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The
DISCIPLINARY BOARD
of the Supreme Court of Pennsylvania

January 2019
Newsletter



From the Chair

In our October newsletter, I advised our readers of the organizational realignment taking place in our offices. At this time, I find it important to provide our readers with some historical information for context.

Our reorganization began more than 2 years ago and was borne of necessity. The Board Secretary, Elaine M. Bixler, announced her retirement after more than 37 years with the Board. Without hesitation, she was the backbone of the Board's operations and handled most of the administration. In anticipation of her retirement, we underwent a review of operations to determine an appropriate structure for the future. During our review, we came to fully understand the nuances affecting the system's operations and the methods we could improve. From the Board's perspective, it was clear that changes were necessary.



Recognizing the need to modernize, including the development of new processes and technology, the Board focused on efficiently evaluating cases and bringing them to their ultimate conclusion in a timely manner. This resulted in Board members and management expending hundreds of hours on research and development to present a reorganization plan, hire a new Board Secretary, develop new roles, and put in place new reporting requirements. At the same time, we recognized that this process must never become stagnant – that we must always seek to make changes that will benefit the organization and the profession.

Since the reorganized structure was put in place more than two years ago, our Board has continually monitored and evaluated it. In 2018, then-Chair Douglas W. Leonard and I led the Board through the next phase of its reorganization – realignment. Mr. Leonard, myself, and current Vice Chair Andrew J. Trelise worked with the Board and management to further streamline policies and procedures, reporting structures, and lines of communication. This realignment was put in place effective September 24, 2018.

The Board has eliminated the Board Secretary position – the position is simply not necessary or warranted. We have an Executive Director now, reporting directly to the Board, who is responsible for oversight of the Attorney Registration Office, finance, technology, human resources, communications, and the Board Prothonotary's Office. We have had a Board Prothonotary for the past two years, and will continue to do so. We continue to maintain the roles of Chief Disciplinary Counsel and Counsel to the Board.

The Board also created a new role – Special Counsel – which has been filled by the Board's former Secretary, Julia M. Frankston-Morris, Esquire. Ms. Frankston-Morris was part of the team charged with developing the realignment (the team also included Board Members, the current Executive Director, Counsel to the Board, and

the Board Prothonotary). This role was developed to, among other things, assist hearing committee members in the performance of their duties. In recent years, the Board has provided more training sessions for hearing committee members than it has ever previously done. The role of the hearing committees remains unchanged. Special Counsel will provide these members with procedural guidance, monitor the progress of the cases, and provide relevant research for the committees to enhance consistency of discipline. The authority and responsibility to author and file reports and recommendations continues to reside solely with the committees.

In addition, the Board is seeking to expand the ability for the Board to appoint Senior Hearing Committee Members and Special Counsel to serve as Special Masters.

The goal of this realignment is to move cases through the system in a more efficient and effective manner. This Board is committed to ensuring cases do not languish within the system and the elimination of unnecessary delays.

Pennsylvania's attorney regulation system is, and has been since its creation in 1972, self-regulatory. Regulating and representing an attorney population of more than 75,000 (more than 65,000 actively licensed attorneys) is a significant task. With six offices around the state, 70 employees, and the receipt of more than 4,000 complaints annually, the charge upon this organization is great. Each member of the Board takes his or her role very seriously and understands that it is a privilege and an honor to serve in the capacity of Disciplinary Board Member. Accordingly, we each take our role seriously when adjudicating matters and overseeing the entirety of the organization.

Our self-regulatory system is thriving and its continuous evolution is necessary to maintain such an organization. The system is more professional than ever with talented and dedicated staff, management, and Board members. Our staff are better trained for the important roles they fill for the citizens of the Commonwealth and for the more than 75,000 Pennsylvania attorneys. A complacent, or nostalgic, view of our regulatory system is simply not a solution to the ever-changing needs of the profession – continuous review and constructive change is. This Board seeks to ensure the public, the profession, and the Court that we will continually evaluate our organization to maintain it as one of the finest Attorney Regulatory systems in the nation.

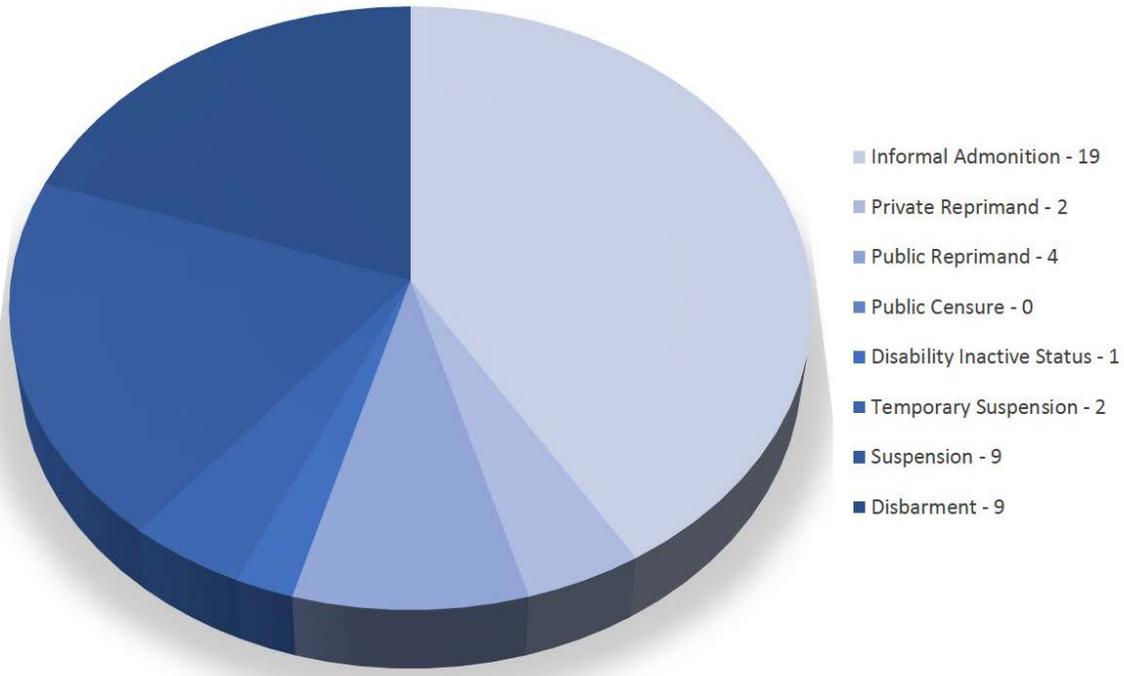
Brian J. Cali, Esquire
Board Chair

Social Media

Don't forget to like us on [Facebook](#), follow us on [Twitter](#), and connect with us on [LinkedIn](#) for more news and information.

Discipline Imposed

October 1 - December 31, 2018



Suspension

[Arthur J. Smith](#)
[Carl Louis Epstein](#)
[Stuart I. Rich](#)
[John Andrew Klamo](#)
[Robert B. MacIntyre](#)
[Sharmil Donzella McKee](#)
[John Ari Lefkowitz](#)
[Louis Alfred Piccone](#)
[Thomas Peter Gannon](#)

Temporary Suspension

[Dory L. Sater](#)
[Edward James Haushas, II](#)

Disbarment

[Robert Henry Leiner](#)
[Frank N. Tobolsky](#)
[Nathan Daniel Lyle](#)
[Carl J. Greco](#)
[Michael Christopher Gallo](#)
[Joshua Lawrence Gayl](#)
[Michael Elias Stosic](#)
[Sandy N. Webb](#)
[Raheem S. Watson](#)

Public Reprimand

[Dean I. Weitzman](#)
[Eric A. Jobe](#)
[Tami L. Fees](#)
[Joseph F. Nicotero](#)

Articles of Interest

ABA Issues Formal Opinion on Disaster Preparation

[Formal Opinion 482](#) (September 19, 2018) from the American Bar Association's Standing Committee on Ethics and Professional Responsibility addresses the duties of lawyers in disaster situations. Topics addressed include communication with clients, protection of documents, funds, and other property, and the use of technology to minimize risk.

The opinion first notes that the ABA offers significant resources to lawyers faced with disaster situations on how to prepare for and respond to the effects of disasters. Lawyers may obtain information on:

- obtaining insurance;
- types and methods of information retention; and
- steps to take immediately after a disaster to assess damage and rebuild.

The Opinion notes that lawyers have an obligation under [Rule 1.4](#) to communicate with clients to assure them their legal needs will be met and to advise of any issues the disaster causes. It states that in order to contact clients quickly in the event of a disaster, the lawyer should maintain, or be able to create on short notice, electronic or paper lists of current clients and their contact information. This information should be stored in a way that it will be accessible even in the event of a disaster.

The lawyer should inform the client whether the lawyer remains available to handle the client's matters, or, alternatively, if the lawyer is unavailable because of the disaster's effects. The lawyer may need to withdraw if the circumstances render appropriate representation impossible.

While the duty to communicate under Rule 1.4 is paramount, the lawyer should also be mindful of the requirements of [Rule 1.1](#) to maintain reasonable proficiency in technology, and [Rule 1.6](#) regarding disclosure of confidential matters.

The second area of concern is with preservation of documents. The Opinion notes that in a disaster, the lawyer may not have access to paper files. Therefore, the lawyer should evaluate in advance the need to store storing files electronically so that they will have access to those files via the Internet if they have access to a working computer or smart device after a disaster. If Internet access to files is provided through a cloud service, the lawyer should choose a reputable company and take reasonable steps to ensure that the confidentiality of client information is preserved, and that the information is readily accessible to the lawyer. The opinion notes that if documents or other property with intrinsic value is lost, the lawyer must notify both current and former clients and make reasonable efforts to reconstruct such documents or obtain copies from other sources.

Lawyers also must take reasonable steps in the event of a disaster to ensure access to funds the lawyer is holding in trust. The lawyer should consider a succession plan in the event of his or her death or unavailability. The lawyer should also consider that a disaster may affect the financial institution in which funds are held, or the lawyer's ability to communicate with the financial institution. If funds are inaccessible for any reason, the lawyer should communicate with the clients about that fact and timelines for accessibility.

The Opinion addresses other issues such as withdrawal from representation after a disaster, advertising and solicitation, and representation of clients by displaced lawyers in another jurisdiction, and out-of-state lawyers providing representation to disaster victims.

The Opinion concludes, "By proper advance preparation and taking advantage of available technology during recovery efforts, lawyers will reduce the risk of violating professional obligations after a disaster."

Supreme Court Reinstates Former Top Prosecutor

By [order entered November 15, 2018](#), the Supreme Court of Pennsylvania reinstated the license of Lynn Marietta Nichols, the former Assistant Chief of Homicide in the Philadelphia District Attorney's Office. Nichols was [suspended](#) for thirty months in 2014 after conviction of criminal mischief for actions she took in her official capacity first to help and later to retaliate against a man with whom she was personally involved.

The Disciplinary Board recommended Nichols's reinstatement after finding that she had complied with all the terms of her criminal probation, worked as a legal secretary, kept herself current on legal matters, and taken steps to deal with stress which an expert witness testified was a factor in her misconduct. The Hearing Committee that heard her disciplinary case had recommended she serve a term of disciplinary probation upon reinstatement, but the Disciplinary Board recommended immediate reinstatement without probation, which was

accepted by the Supreme Court.

Mystery Writers Revoke Award to Controversial Prosecutor

Discipline isn't the only kind of sanction to which a lawyer can be subject. In November, the [Mystery Writers of America](#) awarded its coveted Grand Master award to [Linda Fairstein](#), former chief of the sex-crimes unit at the Manhattan District Attorney's Office and author of [twenty mystery novels](#).

Within hours, however, the group was flooded with protests from members. This issue was not literary, but a reaction to Fairstein's role as a supervisor in the prosecution of the [Central Park Five case](#) concerning the beating and rape of a jogger in Central Park in 1989. The convictions of the five defendants were vacated in 2002 after a serial rapist admitted to assaulting the victim. Fairstein has continued to defend the prosecution and accuse the defendants of guilt as late as November 2018.

As a result of the outpouring of opposition from its membership, the MWA reversed its decision and [rescinded the award](#) to Fairstein two days later.

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 are currently seven vacancies on these panels:

- [Disciplinary Board](#) - Applicants must be members of the Pennsylvania Bar and be knowledgeable about the Pennsylvania Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement.
- [Juvenile Court Procedural Rules Committee](#) - Applicants should be knowledgeable about the Pennsylvania Rules of Juvenile Court Procedure and experienced in juvenile law practice in Pennsylvania, including dependency and delinquency matters.
- [Pennsylvania Lawyers Fund for Client Security Board](#) - Lawyer applicants should be knowledgeable about the practice of federal or state law in Pennsylvania and about a lawyer's duties to clients.
- [Pennsylvania Lawyers Fund for Client Security Board](#) - Non-lawyer applicants should have an interest in supporting public trust and confidence in the legal profession.
- [Board of Law Examiners](#) - Applicants must be members of the Pennsylvania Bar or jurists. In addition, applicants should be knowledgeable about law school curriculum, legal practice and attorney ethical obligations. Please note that law school faculty may not serve on this Board. Additionally, applicants should not apply for a membership position if, during that position's term of service, they will have immediate family members who will be taking the bar examination or seeking membership in the Pennsylvania Bar.
- [Domestic Relations Procedural Rules Committee](#) - **Two vacancies.** Applicants should be knowledgeable about the Pennsylvania Rules of Civil Procedure governing domestic relations matters, and experienced in family law practice in Pennsylvania.

Disciplinary Board News



Paul Burgoyne, Deputy Chief Counsel, Retires

On December 31, 2018, Paul J. Burgoyne retired after 37 years with the Office of Disciplinary Counsel, 25 of those years as Deputy Chief Disciplinary Counsel, the second-ranking Disciplinary Counsel in the State.

Mr. Burgoyne graduated from La Salle University and the Rutgers School of Law at Camden. He clerked for a judge of the Court of Common Pleas in Philadelphia and worked in private practice and with the Legal Aid Society of Chester County before joining District I (Philadelphia) of the Office of Disciplinary Counsel as an Assistant Disciplinary Counsel in 1981.

He was named the Counsel-in-Charge of the District I office in May 1987. In April 1993, he became the Deputy to Chief Counsel John L. Doherty. He continued in that role when Paul J. Killion became Chief Disciplinary Counsel in 2002. As Deputy Chief Disciplinary Counsel, Mr. Burgoyne played an active role in a wide range of roles in the administration of the Office of Disciplinary Counsel.. [Read More](#)

Rule Changes

Supreme Court Adopts Schedule of Administrative Fees for Discipline, Reinstatement

Effective November 16, 2018 the Supreme Court of Pennsylvania adopted changes to Rule 208 and 218 of the Rules of Disciplinary Enforcement, providing for administrative fees to be imposed on lawyers in disciplinary or reinstatement proceedings.

[Rule 208\(g\)\(4\)](#) was amended to include a schedule of administrative fees for disciplinary actions. Prior to the amendment, a fee of \$250 was imposed in all disciplinary actions other than informal admonition. Under the amended rule, the following administrative fees will be assessed in orders imposing discipline.. [Read More](#)

Proposed Amendments to Pa.R.P.C. 1.6

The Disciplinary Board has proposed a [change to Rule 1.6 of the Pennsylvania Rules of Professional Conduct](#), to authorize a lawyer to reveal confidential information otherwise protected by the rule to the extent that the lawyer reasonably believes necessary "to comply with other law or court order" and to add conforming language to the Comment to the rule.

Interested persons are invited to submit written comments regarding the proposed amendments by mail, fax or email to:

The Disciplinary Board of the Supreme Court of Pennsylvania
601 Commonwealth Avenue, Suite 5600
PO Box 62625

The deadline for comment submission is February 1, 2019

Around the Court



The Judicial Conduct Board of Pennsylvania is an independent board within the judicial branch of the Commonwealth's government created by a constitutional amendment adopted in 1993. The Board is comprised of 12 members, six appointed by the Governor and six appointed by the Supreme Court. The members are a magisterial district judge, a judge of the court of common pleas, and a judge from either the Superior or Commonwealth Court, three attorneys, and six lay persons. No more than six of the members may be of the same political party. The term for members is four years. The Board acts by majority vote.

The Board is the first tier of Pennsylvania's two-tier judicial disciplinary process. The Board investigates and, where warranted, prosecutes charges of misconduct or physical or mental disability by Pennsylvania's judges. All members of Pennsylvania's judiciary are subject to the Board's investigative authority from magisterial district judges to justices of the Supreme Court. After investigation by its legal and investigative staff, the Board determines if there is probable cause of misconduct or disability. Before the Board may make any probable cause determination, the accused judge must be given notice of the allegations and the opportunity to respond. If the Board finds probable cause, it authorizes filing of a formal complaint in the Court of Judicial Discipline (CJD), the second tier of Pennsylvania's disciplinary system. After the filing of a formal complaint, the Board prosecutes the charge(s) against the judge in the CJD where it must prove the charges by clear and convincing evidence. If the Board satisfies its burden of proof, the CJD determines the sanction to be imposed. The sanctions may range from reprimand or censure to removal from office and bar to holding judicial office in the future. The judge may appeal from any sanction imposed by the CJD to the Supreme Court. If a member of the Supreme Court is prosecuted by the Board and sanctioned by the CJD, the justice may appeal to a Special Tribunal made up of judges, decided by lot, from the Commonwealth and Superior Courts. If the CJD dismisses a formal complaint filed by the Board, the Board may appeal to the Supreme Court (or the Special Tribunal if the matter involves a member of the Supreme Court), but the Board appeal is limited to questions of law.

The Pennsylvania Constitution provides that all complaints filed with the Board and all material gathered by the Board in conducting an investigation are not public records and all proceedings of the Board are confidential. From the filing of a formal complaint by the Board in the CJD charging a judicial officer with misconduct or disability, all proceedings before the CJD are matters of public record. For more information about the Board visit www.jcbpa.org.



SUPREME COURT OF PENNSYLVANIA

Pennsylvania Interest on Lawyers Trust Account Board

New Rule Provides Direction to Attorneys with Unclaimed Funds in their IOLTA Account

After several years of receiving calls from attorneys seeking guidance on the ethical distribution of unclaimed and unidentifiable funds in their IOLTA trust account, the IOLTA Board is pleased to share that recently adopted Pennsylvania Rule of Professional Conduct 1.15(v) provides such guidance. It is an especially common question when an attorney is winding down a law practice in preparation for retirement or when his or her attempts to contact a former client are unsuccessful.

The new rule provides that after reasonable efforts have been undertaken to reunite funds in an IOLTA account with their rightful owner for at least two years, any unidentifiable or unclaimed funds may be transferred to the IOLTA Board for safekeeping. The funds may be reclaimed if the rightful owner is identified or located at a later time.

For additional information and access to related forms, please click here: <https://www.paiolta.org/unclaimed-funds/>

Resources

[FAQs - For the Public](#)

[Annual Report](#)

[Recent Discipline](#)

[FAQs - For Attorneys](#)

[Rules](#)

[Discipline Statistics](#)

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