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The
DISCIPLINARY BOARD
of the Supreme Court of Pennsylvania

**April 2020
Newsletter**



Unified Judicial System of Pennsylvania Coronavirus Information

The Pennsylvania Judiciary has provided [updates](#) regarding county-by-county court operations and proceedings. The Court continues to monitor developments regarding the spread of the coronavirus (COVID-19) and its impact on court operations.

[By Order of the Supreme Court of Pennsylvania, all Pennsylvania Courts are generally closed to the public, beginning at the close of business March 19, 2020, and lasting through at least April 30, 2020, subject to general and specific directives and exceptions in the order.](#)

The Court communicates regularly with the Governor's Office and the state Department of Health for guidance on measures to continue protecting the health and safety of court users and court employees.

Contact your local county court for more information or [visit their website](#). Learn more about [filing emergency PFAs](#) during this pandemic. You can also learn more about mitigating the spread of the virus at Health.pa.gov.

From the Chair

Today, it is my honor to write to you as Chair of the Disciplinary Board. Together with Vice Chair John F. Cordisco, I want to assure you that our Board remains focused on maintaining Pennsylvania's attorney regulatory system in the face of the most uncertain period in our lives. We do, at all times, seek to protect the public, maintain the integrity of the legal profession, and safeguard the reputation of the courts.

Rest assured that our staff continue to operate remotely to perform the important work of the Board. We are monitoring the COVID-19 situation closely and are nimble enough to react quickly to ensure the rights of all are protected. Most certainly, I did not envision my first acts as Chair to [extend deadlines](#), [reschedule public reprimands](#), and maintain office closures; however, the situation called for such action.



I want to express my most sincere appreciation to former Chair Andrew J. Trelise for his dedication to the Board throughout his tenure and, in particular, his service as Board Chair. He worked tirelessly in pursuit of the Board's mission and has been an integral part of its success.

Please welcome our three new members to the Board, whose terms commenced on April 1, 2020: [David S. Senoff](#), [Celeste L. Dee](#), and [Hon. Eugene F. Scanlon, Jr.](#)

Above all else, Vice Chair Cordisco and I wish for each of you to stay safe and healthy during these troubled times. Heed the advice of professionals. This, too, shall pass.

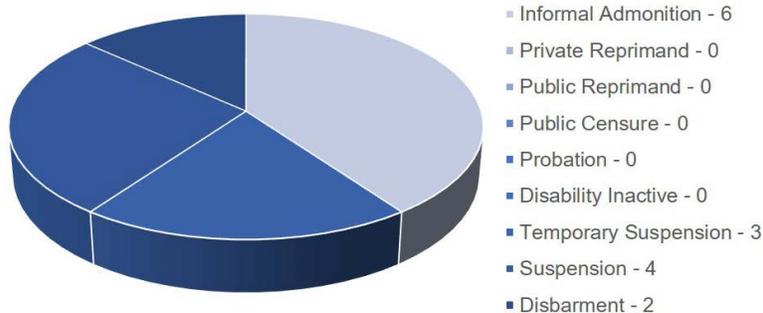
James C. Haggerty
Board Chair

Social Media

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

Discipline Imposed

March 2020



Temporary Suspension

[Robert Barbato, Jr.](#)
[Robert Charles Brabender](#)
[Tancredi William Calabrese](#)

Suspension

[Christopher Corsi](#)
[Rhashea Lynn Harmon](#)
[Jonathan Kimbel O'Neill](#)
[Alexander Z. Talmadge, Jr.](#)

Disbarment

[James Downing Brady](#)
[David M. Gilliland](#)

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 vacancies on the following panel:

- [Civil Procedural Rules Committee](#) - There are **three** positions available. Applicants should be knowledgeable about the Pennsylvania Rules of Civil Procedure and experienced in state civil practice in Pennsylvania.

Application Instructions

If you would like to be considered to serve on a board, committee, advisory group, or related independent entity, email the [application](#), cover letter, resume, and other pertinent information expressing your reasons of interest to SCApplications@pacourts.us. Click [here](#) for more application information. **Applications are due by April 30, 2020.**

Rules

Supreme Court Amends Rule on Fees and Taxed Expenses

By [Order dated March 31, 2020](#), the Supreme Court of Pennsylvania [adopted amendments to Rule 218](#) of the Rules of Disciplinary Enforcement relating to fees and expenses for disciplinary proceedings.

An amendment to Enforcement Rule 218(f)(1) adds a filing fee of \$250 for applications for reinstatement from inactive status pursuant to [Enforcement Rule 301](#) (proceedings where an attorney is declared to be incapacitated or severely mentally disabled).

Enforcement Rule 218(f)(3) is amended to provide a monthly penalty for failure to pay expenses taxed under Enforcement Rule 218(f)(2), within thirty days after entry of an order taxing the expenses. The penalty is set at the rate of 0.8% of the unpaid principal balance, or such other rate as established by the Supreme Court from time to time. The Board is authorized to waive or reduce the penalty, for good cause shown.

Enforcement Rule 218(g) provides that an attorney suspended for one year or less may file a verified statement of compliance, which the Board then certifies to the Supreme Court, leading to immediate reinstatement. An amendment to this provision adds a nonrefundable filing fee of \$250 to be paid with the submission of the verified statement.

Coronavirus Updates for the Legal Community

As everyone in the country surely knows, the news over the last month has been completely dominated by information about the novel coronavirus and the disease it causes, COVID-19. Just as nearly every business in the country has felt the effects of the pandemic, the legal community has faced major adjustments as well. For most of this issue, we will examine articles that relate to the legal community's response to the pandemic.

Pennsylvania Bar Association Issues Opinion & Resources

The [Pennsylvania Bar Association](#) Committee on Legal Ethics and Professional Responsibility has issued a [formal opinion](#) regarding the ethical obligations for lawyers working remotely. The PBA has also provided a [COVID-19 Resources Guide for Lawyers](#).

States Vary on Whether Law Firms Are Essential

As many states and municipalities have exercised their powers to order businesses to close down in the process of controlling the spread of the virus, [law firms have been exempted from the ban in some states and included in others](#). California, Illinois, and Indiana specifically exempted law firms and legal workers from their stay-at-home orders; Michigan did not.

The status of Pennsylvania law firms was not entirely clear. Governor Tom Wolf's [original Order](#) issued March 19, 2020, did not exempt law firms or lawyers. However, a [revision of the Order published March 20](#) eased restrictions on several varieties of professional service firms, including accounting and tax preparation firms, specialty food stores, laundromats, and dry cleaners.

A [Supreme Court Order](#) was issued on March 22, 2020, stating that "Legal Services" must cease physical operations "except as required to allow attorneys to participate in court functions deemed essential by a president judge per the Pennsylvania Supreme Court's order of March 18, 2020, or similar federal court directive, and lawyers may access their offices to effectuate such functions and directives." A [concurring and dissenting statement](#) was issued by Justice Wecht.

The Administrative Office of the Pennsylvania Courts stated that president judges can permit "restricted access" to some lawyers and legal staff "to participate in court functions deemed essential," allowing some firms to reopen their offices for specific cases. Nonetheless, many law firms have arranged for staff to work remotely wherever possible.

ABA Journal Offers Advice on Law Firm Survival

Law firms, like many businesses, are faced with economic challenges in a time when many clients are out of work or suffering dislocations due to stay-at-home orders. The ABA Journal has published an [article setting forth advice to law firms](#) on getting through the difficult times of the coronavirus period.

Topics addressed include negotiating for forbearance with creditors, sources for small business loans, reaching out to clients stranded at home, working with clients who cannot pay, and

networking while offsite.

Stay-at-Home Strikes Contract and Document Review Attorneys

The crisis has caused hardship for many in the legal profession, but two groups hit particularly hard are contract and document review lawyers. Many of these are employed at some of the lowest compensation rates and with the least security and benefits of practicing attorneys. They often work in crowded quarters with significant exposure to other people, and often lack health insurance to protect them if they do get sick.

[Above the Law published an article](#) quoting several contract and documents review attorneys expressing concern about the conditions under which they work and a lack of flexibility in law firms to protect them. Although much documents review work is done on computer systems, some firms have refused to allow temporary lawyers to work remotely, requiring them to report for work in congested conditions. Staffing agencies through whom the lawyers are hired are often more concerned with preserving their law firm clients than with protecting the workers they hire.

Law School Admission Council Cancels March LSAT Administration; July Bar Exam “Under Review” by National Conference of Bar Examiners

Precautions against spread of the virus have led authorities administering examinations relevant to the practice of law to consider or implement delays in the administration of the exams.

The Law School Admission Council [canceled the March 30 administration of the Law School Aptitude Test \(LSAT\)](#), and rescheduled all enrolled for that test for the next date on April 26. It promised a decision on whether the April test would take place by Friday, April 10.

The National Conference of Bar Examiners [announced](#) that it would make a decision about the July 2020 administration of the Multistate Bar Examination (MBE), Multistate Essay Examination (MEE), and Multistate Performance Test (MPT) by Tuesday, May 5. It stated that the decision whether to proceed would be based on reports from the various jurisdictions administering the tests as to their readiness and the risks in the jurisdiction, as well as the status on May 5 of federal, state, and local health orders for isolation/distancing.

Legal Publishers Offer COVID-19 Materials

Several publishers of legal materials have issued new webpages, tools, and materials to help lawyers coping with the COVID-19 crisis. Above the Law has a collection of useful materials [here](#).

[Lawsitesblog.com](#) also has a useful [collection of links](#) on subjects such as practice management, products, services, education programs, news and resources.

Will COVID-19 Change the Paradigm of Court?

During the COVID-19 crisis, people have adapted to perform their work in new ways. We can do much more than we could have ten or twenty years ago, due to innovations such as remote technology, electronic filing, and online dockets. In an [article on Above the Law](#), Jill Switzer, an

attorney with over 40 years' experience, argues that the isolation forced by the pandemic could change our entire concept of practice and the nature of courts. She sees the current isolation practices as an opportunity to find ways to conduct court business more efficiently and economically. Rather than billing clients for unproductive travel time and long waits in courtrooms, she argues that videoconferencing and other technological tools can make life easier for lawyers and less expensive for clients.

She cites an [interview](#) in which legal technology guru and author Richard Susskind argues in favor of an asynchronous, online court system. He also proposes that courts should be viewed not as places, but as a package of services, and that this package should include options for nonlawyers to better understand their rights and obligations and ways for parties to resolve disputes among themselves. Through such a revisioning of the role of courts, it may be possible to build on the tools of a crisis to provide a long-term improvement in the accessibility and affordability of justice.

Judge to Litigants: “Be Kind”

A United States District Court judge in Atlanta helps people keep perspective in unprecedented times. [Judge Amy Totenberg](#) has been adding the following advice to each of her orders: “Be kind to one another in this most stressful of times. Remember to maintain your perspective about legal disputes, given the larger life challenges now besetting our communities and world. Good luck to one and all.”

Articles of Interest

Scams Aimed at Lawyers Continue to Well Up

We have found more stories in the news this month about lawyers who fell or nearly fell victim to scams targeted to the legal profession.

Epiq Global, an e-discovery and managed services company, [took its systems offline after a ransomware attack was detected](#) on its entire fleet of computers across its 80 global offices. Law firms found themselves unable to access their data, as document review teams sat idle.

Ransomware is an attack in which a malicious party locks up a target's computers and releases it only when a ransom payment is made to a carefully disguised source.

Gary Schildhorn, a Philadelphia lawyer, [had a close call](#) when he received a telephone message from a party claiming to be his adult son, saying he was in legal trouble and needed a sum of money wired to him. The lawyer described the call as very convincing. “It was his voice, his cadence, using words that he would use.” Schildhorn thought to check out the veracity of the story, and received a call from his son just in the nick of time informing him the message was not genuine. He suspects that the scammers used Artificial Intelligence to simulate his son's voice.

Voice impersonation is a growing threat as the advance of AI-based voice simulation software makes it possible to mimic voices with remarkable accuracy. Scammers often gather information from voicemail greetings, data breaches, websites and social media to create an accurate replica of a voice, then use spoofed numbers to make it appear calls are coming from the appropriate area of the country. In the United Kingdom last year, scammers used software to impersonate the

voice of a company's CEO, persuading a company official to transfer \$243,000 to what the scammer said was a corporate supplier.

As technology advances to the point where it is nearly impossible to distinguish the real from the faked, the duty of lawyers to maintain technical competence, set forth in Comment [8] to [Rule 1.1 of the Rules of Professional Conduct](#), becomes all the more demanding.

Justice Thomas Urges Reversal of Decision – By Justice Thomas

Supreme Court Justice Clarence Thomas has authored many a dissenting opinion in his long career on the Court, but [one dissent in February was particularly remarkable](#), because in that dissent he argued for the reversal of a 2005 opinion written by Justice Thomas.

On February 24, 2020, the Supreme Court issued a *per curiam* order denying certiorari in [Baldwin v. United States](#), a tax case in which an issue arose regarding the doctrine of Chevron deference, as to whether courts should defer to an administrative agency's interpretation of its own statutes. The appellants in the case argued that the Court should overrule *National Cable & Telecommunications Assn. v. Brand X Internet Services*, 545 U. S. 967 (2005).

Justice Thomas filed a [dissenting opinion](#) in the case, arguing that the Court should accept certiorari and revisit the principle established in *Brand X*. This was remarkable considering that the author of the opinion in *Brand X* challenged in *Baldwin* was Justice Thomas.

Justice Thomas acknowledged the irony of proposing to overrule his own opinion, but cited a concurring opinion in a 2018 case stating, "it is never too late to surrender former views to a better considered position." The author of that concurrence was – Justice Thomas.

Disciplinary Board News

Disciplinary Board Issues Orders in Response to COVID-19

In response to COVID-19, the Disciplinary Board has issued three administrative orders. On April 1, 2020, two Orders were issued; one [extending deadlines for pending disciplinary and reinstatement matters](#) and another [rescheduling Public Reprimands](#). Additionally, an Order dated April 7, 2020 was issued regarding [electronic documents in informal and formal proceedings](#).

Former Board Chair & Two Members Leave Board after Completing Terms of Service

After each completing two terms of service, [Former Board Chair, Andrew J. Trevelise, Esquire](#), [Stefanie B. Porges, M.D.](#), and [P. Brennan Hart, Esquire](#) have left the Board after expiration of their second terms. The Board extends its most sincere gratitude to Mr. Trevelise, Dr. Porges, and Mr. Hart for their years of dedicated volunteer service on the Disciplinary Board.

Disciplinary Board Releases Annual Report

The Disciplinary Board has released its [2019 Annual Report](#). A few highlights:

- 65,252 attorneys maintain active status, of whom 49,069 have Pennsylvania addresses. 10,303 attorneys remain in inactive status.
- 211 matters were resolved in discipline, a 30% increase from 2018.
- The Office of Disciplinary Counsel opened 4,451 cases, and closed 4,353.
- Chief Disciplinary Counsel Paul Killion retired after 17 years of service, the longest tenure of any CDC in Board history. Thomas J. Farrell was named as Mr. Killion's successor.
- The Supreme Court adopted eight rule changes to the Rules of Disciplinary Enforcement, including major reorganizations of the Board membership and staff.
- 43 Joint Petitions for discipline were filed with the Board, of which 37 were approved, 5 denied by the Board, and one by the Supreme Court.
- 96.7% of attorneys paid their annual registration fee on time or within the grace period to pay without penalty.
- 84.5% of attorneys paid their annual registration fees online with a credit card.
- The Office of Disciplinary Counsel made a transition to a centralized intake office, requiring major revisions to its Case Management System.
- The Board installed Smartboard systems in Philadelphia and Pittsburgh, allowing video conferencing and the presentation of testimony and evidence in hearings. A third system is scheduled to be installed in the District II (Montgomery County) office.
- The Supreme Court revised the annual fee for active attorneys to \$225, allocated as \$140 to the Disciplinary Board, \$60 to the Pennsylvania Lawyers Fund for Client Security, and \$25 to the Pennsylvania Interest on Lawyer Trust Accounts Board.

Attorney Well-Being

LET'S TALK ABOUT MENTAL HEALTH

**Depressed?
Stressed?
Anxious?
Overwhelmed?**

YOU ARE NOT ALONE.

LAWYERS CONCERNED FOR LAWYERS
PENNSYLVANIA
www.lclpa.org

LCL CONFIDENTIAL HELPLINE
1-888-999-1941

[Lawyers Concerned for Lawyers](#) is a confidential and safe resource for Pennsylvania attorneys and their family members who may be struggling with their mental health or substance use. An astounding one in three legal professionals will face these issues at some point in their career. Over the past 32 years, LCL has confidentially assisted and supported thousands of individuals who have faced a myriad of challenges (including grief, stress, anxiety, depression, eating disorders, gambling problems, problematic alcohol or prescription drug use, etc.), helping them navigate through dark and difficult times. Members of our profession are dying because they are afraid or unable to ask for help. If you or someone you know is struggling, please call us. You may save a life. There is help and there is hope.

Resources for the Legal Profession During COVID-19

Confidential 24/7 Helpline: 1-888-999-1941

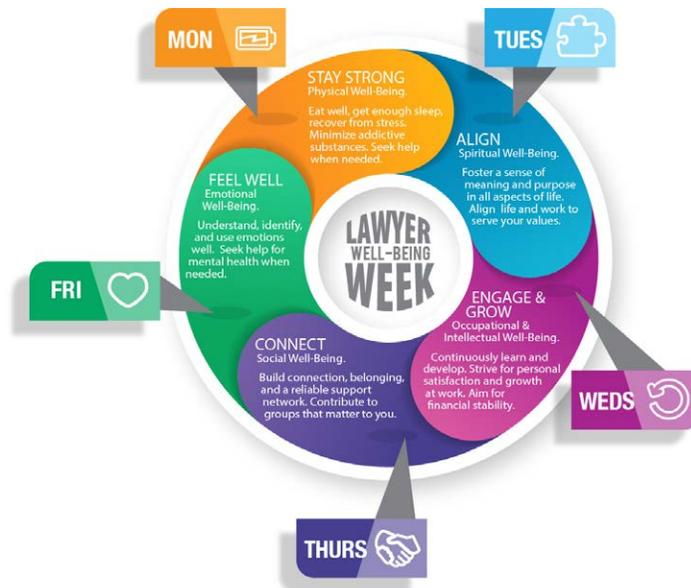
Lawyers-only support meetings

Peer and staff support & resource coordination

LCL resources are free, voluntary, & confidential

Free CLE, resources, and information at www.lclpa.org

Assessment by a healthcare professional to determine a customized treatment plan, if indicated



Lawyer Well-Being Week

To align with Mental Health Awareness Month in May, [Lawyer Well-Being Week](#) will occur **May 4-8, 2020**. The aim of Well-Being Week is to raise awareness and encourage action across the profession to improve well-being for lawyers and their support teams. The Lawyer Well-Being Week team of volunteers has been working hard to make it easy for you to get involved. You can help make a difference by organizing or joining in [activities](#) and [events](#).

Are You Mindful of Your Law Practice?

By Yvette Hourigan

"All negativity is caused by an accumulation of psychological time and denial of the present. Unease, anxiety, tension, stress, worry—all forms of fear—are caused by too much future, and not enough presence. Guilt, regret, resentment, grievances, sadness, bitterness, and all forms of nonforgiveness are caused by too much past, and not enough presence. [Emphasis added]."

Read "[Are You Mindful of Your Law Practice?](#)" in full in the Kentucky Bar Association's publication, *Bench & Bar*.

Yvette Hourigan is the director of the Kentucky Lawyer Assistance Program ([KYLAP](#)). Similarly to [Lawyers Concerned for Lawyers of Pennsylvania](#), KYLAP provides assistance to all Kentucky law students, lawyers and judges with mental health issues and impairments including depression,

substance or alcohol addictions, process addictions and chronic anxiety disorders.

Around the Court



Last summer, the Pennsylvania Board of Law Examiners asked new lawyers in Pennsylvania to participate in a national study to provide critical information that would be used to develop future bar exams. We thank you for your incredible response. Pennsylvania was third after New York and California in the number of new lawyers that participated in a survey to assess the knowledge, skills, abilities, other characteristics, and technology that new lawyers use in the performance of their job. This feedback is incredibly valuable and will guide us in making determinations about the content and format of the bar exam. Again, thank you to those that participated in this project and thank you to the Disciplinary Board and the bar associations that assisted us in getting the word out. The results of the practice analysis survey are online at: <https://testingtaskforce.org/research/>.



SUPREME COURT OF PENNSYLVANIA

Pennsylvania Interest on Lawyer Trust Accounts Board

As an attorney, there are more ways to support the IOLTA Board's mission than simply utilizing your IOLTA account. Consider making a voluntary contribution when you complete your annual attorney registration - or anytime [online](#). Your tax-deductible donation will help to support and expand the availability of legal aid for those without the financial resources to hire an attorney.

We Want To Hear From You...

We are always on the lookout for stories of interest relating to legal ethics, new issues in the practice of law, lawyer wellness, and funny or just plain weird stories about the legal profession. If you come across something you think might be enlightening, educational, or entertaining to our readers or social media followers, [pass it along](#). If you're our original source, there may be a hat tip in it for you.

Resources

[FAQs - For the Public](#)

[Annual Report](#)

[Recent Discipline](#)

[FAQs - For Attorneys](#)

[Rules](#)

[Discipline Statistics](#)

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