

**SANCTIONED ATTORNEYS**

**ANDREW R. PROPER**

Bar No. 011295; File No. 06-1302  
Supreme Court No. SB-07-0183-D

By Arizona Supreme Court judgment and order dated Jan. 8, 2008, Andrew R. Proper, P.O. Box 35070, Phoenix, AZ 85069, was suspended for 90 days and shall be placed on probation for two years upon reinstatement. The terms of probation will be participation in the State Bar's Member Assistance Program and refraining from engaging in any conduct that violates the rules of professional conduct. He also was assessed the costs and expenses of the disciplinary proceedings.

Mr. Proper violated Rule 42, ARIZ.R.S.C.T., ER 8.4(b).

**BERNARD M. STRASS**

Bar No. 013684; File No. 06-0301  
Supreme Court No. SB-07-0166-D

By Arizona Supreme Court judgment and order dated Nov. 30, 2007, Bernard M. Strass, P.O. Box 2526, Gilbert, AZ 85299, an inactive member of the State Bar, was suspended for six months and one day. If he seeks reinstatement, he may be placed on probation if deemed necessary. The terms and conditions will be determined at the time of reinstatement. He was assessed the costs and expenses of the disciplinary proceedings.

Mr. Strass was retained by a client to represent him in two separate matters. Mr. Strass failed to respond truthfully to the client's request for information in the first matter and failed to adequately prosecute one case, which was subsequently dismissed after being placed on the Court's inactive calendar. In the second matter, he failed to inform his client about an arbitration hearing consequently, the arbitration award was granted against the client because he did not appear. Mr. Strass unilaterally altered the financial terms of the fee agreement.

Two aggravating factors were: selfish or dishonest motive and substantial experience in the practice of law.

Two mitigating factors were: personal and emotional problems and full and free disclosure or cooperative attitude toward proceedings.

Mr. Strass violated Rule 42, ARIZ.R.S.C.T., ERs 1.1, 1.2, 1.3, 1.4, 1.5(c), 1.16(d), 3.2 and 8.4(c) and(d).

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

**Your Input Sought**

In March 2008, President Dan McAuliffe appointed the State Bar of Arizona **Consumer Information and Education Task Force**.

A statewide, diverse group of lawyers and public members have been asked to examine two issues:

1. What information best serves legal consumers about whether they need counsel, and if they do, how best to educate them regarding what to ask when considering hiring counsel and how to choose responsibly, including a review of best practices for delivery of that information to the public; and
2. Addressing professionalism in lawyers' communications to consumers, including a review of the lawyer advertising rules, and whether proposed rule amendments or comment changes are necessary.

We welcome your comments on either of the Task Force's areas of focus. Contact the Task Force Chair at

**Pamela.Treadwell-Rubin@azbar.org.**

**BAR COUNSEL INSIDER**



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

**Responding to a Bar Complaint? Stop, Drop and Roll!**

So it finally happened. It's sitting right there on your desk. That envelope from the State Bar marked "Personal and Confidential." You know what's inside, but you still hope it's a mistake. Nope—someone actually filed a bar complaint against you, and now the State Bar wants you to respond. What do you do now?

That's easy: stop, drop and roll.

**Stop** and take a breath, calm down and relax. The fortunate thing about the letter you just opened is that it's the beginning of a process designed to let you explain what's going on. It even helps you frame your explanation. It tells you what the complaint is about, who it's from, and what rules the State Bar thinks are implicated. That's all the basic information you'll need to start your response.

The letter also contains a due date you need to pay attention to. Tickle that date, and remember—if you need more time to complete your response, *ask for it*. It's easy to get a couple extra weeks to prepare a good response. It's not so easy to remove extra charges against you for letting time slide, but we'll come back to that in a moment.

Finally, think about whether you want to get some help with your response. Just like any other field of law, there are practitioners out there who help their colleagues work through State Bar investigations. Some are even former bar counsel.

Once you've thought about your response and what you want to say, it's time to **drop** ink to paper and tell the State Bar what it wants to know. Remember, there are two sides to every story, and this is your chance to tell yours. Also bear in mind that you're writing to another lawyer who has asked specific questions about your conduct, so support what you write with appropriate exhibits and documentation. The more relevant information the State Bar has to work with, the smoother the process runs.

"But what about client confidentiality?" you may ask. ER 1.6(d)(4) allows you to reveal otherwise confidential client information to support your defense, and comment 12 helps flesh that out. Don't confuse confidentiality with attorney-client privilege, though. They're two distinct issues, even if they are closely related.

That brings us to the next important issue: Be mindful that once you submit your response, it's going to become public record in a short while. So if you want to keep certain information from prying eyes, check out Rule 70(g), ARIZ.R.S.C.T. That rule sets out the guidelines for sealing your response from the public, the complaining party, or both. And if you decide you want to file a motion for a protective order, send your motion to the State Bar alongside one complete and one redacted copy of your response. In the event that your motion is granted, the redacted copy will become a part of the public file.

Now, **roll** your response out the door and into the mail. Remember that due date? ER 8.1(b) and Rules 53(d) and (f), ARIZ.R.S.C.T., all require you to cooperate with the State Bar's investigation. So if you don't respond, not only are the charges in the bar complaint going to start formal proceedings, but you'll also get socked for not responding. Don't let that happen.

*Contact the State Bar's Ethics Hotline at (602) 340-7284.*

## **IOLTA**

### **TRUST ACCOUNT ANSWERS AVAILABLE**

The answers to the Who, What, When, Where and Why questions concerning your Interest on Lawyers Trust Account (IOLTA) are just a phone call away.

If you call the Trust Account Hotline at **(602) 340-7305**, Monday through Friday, 8:00 a.m. to 4:30 p.m., a State Bar of Arizona Trust Account Examiner will provide you with this information at no cost.

The Examiner will not give legal advice but will answer your questions so that you are in compliance with Rule 42, ER 1.15(a), Rule 43, and Rule 44 ARIZ.R.S.C.T.