled his client's case for approximately \$53,000, deposited the settlement check into his trust account, and distributed the proceeds to everyone but the other attorney. Although Mr. Ziman received the settlement proceeds on Nov. 30, 1998, he did not pay the other attorney until Mar. 9, 2001.

Mr. Ziman violated ER 1.15(b). There were three aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (a) prior disciplinary offenses; (b) dishonest or selfish motive and (i) substantial experience in the practice of law. There were two mitigating factors found pursuant to Section 9.32 of the ABA *Standards*: (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings and (m) remoteness of prior offenses. The Disciplinary Commission found that factors in aggravation outweighed factors in mitigation and recommended imposition of a 30-day suspension and the payment of costs of the disciplinary proceedings. ▀