



The
DISCIPLINARY BOARD
of the Supreme Court of Pennsylvania

Quarterly
Newsletter

Volume 2, July 2018



From the Board

Change is Easy; Transition is Hard

The beginning of wisdom is to call things by their right names.

-Chinese Proverb

It isn't the changes that do you in, it's the transitions. They are not the same thing. Change is situational: the changing of Board Chair, reorganization of the roles on the Disciplinary Board staff, a retirement. Transition is psychological; it is a process people go through as they internalize and come to terms with the details of the new situation that the change(s) bring about.



As a fair amount of my consulting work is supporting teams and organizations through transition, I am constantly reminding them of the difference. I emphasize that marshalling people through the transition is essential if they expect the changes they make to work. We are about to make a change and a transition in the leadership of the Disciplinary Board. I will soon turn over the Chair to Brian Cali, and Andrew Trevelise will become Vice Chair.

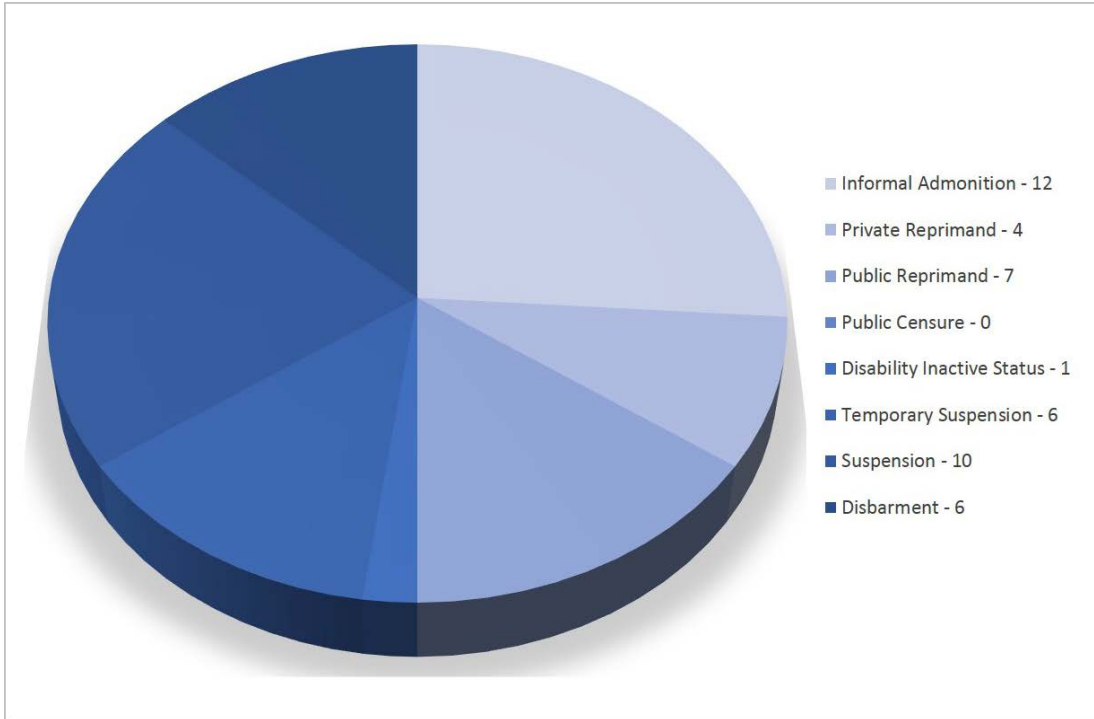
While I am saddened that my time is nearly over, I feel positive about this transition. Brian and I worked together every step of the way; recently, Andy has joined our conversations. We have worked to communicate and collaborate with staff. Brian and I challenged the Board and staff to reevaluate everything we were undertaking and make suggestions for improvement.

The starting point for dealing with transitions is not the outcome, but the ending. For a transition to be successful, psychologically, you need to let go of the old ways before you can embrace the new. Changes of any sort succeed or fail on the basis of whether the people affected do things differently. Although my time as Chair is quickly drawing to a close, I am committed, even in this last short while, to continuing to question and improve. I have full confidence in Brian, Andy, the Board, and staff to properly transition and continue to improve on the important work we do.

Douglas W. Leonard, Chair

Discipline Imposed

April 1, 2018 - June 30, 2018



Public Reprimand

[Royce W. Smith](#)
[Richard F. Klineburger, III](#)
[Marc I. Simon](#)
[Mark Eric Elvin](#)
[Roberta Binder Heath](#)
[Lorraine D. Taylor](#)
[Matthew Gerald Porsch](#)

Temporary Suspension

[Douglas M. Marinos](#)
[Clyde Kevin Middleton](#)
[Michael Joseph Savona](#)
[Paul Iannetti](#)
[Jeffrey Alan Hulton](#)
[Candace Marie Stamos Ford](#)

Suspension

[Brian McDevitt](#)
[Franchot A.S. Golub](#)
[Jeffrey T. Toman](#)
[Daniel J. McCarthy](#)
[Jeffrey L. Perlman](#)
[Raul I. Jauregui](#)
[Louis F. Caputo](#)
[Barry Jay Beran](#)
[John Andrew Klamo](#)
[William J. Soriano](#)

Disbarment

[Randy McRae](#)
[Ronald I. Kaplan](#)
[Raphael A. Sanchez](#)
[Brian Arthur McCormick](#)
[Marc D'Arienzo](#)
[John Edwin Cooper](#)

Rule Changes

By [Order](#) dated April 23, 2018, the Supreme Court of Pennsylvania [amended](#) Rules of Professional Conduct 1.1, relating to attorney competence, and 1.6, relating to confidentiality. These amendments require an attorney to be familiar with the policies and rules of courts in which the lawyer practices, which include the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania. These amendments went into effect on July 1.

By [Order](#) dated April 30, 2018 and effective June 29, 2018, the Court, upon the recommendation of the Pennsylvania IOLTA Board, amended Rule of Professional Conduct 1.15(v) to require lawyers and law firms to remit unclaimed or unidentifiable IOLTA Funds to the IOLTA Board following reasonable efforts to identify or locate the owner of funds after a minimum of two years. To learn more about this new obligation on attorneys, click [here](#).

By [Order](#) dated May 9, 2018, the Supreme Court of Pennsylvania adopted [Pennsylvania Rule of Disciplinary Enforcement 403](#), creating an emeritus status for attorneys who retire from the practice of law and seek to provide pro bono services through legal aid organizations. Emeritus programs create a pool of qualified volunteer attorneys to provide services to those in need. Emeritus attorneys perform valuable roles in the community by bolstering legal aid and other nonprofit programs to help close the gap between the need for and the availability of free legal services. To see the press release, click [here](#). To read FAQs about the program, click [here](#), and to access the necessary forms, click [here](#). This rule became effective June 8.

By [Order](#) dated June 29, 2018, the Supreme Court of Pennsylvania amended [Rule 219\(k\)](#) of the Pennsylvania Rules of Disciplinary Enforcement which addresses the payment owed by an inactive attorney who was administratively suspended. The amendment includes “payment of the annual fee that was due in the year in which the attorney was administratively suspended,” to the list of monies owed. To view the Notice of Proposed Rulemaking filed by the Board, articulating the rationale for the amendment, click [here](#). This Rule will become effective July 29, 2018.

Disciplinary Board and Hearing Committee News

Board Member Updates

The Board is preparing to wish two of its Members farewell as they complete their second terms and transition off the Board. Jane G. Penny, Esquire, of Dauphin County will finish her second term on the Board on August 8, 2018. During her time on the Board, she served as Chair of the Rules Committee, Vice Chair of the Board, and Board Chair. Douglas W. Leonard, of Butler County, will finish his second term on August 7, 2018. During his time on the Board, he served as Vice Chair of the Board and currently serves as Board Chair. The Disciplinary Board extends its gratitude to Ms. Penny and Mr. Leonard for their dedication and leadership.

By Supreme Court of Pennsylvania [Order](#) dated May 23, 2018, current Board members, Brian J. Cali, Esquire and Andrew J. Trevelise, Esquire, were designated, as Chair and Vice Chair of the Disciplinary Board of Pennsylvania, commencing August 7, 2018. The Disciplinary Board congratulates Mr. Cali and Mr. Trevelise on this designation and wishes them well in these positions of leadership.

By [Order](#) dated June 20, 2018, the Supreme Court of Pennsylvania appointed Magisterial District Judge Robert L. Repard as a member of the Disciplinary Board for a term of three years, commencing September 1, 2018. Judge Repard of Tioga County, as a non-attorney, will be filling one of the two non-lawyer seats on the Disciplinary Board.

To see the current membership of the Disciplinary Board of the Supreme Court of Pennsylvania, click [here](#).

Hearing Committee Member Updates

Hearing Committee Members, appointed by the Disciplinary Board, serve as volunteers to conduct hearings and act as a formal reviewing body to determine if a case can move forward in pursuit of a particular course of discipline. Hearing Committee Members serve for a term of three years and may be reappointed for a second three-year term. Here is a list of the current [Hearing Committee Members](#).

On July 1, 2018, 21 new Hearing Committee Members were appointed by the Disciplinary Board and 23 were reappointed for a second term. The Disciplinary Board congratulates the newly appointed and reappointed members and extends its gratitude for all of the hard work done by Hearing Committee Members.

Hearing Committee Training

Twice each year, in conjunction with Disciplinary Board meetings in Pittsburgh and Philadelphia, the Board hosts Hearing Committee training sessions for Experienced and Senior Hearing Committee Members. Trainings include sessions from Board Members, Board staff, and seasoned Hearing Committee Members. Recently, in June, the Board hosted over 40 of the newly appointed and recently appointed Hearing Committee members for a training session in Harrisburg. At this session, the Board offered presentations from Board Members, Board staff, Office of Disciplinary Counsel staff, Respondents' counsel, and a Lawyers Concerned for Lawyers representative.

Attorney Registration

Each July, about 76,000 attorneys are required to renew their Pennsylvania attorney license status by completing annual registration. As of July 2, over 63,000 attorneys completed their registration. Attorneys can fulfill the registration requirement by July 31 without penalty on the [UJS Portal](#).

Articles of Interest

ABA Publishes Formal Opinions on Duty to Inform Client of Errors

The ABA Standing Committee on Ethics and Professional Responsibility released a Formal Opinion with potential application to the practice of many lawyers. [Formal Opinion 481](#) discusses a lawyer's duty to inform a current or former client of a material error committed by the lawyer. The Opinion examines laws of several states on whether Rule 1.4, dealing with communications with clients, requires a lawyer to inform a current or former client of an error the lawyer has made with the potential for adverse effect on the client.

Initially, the Opinion concludes that Rule 1.4 does not impose a responsibility on a lawyer to inform a former client of an error. It cites an example in which a lawyer prepares a contract for a client, then later discovers an error while using the contract as a template. The Opinion notes that there may be good reasons for the lawyer to notify the client, such as mitigating harm or potential liability, but concludes that this is not required.

The Opinion reaches a different conclusion as to current clients. It finds that that a lawyer must inform a current client of a material error committed by the lawyer in the representation. An error is material if a disinterested lawyer would conclude that: (a) it is reasonably likely to harm or prejudice a client; or (b) it would reasonably cause a client to consider terminating the representation even in the absence of harm or prejudice.

U.S. Supreme Court: Accused Has Right to Reject Concession of Guilt

In a [decision](#) in the case of *McCoy v. Louisiana*, rendered May 14, 2018, the U.S. Supreme Court held that an accused defendant has a right to reject his counsel's proposal to concede guilt. In *McCoy*, the defendant was charged with three murders, but consistently maintained that he was out of state at the time of the killings and that police had committed the crime. Counsel determined that the evidence of his guilt was overwhelming, proposed a concession of guilt, and developed a defense based on the defendant's mental state. McCoy firmly and repeatedly rejected this approach and insisted on his innocence. Despite his client's objections, counsel conceded guilt at both trial and penalty phases in an effort to establish a mental state defense and to avoid the death penalty. McCoy was convicted of the murders and sentenced to death. After the Louisiana Supreme Court upheld the sentence, the US Supreme Court granted certiorari on the question of whether it is unconstitutional to allow defense counsel to concede guilt over the defendant's intransigent and unambiguous objection.

The Court's opinion, written by Justice Ginsburg, distinguished the case from its prior decision in [Florida v. Nixon, 543 U. S. 175 \(2004\)](#), in which it held that counsel's decision to concede guilt was not prohibited where counsel had explained the decision and the defendant was unresponsive. The opinion notes that trial management decisions such as what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence – are within the role of counsel. The determination of the fundamental goals of the representation, however, remains within the control of the client. Decisions that fall within this scope include whether to plead guilty, waive the right to a jury trial, testify in one's own behalf, and forgo an appeal. The Court concluded that the right to maintain one's innocence falls within the latter category. Justice Ginsburg stated, "these are not strategic choices about how best to achieve a client's objectives; they are choices about what the client's objectives in fact are."

Justice Alito, joined by Justices Thomas and Gorsuch dissented, describing the case as a "freakish confluence of factors that is unlikely to recur." The dissent disagreed with the characterization of the decision as a fundamental one, and placed greater weight on the judgment of counsel as to the best way to achieve the client's objectives.

Not Sesame Street Any More: Muppets Go Noir

They're not Kermit's Muppets any more.

Many of us recall the Muppets fondly from the wholesome days of Sesame Street and the Muppet movies, but the latest project from The Jim Henson Company is an R-rated noir crime story, [Happytime Murders](#), starring [Melissa McCarthy](#) as a detective probing goings on in a Muppet world that is more seamy than Sesame.¹

Needless to say, this did not sit well with Sesame Workshop, owners of the rights to *Sesame Street*, so they [filed a lawsuit](#) against the film's creators, STX Entertainment, in the United States District Court for the Southern District of New York, seeking a restraining order prevent the company from referring to Sesame Street in its marketing.² However, STX Entertainment [responded](#) both with real human lawyers and also a Muppet lawyer, [Fred Esq.](#), arguing that the film's campaign did not create any confusion as to Sesame Workshop's copyrights or trademarks.

After hearing arguments, U.S. District Judge Vernon Broderick [ruled](#) that STX Productions can continue to use the tagline "No sesame. All street" in promoting the R-rated film, finding that Sesame Workshop failed to prove that anyone was likely to be confused by the movie's disclaimer.

Happytime Murders hits theaters in August. Don't take the kids.

¹ We'd link the trailer, except that it is decidedly not safe for work, much less appropriate for this publication. You can find it if you try.

² In fact, the tagline for the film is "NO SESAME. ALL STREET."

Vacancies

The Supreme Court of Pennsylvania is aided by select boards, committees, commissions and councils consisting of more than 180 appointed volunteers - most, but not all, are lawyers and judges.

The panels have a wide range of responsibilities and functions. Some make recommendations to the Court for amendments, revisions or simplification of court procedural rules. Others regulate the practice of law, oversee continuing legal education for lawyers and administer funds to assist individuals unable to pay for legal services. Still others advise on keeping the courts free of bias and discrimination and on long-range planning.

There is currently one vacancy on these panels:

- [Minor Court Rules Committee](#) (Apply by July 31, 2018)

For application information, please visit: <http://www.pacourts.us/courts/supreme-court/committees/>

Around the Court



Pennsylvania Board of Law Examiners

The Supreme Court of Pennsylvania has the inherent and exclusive power to regulate admission to the bar and the practice of law through the Pennsylvania Bar Admission Rules which govern bar admission policies and procedures. Pursuant to these rules, the [Pennsylvania Board of Law Examiners](#) is empowered to recommend the admission of persons to the bar and the practice of law. In conjunction with this charge, the Board is responsible for recommending rules pertaining to admission to the bar and the practice of law and to exercise the powers and perform the duties vested in and imposed upon the Board by the Court. The Board of Law Examiners is empowered by the Supreme Court of Pennsylvania to recommend for admission only those individuals who have demonstrated the minimum competency and requisite character necessary to become a member of the bar of this Commonwealth. This mission preserves the integrity of the legal system, and protects all individuals seeking legal representation from unethical or incompetent lawyers.

In addition to administering the bar examination, the Board provides other avenues for admission to the bar in Pennsylvania. Information about these other avenues is available [here](#). Attorneys interested in waiving in should read the [Tips for a Successful Application](#). Corporate Counsel that wish to perform any legal services in Pennsylvania on more than a temporary basis must obtain a Limited In-House Corporate Counsel License. Information about this process is available [here](#).



Pennsylvania Lawyers Fund for Client Security

The mission of the [Pennsylvania Lawyers Fund for Client Security](#) is to reimburse victims of attorney dishonesty in the practice of law; to preserve the integrity of the legal profession; and to promote public confidence in the legal system and the administration of justice in Pennsylvania. The Pennsylvania Lawyers Fund for Client Security has jurisdiction over claims alleging a conversion of client funds. The Fund has a \$100,000 maximum award per claimant and a \$1,000,000 aggregate cap per attorney. The Board may request the Supreme Court of Pennsylvania to permit payments of awards relating to one attorney to exceed the \$1,000,000 aggregate cap. All claims are reviewed for disposition by the seven-member Board. By Court Rule, five are lawyers and two are non-lawyers, all of whom serve without compensation. More information about the Pennsylvania Lawyers Fund for Client Security may be found in the Fund's [annual report](#). Claim forms are available [here](#).

Additionally, the Fund is currently looking for a new Administrative Assistant. To learn more, please see [the job posting](#).

Social Media

The Disciplinary Board is committed to being a resource for Pennsylvania attorneys and the public. For news and information related to the Disciplinary Board and to the legal profession, follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#).

Resources

[FAQs - For the Public](#)

[Annual Report](#)

[Recent Discipline](#)

[FAQs - For Attorneys](#)

[Rules](#)

[Discipline Statistics](#)

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