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

July 2019  
Newsletter



## *From the Chair*

One of the most selfless things we can do as lawyers is to perform *pro bono* legal work for those in need. In mid-2018, the Supreme Court of Pennsylvania created a new license status for retired attorneys – Emeritus. An Emeritus attorney is licensed to perform *pro bono* legal work through an eligible legal aid organization. If any of you are currently retired or are contemplating retirement, I encourage you to consider Emeritus status. For more information, visit our [FAQ's for Emeritus Attorneys](#).



Each Pennsylvania lawyer's annual registration filing was due on July 1. For those of you who have not yet completed registration, I encourage you to visit the [site](#) as expeditiously as possible to avoid the imposition of late payment penalties or, in the worst case, administrative suspension of your license. Of note, more than 91% of attorneys have completed registration by July 10, 2019.

Lastly, we wish you all an enjoyable summer!

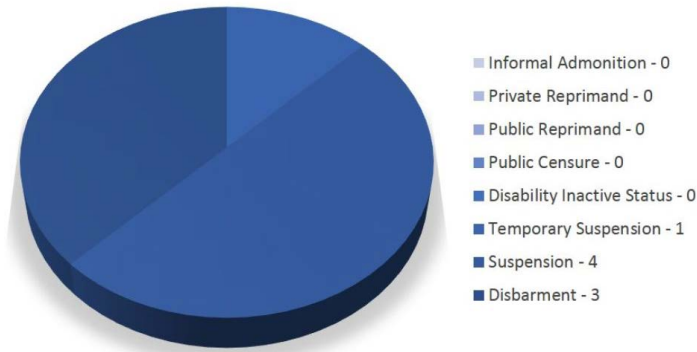
Andrew J. Trevelise, Esquire  
Board Chair

## *Social Media*

Like us on [Facebook](#), follow us on [Twitter](#), and connect with us on [LinkedIn](#) for more news and information.

## *Discipline Imposed*

June 2019



#### **Suspension**

[Douglas B. Breidenbach, Jr.](#)  
[Lenard Fredrick Collett](#)  
[Brian Joseph Smith](#)  
[Susan Steinthal](#)

#### **Disbarment**

[John Kelvin Conner](#)  
[Mark Curtis Hanamirian](#)  
[Kenneth Lasch Smukler](#)

#### **Temporary Suspension**

[Peter Jude Caroff](#)

## *Articles of Interest*

### **ABA Issues New Guidance for Splitting Fees in Contingency Cases When a Lawyer is Replaced**

The [ABA's Standing Committee on Ethics and Professional Responsibility](#) has released an ethics opinion, [Formal Opinion 487](#), addressing the question of [how fees should be divided](#) when a lawyer in a separate firm succeeds an attorney who has been dismissed from a contingent fee matter.

[Rule 1.5\(e\) of the Rules of Professional Conduct](#) addresses fee splitting, but it only applies in situations where multiple lawyers are simultaneously representing the client. It does not apply to a situation where a lawyer formerly represented a client on a contingent fee basis, but has been discharged from the representation and replaced by another lawyer, most likely also on a contingent arrangement. Comment 4 (in the Pennsylvania rule) notes that it typically applies in a referral situation, such as when the lawyer originally retained brings in a trial specialist.

Rules 1.5(b), which requires that the basis or rate of the fee shall be communicated to the client in writing, and 1.5(c), which adds additional specifications the lawyer working on a contingent fee must make to the client, do apply. The Formal Opinion notes that these rules impose on the successor lawyer an obligation to discuss with the client the possibility that fees may be due to predecessor counsel on a *quantum meruit* basis and the risk that the client may pay twice for legal services, and confirm that advice in writing.

Predecessor counsel's fee claim may constitute a lien on any recovery that must be addressed in the distribution of funds. The successor lawyer may participate in evaluating the merits of predecessor counsel's claim. However, if representation of the client in a fee dispute or other proceeding to determine the merits of such a claim is necessary, the lawyer may have to enter into a separate fee agreement with the client for such services.

If an agreement as to prior counsel's claim does not take place, and prior counsel asserts a claim against the recovery, the provisions of [Rule 1.15](#) regarding funds held in trust applies. The opinion states that successor counsel may not distribute funds for the prior lawyer's claim without client consent, but that such consent may be inferred under some circumstances. Successor counsel may have to retain the disputed amount in trust pending the legal resolution or settlement of prior counsel's claim.

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### **Inactive Lawyer Agrees to Suspension for Corporate Practice**

A Pennsylvania lawyer on inactive status has agreed to suspension for 30 months, after disciplinary authorities learned that he continued to work in a legal capacity for a corporation after taking inactive status.

[John T. Lynch, Jr.](#), assumed inactive status in 1983 and moved to Scottsdale, Arizona. He was never admitted to the Arizona or any other bar. In 2009, he accepted employment with Lawson Financial Services of Phoenix, Arizona, to work in the area of investment banking services. For five years he also acted as legal counsel for LFS, overseeing the preparation and issuance of over \$335 million in bond offerings. He prepared opinion letters offering legal opinions, listed himself as an attorney on letterhead, and held himself out as a lawyer in business contacts. He did this in spite of not holding an Arizona certificate of registration as in-house corporate counsel. He was paid approximately \$840,000 for these services, which he viewed as compensation for investment banking activities rather than as legal fees.

Lynch admitted that this conduct violated Arizona law on unlicensed practice. He was reprimanded by the State Bar of Arizona and sanctioned by the Securities and Exchange Commission. Lynch admitted that he was subject to discipline in Pennsylvania under the choice of law provision of [Rule 8.5\(b\)\(2\), Pennsylvania Rules of Professional Conduct](#). He also failed without cause to respond to a DB-7 letter of inquiry, resulting in cause for discipline under [Rule 203\(b\)\(7\) of the Pennsylvania Rules of Disciplinary Enforcement](#). The parties agreed that a suspension of 30 months was appropriate, and the Supreme Court imposed that discipline.

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### **Keeping Your Secrets: The Perils of Redaction**

The risks of practice in the era of electronic documents came to light earlier this year in a high-profile case. In January, the defense team for accused former Trump advisor Paul Manafort suffered an embarrassment when they [filed public documents in Portable Document Format \(PDF\), from which confidential information had not been properly redacted](#), resulting in the information being reported in the press.

An [article in the ABA Journal](#) warns that failure to understand the intricacies of redaction represents a significant risk for technology-shy lawyers in the electronic era. The lawyer who is negligent in redacting sensitive information may violate several Rules of Professional Conduct, including [Rule 1.1, regarding competence](#), [Rule 1.6, protecting confidences](#), and, if the lawyer relies on redaction performed by a subordinate, [Rule 5.3, on responsibilities regarding non-lawyer assistants](#). Comment 8 to Rule 1.1 specifically states that the lawyer "should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology..."

The article notes that some lawyers have tried to perform redaction by such simple and ineffectual

methods as changing the font to white, blacking out with comment tools, deleting certain passages or covering text with a black marker. At a minimum, a lawyer who practices under circumstances where redaction is required should purchase a fairly robust PDF management package such as [Adobe Acrobat Pro DC](#), [Nitro Pro 12](#), [Foxit Phantom PDF](#), [Nuance Power PDF Advanced](#), or [PDF Architect Pro](#), which contain tools for redaction missing from free or economy versions of the same packages.

Even with sophisticated PDF software, it is possible to perform incomplete or flawed redaction that will still expose sensitive information. [This article from the ABA Journal](#) provides step-by-step instructions for redacting your work and checking the redactions in Adobe Acrobat Pro.

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### **Don't Do Me Like That: Petty Estate Mired in Conflict**

The death of Tom Petty on October 2, 2017 shocked many of us who had been fans for decades. Sadly, his legacy has been tarnished by a [bitter dispute](#) between his widow Dana Petty and his two daughters from his first marriage, Adria Petty and Annakim Violette.

At issue is the administration of [Tom Petty Unlimited](#), a limited liability company created to manage the singer/songwriter's intellectual property rights, including the marketing rights to his name and image, royalties, and artistic creations.

Petty's 77-page living trust named Dana Petty the sole trustee of his estate, but recited that Dana, Adria and Annakim ["shall be entitled to participate equally in the management of the Artistic Property Entity."](#) According to the daughters, this gives them two of the three votes and enables them to outvote Dana as to all management decisions of the LLC. Dana argues that Petty intended the LLC to be managed by professionals and that the language was intended to require unanimous consent. She alleges the daughters dismissed a professional manager on whom the parties had agreed when he refused to carry out their directions, such as marketing Petty's image in commercial applications the widow finds unacceptable, while the daughters contend the widow has appropriated commercial opportunities to herself. With Petty's estate valued at \$95 million, the stakes are high. Already the dispute has delayed release of a 25<sup>th</sup> anniversary version of Petty's most successful solo album, *Wildflowers*.

The dispute illustrates the heartbreak that ambiguous language in estate documents can cause. If Petty intended that the entity he created would be professionally managed to minimize conflict between his widow and daughters, more specificity as to his intention might have helped. It is highly unlikely he intended the document to create the level of conflict between his loved ones it has.

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### **Lawyers, Songs, and Money: Musically Inspired Lawsuits**

While we are on the subject, the ABA Journal has compiled a [collection of famous lawsuits involving musical properties](#). "My Sweet Lord," "Stairway to Heaven," "Y.M.C.A.," "As Nasty as They Wanna Be," Fogerty vs. Zaentz, the violent lyrics cases – they're all here.

## Hearing Committee Training

At least annually, the Disciplinary Board hosts a training session for Hearing committee members. These sessions include presentations from Board Members, Board staff, and seasoned Hearing Committee Members. On June 25th, the Board hosted over 50 newly appointed and District III Hearing Committee members for training sessions in Harrisburg. Presentations from Board Members, Board staff, Office of Disciplinary Counsel staff, Respondents' counsel, and Senior Hearing Committee members were offered.

# *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.*

### **Clock is Ticking: If You Haven't, Register Now**

The July 1 deadline to complete your attorney registration and pay the annual fee has come and gone. If this process is not completed on or before July 16, you will incur a \$200 late fee. Let the matter slide past August 1 and two more C-notes will be added to your bill. That's \$400 for a month's delay. Also, after August 2 your name will be certified to the Supreme Court for administrative suspension.

Bear in mind these late fees are not waivable by the Board staff for any reason, and are not subject to any excuse including not receiving a notice or being unable to operate the online registration process.

So if you haven't registered yet, do it now, if not sooner on the [UJS Portal](#).

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### **Emeritus Status; What It Is & How It Works**

By Order effective June 8, 2018, the Supreme Court of Pennsylvania adopted Pennsylvania Rule

of Disciplinary Enforcement (Pa.R.D.E.) 403, creating an emeritus status for attorneys who retire from the practice of law and seek to provide *pro bono* services to 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.

How it works...

1. Submit an [Application for Emeritus Status](#) (and an [Application for Retirement](#), if needed) along with all required supporting documentation and the appropriate license fee as noted on the form.
2. Submit an [Eligible Legal Aid Form](#) **prior to** the commencement of services. Submit a separate form for each Legal Aid Organization for which *pro bono* services will be provided.
3. Renew emeritus status by January 31 of each year (forms mailed in December). Failure to file by January 31 shall result in the emeritus attorney's transfer back to retired status.

Emeritus attorneys are subject to an annual continuing legal education requirement of eight hours, consisting of 6 hours of substantive law, practice, and procedure and 2 hours of ethics, professionalism, or substance abuse, pursuant to the [Pennsylvania Rules of Continuing Legal Education](#). Review the information regarding the new [Pro Bono Pilot Program](#) through which CLE credits can be earned for hours of *pro bono* service completed.

Please see [Pa.R.D.E. 403](#) for detailed emeritus information, review the [Emeritus Attorney FAQs](#), or contact us at (717) 231-3380 or [atty.registration@pacourts.us](mailto:atty.registration@pacourts.us).

## *Around the Court*



**SUPREME COURT OF PENNSYLVANIA**

### **Pennsylvania Interest on Lawyers Trust Account Board**

#### **More Than \$26 Million in Grants Awarded to Legal Aid Providers**

The Pennsylvania IOLTA Board recently announced grant awards totaling more than \$26 million to 35 legal aid providers and each of Pennsylvania's 9 law schools to support the delivery of civil legal aid throughout the Commonwealth in 2019-2020. Additionally, a special 3-year grant was awarded to the Pennsylvania Bar Foundation for the administration of a loan repayment assistance program to help legal aid attorneys manage their student loan debt.

Funding for the IOLTA Board's grants comes from interest income earned on more than 14,000 special attorney trust accounts, court filing fees, a portion of attorney registration fees, class action residual funds, donations, and *pro hac vice* fees. View a complete list of the 2019-2020 grantees and awards [here](#).

### Earn CLE Credit for *Pro Bono* Service

Attorneys may receive one (1) CLE credit hour for every five (5) hours of pro bono service with an IOLTA-funded legal aid organization. View more information on the pilot program [here](#).

## *Resources*

[FAQs - For the Public](#)

[Annual Report](#)

[Recent Discipline](#)

[FAQs - For Attorneys](#)

[Rules](#)

[Discipline Statistics](#)

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