

REINSTATED ATTORNEYS

MICHAEL P. KENNEDY

Bar No. 015846; File No. 10-6008

Supreme Court No. SB-11-0023-R

By Arizona Supreme Court order dated June 15, 2011, Michael P. Kennedy, Las Vegas, Nev., was reinstated as an active member of the State Bar effective the date of the order. Mr. Kennedy had been summarily suspended for failing to pay his dues.

SANCTIONED ATTORNEYS

JOHN T. BANTA

Bar No. 010550; File No. SB-11-0044-D

By judgment and order of the Arizona Supreme Court dated June 15, 2011, John T. Banta of Phoenix was suspended for six months, effective July 15, 2011. Upon reinstatement, Mr. Banta will be placed on probation for two years. He was also assessed the costs and expenses of the disciplinary proceeding.

During a civil traffic hearing, Mr. Banta disagreed with the judge's ruling, became abusive in open court, yelled, disregarded the judge's instructions, used profanity, and then moved aggressively toward the prosecutor in a threatening manner.

Aggravating factors: prior disciplinary offenses, pattern of misconduct, multiple offenses, and substantial experience in the practice of law. Mitigating factors: personal or emotional problems, character or reputation, and remorse.

Mr. Banta violated Rule 42, ARIZ.R.S.Ct., specifically ERs 3.5(d) and 8.4, and Rule 41(c) and (g), ARIZ.R.S.Ct.

JOHN T. BANTA

Bar No. 010550

PDJ No. 2011-9032

By judgment and order of the presiding disciplinary judge dated Oct. 3, 2011, John T. Banta of Phoenix was suspended for six months and one day to run concurrent with the six-month suspension in SB-11-0044-D. If reinstated, Mr. Banta will be placed on probation for two years. He also was assessed the costs and expenses of the disciplinary proceeding.

Mr. Banta charged an unreasonable fee; failed to communicate the scope of the representation and the basis of the fee to the client in writing; failed to notify his client in writing about the nonrefundable/earned-on-receipt nature of the fee; failed to provide the client an accounting; and failed to refund unearned fees at the termination of the representation.

Mr. Banta's conduct during a trial constituted conduct likely to disrupt a tribunal, his treatment of a witness during the court proceedings had no other purpose other than to embarrass or burden the witness, his behavior was prejudicial to the administration of justice and was disrespectful to the judge.

Aggravating factors: prior disciplinary offenses, pattern of misconduct, and substantial experience in the practice of law. There were no

mitigating factors.

Mr. Banta violated Rule 42, ARIZ.R.S.Ct., specifically ERs 1.5(a), (b), and (d)(3), 1.15(d), 1.16(d), 3.5(d), 4.4(a), and 8.4(d), and Rule 41(c) and (g), ARIZ.R.S.Ct.

STEVEN BRANDON

Bar No. 018666; File No. 11-9009

PDJ No. PDJ 2011-9009

By the presiding disciplinary judge's June 30, 2011, order, Steven R. Brandon, Tucson, was transferred to disability inactive status pursuant to Rule 63, ARIZ.R.S.Ct. Mr. Brandon may not practice law unless and until he is reinstated as an active member of the State Bar.

VIDA Z. FLORES-WARNER

Bar No. 013531; File No. 10-2260

PDJ No. 2011-9053

By judgment and order dated Oct. 14, 2011, the presiding disciplinary judge accepted an agreement for discipline by consent by which Vida Z. Flores-Warner of Yuma was reprimanded (a sanction formerly known as censure). Ms. Flores-Warner was ordered to pay \$2,500 in restitution to a former client and also was assessed \$1,200 in costs and expenses of the disciplinary proceeding.

Ms. Flores-Warner agreed to represent a client in connection with the latter's Application to Vacate Judgment of Guilt. In the Application, she cited obsolete statutes and incorrect rules of procedure, and demonstrated her lack of understanding of relevant legal doctrines and procedures. In her written fee agreement with the client, Ms. Flores-Warner did not adequately communicate the scope of the representation or the basis or rate of the fee for which her client was responsible. Ms. Flores-Warner's fee agreement included a clause stating that the fee was immediately earned and not refundable but did not include required refundability language. Finally, the significant errors in her fee agreement rendered it at best ambiguous and at worst unintelligible.

Aggravating factors: prior disciplinary offenses, multiple offenses, vulnerability of victim, and substantial experience in the practice of law.

Mitigating factors: absence of dishonest or selfish motive and full and free disclosure.

Ms. Flores-Warner violated Rule 42, ARIZ.R.S.Ct., specifically ERs 1.1, 1.5(b), 1.5(d)(3), and 3.1.

TROY P. FOSTER

Bar No. 017229; File No. 09-1680

PDJ No. 2011-9036

By order dated Oct. 3, 2011, the presiding disciplinary judge accepted an agreement for discipline by consent and suspended Troy P. Foster, Phoenix, from the practice of law for one year effective Nov. 2, 2011. If reinstated, Mr. Foster will be placed on probation, the terms and duration of which will be specified at the time of reinstatement. Mr. Foster will be required to comply

with his MCLE requirements that pertain to members in good standing while serving his suspension; enter into and comply with an agreement with the State Bar's Member Assistance Program (MAP) while serving his suspension; and was ordered to pay restitution to the law firm Ford & Harrison in an amount to be determined by the Bankruptcy Court. Mr. Foster also was ordered to pay the State Bar's costs and expenses of \$1,201.50.

Mr. Foster worked at Ford & Harrison between January 2007 and August 2009. Following a review of Mr. Foster's billable time, Ford & Harrison determined in August 2009 that it was appropriate to refund approximately 19 different clients in 50 matters for work billed by Mr. Foster. In the agreement for discipline by consent, Mr. Foster agreed that at least some of his billings were negligently and not properly or ethically billed.

Aggravating factors: a pattern of misconduct, vulnerability of the victims, and substantial experience in the practice of law. Mitigating factors: absence of a prior disciplinary record, personal or emotional problems, Mr. Foster's cooperative attitude with the State Bar's investigation, his character and reputation, and the imposition of other penalties or sanctions.

Mr. Foster violated Rule 42, ARIZ.R.S.Ct., specifically ERs 1.5, 8.4(a), and 8.4(c).

LOGAN T. JOHNSTON, III

Bar No. 009484; File No. 10-1167

By the presiding disciplinary judge's amended report and order dated Aug. 31, 2011, Logan T. Johnston, III, Phoenix, was suspended for six months, with credit for more than seven months of previously served interim suspension. Mr. Johnston also was placed on two years of probation. The suspension stemmed from Mr. Johnston's conviction of aggravated DUI, a felony offense.

Mr. Johnston's conduct violated Rule 42, ARIZ.R.S.Ct., specifically ER 8.4(b), and former Rule 53(h), ARIZ.R.S.Ct.

STANFORD E. LERCH

Bar No. 001287; File No. 10-1396

PDJ No. 2011-9010

By Arizona Supreme Court judgment and order dated July 7, 2011, Stanford E. Lerch, Scottsdale, was reprimanded (a sanction formerly known as censure), was ordered to pay restitution and participate in the State Bar Fee Arbitration Program. He also must pay the costs and expenses of the disciplinary proceeding.

Mr. Lerch took two loans from a client without complying with the business-transaction rule. He failed to advise the client, in writing, of

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.

the desirability of seeking the advice of independent legal counsel and did not obtain informed consent, in a writing signed by the client, to the essential terms of the loan transactions and Mr. Lerch's role in the transactions, including whether he was representing the client with respect to the loan transactions.

Aggravating factors: selfish motive and substantial experience in the practice of law.

Mitigating factors: absence of a prior disciplinary record, full and free disclosure to disciplinary board or cooperative attitude towards proceedings, character or reputation, remorse, and imposition of other penalties or sanctions.

Mr. Lerch violated Rule 42, ARIZ.R.S.Ct., specifically ER 1.8(a).

ROBERT J. ROSEPINK

Bar No. 004251; File Nos. 08-1678, 09-0687, 09-2184

By the presiding disciplinary judge's order dated July 20, 2011, Robert J. Rosepink, Scottsdale, was suspended from the practice of law for 90 days effective Aug. 19, 2011. Upon reinstatement, Mr. Rosepink will be placed on probation under the supervision of the State Bar's Law Office Management Assistance Program and must complete the State Bar's "Ten Deadly Sins of Conflict" CLE course. Mr. Rosepink was ordered to pay the State Bar's administrative costs and expenses totaling \$8,168.24 and \$15,688.25 in costs incurred by the former Disciplinary Commission of the Supreme Court.

In count one, Mr. Rosepink helped facilitate a loan from one of his estate-planning clients to a business entity in which Mr. Rosepink was a director and had a financial interest. The business entity defaulted on the loan, and Mr. Rosepink's client was not repaid. Mr. Rosepink failed to explain the loan to the extent reasonably necessary to permit the client to make an informed decision and engaged in a conflict of interest because there was a significant risk that Mr. Rosepink's representation of his client would be materially limited by his interest in the company. The loan was also considered a business transaction in which Mr. Rosepink failed to fully disclose the terms to his client in writing, failed to advise his client of the desirability of seeking independent counsel to consult about the transaction, and failed to obtain written informed consent to the transaction. Mr. Rosepink was found to be in violation of Rule 42, ARIZ.R.S.Ct., specifically ERs 1.4(a), 1.4(b), and 1.7(a).

In count two, Mr. Rosepink recommended that several estate-planning clients loan money to a concert-promotion company, ENTI Inc. (ENTI) and was paid commissions by ENTI for loans made to it by his clients. By helping to facilitate the clients' loans to ENTI, Mr. Rosepink engaged in a law-related service that was not distinguishable from his practice of law. Mr. Rosepink failed to provide competent representation to his clients by failing to obtain

current financial information about ENTI. Mr. Rosepink also failed to keep his clients reasonably informed about the financial status of ENTI or explain ENTI to his clients to the extent reasonably necessary for them to make informed decisions. Mr. Rosepink further failed to discuss future consequences that could affect his representation of the clients as a result of an ENTI investment, including that he may be required to withdraw as their attorney. By accepting commissions from ENTI, Mr. Rosepink engaged in a conflict of interest and failed to give his clients sufficient information to allow them to form informed consent to waive the conflict. Mr. Rosepink continued to represent one client after the collapse of ENTI without obtaining informed written consent from the client. Mr. Rosepink failed to exercise his independent professional judgment and render candid advice to his clients about ENTI by failing to obtain current financial information about ENTI. Mr. Rosepink's failure to obtain current financial information about ENTI resulted in the loss of millions of dollars by his clients contrary to the administration of justice.

Mr. Rosepink was found to have violated Rule 42, ARIZ.R.S.Ct., specifically ERs 1.1, 1.4(a)(1), 1.4(a)(3), 1.7(a), 1.8(a), 1.16(a)(1), 2.1, and 8.4(d).

STEPHEN L. TUNNEY

Bar No. 020712; File No. 10-1741
PDJ No. 2011-9013

By the presiding disciplinary judge's order dated June 10, 2011, Stephen L. Tunney, Richmond, Mich., was suspended for 10 months effective the date of the order. Mr. Tunney also was ordered to pay restitution and the costs and expenses of the disciplinary proceedings.

Mr. Tunney represented clients in a dispute with their homeowners' association. The clients prevailed at trial, and the homeowners' association appealed. Mr. Tunney continued to represent the clients on appeal, and the Court of Appeals upheld the jury verdict. The Court of Appeals also granted the request for attorney's fees. Mr. Tunney promised the clients he would file the application for attorney's fees, but failed to timely file such an application. Mr. Tunney also failed to return the clients' phone calls and emails. The clients submitted a bar charge, and Mr. Tunney failed to respond to the State Bar's investigation.

Aggravating factor: bad-faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency.

Mitigating factors: substantial experience in the practice of law and absence of a prior disciplinary record.

Mr. Tunney violated Rule 42, ARIZ.R.S.Ct., specifically ERs 1.2(a), 1.3, 1.4(a)(4), 1.16(d), and 8.1(b), and Rules 53(d) and 53(f), ARIZ.R.S.Ct. (2010).

MICHAEL A. URBANO

Bar No. 023029; File Nos. 09-1631, 09-2339

By the presiding disciplinary judge's April 4, 2011, order, Michael A. Urbano of Phoenix was suspended for six months. Mr. Urbano must pay \$1,500 in restitution to his client and the costs and expenses of the disciplinary matter.

In count one, Mr. Urbano accepted a 1999 Yamaha R-6 motorcycle as payment for his legal fees without first complying with the required ER 1.8 safeguards, such as advising his client in writing of the desirability of seeking the advice of outside counsel in the transaction and advising his client in writing of Mr. Urbano's role in the transaction. Mr. Urbano's conduct violated Rule 42, ARIZ.R.S.Ct., specifically ER 1.8(a).

In count two, Mr. Urbano was defending a client from sale of narcotic drug charges. The state did not allege, and never filed nor threatened to file, any allegation that the drugs involved were over the statutory threshold. Accordingly, the offense Mr. Urbano's client was charged with was probation-eligible. The state erroneously submitted a plea offer to Mr. Urbano for charges in which the drugs were over threshold, which would require Mr. Urbano's client to serve a jail term as part of the plea. Although the matter had not been charged as over threshold and despite having police reports that showed the amount of drugs to be under threshold, Mr. Urbano repeatedly urged his client to accept the erroneous offer. Rather than accept the offer, Mr. Urbano's client terminated Mr. Urbano's representation and obtained subsequent counsel for \$1,500. The error was eventually discovered and Mr. Urbano's client accepted a probation offer. Mr. Urbano refused to refund any of the \$6,025 that his client had paid. Mr. Urbano's conduct in count two violated Rule 42, ARIZ.R.S.Ct., specifically ERs 1.1, 1.3 and 8.4(d).

Aggravating factors: prior disciplinary offenses, multiple offenses, refusal to acknowledge wrongful nature of conduct and indifference to making restitution. Mitigating factor: character or reputation.

CINDRA L. WHITE

Bar No. 015831; File No. 11-9008
Supreme Court No. SB-11-0079-R

By Arizona Supreme Court order filed Sept. 21, 2011, Cindra L. White, San Diego, Calif., was denied reinstatement to the practice of law.

Ms. White was summarily suspended from the practice of law for failing to timely pay her membership dues on May 18, 2007. While denying Ms. White's application for reinstatement, the Court suspended the prohibition of Rule 65(a)(4), ARIZ.R.S.Ct., in her matter and provided that, within one year from the date of the Court's order, Ms. White may supplement her application for reinstatement to demonstrate proof of her fitness to practice law and competence, including continuing legal education requirements.

ETHICS OPINION

Opinion No. 11-02 (October 2011)

A lawyer may ethically participate in an Internet-based group advertising program that limits participation to a single lawyer for each ZIP code from which prospective clients may come, provided that the service fully and accurately discloses its advertising nature and, specifically, that each lawyer has paid to be the sole lawyer listed in a particular ZIP code. To remain a permissible group advertising program, such a service may do nothing more to match clients with lawyers than to provide inquiring clients with the name and contact information of participating lawyers, without communicating any substantive endorsement. The service will lose the protection afforded by the required disclosures and cross the line that distinguishes permissible advertising from an impermissible for-profit referral service if the required disclosures are difficult to find, read, or understand; are contradicted by other messages on the website; or are made so late in the process that the consumer of legal services is unlikely to read them before contacting participating lawyers.

A lawyer also may ethically participate in Internet advertising on a pay-per-click basis in which the advertising charge is based on the number of consumers who request information or otherwise respond to the lawyer's advertisement, provided that the advertising charge is not based on the amount of fees ultimately paid by any clients who actually engage the lawyer.

This opinion is based on certain assumed facts with respect to a hypothetical group advertising website, as set forth in the body of this opinion, which the Committee is informed is an emerging type of advertising arrangement that may take different forms. This opinion is intended to provide general parameters to guide lawyers who desire to participate in this type of advertising arrangement. Because the facts are hypothetical, however, the Committee has not examined any particular website's disclosures for their content, prominence, timing, and understandability. Any lawyer considering participating in such a service should make a thorough evaluation of the adequacy of the particular service's disclosures, consistent with the guidance set forth in this opinion, before participating.

Need an Opinion? Check out the State Bar website at www.azbar.org/Ethics for a listing of the ethics opinions issued between 1985 and the present, as well as Arizona's Rules of Professional Conduct. If you are an Arizona attorney and have an ethics question, call our ethics counsel, Patricia A. Sallen, at the ethics hotline: (602) 340-7284.