

SANCTIONED ATTORNEYS

ARLA H. BLASINGIM-STENZEL

Bar No. 011878; File No. 02-1900

By Supreme Court Judgment and Order dated Dec. 5, 2002, Arla H. Blasingim-Stenzel, 8751 N. 51st Ave., 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.

EDWARD P. BOLDING

Bar No. 002532; File Nos. 99-1741 and 01-0192

By Supreme Court Judgment and Order dated Dec. 5, 2002, Edward P. Bolding, 4951 E. Grand Road, #150-300, Tucson, AZ 85712, was suspended for one year, effective 30 days from the date of the Judgment and Order, by consent, for violation of his duties and obligations as a lawyer. Mr. Bolding was also ordered to pay costs and expenses incurred by the State Bar in the amount of \$2,603.28, together with interest at the legal rate.

In the first matter, Mr. Bolding represented a client with a drug addiction. Mr. Bolding provided the client with thousands of dollars, knowing that the client was drug addicted, on probation, subject to random drug screening and facing a prison sentence if the client did use drugs. The funds had been provided to Mr. Bolding by the client's parents for his representation of the client. While representing the client, Mr. Bolding engaged in a personal relationship with the client. Mr. Bolding allowed his professional judgment concerning the representation to become clouded by his personal relationship with the client. Mr. Bolding visited the client in prison after the representation had been terminated and the client thereafter refused any further visits by Mr. Bolding. In the sec-

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ond matter, the State Bar received an insufficient funds notice concerning Mr. Bolding's trust account. A request for records was made of Mr. Bolding, who could not provide all of the documents. Mr. Bolding made disbursements using non-prenumbered checks from the account; failed to conduct proper monthly reconciliations of the account; failed to maintain client ledgers; failed to maintain complete records concerning the handling, maintenance and disposition of client and/or third-party trust account funds; failed to appropriately safeguard client funds in his trust account; failed to exercise due professional care in the performance of his duties pursuant to the trust account guidelines; and failed to maintain internal controls within his office to safeguard client trust account funds.

There were three aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (d) multiple offenses, (h) vulnerability of victim 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 problems.

Mr. Bolding's conduct violated Rule 42, ARIZ.R.S.C.T., particularly ERs 1.7, 1.8(e),

1.15 and 8.4(d) and Rules 43 and 44, ARIZ.R.S.C.T.

GREGORY S. BYRD

Bar No. 016408; File Nos. 00-2549, 00-2593, 01-0034 and 01-1131

By Supreme Court Judgment and Order dated Dec. 5, 2002, Gregory S. Byrd, 1650 Emerald St. #19, San Diego, CA 92109, was suspended for 18 months, retroactive to Oct. 10, 2001, by consent, for violation of his duties and obligations as a lawyer. Upon reinstatement, Mr. Byrd was also put on probation concurrent with his suspension, including participation in the MAP program. Mr. Byrd was also ordered to pay restitution to one client in an amount totaling \$300. Mr. Byrd was also ordered to pay costs and expenses incurred by the State Bar in the amount of \$740.40, together with interest at the legal rate.

In the first count, Mr. Byrd represented clients in criminal and juvenile matters. Mr. Byrd failed to appear for hearings, did not provide competent representation for his clients, failed to adequately communicate with his clients, failed to expedite litigation, knowingly made false statements of material fact to tribunals and engaged in conduct that

was prejudicial to the administration of justice. In the second count, Mr. Byrd was hired to represent a client with an EEOC matter. Mr. Byrd failed to communicate with his client, was not diligent in his representation and failed to return the client's file after his services were terminated. In the third count, Mr. Byrd was retained to assist a client in getting a refund from a company. Mr. Byrd was paid \$300 to review the file and write a demand letter. Mr. Byrd failed to advance her matter in a timely manner and failed to communicate with the client. Mr. Byrd suffered from a drug and alcohol problem and voluntarily committed himself into a rehabilitation facility in October 2001 and successfully completed the program.

There were two aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (c) pattern of misconduct and (k) illegal conduct, including that involving the use of controlled substances. There were seven 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) personal or emotional problems, (e) full and free disclosure to disciplinary board and cooperative attitude toward pro-

ceedings, (f) inexperience in the practice of law, (i) chemical dependency and (l) remorse.

Mr. Byrd's conduct violated Rule 42, ARIZ.R.S.Ct., particularly ERs 1.1, 1.3, 1.4, 1.16(d), 3.2, 3.3 and 8.4.

TERRY J. DALKE

Bar No. 006757; File Nos. 98-0586 and 99-2503

By Supreme Court Judgment and Order dated Oct. 24, 2002, Terry J. Dalke, 100 N. Stone, Suite 1005, Tucson, AZ 85701, was censured, by consent, for violation of her duties and obligations as a lawyer. Ms. Dalke was also placed on two years' probation and ordered to participate in the LOMAP program and take the Trust Account Ethics Enhancement Program within the first six months of her probation. Ms. Dalke was ordered to pay costs and expenses incurred by the State Bar in the amount of \$1,108.63, together with interest at the legal rate.

In the first matter, Ms. Dalke represented two mothers of minor children whose parental rights were severed. Ms. Dalke was to file appeals of the severances, but she miscalculated the dates and filed the notices of appeal late. The appeals were dismissed. Ms. Dalke then hired another attorney to prepare

petitions for review, but failed to supervise the other attorney. Filing petitions for review was not the appropriate procedure to follow, they were filed untimely, and they were not in conformance with the Supreme Court's procedural rules. As a result the severance orders became final. In the second matter, Ms. Dalke delegated her trust account duties to others without sufficient supervision and failed to perform monthly reconciliations of the trust account. As a result the account became overdrawn and Ms. Dalke deposited her own funds to cover the errors. Ms. Dalke also failed to perform monthly reconciliations. Ms. Dalke subsequently hired an accountant to bring her trust account into compliance with the Supreme Court Rules.

There were three aggravating factors found to be present pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (a) prior discipline, (d) multiple offenses and (i) substantial experience in the practice of law and (j) indifference to making restitution. There were two mitigating factors found pursuant to Section 9.32 of the ABA *Standards*: (b) absence of dishonest or selfish motive, and (l) remorse.

Ms. Dalke's conduct violated Rule 42, ARIZ.R.S.Ct., particularly ERs 1.1, 1.3,

1.15(a) and Rules 43(d) and 44(b), ARIZ.R.S.Ct.

EDDIE G. DISTEL

Bar No. 014771; File Nos. 97-0256, 98-1281, 98-1565, 99-0262, 99-0695, 99-1439, 99-1613, 00-0053, 00-0352, 00-1149 and 00-1681

By Supreme Court Judgment and Order dated Dec. 4, 2002, Eddie G. Distel, 9070 N. Oracle Rd., #178-166, Tucson, AZ 85737, was disbarred for violation of his duties and obligations as a lawyer. Mr. Distel ordered to pay restitution to four clients in an amount totaling \$11,829.76. Mr. Distel was also ordered to pay costs and expenses incurred by the State Bar in the amount of \$6,645.45, together with interest at the legal rate.

At hearing, Mr. Distel admitted to most of the allegations in the State Bar's complaint. Mr. Distel's misconduct involved not having the legal knowledge or skill to represent his clients; not communicating to clients the status of their cases; failing to be diligent and expedite litigation for his clients; not being truthful to a tribunal and the State Bar; assisting in the unauthorized practice of law; failing to maintain complete records of the handling, maintenance and disposition of

client and/or third-party trust account funds; failing to maintain client property separate from his own property; failing to preserve complete trust account records for five years; failing to safeguard client funds; failing to abide by client's requests regarding the pursuit of the case objectives; failing to provide accountings to clients when requested; charging an unreasonable fee; and failing to notify clients that he was summarily suspended from the practice of law.

There were five aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (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, (i) substantial experience in the practice of law and (j) indifference to making restitution. The Commission found there were no mitigating factors pursuant to Section 9.32 of the ABA *Standards*.

Mr. Distel's conduct violated Rule 42, ARIZ.R.S.CT., particularly ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.1, 3.2, 3.3, 3.4, 5.5, 8.1, and 8.4(c) and (d) and Rules 43, 44 and 51 and 63, ARIZ.R.S.CT.

DANIEL INSERRA

Bar No. 017284; File Nos. 00-1982 and 00-2433

By Supreme Court Judgment and Order dated Oct. 24, 2002, Daniel Inserra, 7500 E. McDonald Drive, Suite 102A, Scottsdale, AZ 85250, was censured, by consent, for violation of his duties and obligations as a lawyer. Mr. Inserra was also placed on two years' probation and ordered to participate in the LOMAP program and take the Trust Account Ethics Enhancement Program within the first six months of his probation. Mr. Inserra was ordered to pay costs and expenses incurred by the State Bar in the amount of \$992.29, with interest at the legal rate.

Pursuant to Supreme Court Rule 44(d), the Bar received notices that Mr. Inserra's trust account was overdrawn. Mr. Inserra admitted that he was negligent in failing to conduct monthly reconciliations of his trust account; he failed to utilize only prenumbered checks drawn on his trust account; he was negligent in his accounting and record keeping practices; he failed to maintain complete trust account records for a period of five years; he failed to exercise due professional care in the maintenance of his client trust account; he was unable to identify clients affiliated with each account transaction; and he failed to keep his own funds separate from his clients' by occasionally depositing earned fees into his trust account.

There was one aggravating factor found to be present pursuant to the ABA *Standards*

for *Imposing Lawyer Sanctions*, Section 9.22: (d) multiple offenses. 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, (d) timely good faith effort to rectify consequences of misconduct, (e) full and free disclosure and (l) remorse.

Mr. Inserra's conduct violated Rule 42, ARIZ.R.S.CT., particularly ER 1.15 and Rules 43 and 44, ARIZ.R.S.CT.

BRIAN M. KEITH

Bar No. 010950; File No. 02-4000

By Supreme Court Judgment and Order dated Dec. 5, 2002, Brian M. Keith, P.O. Box 122828, San Diego, CA 92101, was suspended for 90 days, effective 30 days from the date of the judgment and order, for violation of his duties and obligations as a lawyer. This was a reciprocal discipline from California pursuant to Rule 58(c), ARIZ.R.S.CT. Mr. Keith was placed on two years' probation in California, including participation in LOMAP and retaking the MPRE within one year. Mr. Keith was also ordered to successfully complete his California probation. Mr. Keith was ordered to pay costs and expenses incurred by the State Bar in the amount of \$600, together with interest at the legal rate.

Mr. Keith represented an insurance company in a subrogation lawsuit. Mr. Keith received two settlement checks totaling \$69,542.02, in February 1997, of which he was entitled to one third for his fees. Two thirds was due to his client, or \$46,361.35. Mr. Keith did not deposit the checks into his trust account and allowed his balance to fall below the level that he should have retained in his account to pay his client. Mr. Keith did not respond to his client's request for the funds until October 1997, when he sent the client two checks, one of which, in the amount of \$21,667.67, was dishonored. After not communicating with his client again, Mr. Keith finally sent his client \$5,000 in December 1997 and \$5,000 in March 1998. Finally in June 1998, Mr. Keith sent his client the final balance of \$11,667.66.

There was one aggravating factor found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (d) multiple offenses. There was one mitigating factor found pursuant to Section 9.32: (a) absence of prior disciplinary record.

Mr. Keith's conduct violated Rule 42, ARIZ.R.S.CT., particularly ERs 1.15 and Rules 43 and 44, ARIZ.R.S.CT.

NAJIA M. KERRIN

Bar No. 010953; File No. 99-2145

By Supreme Court Judgment and Order dated Oct. 23, 2002, Najia M. Kerrin, 3930 E. Ray Rd., Suite 170, Phoenix, AZ 85044, consented to a censure for violation of her duties and obligations as a lawyer. Ms. Kerrin was placed on one year's probation and ordered to take the Trust Account Ethics Enhancement program. Ms. Kerrin was also ordered to pay costs and expenses incurred by the State Bar in the amount of \$2,324.93, together with interest at the legal rate.

The State Bar received a complaint regarding Ms. Kerrin's management of her trust account from Ms. Kerrin's former employee after she was terminated from her employment. In investigating the allegations, it was found that Ms. Kerrin failed to maintain trust account records in compliance with the State Bar's Trust Account Guidelines and that she inadvertently failed to safeguard client property particularly during Ms. Kerrin's maternity leave. This failure had the potential to do client harm, but no actual harm ever resulted to any clients. Ms. Kerrin, once aware of the problem, engaged a CPA to fully review and reconcile her trust account. The account was then promptly made whole and properly reconciled.

There was one aggravating factor found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (i) substantial experience in the practice of law. There were five mitigating factors pursuant to Section 9.32 of the ABA *Standards*: (a) absence of prior disciplinary record, (b) absence of any dishonest or selfish motive, (c) personal problems, (d) timely good faith effort to rectify the consequences of her misconduct and (l) remorse.

Ms. Kerrin's conduct violated Rule 42, ARIZ.R.S.CT., particularly ER 1.15 and Rules 43 and 44, ARIZ.R.S.CT.

CLIFFORD I. LEVINSON

Bar No. 014523; File Nos. 00-1622, 00-1624, 01-0034 and 01-0722

By Supreme Court Judgment and Order dated Dec. 4, 2002, Clifford I. Levinson, 11651 N. 41st St., Phoenix, AZ 85028, was suspended for one year, retroactive to Oct. 16, 2000, by consent, for violation of his duties and obligations as a lawyer. Upon reinstatement, Mr. Levinson will be put on probation for two years including participation in the MAP program. Mr. Levinson was also ordered to pay restitution to three clients in an amount totaling \$2,800. Mr. Levinson was also

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.

ordered to pay costs and expenses incurred by the State Bar in the amount of \$782.10, together with interest at the legal rate.

Mr. Levinson received retainers from clients and then failed to adequately communicate with his clients; failed to act with reasonable diligence on their matters; failed to refund unearned fees to his clients; engaged in conduct that was prejudicial to the administration of justice and failed to promptly respond to the inquiries and requests for information received from the State Bar regarding the matters. Mr. Levinson voluntarily ceased practice and entered into a drug rehabilitation facility in Southern California in October 2000.

There were three aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (d) multiple offenses, (h) vulnerability of victims and (i) substantial experience in the practice of law. There were four mitigating factors found pursuant to Section 9.32: (a) absence of prior disciplinary record, (b) absence of dishonest or selfish motive, (i) mental disability or impairment and (l) remorse.

Mr. Levinson's conduct violated Rule 42, ARIZ.R.S.C.T., particularly ERs 1.2, 1.3, 1.4, 1.5, 1.16(d), 3.4, 8.1(b), and 8.4(d) and Rule 51(h) and (i), ARIZ.R.S.C.T.

D. JOHN MUSSELMAN

Bar No. 013621; File Nos. 01-0062 and 01-0213

By Supreme Court Judgment and Order dated Jan. 8, 2003, D. John Musselman, 930 N. Mesa Drive, #1060, Mesa, AZ 85201, was suspended for 90 days, effective Aug. 27, 2002, by consent, for violation of his duties and obligations as a lawyer. Mr. Musselman was ordered to pay costs and expenses incurred by the State Bar in the amount of \$732.50, with interest at the legal rate.

Mr. Musselman was suspended for two years in July 2000, effective Aug. 27, 2000. Mr. Musselman worked for the law firm of Scott Richardson. In the two counts, clients were led to believe that Mr. Musselman was their attorney, even after his suspension. Mr. Musselman wrote demand letters for two clients in their personal injury cases. Even though Mr. Musselman did not sign the letters representing he was an attorney, the letterhead was misleading. The clients were not informed that Mr. Musselman had been suspended. Mr. Musselman failed to cooperate with the State Bar in its investigations of the two counts in the complaint.

As part of the settlement, the parties agreed three aggravating factors were present pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (a) prior disciplinary offenses, (c) pattern of misconduct and (d) multiple offenses. The parties also

agreed there were two mitigating factors pursuant to Section 9.32 of the ABA *Standards*: (e) cooperative attitude towards the proceedings after retaining counsel and (l) remorse. In addition the parties agreed that the evidence showed that the conduct was negligent rather than based on bad faith and that Mr. Musselman made good faith efforts to comply with the Rules of Professional Conduct.

Mr. Musselman's conduct violated Rule 42, ARIZ.R.S.C.T., particularly ERs 5.5(a), and 8.4(a), (c) and (d) and Rules 31(a)(3), 51(e), (f) and (k) and 63, ARIZ.R.S.C.T.

JON MICHELE RICHARDSON

File Nos. 00-1877 and 00-2378

By Supreme Court Judgment and Order dated Nov. 14, 2002, Jon Michelle Richardson, 11548 N. 114th Place, Scottsdale, AZ 85257, was censured for violation of her duties and obligations as a lawyer. Ms. Richardson was ordered to pay restitution to two clients in an amount totaling \$2,750. Ms. Richardson was also ordered to pay the costs and expenses incurred by the State Bar in the amount of \$1,095.25, together with interest at the legal rate.

Ms. Richardson is an Illinois attorney who has never been admitted to practice law in Arizona. Ms. Richardson held herself out as an Arizona attorney and took fees, then failed to perform services or communicate with her clients. Ms. Richardson also failed to respond to proper inquiries from the State Bar regarding the matters and failed to return unearned fees to her clients.

Ms. Richardson's conduct violated Rule 42, ARIZ.R.S.C.T., particularly ERs 1.1, 1.2, 1.3, 1.4, 1.15, 1.16(d), 4.1, 8.1(b) and 8.4(d) and Rule 51(h) and (i), ARIZ.R.S.C.T.

The Supreme Court was limited in their ability to impose a sanction greater than a censure, because Ms. Richardson is not an Arizona attorney. However, the Hearing Officer and Disciplinary Commission did find that had Richardson been an Arizona attorney, the sanction would have been a nine-month suspension. This was done for purposes of imposing reciprocal discipline in Illinois.

BRIAN EDWARD SMITH

Bar No. 010459; File No. 98-1257

By Supreme Court Judgment and Order dated September 3, 2002, Brian Edward Smith, 1275 W. Washington, Phoenix, AZ 85007, was censured and ordered to attend and complete the Trust Account Ethics Enhancement Program if he returns to private practice, for violation of his duties and obligations as a lawyer. Mr. Smith was ordered to pay costs and expenses incurred by the State Bar in the amount of \$1,060.83,

together with interest at the legal rate.

Mr. Smith attempted to pay his MCLE late fee and purchase an audiotape with two checks from his trust account. Upon inquiry from the State Bar, Mr. Smith advised the funds represented earned fees. However, Mr. Smith was initially unable to produce trust account records to prove the funds were earned, in part due to the theft of some of the trust account records. Mr. Smith did recreate most of his trust account records. The State Bar reviewed the trust account records and established that Mr. Smith commingled his personal funds with client funds; that the amount of money in the trust account for one client dipped below what should have been in the account for the client; and that Mr. Smith made less cash transactions without waiting for the checks to clear before he dispersed funds, thereby putting other clients' funds at risk.

The Disciplinary Commission found one aggravating factor pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (i) substantial experience in the practice of law. There were six mitigating factors pursuant to Section 9.32 of the ABA *Standards*: (a) absence of prior disciplinary history, (b) absence of selfish or dishonest motive, (c) personal or emotional problems, (d) timely good faith effort to make restitution or to rectify consequences of misconduct, (e) full and free disclosure to disciplinary board or cooperative attitude towards proceedings and (l) remorse.

Mr. Smith's conduct violated Rule 42, ARIZ.R.S.C.T., specifically ER 1.15 and Rules 43 and Rule 44, ARIZ.R.S.C.T.

JOSEPH A. VELEZ

Bar No. 016059; File Nos. 98-2507, 00-1309, 00-1882 and 00-1927

By Supreme Court Judgment and Order dated September 27, 2002, Joseph A. Velez, 500 E. Southern Ave., Suite B, Tempe, AZ 85282, was suspended for three months and, upon reinstatement, will be placed on two years' probation with participation in LOMAP and the State Bar's Ethics Enhancement Program, by consent, for violation of his duties and obligations as a lawyer. Mr. Velez was also ordered to pay costs and expenses incurred by the State Bar in the amount of \$2,621.28, together with interest at the legal rate.

In the first matter, the Bar received notice of an overdraft from Norwest Bank where Mr. Velez had his client trust account. It was found that Mr. Velez routinely deposited all monies received from clients into his trust account regardless of whether the funds were earned and he deposited personal funds into the trust account on several occasions. Mr.

Velez failed to maintain complete trust account records for a period of five years and did not maintain individual client ledgers or the equivalent. Mr. Velez failed to record all transactions promptly and completely, failed to perform monthly reconciliations of the trust account and failed to consistently disburse from his trust account with only pre-numbered checks. Mr. Velez also failed to properly safeguard client funds that resulted in negligent conversion of those funds.

In the second matter, Mr. Velez agreed to represent a client in a personnel action before the City of Coolidge. Mr. Velez asked Roger McKee, a suspended attorney, to do research on the relevant legal issues pertaining to the client's defense. At the hearing before the City Council, Mr. Velez introduced Mr. McKee as his associate and allowed Mr. McKee to present his legal analysis and opinion to the City Council without informing the City Council of Mr. McKee's status.

In the third matter, Mr. Velez and his wife were involved in a contract action. Mr. Velez was aware that the opposing party, a company, was represented by counsel and after a lawsuit was filed, Mr. Velez telephoned the opposing party's president and discussed settlement with the president of the opposing party rather than through their attorney.

In the last matter, Mr. Velez represented six clients in an action against the State of Arizona and Pima County regarding unpaid overtime wages. His fee agreement with the clients called for a reduced rate and a contingency fee. The cases settled in 1999 and Mr. Velez forwarded the entire settlement amount to each individual client without deducting any due and owing hourly fees or contingency fees. Mr. Velez then submitted a request for attorney's fees to the court quoting his regular rate and failed to inform the court about his reduced rate or the contingency fee portion of the fee agreement. In addition, Mr. Velez failed to sufficiently explain the settlement disbursements to the clients. Mr. Velez agreed to participate in fee arbitration with the clients to resolve any issues concerning fees.

There was one aggravating factor found pursuant to Section 9.22 of the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (d) multiple offenses. There were four mitigating factors found pursuant to Section 9.32: (a) absence of prior disciplinary history, (b) absence of dishonest or selfish motive, (e) cooperative attitude toward proceedings and (l) remorse.

Mr. Velez's conduct violated Rule 42, ARIZ.R.S.C.T., specifically ER 1.4, ER 1.15, ER 4.2, ER 5.5, ER 8.4 and ER 8.4(c) and Rules 43 and 44, ARIZ.R.S.C.T.

DAVID WILLIAM WEST

Bar No. 001793; File No. 99-1131

By Supreme Court Judgment and Order dated Oct. 24, 2002, David William West, 1340 E. Missouri, Phoenix, AZ 85014, was censured by consent for violating of his duties and obligations as a lawyer. Mr. West was placed on one year's probation and ordered to take the Trust Account Ethics Enhancement program and to participate in the LOMAP program. Mr. West was also ordered to pay costs and expenses incurred by the State Bar.

Mr. West represented a husband and wife with respect to several legal matters. The clients paid a portion of the litigation costs and Mr. West fronted a portion of the costs. Upon settlement of one case, the opposing party reimbursed the costs paid. Both Mr. West and the clients believed they were entitled to the reimbursement for costs. This issue remained in dispute for over a year. Throughout the period of the disagreement, the disputed funds should have remained in the attorney trust account. A review of the trust account records revealed the disputed funds did not remain in Mr. West's trust account at all times. Specifically, the balance in the trust account fell below the disputed amount of funds on ten occasions. The parties ultimately resolved the matter.

There were two aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (a) prior discipline and (i) substantial experience in the practice of law. There were four mitigating factors pursuant to Section 9.32 of the ABA *Standards*: (b) absence of any dishonest or selfish motive, (e) cooperative attitude, (g) character or reputation and (m) remoteness of prior offense.

Mr. West's conduct violated Rule 42, ARIZ.R.S.C.T., particularly ER 1.15 and Rules 43 and 44, ARIZ.R.S.C.T.

BRIAN R. WINSKI

Bar No. 012021; File Nos. 96-2051, 98-0579, 99-0559, 99-1077, 99-1145, 00-0194, 00-0210, 00-0992, 00-1678, 00-2113, 01-0273, 01-0074 and 01-0439

By Supreme Court Judgment and Order dated Sept. 30, 2002, Brian R. Winski, 21810 N. Calle Royal, Scottsdale, AZ 85285, was suspended for four years and 11 months effective from the date of the Judgment and Order, by consent, for violation of his duties and obligations as a lawyer. Mr. Winski was also ordered to pay costs and expenses incurred by the State Bar in the amount of \$2,189.39, together with interest at the legal rate.

In the first matter, Mr. Winski pled guilty to two counts of Facilitation of Theft, both of which were class-six felonies.

In the second matter, Mr. Winski supervised the drafting of several pleadings, which stated that the firm had to obtain the opposing parties motion to strike from the clerk of the court, as opposing counsel had not sent the firm a copy. At oral argument, Mr. Winski avowed that the statements in the pleadings were true. Mr. Winski failed to make a reasonably diligent inquiry into the matter, which led to him making false statements of material fact to the tribunal, as the firm's file copy of the motion showed it did not come from the court.

In the third matter, the firm represented a client on a contingency fee in a collection matter. Mr. Winski failed to properly supervise employees who held themselves out as attorneys when they were not and who improperly contacted a represented party. Respondent also shared fees with these employees. The firm's contingency fee agreement improperly included a provision that any fees awarded by the court were not considered client funds and were retained by the firm as part of the attorney's fees.

In the fourth matter, Mr. Winski improperly retained escrow funds belonging to his client for his attorney's fee and he misrepresented to the court that the escrow funds would go to his client.

In the fifth matter, Mr. Winski frivolously recorded a judgment for the purpose of harassing the opposing party. Mr. Winski misrepresented to the opposing counsel and his client that the judgment would not be recorded if the payments were made on time.

In the sixth through eighth matters, Mr. Winski did not inform opposing counsel or their clients that he was suspended and he continued to work on cases and appear for clients while suspended.

In the ninth matter, Mr. Winski failed to diligently represent a client, failed to expedite litigation consistent with the client's interests, failed to keep the client informed about the status of the matters, failed to protect the client's interests, made misrepresentations to the State Bar and misappropriated a liquor license belonging to the client.

There were six aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (a) prior disciplinary offenses, (c) pattern of misconduct, (d) multiple offenses, (e) bad faith obstruction of the disciplinary proceedings, (g) vulnerability of victim and (i) substantial experience in the practice of law. There were three mitigating factors found pursuant to Section 9.32 of the ABA *Standards*: (c) personal or emotional problems, (k) imposition of other penalties or sanctions and (l) remorse.

Mr. Winski's conduct violated Rule 42, ARIZ.R.S.C.T., specifically ERs 1.2, 1.3, 1.4,

lawyer regulation

1.5, 1.15, 3.1, 3.2, 3.4, 4.1, 4.2, 5.1, 5.3, 5.4, 5.5, 8.4 and Rules 43, 44, 51, 57 and 63, ARIZ.R.S.CT.

RUSSELL J. ZARKOU

Bar No. 006516; File No. 99-1816

By Supreme Court Judgment and Order dated June 26, 2002, Russell J. Zarkou, P.O. Box 30056, Mesa, AZ 85275, was suspended for 30 days for violation of his duties and obligations as a lawyer. Upon reinstatement, Mr. Zarkou will be placed on one year's probation including participation in the LOMAP program and complete the State Bar's Trust Account Ethics Enhancement Program. Mr. Zarkou was also ordered to pay costs and expenses incurred by the State Bar in the amount of \$3,807.50, together with interest at the legal rate.

Mr. Zarkou's misconduct arose from his representation of the Pecan Grove Village III Homeowner's Association ("the Association"). In April 1999, the Association's Board of Directors noted that a certain property was in arrears and inquired about placing a lien on the property and/or garnishing the owner's wages.

The Association directed the property manager to file a foreclosure action. Mr. Zarkou received a memorandum from the property manager requesting Mr. Zarkou to immediately begin a foreclosure action. On July 9, 1999, the complaint was filed in Maricopa County Superior Court regarding the foreclosure. On July 13, 1999, Mr. Zarkou sent a bill to the Association in the amount of \$1,089.80 for payment of his fees in the matter, which was paid that same day.

The property owner met with Mr. Zarkou on July 31, 1999, and gave Mr. Zarkou a payment of \$1,867.30 that represented Mr. Zarkou's attorney's fees previously sent to and paid by the Association and additional monies to bring the account current. Mr. Zarkou deposited the check into his general operating account rather than his IOLTA trust account. Because the monies were not properly deposited, Mr. Zarkou failed to promptly remit the funds to the client for a period of five months. Mr. Zarkou admitted this misappropriation of client funds. Mr. Zarkou failed to maintain proper trust account records and during the five-month period, Mr. Zarkou's general

account fell below the amount owed to the Association. Mr. Zarkou failed to comply with the State Bar's records request for his trust account records. Mr. Zarkou also failed to file a timely disclosure statement and did not timely answer non-uniform interrogatories. Mr. Zarkou also failed to submit Findings of Fact and Conclusions of Law.

There were three aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (e) bad faith obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the disciplinary agency, (g) refusal to acknowledge wrongful nature of conduct and (i) substantial experience in the practice of law. There were two mitigating factors found pursuant to Section 9.22 of the ABA *Standards*: (a) absence of a prior disciplinary record and (d) timely good faith effort to make restitution or to rectify consequences of misconduct.

Mr. Zarkou's conduct violated Rule 42, ARIZ.R.S.CT., particularly ERs 1.15 and 8.1(b) and Rules 43, 44 and 51(h) and (i), ARIZ.R.S.CT. ▀