

bar community

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lawyer regulation

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.

REINSTATED ATTORNEYS

STEPHEN J. POLITI

Bar No. 011045; State Bar File Nos. 98-1223 and 98-2192; Disciplinary Commission File No. 01-6000

By Supreme Court Judgment and Order dated June 20, 2002, Stephen J. Politi, 903 South Rural Road, Suite 101, Tempe, AZ 85281, was reinstated pursuant to Rule 72 after completing his suspension ordered on Feb. 16, 2001. Mr. Politi is placed on two years' probation, continuing in MAP and working with a practice monitor.

MEYER L. ZIMAN

Bar No. 002624; File No. 99-1931

By Supreme Court Judgment and Order dated May 28, 2002, Meyer L. Ziman, 2999 North 44th Street, Suite 225, Phoenix, AZ 85018, was reinstated pursuant to Rule 71(c) after completing his suspension ordered on Feb. 26, 2002.

SANCTIONED ATTORNEYS

GARY PETER KLAHR

Bar No. 002102; File No. 02-0100

By Supreme Court Judgment and Order dated Feb. 15, 2002, Gary Peter Klahr, Phoenix, AZ, was placed on interim suspension pursuant to Rule 52(b), ARIZ.R.S.Ct., until the final disposition of all pending proceedings.

GARY PETER KLAHR

Bar No. 002102; File Nos. 98-0492, 98-1425, 98-1773, 98-2540, 99-0187, 99-0629, 99-2400, 00-0246 and 00-0318

By Supreme Court Judgment and Order dated May 1, 2002, Gary Peter Klahr, 317 East Berridge Lane, Phoenix, AZ 85012, was disbarred effective from the date of the Judgment and Order for conduct in violation of his duties and obligations as a lawyer. Mr. Klahr was ordered to pay restitution to four clients totaling \$3,635 and also was ordered to reimburse the Client Protection Fund for any claims paid out by the Fund up to the maximum amount of \$100,000. Mr. Klahr was ordered to pay costs and expenses incurred by the State

Bar in the amount of \$8,362.10, together with interest at the legal rate, in this matter.

Mr. Klahr engaged in various acts of misconduct. The misconduct included his agreement to represent clients in various legal matters and then assign those cases to other attorneys who would perform services on contract for his clients. The client was billed at the rate of \$150 per hour on behalf of Mr. Klahr, and then Mr. Klahr would pay the contract attorney \$50 an hour for services performed on behalf of the client. Mr. Klahr allowed the client's legal interests to be adversely affected by his failure and/or the failure of a contract attorney to perform legal services as retained. On various occasions, Mr. Klahr instructed the contract attorneys to stop performing services for clients when their retainer funds were close to being entirely expended. Mr. Klahr would have his staff contact the clients and inform them that if further payment were not made, no further services would be performed. Mr. Klahr also would direct his staff to threaten clients with legal action to force payment of additional retainer funds. Mr. Klahr's usual course of business also included entering into "non-refundable" fee contracts with clients. In cases where Mr. Klahr did not fully earn the retainer funds, Mr. Klahr refused to return the unearned portion of the retainer funds to the client.

Over a prolonged period of time, Mr. Klahr allowed unqualified and dangerous persons to manage and actively participate in his law practice. Mr. Klahr abdicated his duties to oversee and supervise both his non-lawyer staff and his contract attorneys. Moreover, the Hearing Officer found that Mr. Klahr knowingly allowed unlawful drugs and other criminal activity to occur in his office on numerous occasions.

The Judgment and Order sets forth, by count, the specific facts and violations of the nine files involved with the formal complaint in this matter.

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

Imposing Lawyer Sanctions, Section 9.22: (a) prior disciplinary offenses, (b) dishonest or selfish motive, (c) pattern of misconduct, (d) multiple offenses, (h) vulnerability of the victim, (i) substantial experience in the practice of law and (j) indifference to making restitution. There was one mitigating factor found pursuant to Section 9.32 of the ABA *Standards*: (g) character or reputation for engaging in pro bono and extensive community work.

Mr. Klahr's conduct violated Rule 42, ARIZ.R.S.Ct., particularly ER 1.3, ER 1.4(a), ER 1.4(b), ER 1.5, ER 1.5(d), ER 1.16, ER 5.1, ER 5.3(e) and ER 8.4(a), (b), (c) and (d) and Rule 44(b)(4), ARIZ.R.S.Ct.

ROBERT A. ROJAS

Bar No. 012864; File Nos. 98-0342, 98-1198, 98-1800, 99-0741, 99-0760 and 99-0927

By Supreme Court Judgment and Order dated Dec. 12, 2001, Robert A. Rojas, 826 North Third Avenue, Phoenix, AZ 85003, was suspended for seven months for conduct in violation of his duties and obligations as a lawyer. Mr. Rojas also was placed on probation for two years, including taking the State Bar's Trust Account Ethics Enhancement Program during the period of his suspension, participating in MAP and LOMAP, pay \$8,000 in restitution and work with a practice monitor. Mr. Rojas was ordered to pay costs and expenses incurred by the State Bar in the amount of \$1,088.54, together with interest at the legal rate, in this matter.

In Count One, Mr. Rojas signed a lien agreement to secure medical treatment on behalf of his client. While full payment was initially sent, it arrived at an old address. After agreeing to send the lien payment to the appropriate address, Mr. Rojas waited 44 days before complying. Mr. Rojas also failed to respond to the State Bar's inquiries until he retained counsel. Mr. Rojas made full payment to the doctor in April 1998.

In Count Two, Mr. Rojas executed sev-

—continued on p. 29

AUDITED STATEMENT OF FINANCIAL POSITION**ASSETS****CURRENT ASSETS**

Cash and money market funds	\$2,694,150
Accounts receivable, less allowance for doubtful accounts of \$6,000	131,597
Interest receivable	8,086
Inventories	116,596
Advances to affiliated organizations	31,290
Prepaid expenses and other assets	192,326
TOTAL CURRENT ASSETS	3,174,045

INVESTMENTS 780,744

PROPERTY AND EQUIPMENT, less
accumulated depreciation and amortization 763,827

OTHER ASSETS 28,843

TOTAL ASSETS .. \$4,747,459

LIABILITIES AND NET ASSETS**CURRENT LIABILITIES**

Accounts payable	\$166,591
Accrued liabilities	339,194
Unearned dues & fees	1,403,016
Capital lease obligation	21,707
TOTAL CURRENT LIABILITIES	1,930,508

OTHER LIABILITIES 99,415

NET ASSETS, UNRESTRICTED 2,717,536

**TOTAL LIABILITIES AND
NET ASSETS** \$4,747,459

STATEMENT OF ACTIVITIES**SUPPORT AND REVENUES**

DUES	TOTAL
Active	\$4,321,346
Inactive	490,891
Sections	235,395
Board of Specialization	154,836
FEES	
Continuing Legal Education	1,590,488
Convention	430,874
Lawyer Regulation	139,431
Board of Specialization	42,650
Law Office Management Assistance Program	33,739
Other	11,415

PUBLICATION AND ADVERTISING SALES

ARIZONA ATTORNEY	318,905
Membership Directory	176,904
Interest and Dividends	200,295
Late Fee Mandatory Continuing Legal Education	106,855

Sections — Other	82,506
Membership Benefits	77,555
Special Services	67,677
Contributions	24,841
Unrealized/Realized Gain (Loss) on Investments	(15,284)
Membership Assistance Program	6,750
Other	114,653
TOTAL SUPPORT AND REVENUES	\$8,612,722

EXPENSES

Lawyer Regulation	\$2,470,912
Continuing Legal Education	1,762,226
Committees and Sections	669,309
Special Services	539,658
Clerk's Office	548,337
ARIZONA ATTORNEY	400,204
Convention	389,833

eral lien agreements to secure medical treatment for his clients, then failed to make payments to his clients or to his clients' healthcare providers until after the State Bar filed a formal complaint. Mr. Rojas failed to timely keep his clients informed on the status of their case and failed to respond to the State Bar's inquiries until after he retained counsel. Mr. Rojas eventually paid his clients and the providers but chose not to charge a fee for his legal services.

In Count Three, Mr. Rojas failed to provide information to a lien holder of 21 lien agreements and failed to maintain adequate records regarding the liens. Mr. Rojas failed to respond to the State Bar's inquiries until he retained counsel. Mr. Rojas set up a payment plan with the lien holder in November 2000.

In Count Four, Mr. Rojas failed to respond to the State Bar's inquiries from the medical provider, but resolved this matter in July 1999.

In Count Five, Mr. Rojas signed a doctor's lien for a client. The doctor refused to accept a reduction of his bill, but the matter was later resolved in August 2000. Mr.

Rojas failed to respond to the State Bar's inquiries until he retained counsel.

In Count Six, Mr. Rojas failed to provide his client with a final accounting of settlement funds in writing, although the client had executed the settlement draft for the full settlement amount. Mr. Rojas was unable to provide the State Bar with trust account records to track the deposit and disbursement of the funds relating to the settlement of the matter. Mr. Rojas paid his client the full amount of the settlement.

There were three aggravating factors presented to the Commission pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (a) prior disciplinary offense, (c) pattern of misconduct and (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. In addition, the Commission found that the (h) vulnerability of victims and (i) substantial experience in the practice of law were also present. The Commission also found four mitigating factors pursuant to Section 9.32 of the ABA *Standards*: (b) absence of a dishonest or selfish motive, (c) personal or emotional problems, (d) timely good faith effort to make restitution or to rectify the consequences of the misconduct and (l) remorse.

Mr. Rojas' conduct violated Rule 42, ARIZ.R.S.CT., particularly ER 1.2, ER 1.3, ER 1.4, ER 1.15, ER 8.1 and ER 8.4 and Rules 43, 44 and 51(h) and (i), ARIZ.R.S.CT.

ERIC S. SPARKS

Bar No. 011726; File No. 98-0791

By Supreme Court Judgment and Order dated Dec. 19, 2001, Eric S. Sparks, 110 South Church, Suite 2270, Tucson, AZ 85701, was suspended for 30 days for conduct in violation of his duties

and obligations as a lawyer. Mr. Sparks also was placed on probation for two years, effective upon reinstatement including participating in LOMAP and taking an additional nine hours of continuing legal education in law office management, professional responsibility and client relations. Mr. Sparks was ordered to reimburse the Client Protection Fund for any claims paid out, not to exceed the maximum permissible payment of \$100,000. Mr. Sparks also was ordered to pay costs and expenses incurred by the State Bar together with interest at the legal rate, in this matter.

In Count One, Mr. Sparks was retained to handle a Chapter 11 bankruptcy. A dispute arose regarding assets, and the proceeds were placed in an escrow account. Mr. Sparks failed to safeguard the client's property by distributing proceeds without client authorization or court approval and by failing to provide an accounting of the funds. Furthermore, Mr. Sparks failed to return the client's calls.

In Count Two, Mr. Sparks transferred all the bankrupt's monies to his IOLTA trust account and paid creditors and himself from that account. The United States Bankruptcy Trustee began an investigation into Mr. Sparks's commingling of the bankrupt's bankruptcy proceeds. It is undisputed that during the period of Mar. 18, 1996, to Oct. 22, 1997, Mr. Sparks's trust account fell below the required balance for 81 days and, after Nov. 12, 1997, fell below the required balance for 33 days. Mr. Sparks failed to maintain sufficient funds in his trust account to cover the amount of funds that he was holding in trust for the bankrupt debtor that resulted in deficiencies, including one for \$12,000. Additionally Mr. Sparks commingled \$175,000 of his personal funds with trust account funds and utilized said funds for unauthorized and personal purposes.

There were four aggravating factors found pursuant to the ABA *Standards for Imposing Lawyer Sanctions*, Section 9.22: (d) multiple offenses, (g) refusal to acknowledge the wrongful nature of the conduct, (h) vulnerability of the client 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. Sparks's conduct violated Rule 42, ARIZ.R.S.CT., particularly ER 1.4 and ER 1.15 and Rules 43 and 44, ARIZ.R.S.CT. ▀

For the Year Ended December 31, 2001

Attorney Client Assistance Program	360,651
Depreciation and Amortization	346,836
Law Office Management Assistance Program	254,715
Tucson Office	191,982
Records Management	195,163
Membership Assistance Program	149,762
Sales and Marketing	127,613
Mandatory Continuing Legal Education	125,726
Board of Specialization	117,522
Web Site	110,980
Membership Directory	88,249
Young Lawyers	58,692
Member Benefits	398
TOTAL EXPENSES	\$8,908,768

CHANGE IN NET ASSETS \$(296,046)

STATE BAR BOARD OF GOVERNORS

August Meeting Review

Below are highlights from the August 16, 2002, State Bar Board of Governors meeting. Meetings are held monthly at the Arizona Bar Center in Phoenix.

- ▶ President Calderón received a request for comment from the U.S. District Court Judges regarding proposed changes to the U.S. District Court Rules. The Rules Committee will review the proposal and submit its report to the Scope and Operations Committee, which has the authority to act on this matter prior to the next board meeting so the court's deadline can be accommodated.
- ▶ Pamela Treadwell-Rubin, President-Elect, requested that the 2004 convention be held at the Phoenician Resort in Scottsdale; the normal location rotation for the 2004 convention would be in Tucson. Ms. Treadwell-Rubin made this request to accommodate her plans to hold a second trial showcase program, similar to the OK Corral trial held in 1999, that would focus on a criminal trial and feature the skills of public lawyers. The Phoenician has a theatre venue that is best suited for this program. After discussion regarding the pros and cons of changing the rotating schedule, a motion was made to grant Ms. Treadwell-Rubin's request. Motion further stated that the 2005 convention would be held in Tucson.
- ▶ Leesa Berens Morrison, ABA House of Delegates Representative, presented a review of the ABA annual meeting held in Washington, DC, recently. The MJP (Multijurisdictional Practice) Proposal passed as amended. Ms. Morrison also reported that Luis Ochoa, a Tucson attorney, was awarded the Pro Bono Lawyer of the Year Award at the conference.
- ▶ Helen Perry Grimwood, Chair of the Appointments Committee, recommended, and the Board approved, that the following names be submitted to the Supreme Court for consideration and ultimate selection to fill the following vacancies:
 - ▶ Arizona Supreme Court Committee on Character and Fitness (one position): Raymond Brown, David Gaona, Timothy Hyland, Marilyn Pollard
 - ▶ Arizona Supreme Court Committee on Examinations (two positions): Theodore Campagnolo, Anna Chavez, Michael Galloway, Jeffrey Messing,

Marilyn Pollard, Laura Zeman

- ▶ The Board also voted to send John Evans' name to the Governor for appointment to the Pima County Commission on Trial Court Appointments.
- ▶ The Member Services Committee is holding a Bar Leadership Institute on Sept. 27 at the La Posada Resort in Phoenix. All section and committee members and board liaisons are encouraged to attend. Guest speaker will be Donna Killoughey. There will be expos and an opportunity for networking.

July Meeting Review

Below are highlights from the July 25, 2002, State Bar Board of Governors meeting, held in conjunction with the Board retreat at the Hassayampa Inn in Prescott.

- ▶ President Ernest Calderón reported that he, Bar and Court representatives met with document preparers who are in opposition to the Rule 31 (Unauthorized Practice of Law) petition. The document preparers requested that action be abated regarding this rule. Mr. Calderón said the petition would stand, but this working group seeks middle ground.
- ▶ Executive Director Cynthia Zwick reported that the Task Force on Persons with Disabilities in the Legal Profession distributed a survey to the membership electronically. Within two days 200 responses were e-mailed, and approximately 100 were received via hard copy.
- ▶ Ms. Zwick reported that 57 lawyers volunteered their time to help assist the victims of the recent wildfire in northern counties. A toll-free number was established, and 22 calls were received from the victims for assistance in legal matters.
- ▶ Chas Wirken, Chair of the Discipline Committee, reported that Chief Justice Jones created an ad hoc discipline committee to revise procedure rules for processing discipline cases. Mr. Wirken reported that all points of view are represented on the committee.
- ▶ The Criminal Practice and Procedure Committee recommended that the Board adopt the proposed changes to the Superior Court Rules of Appellate Procedure governing the procedure to be followed appealing the final judgment of a limited jurisdiction court to superior court. The Committee also proposed that in Rule 5(a), after the words "appointment of counsel for indigent defendants"

be added "or waiver or reduction of fees." Motion was made by Ed Novak to approve the proposed change with the understanding that some "cleanup" work by Ed Novak and Chief Bar Counsel Robert Van Wyck needs to be completed. Motion passed.

► The Criminal Practice and Procedure Committee recommended to disapprove the proposed amendment to Rule 17.2 regarding immigration issues. Motion was made by Ed Novak to request an extension of the comment deadline and to make language modifications to the com-

mittee's comments. Motion passed unanimously.

► The Pro Hac Vice Application was submitted to the Board for approval. Motion was made to approve the application after application has been modified to include the cost. Motion passed. Application will be available on the State Bar's Web site.

new people, new places

John C. West has been elected managing partner of **Jennings Strouss & Salmon PLC**. He joined the firm in 1997 and practices in health care and commercial litigation.



WEST

Brian W. LaCorte joined **Gallagher & Kennedy** as a shareholder. He practices in intellectual property, including complex patent trademark and copyright litigation.



LACORTE



O'MEARA

Gerard R. O'Meara and **Roger W. Frazier** joined **Gust Rosenfeld PLC** in Tucson. They will practice in civil litigation, real estate, corporate law, commercial law and estate planning.



FRAZIER

"Trey" **A. R. Dayes III**, **David K. Paule** and **James E. Holland** joined **Holm Wright Hyde & Hays PLC** as associates. The firm also has relocated its offices to Freeway Executive Center, 10429 South 51st St., Ste. 285, Phoenix 85044. Phone 480-961-0040; fax 480-961-0818.

Gust Rosenfeld PLC announced that its Phoenix office has moved to the Bank of America Tower at the Collier Center, 201 E. Washington, Suite 800, Phoenix.

Stinson Morrison Hecker LLP has announced that **David E. Koval** has been elected partner with the firm. He represents clients in appellate matters and civil litigation.



KOVAL

Brian K. Moll, an associate with the Phoenix office of **Bryan Cave LLP**, has been named counsel. He joined the firm in 2001 and is a member of the Corporate Finance and Securities Client Service Group.

honors & awards

Steven Weinberg, a shareholder in the Phoenix office of **Greenberg Traurig LLP**, was named one of the **World's Leading Trademark Practitioners** by *Managing Intellectual Property Magazine*. He is known for his practice in trademark and copyright law, licensing, software and information technology, advertising and new media laws.

Stephen M. Rubin, Commission and Judge Pro Tem of the Pima County Superior Court, has been elected Secretary to the Board of Directors for the **National Council of Juvenile and Family Court Judges**. The Council works with judges on matters involving children and families.

JoAnn Garcia has been named one of *Hispanic Magazine's* **100 Leading Latinas**. Garcia was recognized for her work as president of **Mujer, Inc.**, a nonprofit organization dedicated to the empowerment of Latina youth. She works as the unit chief of the Drugs and Violent Crimes Unit of the Office of Attorney General.

James F. Morrow, an attorney with **Quarles & Brady Streich Lang LLP**, was included in the recent international publication *The International Who's Who of Real Estate Lawyers*, second edition.

John W. Moody, a partner with **Jennings, Strouss**



MOODY

Pamela S. Gates, an associate with the Phoenix office of **Bryan Cave LLP**, has been appointed **National Chair of the Young Lawyers Division's Environment, Energy & Resources Law Committee** for 2002-2003. She practices in the areas of environmental law and commercial litigation.



GATES

vlp news

Sidney Kain of Tucson has been selected as the **Outstanding Pro Bono Attorney for July**. He has been a member of the VLP for 20 years, and he represents clients in domestic relations and real property cases.



KAIN



TEDLOCK

Sandra Tedlock of Tucson has been selected as the **Outstanding Pro Bono Attorney for August**. She has been a member of the VLP for 16 years and has represented clients in divorce, custody, visitation and support matters.