

**SANCTIONED ATTORNEYS**

**JOHN THOMAS BANTA**

Bar No. 10550; File Nos. 02-1070, 02-1628, 02-2066

By Arizona Supreme Court order dated Mar. 23, 2005, John Thomas Banta, 2228 W. Northern, Suite B212, Phoenix, AZ 85021, was censured and placed on probation for one year, which will include participating in the State Bar's Member Assistance Program and paying all costs and expenses associated with probation.

Mr. Banta's misconduct included abusive, offensive and improper conduct toward judicial officers, the courts, opposing counsel and third persons. His misconduct was prejudicial to the administration of justice and disrupted a tribunal. He also failed to safeguard client property.

Two aggravating factors were found: refusal to acknowledge wrongfulness of misconduct and substantial experience in the practice of law.

Two mitigating factors were found: no prior disciplinary history and absence of dishonest or selfish motive.

Mr. Banta violated Rule 42, ARIZ.R.S.CT., ERs 1.15(b) and (c), 3.5(c), 4.4 and 8.4(d), and Rule 41(c) and (g), ARIZ.R.S.CT.

**RICHARD E. CLARK**

Bar No. 09052; File No. 00-1066

By Supreme Court judgment and order dated Dec. 1, 2004, Richard E. Clark, 7900 E. Princess Dr. #1277, Scottsdale, AZ 85255, was censured and placed on probation for two years, ordered to pay \$12,141.16 restitution to one client and assessed some of the costs and expenses of the disciplinary proceedings.

One of Mr. Clark's former clients obtained a nondischargeable judgment against him in bankruptcy court. In an attempt to collect on the judgment by having garnishments issued against Mr. Clark's clients who owed him money, the former client scheduled a debtor's exam to question Mr. Clark about the amounts due him for legal services rendered. The day before the exam was scheduled to take place, Mr. Clark formed a professional corporation and transferred all of his business assets thereto, thus rendering Mr. Clark insolvent and precluding the former client's collection efforts.

Mr. Clark's misconduct was deemed conduct prejudicial to the administration of justice.

No aggravating factors were found. One mitigating factor was found: absence of a prior disciplinary record.

Mr. Clark violated Rule 42, ARIZ.R.S.CT., ER 8.4(d).

**ALBERT M. COURY**

Bar No. 002666; File No. 04-2078

By Arizona Supreme Court judgment and order dated Apr. 4, 2005, Albert M. Coury, P.O. Box 9534, Scottsdale, AZ 85252-9534, an inactive member of the State Bar, was disbarred by con-

sent. Mr. Coury's misconduct included a criminal conviction in Maricopa County Superior Court (CR 2003-024254-001 DT), in which he pled guilty to one count of sale of unregistered securities, a Class 4 felony.

**CLIFFORD G. COZIER**

Bar No. 015010; File No. 04-4000

By Supreme Court judgment and order dated Feb. 11, 2005, Clifford G. Cozier, 7430 E. Caley Ave., Suite 100, Englewood, CO 80111, a suspended member of the State Bar, was disbarred from the practice of law and assessed the costs and expenses of the disciplinary proceedings.

This reciprocal discipline was imposed upon Mr. Cozier based on a judgment and order dated Sept. 8, 2003, by the Colorado Supreme Court, disbarring Mr. Cozier from the practice of law for the following violations of the Colorado Rules of Professional conduct ("Colo. RPC"): two violations of Colo. RPC 1.7(b) (conflict of interest); two violations of Colo. RPC

1.15(a) (failure to keep client or third-party funds separate from the lawyer's own property); two violations of Colo. RPC 3.4(c) (knowing failure to comply with an obligation under the rules of a tribunal); one violation of Colo. RPC 8.1(b) (failure to respond reasonably to a lawful demand for information from a disciplinary authority); one violation of Colo. RPC 8.4(a) (attempting to violate the rules of professional conduct through the act of another); and five violations of Colo. RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

**BRIAN G. DI PIETRO**

Bar No. 014769; File No. 04-0012

By Arizona Supreme Court order dated Apr. 20, 2005, Brian G. Di Pietro, 4652 E. Lavender Lane, Phoenix, AZ 85044, was suspended for two years; ordered to participate while suspended in the State Bar's Member Assistance Program; placed on probation for two years effective upon reinstatement, the terms of which to be determined at

the reinstatement proceeding; and assessed the State Bar's costs and expenses of \$600, together with interest at the legal rate.

Mr. Di Pietro converted \$700 of his law firm's funds to his own use, prepared a false document to hide the theft and lied to his business partner when confronted with the theft.

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

Two mitigating factors were found: absence of prior disciplinary record and cooperative attitude toward proceedings.

Mr. Di Pietro violated Rule 42, ARIZ.R.S.C.T., ERs 4.1(a) and 8.4(b) and (c).

**DAVID O. DRAKE**

Bar No. 011459; File No. 04-4002

By Arizona Supreme Court judgment and order dated Mar. 8, 2005, David O. Drake, 28110 Driver, Agoura Hills, CA 91301-2673, a suspended member of the State Bar, was censured and

assessed costs and expenses of the disciplinary proceedings.

This reciprocal discipline was based on a judgment and order dated May 24, 2004, by the Utah Fourth Judicial District Court ordering public reprimand for three violations of the Utah Rules of Professional Conduct, Rule 5.3(a) and (b) (Responsibilities Regarding Non-lawyer Assistants).

**MICHAEL L. GERTELL**

Bar No. 009458; File Nos. 02-0281, 02-0703, 02-1170, 02-1294, 02-1324, 02-1623

By Arizona Supreme Court judgment and order dated Feb. 11, 2005, Michael L. Gertell, P.O. Box 33021, Phoenix, AZ 85004, was suspended for 90 days; placed on probation for two years; required to participate in the State Bar's Law Office Management Assistance Program; required to find a practice monitor; and was assessed the State Bar's costs and expenses of \$743.33, together with interest at the legal rate.

Mr. Gertell's misconduct included controverting an issue without a good-faith basis of fact; engaging in conduct prejudicial to the administration of justice; failing to abide by his client's decisions concerning the objectives of representation; failing to act with reasonable diligence and promptness in representing his client; failing to keep his client reasonably informed about the status of the matter; failing to promptly comply with his client's reasonable requests for information; failing to notify his client that his license to practice law had been suspended; failing to promptly deliver to his client any funds or other property to which his client was entitled; and failing to render a full accounting regarding the property of his client that was held in his possession.

**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.

## ETHICS OPINION

### Opinion No. 05-01 (May 2005)

Under ER 5.7, adopted in December 2003, a lawyer who operates a separate investment advisory business may refer nonclients to an investment advisory firm that pays a referral fee to the lawyer, so long as the lawyer takes reasonable steps to assure that the nonclients understand they are not receiving legal services and they do not have the protections of a lawyer-client relationship. A lawyer who provides such services to former clients must also comply with the confidentiality requirements and other obligations under ER 1.9 and should take particular care to assure that the former clients understand they do not have a lawyer-client relationship with respect to the investment transactions. A lawyer may not refer a current client to such a program, however, unless the lawyer meets the "heavy burden" of showing compliance with ER 1.7 and 1.8(a). Also, a lawyer who provides investment advisory services must satisfy ERs 7.1 through 7.3 and maintain separation between the law practice and the lawyer's investment advisory business so that they do not appear to be related.

To the extent previous Arizona ethics opinion 98-09 is inconsistent with ER 5.7 and the analysis in this opinion, the earlier opinion is no longer effective.

A dissenting opinion issued contemporaneously by the committee recommends a per se ban against lawyers accepting money from third-party professionals in exchange for referring law clients to those third-party payors. However, like the majority, the dissent agrees that a lawyer can accept a fee from a third-party professional for referring nonclients to the third-party's firm, provided that the lawyer complies with Rule 5.7.

**Need an Opinion?** Check out the State Bar Web site at [www.myazbar.org/Ethics/](http://www.myazbar.org/Ethics/) for a listing of the ethics opinions issued between 1985 and 2005. If you are an Arizona attorney and have an ethics question, call (602) 340-7285.

Four aggravating factors were found: prior disciplinary offenses; a pattern of misconduct; multiple offenses; and substantial experience in the practice of law.

Three mitigating factors were found: personal or emotional problems; timely good faith effort to make restitution or to rectify consequences of misconduct; and remorse.

Mr. Gertell violated Rule 42, ARIZ.R.S.Ct., ERs 1.2, 1.3, 1.4, 1.15, 1.16, 3.1, 8.1(b) and 8.4(d) and Rule 51(h) and (i) and Rule 63, ARIZ.R.S.Ct.

#### **KENNETH M. LEVINE**

Bar No. 009500; File No. 04-4001

By order of the Arizona Supreme Court dated Apr. 20, 2005, Kenneth M. Levine, 1212 E. Osborn, P.O. Box 16330, Phoenix, AZ 85011, a suspended member of the State Bar, was suspended for 30 days. Because he has been on summary suspension status for nonpayment of dues since Feb. 28, 1988, Mr. Levine must comply with formal admission and reinstatement procedures in Rules 64 and 65, ARIZ.R.S.Ct.

The reciprocal discipline of suspension was imposed on Mr. Levine based on a judgment and order dated Sept. 10, 2004, by the State Bar of Vermont for filing a false affidavit in connection with his application to appear *pro hac vice* in a Vermont court, in violation of Rules 8.4(c) and 3.3(a)(1) of the Vermont Rules of Professional Conduct.

**RAYMOND J. SLOMSKI**

Bar No. 007223; File No. 02-1506

By Arizona Supreme Court order dated Feb. 18, 2005, Raymond J. Slomski, 2929 N. Central Ave., Suite 1750, Phoenix, AZ 85012-2727, was censured and ordered to pay the State Bar's costs and expenses of \$612, together with interest at the legal rate.

During closing arguments while representing a client in a wrongful-

death case, Mr. Slomski sought to appeal to jurors' emotions by using references to his personal experiences. Mr. Slomski failed to conform his closing argument to the repeated rulings on objections and other statements made during the argument by the trial judge, which resulted in the granting of a new trial. The Court of Appeals upheld the trial court's decision.

One aggravating factor was found: substantial experience in the practice of law. Three mitigating factors were found: absence of a prior disciplinary record; absence of a dishonest or selfish motive; and full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

Mr. Slomski violated Rule 42, ARIZ.R.S.C.T., ERs 8.4(d) and 3.4(e).

**WILLIAM M. SPENCE**

Bar No. 002728; File Nos. 03-1172, 03-1378, 03-1665

By Arizona Supreme Court order dated Apr. 20, 2005, William M. Spence, 500 W. Ray Rd., Suite 1, Chandler, AZ 85225, was suspended for 30 days; placed on probation for two years (including participation in the State Bar's Member Assistance Program specifically tailored toward sensitivity training to address the type of conduct at issue in this matter); and assessed the costs and expenses of the disciplinary proceedings.

Mr. Spence knowingly made inappropriate, sexually suggestive statements to two domestic-relations clients, thereby creating a conflict of interest by limiting his clients' interests in pursuing his own interests. In addition, Mr.

Spence engaged in conduct prejudicial to the administration of justice; knowingly disobeyed an obligation under the rules of a tribunal; willfully violated a court order; and exhibited an offensive personality.

Five aggravating factors were found: dishonest or selfish motive, pattern of misconduct, multiple offenses, vulnerability of victims, and substantial experience in the practice of law.

One mitigating factor was found: cooperation in disciplinary process. Remorse was found to be neutral.

Mr. Spence violated Rule 42, ARIZ.R.S.C.T., ERs 1.7, 3.4(c) and 8.4, and Rules 41 (g) and 51(e), ARIZ.R.S.C.T., in effect prior to Dec. 1, 2003.