

SANCTIONED ATTORNEYS

JOHN THOMAS BANTA

Bar No. 010550; File No. 06-0115

Supreme Court No. SB-07-0157-D

By Supreme Court judgment and order dated Oct. 8, 2007, John Thomas Banta, 2228 W. Northern, #B212, Phoenix, AZ 85021, a member of the State Bar, was censured and assessed the costs and expenses of the disciplinary proceedings in the amount of \$801.73, together with interest at the legal rate.

After filing the complaint in a civil litigation matter, Mr. Banta failed to communicate with the client and respond to pleadings and a motion to dismiss/motion for a more definitive statement. He failed to adequately discuss with the client his reasons for not responding to motions and inform her that the case had been

dismissed. In an attempt to placate the client, Mr. Banta filed a motion to reinstate and motion to amend complaint that had little or no substantive legal basis.

Two aggravating factors were found: prior disciplinary offenses and substantial experience in the practice of law.

Three mitigating factors were found: absence of a dishonest or selfish motive, timely good-faith effort to make restitution or to rectify consequences of misconduct and full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

Mr. Banta violated Rule 42, ARIZ.R.S.Ct., ERs 1.2, 1.3, 1.4, 3.1 and 8.4(d).

TED B. BOWEN

Bar No. 001854; File Nos. 06-0994, 06-1033, 07-0274

Supreme Court No. SB-07-0169-D

By Arizona Supreme Court order dated Oct. 8, 2007, Ted B. Bowen, 415 Webb Place, Prescott, AZ 86303, a member of the State Bar, was disbarred by consent from the practice of law pursuant to Rule 56(f), ARIZ.R.S.Ct.

NICHOLAS S. HENTOFF

Bar No. 012492; File No. 06-1100

Supreme Court No. SB-07-0158-D

By Arizona Supreme Court judgment and order dated Oct. 8, 2007, Nicholas S. Hentoff, P.O. Box 790, Phoenix, AZ 85001, a member of the State Bar, was censured and placed on probation for two years. The terms of probation include participating in the State Bar's Law Office Management Assistance Program. He also was assessed the costs and expenses of the disciplinary proceedings in the amount of \$1,124.71, together with interest at the legal rate.

In a misdemeanor criminal matter, Mr. Hentoff failed to inform his client of the time and date of the trial and a Rule 11, ARIZ.R.CRIM.P., evaluation appointment. Mr. Hentoff also failed to initially respond or cooperate with the State Bar's screening investigation.

Three aggravating factors were found: prior disciplinary offenses, bad-faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency and substantial experience in the practice of law.

Three mitigating factors were found: absence of dishonest or selfish motive, character or reputation, and remorse.

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.

Mr. Hentoff violated Rule 42, ARIZ.R.S.Ct., ERs 1.3 and 8.1(b), and Rule 53(d) and (f), ARIZ.R.S.Ct.

GARY E. PEEL

Bar No. 005681

Supreme Court No. SB-07-0143-D

By Supreme Court order dated Oct. 17, 2007, Gary E. Peel, 16 Kensington Court, Glen Carbon, IL 62034, a member of the State Bar, was placed on interim suspension pursuant to Rule 53(h)(2)(A), ARIZ.R.S.Ct.

Mr. Peel was found guilty of one count of bankruptcy fraud, Title 18 U.S.C. § 152(6), one count of obstruction of justice, Title 18 U.S.C. § 1512(c)(2), and two counts of possession of child pornography, Title 18 U.S.C. § 2252(a)(5)(B), in U.S. District Court for the Southern District of Illinois, Case No. 06 CR 30049-WDS.

JOE SAIENNI

Bar No. 018142; File No. 04-1581

Supreme Court No. SB-06-0151-D

By Supreme Court judgment and order dated Oct. 27, 2007, Joe Saienni, 11811 N. Tatum Blvd., Suite 3053, Phoenix, AZ 85028, a member of the State Bar, was censured and assessed the costs and expenses of the disciplinary proceedings in the amount of \$662.22, together with interest at the legal rate.

In a criminal matter, Mr. Saienni represented a father who had been indicted for the child abuse of his son. Later in case he also represented the mother and son in response to a motion to appoint a guardian *ad litem*. Mr. Saienni negligently engaged in a conflict of interest by representing the defendant, victim and potential witness in a criminal matter. No actual harm occurred to the clients.

No aggravating factors were found. Three mitigating factors were found: absence of prior disciplinary offenses, absence of a dishonest or selfish motive and full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

Mr. Saienni violated Rule 42, ARIZ.R.S.Ct., ER 1.7.

THOMAS G. WATKINS III

Bar No. 004433; File No. 05-0357

Supreme Court No. SB-07-0062-D

By Supreme Court judgment and order dated Sept. 25, 2007, Thomas G. Watkins III, 5330 E. Palomino Rd., Phoenix, AZ 85018, a member of the State Bar, was disbarred and assessed the costs and expenses of the disciplinary proceedings.

Mr. Watkins represented Taser in preparing certain patent applications. During the representation, Mr. Watkins failed to disclose information to Taser that he knew could impact the representation and Taser's business interests. Mr. Watkins misappropriated information from Taser that he learned during the course of his

representation that he then used to harm Taser. Mr. Watkins continued to represent Taser when his representation was materially limited by his own self-interest. Mr. Watkins attempted to enter into a business transaction with Taser by attempting to knowingly acquire an ownership interest adverse to Taser, without the company's consent. Mr. Watkins used information relating to the representation to the disadvantage of the client when he provoked an interference with Taser's patent application, which he had previously filed with the United States Patent and Trademark Office ("USPTO") on behalf of the company. Mr. Watkins failed to inform Taser that he believed one of its employees had stolen technology giving rise to the X26 device and had signed a declaration under oath stating the employee was the sole inventor of the technology. Mr. Watkins failed to withdraw from representing Taser in connection with the X26 patent prosecution. Mr. Watkins made a false statement of fact or law to a tribunal when he filed false declarations with the USPTO in support of the applications. Mr. Watkins failed to correct the false declarations he filed on behalf of Taser employees in support of the applications. Mr. Watkins' conduct during and after his representation was prejudicial to the administration of justice.

As part of his fee in a patent infringement matter, Mr. Watkins was given stock options in Taser valued at \$75,000. At his direction, options valued at \$25,000 were given to his paralegal. When the options were exercised, Mr. Watkins realized a profit of \$970,000, and his paralegal realized a profit of \$464,801. Mr. Watkins failed to comply with the ethical rules when he acquired Taser stock, and he shared legal fees with a nonlawyer.

Three aggravating factors were found: dishonest or selfish motive, refusal to acknowledge wrongful nature of conduct and substantial experience in the practice of law.

One mitigating factor was found: absence of a prior disciplinary record.

Mr. Watkins violated Rule 42, ARIZ.R.S.Ct., ERs 1.4, 1.6, 1.7(a)(2), 1.8(a) and (b), 1.9(b), 1.13(b), 1.16(a)(1), 3.3(a), 3.4(b), 5.4(a) and 8.4(a), (c) and (d).

PAUL M. WEICH

Bar No. 014089; File Nos. 05-2252, 06-1153, 06-1716

Supreme Court No. SB-07-0156-D

By Supreme Court judgment and order dated Oct. 30, 2007, Paul M. Weich, 4802 E. Ray Rd., Suite 223-541, Phoenix, AZ 85044, a member of the State Bar, was suspended for two years and will be placed on probation for two years upon reinstatement. The terms of probation include participation in the State Bar's Member Assistance Program and Law Office Management Program with a practice monitor. Mr. Weich was ordered to pay \$2,500 restitution in count two and assessed the costs and



Is It Ever Okay for Lawyers to Lie?

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expenses of the disciplinary proceedings.

In count one, a collections matter, Mr. Weich failed to regularly communicate with the client, provide information on the status of the matter, return telephone calls and took little or no action on the client's matter. In count two, a real estate matter, Mr. Weich failed to do any work on the client's behalf, return phone calls and refund unearned fees and client documents upon termination of the representation.

In Count Three, Mr. Weich failed to comply with an order of diversion in File No. 04-0567. In all counts, he failed to respond and cooperate in the State Bar's investigation or to answer or otherwise defend in the formal disciplinary proceeding. The conduct alleged in the complaint was deemed admitted by default pursuant to Rule 57(d), ARIZ.R.S.CT.

Five aggravating factors were found: pattern of misconduct, multiple offenses, bad-faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules and orders of the disciplinary agency, substantial experience in the practice of law and indifference to making restitution.

One mitigating factor was found: absence of a prior disciplinary record.

Mr. Weich violated Rule 42, ARIZ.R.S.CT., ERs 1.1, 1.2, 1.3, 1.4 and 1.5 and Rule 53(d), (e) and (f), ARIZ.R.S.CT.

LARRY KEE YAZZIE

File No. 06-0063

Supreme Court No. SB-07-0135-D

By Supreme Court judgment and order dated July 27, 2007, Larry Kee Yazzie, P.O. Box 3277, Tuba City, AZ 86045, who is licensed to practice law in Utah but not in Arizona, was censured. He was ordered to refrain immediately from using letterhead or other means of advertising that holds him out as an attorney licensed to practice law in Arizona. Mr. Yazzie was ordered to pay \$1,040 restitution and was assessed the costs and expenses of the disciplinary proceedings.

In a criminal matter and a personal injury matter, Mr. Yazzie failed to appear at two hearings in

Merely asking the question should refute the need to answer it, and a handful of ERs confirm the enlightened lawyer's instincts.

ER 3.3 states in part, "A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." ER 4.1 adds, "In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person." Finally, ER 8.4(c) reads, "It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation ..."

Yet, to ask whether lawyers ever may lie is not as silly as it may seem. Lawyers occasionally engage in some sort of deception initiating, conducting or supervising investigations. Examples include supervising undercover investigations, using testers in discrimination cases, or conducting sting operations. Some criminal defense counsel defend their prevarications, lamenting that they are on unequal footing with their prosecutorial counterparts. Police officers frequently misrepresent themselves to investigate or apprehend criminals, while defense counsel, without a readily available investigative force, claim they must resort to guile to mount cost-effective defenses.

Some State Bar authorities have modified their candor rules to permit lawyers to use deception in limited circumstances. Oregon's rule, for example, excludes from the definition of professional misconduct advising "clients or others about or to supervise lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights." "Covert activity" is defined as "an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge" and may be commenced by a lawyer or involve a lawyer as an adviser or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.

A recent Arizona Supreme Court Disciplinary Commission decision illustrates Arizona's rule.

A criminal defense lawyer learned that two witnesses essential to her client's defense resided on a tribal reservation. They did not respond to her efforts to communicate. She learned that they planned to attend a Halloween party on the reservation and developed a ruse by which to serve them with trial subpoenas. She masqueraded as a marketing representative for a new (fictitious) product entitled "Zephyr Lager," and at a certain congregating point, offered the tribal members coupons with which to obtain free samples. All they had to do was identify themselves on her "World Tour 2005" sign-up sheet. When she saw the sought-for signatures, she served the subpoenas.

Her statements to all who signed-up about who she was, why she was there and why she wanted their names and addresses were entirely false. The judge and prosecutor referred her to the State Bar. She and the State Bar entered into consent for a censure that was accepted by the hearing officer and sustained by the Disciplinary Commission and the Arizona Supreme Court.

Moral of the story: Stick with your gut instinct. Implicit in our Supreme Court rules is that the fairness of our legal system and the delivery of justice depend on lawyer honesty. Don't lie.

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

Phoenix Municipal Court. At the second hearing, the client learned that Mr. Yazzie was not licensed to practice law in Arizona. As a result, the client fired Mr. Yazzie, filed an action in small claims court and recovered a \$1,040 judgment against him. Mr. Yazzie failed to petition for *pro hac vice* admission to practice in Arizona. He failed to disclose on his letterhead or print advertisement that he was not licensed to practice law in Arizona. He misrepresented himself in print advertisements as an attorney who held legal specialization to practice in criminal and personal injury law in Arizona when he was not so admitted and did not possess those

specializations. Mr. Yazzie failed to cooperate with the State Bar's investigation and failed to participate in the formal proceeding until after an entry of default was entered.

Eight aggravating factors were found: dishonest or selfish motive, pattern of misconduct, multiple offenses, bad-faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules and orders of the disciplinary process, refusal to acknowledge the wrongful nature of his misconduct, vulnerability of the victim, substantial experience in the practice of law and indifference to making restitution. The hearing

officer also found that Mr. Yazzie engaged in repeated acts of misconduct, violated many ethical rules, continued the misconduct over a long period of time, and misrepresented himself to the public by using misleading and unfounded advertisements and letterhead in order to solicit and obtain financial gain for himself. No mitigating factors were found.

Mr. Yazzie violated Rule 42, ARIZ.R.S.CT., ERs 1.1, 1.2, 1.3, 1.4, 1.5, 4.1, 5.5, 7.1, 7.2, 7.4 and 8.4(c) and (d). Because he is not a member of the State Bar of Arizona, censure is the highest sanction that could be imposed in this state.

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I just opened my trust account. Why can't I use the starter checks I have?

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