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The
DISCIPLINARY BOARD
of the Supreme Court of Pennsylvania

June 2019
Newsletter



From the Chair

I want to convey to all of you one important message in this month's newsletter – please complete your annual attorney registration on or before July 1. The registration [site](#) hosted by the Unified Judicial System opened to all attorneys eligible to register on May 6, 2019. As I mentioned in previous newsletters, 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. The Board strongly urges you to complete your 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. Of note, approximately 50% of attorneys have completed registration by June 10, 2019.



Effective July 1, 2019, the Board has reappointed 39 current attorneys and appointed 35 new attorneys to serve as Hearing Committee members for a term of three years. The Disciplinary Board offers its most sincere gratitude to these members for their willingness to serve the profession in this capacity. Hearing Committee members perform a multitude of tasks, including the review of charging documents and presiding over disciplinary and reinstatement hearings. Information on both the [Discipline](#) and [Reinstatement](#) processes, including the role of Hearing Committees, can be found on our website.

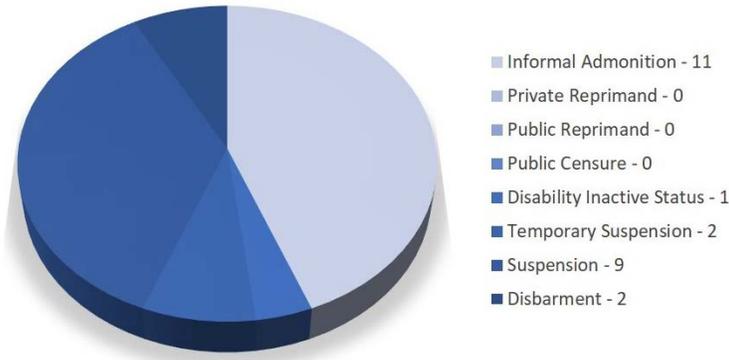
Andrew J. Trevelise, Esquire
Board Chair

Social Media

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Discipline Imposed

May 2019



Suspension

[Peter P. Barnett](#)
[Keith Francis Garrity, Sr.](#)
[Neil Robert Gelb](#)
[John T. Lynch, Jr.](#)
[Benjamin Gerjoy Perez](#)
[Thomas Henry Speranza](#)
[Jean Paulson Tuffet](#)
[Dale Robert Wiles](#)
[James Herbert Wolfe, III](#)

Temporary Suspension

[Edward W. Millstein](#)
[Jimmie Moore](#)

Disbarment

[Miles K. Karson, Jr.](#)
[Jeffrey L. Suher](#)

Articles of Interest

ABA Article Discusses Duty to Disclose Adverse Authority

An [article in the ABA Journal](#) addresses the difficult issue of when a lawyer is required to disclose adverse authority to a tribunal.

The disclosure of adverse authority is covered by [Rule 3.3\(a\)\(2\)](#) of the Rules of Professional Conduct, which states:

(a) A lawyer shall not knowingly:...

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.

The rule is not limited to situations in which the opposing party is unrepresented; in fact, the text of the rule makes clear the failure of opposing counsel to cite applicable adverse authority does not relieve the duty of an attorney who knows of such law to bring it to the tribunal's attention. This principle dates back to an ABA Formal Opinion from 1935 which predates the incorporation of the requirement into the Rules of Professional Conduct.

The duty to disclose adverse authority contains an element of knowing conduct, and thus applies only to authority of which the lawyer is aware. Disciplinary cases on this rule are rare because it is difficult to prove that the lawyer knew of the adverse authority. However, the article notes that [Rules 1.1](#), regarding competence, and [1.3](#), regarding diligence, require that a lawyer thoroughly research the law applicable to the case, and thus if there is significant precedent that contradicts the lawyer's argument, a court may view a lawyer's failure to raise and address it as a breach of candor to the tribunal.

The lawyer is permitted and expected to make any non-frivolous argument that the adverse authority is limited, distinguishable, or that it should be overruled, if possible.

The article cites an Alaska case in which a lawyer was found at fault for failing to mention a precedent directly adverse to his point decided three years earlier. The lawyer had a particular problem in overlooking that decision; he had also been the counsel of record in the earlier case.

Fresh Prints of Bel-Air: California Bar Fingerprint Requirement Turns Up 2000 Convictions

The California Bar had a [problem with compliance with a state statute](#) that imposed a requirement on the agency to obtain data on all convictions of its licensees. The solution the Bar reached was to adopt a [new rule](#) requiring all 189,000 California attorneys to submit to fingerprinting. The lawyers were all fingerprinted at the time of their applications to the bar, but the Bar did not preserve the fingerprints to check for future convictions. The cost of the printing, estimated at \$82, is borne by the lawyers.

As of March, approximately 125,000 attorneys provided fingerprints. Checks on these prints produced records of more than 6,000 criminal history reports, including 2,200 of which the Bar was previously unaware. Most of these were traffic or minor violations, but the Bar learned of 20 unreported felony convictions. Those 20 matters have been referred to disciplinary authorities for prosecution.

As of May 1, a fine will be imposed on any of the remaining 64,000 lawyers who do not comply with the requirement. Those still not in compliance will incur an additional fine, and those who do not supply prints by December 1 face transfer to inactive status. Bar authorities suspect the incidence of unreported crimes may be higher in the ranks of lawyers who have put off compliance with the rule.

No Laughing Matter – or Is It?

Does humor have a place in the practice of law? Regular readers of this newsletter will not be surprised to learn that we have an opinion on this subject. Some of you have objected from time to time to this newsletter's levity, and many more of you have told us you only read it for the jokes.

But enough about us. A Canadian lawyer has [written an article](#) on the place of humor in the law. [Marcel Strigberger](#) practiced civil litigation for many years before retiring and devoting his time to his humorous writing.¹ Yes, he has a [website](#).

Strigberger argues that humor can be a valuable tool in defusing the essentially confrontational work of law. If used with taste and moderation, it will not minimize the seriousness of the subject matter, but can make the human process of working out solutions easier. Strigberger quotes the motto, "we should take our jobs seriously but never ourselves."

He offers three strategies for employing humor in the practice:

1. Use of pictures, puppets, and posters. Strigberger kept a puppet of Foghorn Leghorn on his desk, which he would invite clients to squeeze to hear the humorous messages recorded in the toy. He states that this often made the stressful experience of consulting with a lawyer easier to bear. And he could bill for the humor time.
2. Target yourself. The best humor is directed at oneself, rather than opponents or participants in litigation. However, self-deprecation should be deployed in moderation. People might start to believe you.

3. Borrow from the wise. Strigberger counsels that not everyone should try to be a standup comedian, but remembering witty and pertinent quotes from the well-known can be a useful way to inject humor.

This is a good point to remember the contributions of some of the fine humorists in law we have enjoyed in the past, such as California judge [William Bedsworth²](#) and his column [A Criminal Waste of Space](#), and Pennsylvania's own legendary [S. Sponte, Esq.](#)

Trouble A'Brewing: Federal Judge Ends Corn Syrup Wars

If you watched the Super Bowl, you probably [saw the ads](#). A cartload of corn syrup pulls up to the Bud Light brewery, which for some odd reason resembles a medieval castle. But the king³ refuses the shipment, because Bud Light doesn't use corn syrup; they use rice. So they wheel the barrel to the Miller Light castle, where they have already received their shipment of corn syrup. They take it on through many perils to the Coors Light castle, where it is gratefully accepted. The message: they use corn syrup, we don't.

Because this is America, the ads [quickly resulted in litigation](#). Miller and Coors brought a lawsuit under the [Lanham Act](#) alleging false advertising. Miller and Coors acknowledge that they do use corn syrup, but argue that since the corn syrup is boiled out of the product in the brewing process, the advertisements create a false impression that it finds its way into consumers' cold ones. They also alleged that Bud Light smoothed over the differences between the corn syrup used in brewing and high fructose corn syrup, the sweetener which raises alarm in many consumers.

On May 24, a Federal judge handed down a [decision](#) that may or may not put the corn syrup controversy to rest. In a long opinion that weigh issues such as literal truth that may be misleading and consumer surveys as to the effect of the ads, Judge William M. Conley of the U.S. District Court for the Western District of Wisconsin concluded that the plaintiffs had demonstrated that the advertising was false to the extent it implied corn syrup was still in the product when consumed, but not when it communicated that it was used in the brewing process. He entered a preliminary injunction barring Bud Light from using certain terminology that implied the competing brands contain corn syrup, but not words stating or implying it was used in the brewing process. The Super Bowl ad, remarkably, passes the muster of the preliminary injunction.

¹ We are so envious.

² To whose inspiration we owe this newsletter's traditional technique of inserting humor via footnote.

³ A reference, perhaps, to the "King of Beers?"

Disciplinary Board News

35 Attorneys Take on Hearing Committee Responsibilities; 39 Attorneys Reappointed

The disciplinary system in Pennsylvania is a peer-review system. Before discipline can be imposed on any attorney (except in reciprocal discipline situations), he or she is entitled to a hearing before a panel of volunteer attorneys. These attorneys take time from their schedules to sit through hearings, often extended ones, pore through evidence, read briefs, review recommendations of Disciplinary Counsel, and write detailed reports to guide the Disciplinary Board and the Supreme Court in their determinations. No case (other than one based on a criminal conviction) can go to private discipline, public reprimand, or formal charges until a volunteer hearing committee member has reviewed and approved it.

The 35 newly appointed members listed below have committed to this substantial service to the profession by accepting appointments as Hearing Committee members effective July 1. Also listed below are attorneys already serving as Hearing Committee members who have agreed to extend their service by accepting reappointment to an additional three-year term also effective July 1.

Reappointed Members

District I (*Philadelphia*)

Howard Paul Dwoskin
William J. O'Brien
*Kevin J. O'Brien
*Maria-Louise G. Perri-Quinn
Charles Jay Schleifer
Howard G. Silverman
Andrew J. Soven
Mark William Tanner

District II

Michael Louis Barbiero – *Montgomery*
Stephanie Hollis Klein – *Delaware*
Michael Kuldiner – *Bucks*
Sharon Rose Lopez – *Lancaster*
Colin J. O'Boyle – *Montgomery*
Michael L. Saile, Jr. – *Bucks*
Robert Tyler Tomlinson – *Bucks*
*Cheryl L. Young – *Montgomery*

District III

Lisa Marie Benzie – *Dauphin*
Vincent J. Cappellini – *Luzerne*
Jason C. Giurintano – *Dauphin*
Gerard Michael Karam – *Lackawanna*
Seth Todd Mosebey – *Cumberland*
*†Francis X. O'Connor – *Susquehanna*
Catherine R. O'Donnell – *Luzerne*
*David J. Solfanelli – *Lackawanna*
Michael W. Winfield – *Dauphin*

District IV

Leslie Michelle Britton – *Allegheny*
Gary P. Caruso – *Westmoreland*
Charles W. Garbett – *Lawrence*
Nelson Baker Gaugler – *Allegheny*
Ron Godfrey Jones – *Allegheny*
Lauren Michelle Kelly – *Allegheny*
Kathryn Mary Kenyon – *Allegheny*
Robert J. Marino – *Allegheny*
Thomas Patrick McGinnis – *Allegheny*
*David Ridge – *Erie*
Richard James Schubert – *Allegheny*
*Eric G. Soller – *Allegheny*
George N. Stewart, IV – *Westmoreland*
M. Scott Zegeer – *Allegheny*

Newly Appointed Members

District I (*Philadelphia*)

Francis Ciprero
Anthony Louis Gallia
Kevin Harchar
Catherine Nora Harrington
Debra A. Jensen
Jennifer Ann Santiago
Patrice Smith
Thomas N. Sweeney
Robert Thaddeus Szostak
Suzanne T. Tighe
Heidi Villari
Keld Rolf Wenge
Brian J. Zeiger

District II

Timothy M. Doherty – *Lehigh*
Christopher Watkins Hobbs – *Schuylkill*
Aimee L. Kumer – *Montgomery*
James Joseph McCarrie, II – *Montgomery*
Danielle P. McNichol – *Delaware*
Tuan Naim Samahon – *Bucks*
*Raymond Santarelli – *Delaware*
Joseph Patrick Walsh – *Montgomery*
Christine M. Wechsler – *Montgomery*

District III

Veronica L. Boyer – *Dauphin*
Matthew G. Boyd – *Lackawanna*
Victoria Porcel Edwards – *Dauphin*
Jeffrey S. Loomis – *Tioga*

District IV

Jamie Bishop – *Allegheny*
Jessica Bole – *Allegheny*
Joseph Froetschel – *Allegheny*
Amy Michelle Kirkham – *Allegheny*
Daniel Patrick Lynch – *Butler*
Ashley Ardoin Piovesan – *Allegheny*
Richard William Roda – *Butler*
Jason Charles Tetlow – *Allegheny*
Gregory Reid Unatin – *Allegheny*

* Previously Served as a Hearing Committee Member

† Previously Served as a Disciplinary Board Member

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.

Rule Changes

Supreme Court Approves Rule Amendments

The Supreme Court of Pennsylvania has approved a number of minor amendments to the rules governing disciplinary operations and procedures in a series of orders published May 4, 2019. Several of these amendments bring the Rules of the Disciplinary Board into accord with previously adopted changes to the Pennsylvania Rules of Disciplinary Enforcement.

In a series of amendments published at [49 Pa.B. 2209](#), the Court amended the following rules:

- Rule 8.3 of the Rules of Professional Conduct, Comment 9, amending the duty to report discipline in another jurisdiction to reflect elimination of the position of Secretary of the Disciplinary Board.
- Definitions in Rule 102 of the Pennsylvania Rules of Disciplinary Enforcement for “Court Prothonotary,” Disciplinary Counsel, Experienced Hearing Committee Member, Senior Hearing Committee Member, Legal Counsel, and Special Master were amended.
- Rules 104, 205, 206, 208, 209, 213 through 219, 301, 401, and 403 were amended to reflect changes in titles of positions.

In Order No. 88 published at [49 Pa.B. 2215](#), Board Rule § 93.141, Annual registration, was amended to reflect an increase in the annual fee for registration from \$125 to \$140.

In Order No. 89 published at [49 Pa.B. 2216](#), Board Rule § 93.111, Determination of reimbursable expenses, was amended to add a Subsection (d) providing for a monthly penalty to be added to unpaid taxed expenses and administrative fees.

In Order No. 90 published at [49 Pa.B. 2216](#), Board Rule § 93.144, Administrative suspension for failure to

comply, was amended to move the date when the Board certifies unpaid registrations from August 31 to August 1.

In Order No. 90, published at [49 Pa.B. 2217](#), Board Rule § 89.201, Review by Board, was amended to allow Disciplinary Counsel as well as the respondent-attorney to submit briefs and present argument to a panel of the Board.

Around the Court



Rules Committees

The Supreme Court has established seven procedural rules committees and one evidentiary rules committee to provide advice and make recommendations for rules governing particular substantive areas. Matters taken up by the Rules Committees arrive from multiple sources. Common sources are from within the Rules Committees as they monitor changes in Pennsylvania practice, procedures in other jurisdictions, precedent, and statutory law that may require or warrant rulemaking. Another source is referrals from the Supreme Court, which are often predicated on recent decisions. Rulemaking initiatives are also sparked by inquiries from external sources, including the general public, organizations, the bench, the bar, and intergovernmental workgroups. External requests for rulemaking can be submitted in writing, with supporting documentation if available, to the appropriate Rules Committee in care of its counsel.

Visit the [Rules Committees website](#) to learn more about the Committees and the rulemaking process.

Did you know...

- *In Fiscal Year 2018-2019, the various Rules Committees will have convened approximately 26 times in locations across the Commonwealth, including the Pennsylvania Judicial Center?*
- *In 2018, 22 rulemaking proposals were published for comment?*
- *You can follow the Rules Committees on Twitter [@SCOPARules](#) and receive tweets about proposed rules, adopted rules, and new members?*

Resources

[FAQs - For the Public](#)

[Annual Report](#)

[Recent Discipline](#)

[FAQs - For Attorneys](#)

[Rules](#)

[Discipline Statistics](#)

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