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The  
**DISCIPLINARY BOARD**  
of the Supreme Court of Pennsylvania

May 2019  
Newsletter



## *From the Chair*

Former Chairs Douglas W. Leonard and Brian J. Cali have both previously written to you about the Board's efforts to reorganize and become more efficient. I have the pleasure to inform you that, per Supreme Court Order dated April 18, 2019, the reorganization has been approved by the Court and the Rules have been formally amended.

As you have no doubt already heard, the 2019-2020 Attorney Registration season is upon us. The registration [site](#) hosted by the Unified Judicial System opened to all attorneys eligible to register on May 6, 2019. I mentioned to you in our last newsletter that there are two new items of note for this registration cycle: (1) the addition of a [succession planning](#) question which is designed to spark a dialogue in the profession about the importance of protecting our clients in the event of unexpected circumstances; and, (2) the [timeline](#) for registration has been compressed. I encourage you to complete your annual registration by the July 1 deadline to avoid the imposition of any late payment penalties or, in the worst case, administrative suspension of your license.

Finally, I would like to express the Board's appreciation to all of the lawyers who we do not see in an official capacity because they uphold the integrity of our profession every day. Most of our newsletter addresses Rules, the imposition of Discipline and similar matters and the very small segment of the Bar that we as a Board have to address. They are the exception – you are the standard.

Andrew J. Trevelise, Esquire  
Board Chair

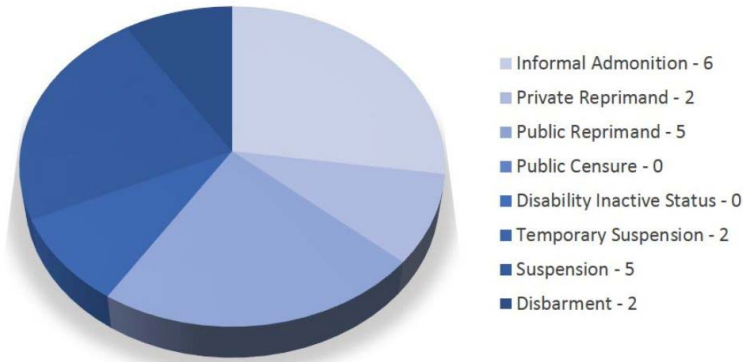


## *Social Media*

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

April 2019



## **Public Reprimand**

[Clair Michelle Stewart](#)  
[Stuart Thomas Cottee](#)  
[James T. Marsh](#)  
[Francis Edward Bigham](#)  
[David Foster Gould, III](#)

## **Suspension**

[Angeles Roca](#)  
[Dawn A. Segal](#)  
[Matthew Todd Croslis](#)  
[William R. Balaban](#)  
[Donald P. Russo](#)

## **Temporary Suspension**

[Kenneth Lasch Smukler](#)  
[Craig Cohen](#)

## **Disbarment**

[Michael Orji-Nwosu](#)  
[Kevin Mark Kallenbach](#)

# Articles of Interest

## **Lawyer Practices Unaware of License Suspension for 15 Years**

A New York lawyer has been [retroactively suspended](#) after a finding that she practiced law for 15 years, unaware that her license had been suspended shortly after she was admitted to the bar.

[Maive Giovati-Dale](#) was admitted to the New York Bar on January 14, 1987, but apparently never became aware that she needed to file registration statements or pay her fee. For 28 years, she did not register, did not pay the required fees, and did not update her residential and business addresses as required by rules of court. The court suspended her license as part of a mass sweep of noncompliant lawyers in 1998, but she continued to practice as an arbitrator for the Financial Industry Regulatory Authority and as arbitration counsel for the New York Stock Exchange. She even provided free legal advice through a law program sponsored by the New York City Bar Association.

Giovati-Dale only learned of her status when her son discovered it in an online search in 2014. She applied for reinstatement, but in a 2015 decision was suspended, based in part on a finding that she falsely stated she had ceased practicing law. In a [decision published April 8, 2019](#), the court imposed a five year suspension retroactive to her 2015 suspension. She is not eligible to reapply for reinstatement until September 21, 2020.

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### **Coming Soon: Facebook Court?**

Facebook has struggled with the tension between allowing its users freedom of speech, and the need to combat campaigns of hate speech and disinformation that have plagued the platform. Recently Facebook CEO Mark Zuckerberg announced a fascinating new development in the company's struggle with controversial speech: it is considering establishing a judicial-style tribunal to determine questions of free speech – [a Facebook court](#).

Much of Facebook's monitoring is automated with artificial intelligence systems. Zuckerberg has claimed that 98% of terrorist content has been flagged by the company's AI systems before it is even reported. Critics have accused the company both of moving too slowly to identify and cut off abuses of speech, such as hate speech in Myanmar used to incite violence against minority Rohingya Muslims, and of acting too aggressively to shut down speech critics feel should be protected under freedom of speech.

The proposed oversight board would adjudicate individual cases according to an established set of values. The members would not be judges in the traditional sense, but experts in content, privacy, free expression and human rights, among other areas, and be supported by a full-time staff. Legal specialists are also likely to be heavily involved in the process. Proceedings would be private, and the board's decisions would be final and binding on Facebook and the party at issue. The oversight board may be indirectly financed by Facebook, but under a structure that preserves its independence. Facebook would retain the right to moderate posts where required by law, including in countries where online expression is limited.

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### **Put Down that Packing Tape and Step Away from the Package, Sir**

Is your mailroom setting you up for a drug rap? You might be surprised.

According to a [forfeiture complaint](#) filed by the United States Attorney's office in the Southern District of Indiana, too much diligence in packing may bring you to the attention of the Feds as a potential drug dealer.

Paragraph 7 of the complaint describes characteristics that drug task force officers look upon as suspicious:

Parcel / bulk cash smuggling interdiction operations are conducted because it has become common practice for smugglers to use shipping companies, such as Federal Express, to transport illegal controlled substances and their proceeds. Shipping companies provide illegal controlled substances smugglers with many benefits such as faster delivery with predictable dates, package tracking, and delivery confirmation. Based on information and experience, task force officers can easily identify suspicious packages with indicators, such as newly-bought boxes bought from the shipping company, overnight shipping, and excessive taping at the seams of the box.

[Above the Law](#) notes that the protection of a drug-sniffing dog may lie between the too-careful shipper and a federal drug rap, but who wants to take the chance? We wonder if the Feds have a policy on bubble wrap.

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## Chalk One Up to Experience

Things keep getting tougher for our beleaguered police forces. Even the parking meter detail is taking its lumps these days – for the practice of making chalk marks on a vehicle's tires to determine whether it has remained at a meter for more than the allowed time.

A three-judge panel of the Sixth Circuit reinstated a case brought by a motorist tagged with 15 parking violations in three years by a hypervigilant meter minder in Saginaw, Michigan. The driver argued that putting a chalk mark on her tires constituted an unreasonable search in violation of the Fourth Amendment. A district judge dismissed her suit in 2017, but the Court of Appeals reinstated the case in a [unanimous decision](#) announced April 22, 2019.

The Court first found that the physical act of making a chalk mark on the tire constitutes a warrantless search of the plaintiff's chattel, which the City must justify. Second, the Court found that the search is initiated without probable cause with no indication the subject is engaged in wrongful conduct. Finally, the Court disparaged the City's arguments that its actions are justified by public safety, concluding that the primary purpose of the enforcement policy is to raise money for the City's coffers. The Court remanded the matter to the District Court for further proceedings.

Left unsettled is the question of whether a nonintrusive search would meet constitutional muster. Cell phone pictures, perhaps?

## *Disciplinary Board News*

### Supreme Court Adopts Changes in Board Structure

By [Order](#) dated April 18, 2019, upon recommendation of the Disciplinary Board, the Supreme Court of Pennsylvania [amended](#) several of the Pennsylvania Rules of Disciplinary Enforcement and Rule 8.3 of the Rules of Professional Conduct to formally reorganize the operations of the Disciplinary Board.

The amendments eliminate the Office of the Secretary and the position of Secretary of the Board. Now the Executive Director of the Board will oversee the Board Prothonotary's Office, the Attorney Registration Office, finance, human resources, technology, and communications. The Board Prothonotary's Office, headed by the Board Prothonotary, will serve as the Board's filing office. The Board is assisted by legal counsel, consisting of Counsel to the Board, primarily providing guidance to the Board in performance of its duties, and the newly-created position of Special Counsel, primarily providing counsel to the hearing committee members in performance of their duties.

Additional changes give the Board more flexibility in appointing hearing committees and special masters, which will facilitate workflow and ensure the timely advancement of matters through the disciplinary system.

The rule amendments take effect May 18, 2019.

# Attorney Registration

Attorneys – Complete your 2019-2020 annual registration [here!](#)

## 2019-2020 Attorney Registration

✓ *July 1 – Registration Due*

✓ *July 17 – First Late Fee Assessed*

✓ *August 2 – Second Late Fee Assessed*

*After the assessment of the second late penalty, the list of remaining un-registered attorneys will be certified to the Supreme Court for administrative suspension.*

### **Registration is Open; Due July 1**

The portal for attorney registration for 2019-2020<sup>1</sup> is now open. All attorneys admitted to the bar of Pennsylvania must complete registration and pay the annual fee of \$225<sup>2</sup> by July 1, 2019. Electronic registration through the [UJS Portal](#) is mandatory. Payment of the annual fee must be made either by credit or debit card at the time of electronic registration, or by check or money order using a printable, mail-in voucher. IOLTA, trust, escrow and other fiduciary account checks will not be accepted and may result in referral for disciplinary investigation.

If registration is not completed and the fee paid by July 16, the first late fee of \$200 automatically accrues, so the amount due becomes \$425. If these requirements are not satisfied by August 1, a second cumulative fee of \$200 accrues, bringing the total due to \$625. These late fees are mandatory and cannot be waived for any reason, including failure to receive notice, inability to pay, firm or staff oversight, or lack of knowledge of the requirement.

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<sup>1</sup> Yes, it's nearly 2020 already.

<sup>2</sup> \$225 for active attorneys. For inactive attorneys, the initial fee is \$100.

## *Rule Changes*

Effective May 4, 2019, the Disciplinary Board is amending its [Rules of Organization and Procedure](#) to modify [§93.141](#) regarding the annual assessment of attorneys, [§93.111](#) regarding the imposition of penalties on unpaid costs and fees, [§93.144](#) regarding the timelines for attorney registration, and [§89.201](#) regarding review and action by the Board, to make these rules consistent with the [Pennsylvania Rules of Disciplinary Enforcement](#).

## *Around the Court*



In January 2015, the Supreme Court of Pennsylvania established the Advisory Council on Elder Justice in the Courts based on a recommendation from the Elder Law Task Force. The Advisory Council serves as a liaison to the executive and legislative branches, and communicates with the Administrative Office of Pennsylvania Courts and the Supreme Court regarding the implementation of the Task Force's 130 recommendations and other matters involving elder justice. The Advisory Council also provides guidance to the Office of Elder Justice in the Courts, which is part of the Administrative Office of Pennsylvania Courts and is located in Harrisburg.

The Advisory Council is composed of 23 members, all of whom generously volunteer their time and expertise. Superior Court Judge Paula Francisco Ott serves as chair, and former Court Administrator of Pennsylvania, Zygmunt A. Pines, Esq., serves as vice-chair. Justice Debra Todd is the Supreme Court Liaison.

Meetings are held quarterly to work towards the implementation of the recommendations of the Task Force, promote initiatives to support elders and discuss elder justice matters. The Advisory Council recently published a progress report on its work.

More information about the Advisory Council and its Progress Report on the Work of the Advisory Council on Elder Justice in the Courts (January 2015 through December 2018) may be found [here](#).

## *Resources*

[FAQs - For the Public](#)

[Annual Report](#)

[Recent Discipline](#)

[FAQs - For Attorneys](#)

[Rules](#)

[Discipline Statistics](#)

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Disciplinary Board of the Supreme Court of Pennsylvania,  
601 Commonwealth Avenue, Suite 5600, PO Box 62625, Harrisburg, PA 17106

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