

## SANCTIONED ATTORNEYS

### MARC A. ADAIR

Bar No. 014938; File No. 01-1671

By Supreme Court Judgment and Order dated Aug. 11, 2003, Marc A. Adair, 2916 North 7th Ave., Suite 100, Phoenix, AZ 85013, was censured by consent. Mr. Adair was also placed on one year's probation, including participation in the Law Office Member Assistance Program. Mr. Adair must pay the State Bar's costs and expenses in the amount of \$707.90, together with interest at the legal rate.

Mr. Adair represented a client in a post-conviction criminal matter. Mr. Adair was retained to seek federal habeas corpus relief for the client. He was negligent in diligently pursuing the client's matter, failed to properly communicate with the client, failed to properly handle the client's money and knowingly made misrepresentations to his client and a third person. Mr. Adair did not have procedures in place to make sure the ethical rules were conformed to and he initially failed to cooperate with the State Bar.

One aggravating factor was found: vulnerability of victim. Four mitigating factors were found: absence of a prior disciplinary record, cooperative attitude toward the proceedings, timely good faith effort to make restitution and remorse. Mr. Adair violated ERs 1.3, 1.4(a) and (b), 1.5(a), 1.15(a) and (b), 4.1(a), 5.1(a), 8.1(b), 8.4(c) and Rules 43, 44 and 51(h) and (i), ARIZ.R.S.C.T.

### SANDRA G. CARR

Bar No. 007128; File No. 03-4000

By Supreme Court Judgment and Order dated July 2, 2003, Sandra G. Carr, 625 Madera, #144, Madera, CA 93637, was suspended for two years, in a reciprocal discipline matter from California. Upon reinstatement, Ms. Carr will be placed on four years' probation with the terms and conditions to be monitored by the State Bar of California. Ms. Carr must pay the State Bar's costs and expenses of \$600, with interest.

Ms. Carr's misconduct involved failure to perform legal services, failure to communicate, failure to respond to client case status inquiries, failure to refund advanced fees and unearned fees until after Bar intervention, failure to appear for scheduled court proceedings, failure to withdraw from representation and protect the client's interests, failure to maintain respect due to the court, commingling of client and personal funds, misuse of client trust account for personal

and nonclient related purposes, failure to maintain complete trust account records and failure to inform the Bar of her inactive status.

Two aggravating factors were found: pattern of misconduct and multiple offenses. Five mitigating factors were found: absence of prior disciplinary record, physical disabilities, cooperative attitude toward proceeding, emotional and physical difficulties from substance abuse and severe financial stress.

Ms. Carr violated California Rules of Professional Conduct 3-700(A)(2) [ER 1.16], 3-700(D)(2) [ER 1.15], 4-100(A) [ER 1.15], 4-100(B)(3) [ER 1.15] and California Business and Professions Code §§ 6068(b) and (m) and 6106.

### DONALD W. HART

Bar No. 003058; File No. 01-1850

By Supreme Court Judgment and Order dated Aug. 13, 2003, Donald W. Hart, 6524 N. 13th St., Phoenix, AZ 85014, was suspended for 30 days, effective the date of the order. Mr. Hart must pay restitution to one client in the amount of \$3,681.

Mr. Hart's misconduct involved representing a client in a bankruptcy matter while suspended from the practice of law. Mr. Hart failed to inform his client, other counsel and the court that he had been suspended from the practice of law.

Four aggravating factors were found: multiple offenses, refusal to acknowledge the wrongful nature of his conduct, vulnerability of victim and substantial experience in the practice of law. Four mitigating factors were found: absence of prior disciplinary record, absence of a dishonest or selfish motive, timely good faith effort to rectify the consequences of his mistake and remorse.

Mr. Hart violated ERs 1.16(a)(1), 3.4(c), 5.5(a) and 8.4(c) and (d) and Rules 31(a)(3), 33(c) and 51(e) and (f).

### STEVEN EDWARD HILL

Bar No. 018023; File No. SB-03-0128-D

By Supreme Court Judgment and Order dated Sept. 23, 2003, Steven Edward Hill, Phoenix, AZ, was placed on interim suspension pursuant to Rule 57(a)(2) and (b), ARIZ.R.S.C.T., until final disposition of all pending proceedings.

### HUGH W. HULL

Bar No. 004486; File Nos. 01-2001, 01-2475 and 02-1621

By Supreme Court Judgment and Order

dated Aug. 14, 2003, Hugh W. Hull, 65 S. Sycamore, Suite 4, Mesa, AZ 85202, was disbarred effective the date of the order. Mr. Hull must pay restitution to two clients totaling \$18,150. Mr. Hull must the State Bar's costs and expenses in the amount of \$1,272.23, together with interest at the legal rate.

In April 2001, Mr. Hull was summarily suspended for his failure to pay dues and to comply with the mandatory continuing legal education requirements. Mr. Hull was not reinstated from those suspensions. Among the conduct warranting disbarment in this matter, Mr. Hull failed to undertake diligent actions consistent with the goals of the representation, failed to keep clients' informed about the status of their matters and comply with requests for information. Mr. Hull failed to perform services when fees had been paid by the clients and subsequently failed to refund the unearned portion of those fees. Mr. Hull engaged in conduct involving dishonesty, fraud or deceit and failed to cooperate with the State Bar in connection with the investigation of the charges. Mr. Hull also engaged in the unauthorized practiced law while suspended.

Nine aggravating factors were found: prior disciplinary offenses, dishonest or selfish motive, pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the disciplinary agency, refusal to acknowledge the wrongful nature of his conduct, vulnerability of victim, substantial experience in the practice of law and indifference to making restitution. No mitigating factors were found.

Mr. Hull violated ERs 1.2, 1.3, 1.4, 1.15, 5.5, 8.1(b) and 8.4(c).

### GARY W. KAZRAGIS

Bar No. 012215; File No. 02-0157

By Supreme Court Judgment and Order dated Aug. 7, 2003, Gary W. Kazragis, 2030 W. Highway 89-A, Sedona, AZ 86336, was censured by consent. Mr. Kazragis was also placed on one year's probation, including participation in the Law Office Member Assistance Program. Mr. Kazragis must the State Bar's costs and expenses in the amount of \$742, together with interest at the legal rate.

The State Bar received an insufficient funds notice for Mr. Kazragis's trust account. Mr. Kazragis failed to maintain complete trust account records and to exercise due

professional care, failed to maintain a general ledger reflecting the ongoing balance in the trust account and failed to record all transactions promptly and completely. Respondent had already taken remedial measures to correct his trust account problems by the time the consent documents were filed.

One aggravating factor was found: substantial experience in the practice of law. Five mitigating factors were found: absence of a prior disciplinary record, absence of a dishonest or selfish motive, timely good faith effort to rectify the consequences of his misconduct, full and free disclosure and remorse.

Mr. Kazragis violated ER 1.15 and Rules 43 and 44, ARIZ.R.S.C.T.

### **CLAUDIA MIRESCU**

Bar No. 019903; File No. 01-1534

By Supreme Court Judgment and Order dated Aug. 7, 2003, Claudia Mirescu, 400 E. Van Buren, Suite 850, Phoenix, AZ 85004, was censured by consent. Ms. Mirescu must pay the State Bar's costs and expenses in the amount of \$735.18, together with interest at the legal rate.

Ms. Mirescu represented a client in a dissolution case involving visitation issues. Ms. Mirescu counseled her client to take the child from the mother in violation of a court order.

No aggravating factors were found. Six mitigating factors were found: absence of a prior disciplinary record, absence of dishonest or selfish motive, timely good faith effort to rectify the consequences of her mistake, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, character or reputation and remorse.

Ms. Mirescu violated ERs 1.2(d), 3.4(c) and 8.4(c) and (d).

### **WALTER E. MOAK**

Bar No. 004849; File Nos. 00-0258 and 00-0698

By Supreme Court Order (Mandate) dated July 11, 2003, Walter E. Moak, 1930 S. Alma School Road, Suite B-104, Mesa, AZ 85210, was suspended for six months and one day effective July 16, 2003. Mr. Moak must also pay the State Bar's costs and expenses of \$4,555.35, with interest.

Mr. Moak represented a client involved in two actions arising out of two car accidents that occurred approximately three years apart. Mr. Moak failed to disclose, in the action based on the first accident, the injuries his client received in the second accident. Mr. Moak also failed to distinguish appropriately the injuries his client received in the second accident from the first accident. The details

of the facts in this matter can be found in *Matter of Moak*, SB-03-0007-D, June 13, 2003, on the Arizona Supreme Court's Web site. In another matter, Mr. Moak's wife loaned money to a client Mr. Moak was representing. This involved a conflict of interest, as Mr. Moak's responsibilities to his wife could have affected his representation of the client and Mr. Moak acquired a proprietary interest in the litigation he was conducting for the client.

Four aggravating factors were found: dishonest or selfish motive, pattern of misconduct, multiple offense and bad faith obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the disciplinary agency. Four mitigating factors were found: absence of a prior disciplinary history, full and free disclosure to the disciplinary board or cooperative attitude toward proceedings, imposition of other penalties and sanctions and remorse.

Mr. Moak violated ERs 1.2, 1.3, 1.4, 1.7(b), 1.8(e) and (j), 1.9, 3.3, 4.1, 8.4(c) and (d) and Rule 51(e), ARIZ.R.S.Ct.

**GEORGE L. MOTHERSHED**

File No. 01-1927

By Supreme Court Judgment and Order dated Sept. 15, 2003, George L. Mothershed, 10820 N. 36th St., Phoenix, AZ 85012, was censured for engaging in the unauthorized practice of law. Mr. Mothershed must pay the State Bar's costs and expenses with interest in the amount of \$101.75, together with interest at the legal rate.

Although licensed to practice law in Oklahoma until Mar. 18, 2003, when he was disbarred by Oklahoma, Mr. Mothershed is not and has never been licensed to practice law in the State of Arizona. After several unsuccessful attempts to become licensed, Mr. Mothershed simply began holding himself out as a licensed attorney and engaging in the unauthorized practice of law in both state and federal courts in Arizona.

Four aggravating factors were found: prior disciplinary offenses, pattern of misconduct, multiple offenses and refusal to acknowledge the wrongful nature of his conduct. No mitigating factors were found.

Mr. Mothershed violated ERs 4.1, 5.5 and 8.4(c) and (d) and Rules 31(a)(3) and 51(b), (e), (f), (h) and (i), ARIZ.R.S.Ct.

**J. J. OAKLEY**

Bar No. 010687; File No. 01-1300

By Supreme Court Judgment and Order dated June 2, 2003, J. J. Oakley, 2400 Cyclorama Drive, Prescott, AZ 86303, was

**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.

suspended for one year effective June 2, 2003. Upon reinstatement, Mr. Oakley will be placed on probation for two years, including participation in the Law Office Management Assistance Program and retaking the State Bar's Professionalism course. Mr. Oakley was ordered to pay restitution to a client in the amount of \$30,767.99. Mr. Oakley was also ordered to pay the State Bar's costs and expenses of \$1,641, with interest.

Mr. Oakley represented a corporation in a lawsuit in 1998. In November 2000, Mr. Oakley contacted the client and advised that he would no longer be practicing law as of January 2001. The client insisted that Mr. Oakley find an attorney who would continue representation on a contingency basis. In mid-December 2000, Mr. Oakley told the client that he was still looking for an attorney to represent the client. Thereafter, the client was unable to contact Mr. Oakley despite a number of letters and e-mail messages, none of which was returned as undeliverable. Upon termination of the representation, Mr. Oakley failed to return the client's files and never provided an accounting of his fees, despite being requested to do so. Mr. Oakley also failed to cooperate with the State Bar in its investigation of the charge.

Three aggravating factors were found: prior disciplinary record, bad faith obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the disciplinary agency and substantial experience in the practice of law. No mitigating factors found.

Mr. Oakley violated ERs 1.2, 1.3, 1.4, 1.16(b) and (d), 3.2, 8.1(b), 8.4(d) and Rule 51(h) and (i), ARIZ.R.S.Ct.

**JON R. POZGAY**

Bar No. 003680; File Nos. 00-0016 and 01-0611

By Supreme Court Judgment and Order dated Aug. 13, 2003, Jon R. Pozgay, 2850

E. Camelback, Suite 200, Phoenix, AZ 85016, was suspended for four years effective 30 days from the date of the order. Mr. Pozgay must pay restitution to a client in the amount of \$81,063.82, and must provide proof of payment in full prior to reinstatement. Upon reinstatement, Mr. Pozgay shall be placed on probation for a period of two years, with terms to include participation in the Law Office Management Assistance Program, the Trust Account Ethics Enhancement Program and the State Bar's Professionalism Course. In addition, Mr. Pozgay must develop a treatment plan with a qualified mental health therapist and submit a treatment progress report to the State Bar upon application for reinstatement. Mr. Pozgay must pay the State Bar's costs and expenses in the amount of \$8,851.35, together with interest at the legal rate.

Mr. Pozgay knowingly submitted a false and inflated fee affidavit to an arbitrator and the court in an effort to increase the fee award over the amount actually billed to the client with the intention of keeping that amount for himself. In the fee affidavit, Mr. Pozgay made false statements of material fact. Mr. Pozgay knowingly converted client funds, commingled personal funds, failed to maintain required client trust account records, failed to properly protect and maintain client funds that were in dispute and failed to comply with an obligation created pursuant to a judgment from a tribunal when no valid objection existed. Mr. Pozgay engaged in conduct that was dishonest and fraudulent, and his misconduct was prejudicial to the administration of justice. Mr. Pozgay also failed to provide a timely response to the State Bar.

Six aggravating factors were considered in this matter. The conduct was dishonest or selfish. There was a pattern of misconduct including multiple offenses. Mr. Pozgay refused to acknowledge the wrongful nature of his conduct and he had substantial experience in the practice of law. Mr. Pozgay demonstrated indifference to making restitution. Three mitigating factors were also found: absence of prior disciplinary record, personal or emotional problems and character or reputation.

Mr. Pozgay violated ERs 1.15(a), (b) and (c), 3.3(a)(1), 3.4(c), 8.4(c) and (d) and Rules 43, 44 and 51(e) (h) and (k), ARIZ.R.S.Ct.

**MARK AARON TORRE**

Bar No. 019337; File No. 01-1638

By Amended Supreme Court Judgment and

Order dated Aug. 11, 2003, Mark Aaron Torre, Phoenix, AZ, was placed on interim suspension pursuant to Rule 57(b), ARIZ.R.S.Ct., until the final disposition of all pending proceedings.

### **KENNETH J. WHITEHEAD**

Bar No. 011353; File Nos. 99-0550, 99-2129, 00-0099, 00-0296, 00-0346, 00-0876, 00-1693, 01-0238, 01-0378, 01-0918, 01-1243, 01-1372, 01-2240, 01-2274, 01-2373, 02-0210, 02-0243, 02-0369, 02-0418, 02-0688, 02-0753, 02-0833, 02-0923, 02-1042 and 02-1152

By Supreme Court Judgment and Order dated July 1, 2003, Kenneth J. Whitehead, P.O. Box 7458, Phoenix, AZ 85011, was suspended for nine months effective 30 days from the date of the order. Upon reinstatement, Mr. Whitehead will be placed on two years' probation with extensive terms, including participation in the State Bar's Law Office Member Assistance Program. Mr. Whitehead was ordered to pay restitution to one client in the amount of \$600. Mr. Whitehead must pay the State Bar's costs and expenses of \$6,094.74, with interest.

In several cases in which Mr. Whitehead directly represented clients, he failed to diligently perform work on the clients' behalf and failed to adequately communicate with the clients. Mr. Whitehead also charged an unreasonable fee in multiple cases. Mr. Whitehead made misstatements to the State Bar during the screening investigation in one matter and failed to timely respond to requests for information in multiple other counts. In other matters, Mr. Whitehead failed to adequately supervise associate attorneys and nonlawyer assistants. Mr. Whitehead also failed to timely refund unearned fees at the conclusion of the representation in several matters.

Four aggravating factors were found: a pattern of misconduct, multiple offenses, failing to submit responses during the screening investigation in several of the counts and for misstatements in two counts. Four mitigating factors were found: absence of prior discipline, absence of dishonest motive concerning the vast majority of the rules violated, full and free disclosure to disciplinary board cooperative attitude toward proceeding after the formal proceedings were initiated and Mr. Whitehead was represented by counsel and remorse.

Mr. Whitehead violated ERs 1.3, 1.4, 1.5, 1.7, 1.15, 1.16(d), 5.1, 5.3, 8.1(a) and 8.4(c) and (d) and Rule 51(h), ARIZ.R.S.Ct. ▲