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The
DISCIPLINARY BOARD
of the Supreme Court of Pennsylvania

November 2020
Newsletter



Unified Judicial System of Pennsylvania Coronavirus Information

A Message from the Court Administrator

Recently, the Pennsylvania Bar Association, on behalf of its members, raised concerns about the failure to assure compliance with public health guidance concerning mask wearing and social distancing within courtrooms across Pennsylvania.

In response, Geoff Moulton, Court Administrator of Pennsylvania, conveyed a message sharing the Pennsylvania Supreme Court's strong desire that all Commonwealth judges take whatever actions are necessary to assure compliance with applicable guidelines. The relevant CDC guidelines are available [here](#) and provide, inter alia, that "Everyone should [wear a mask](#) in public settings and when around people who don't live in your household, especially when other [social distancing measures](#) are difficult to maintain...[K]eep 6 feet between yourself and others. The mask is not a substitute for social distancing."

Compliance is particularly important as cases in Pennsylvania have risen significantly in recent weeks...While local conditions and resources vary across the Commonwealth, the need to protect all participants while conducting court business does not.

The Court thanks you for your prompt attention to this matter.

The Pennsylvania Judiciary has provided [updates](#) regarding local 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, the general statewide judicial emergency declared and maintained in previous Court Orders of March 16, March 18, March 24, April 1 and April 28 ceased as of June 1, 2020. Any previous Orders in this line shall expire according to their own terms.

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 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

In these turbulent times, we have been faced with unexpected challenges in both our professional and personal lives. “Curiouser and Curiouser,” as Alice once observed. Throughout it all, the resilience of our system of government and, in particular, the practice of law within that system, has shone through. We have adapted, and will continue to adapt, to meet the challenges ahead. As attorneys, we are using new technology to zealously represent our clients. Tom Farrell’s article on the ethical use of technology in this issue is a must read for all practitioners.



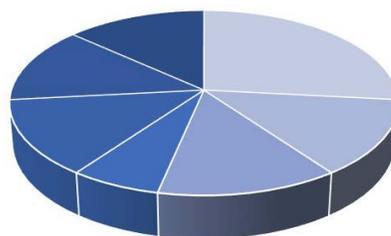
The system established by our founding fathers continues to function. The system of regulation of attorneys established by the Supreme Court of the Commonwealth works for the benefit of all. We are a nation of laws which protects the rights of individuals. As Thanksgiving approaches, let us take time to recognize and appreciate our blessings.

On behalf of the entire Board, we wish you a safe, happy, and healthy Thanksgiving.

James C. Haggerty
Board Chair

Discipline Imposed

October 2020



- Informal Admonition - 4
- Private Reprimand - 2
- Public Reprimand - 2
- Public Censure - 0
- Probation - 0
- Disability Inactive - 1
- Temporary Suspension - 2
- Suspension - 2
- Disbarment - 2

Public Reprimand
[Benjamin Cooper](#)
[James J. Vassallo, Jr.](#)

Temporary Suspension
[Sean Andrew Potter](#)
[Joseph Nicholas Sciulli](#)

Suspension

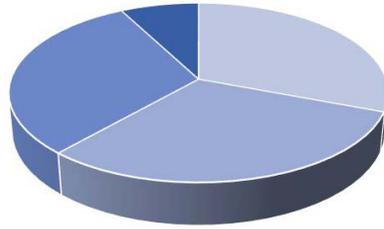
[Frank C. Arcuri](#)
[Tracy Paul Hunt](#)

Disbarment

[Weldon Stephen Caldbeck](#)
[Angelo M. Perrucci, Jr.](#)

Reinstatement Granted

October 2020



- From Inactive - 4
- From Retired - 4
- From Administrative Suspension - 4
- From Disability Inactive - 0
- From Suspension - 1
- From Disbarment - 0

From Inactive Status

[Erika C. Aljens](#)
[Lance Hill](#)
[Kimberly Bane Hynes](#)
[Kalyna Ann Procyk](#)

From Retired Status

[Amy Beth Jones](#)
[Lark Noelle Kurtz](#)
[Mary Kathryn Miluski](#)
[Mark Harris Sidman](#)

From Administrative Suspension

[Robert J. Brown](#)
[Eric Daniel Engberg](#)
[Richard J. Fraher](#)
[James Richard Murdaco](#)

From Suspension

[Anthony Charles Mengine](#)

From Disbarment

[James Daniel Harrison](#) (*Reinstatement Denied*)

Note: The above-listed reinstatements reflect only those granted by Supreme Court Order. An attorney listed above whose current license status does not reflect reinstatement has yet to submit the fees necessary to finalize reinstatement.

Upcoming Public Proceedings

We encourage you to observe our public disciplinary and reinstatement hearings, oral arguments, and public reprimands on the [Board's YouTube channel](#). View "Upcoming Public Proceedings" at the bottom of the Board's home page, www.padisciplinaryboard.org.

November 23 - Stacy Parks Miller Reinstatement Hearing
December 2 - William H. Lynch Disciplinary Hearing

December 15 - William D. Hobson Disciplinary Hearing
January 4 - Robert J. Colaizzi Reinstatement Hearing
January 5 - Brian Joseph Smith Reinstatement Hearing
January 7 - Brittany Marie Yurchyk Disciplinary Hearing

Proceedings are scheduled to begin at 9:30am unless otherwise noted.

Rules

Supreme Court Adopts Permanent Resignation and Readmission Rule

By [Order](#) dated October 29, 2020, the Supreme Court has adopted a set of [amendments](#) to the [Pennsylvania Rules of Disciplinary Enforcement](#) to allow for “permanent resignation” from the bar.

One amendment adds a new Rule 404, providing that an attorney who is not under disciplinary investigation may submit for permanent resignation from the bar without disciplinary stigma. The option is also available to attorneys on administrative suspension but not to those against whom a complaint of misconduct is pending. The resignation would not be defined as “discipline” under Rule 204(a). Additionally, an attorney who has permanently resigned under Rule 404 and desires to be readmitted to the Pennsylvania bar may not be reinstated under the Enforcement Rules and must seek readmission to the bar pursuant to the [Pennsylvania Bar Admission Rules](#).

The Order also [amends](#) Rules 102, 201, 204, and 217 to include permanent resignation.

Disciplinary Board Proposes Bankruptcy Notice Rule

The Disciplinary Board and the Pennsylvania Lawyers Fund for Client Security have published a proposed rulemaking at [50 Pa. Bulletin 5975](#) (10/31/2020), to require some attorneys to notify the agencies upon becoming a debtor in bankruptcy. The Disciplinary Board proposes to add a new Subsection (6) to [Pa. Rule of Disciplinary Enforcement 208](#), regarding discipline, and a new Subsection (4) to [Rule 218\(f\)](#), regarding reinstatement. The proposed sections would require any attorney who is subject to unpaid administrative fees, expenses, or penalties and who becomes a debtor in bankruptcy to notify the Executive Director of the Disciplinary Board in writing within 20 days of filing.

The purpose of the rule is to allow the Disciplinary Board to take timely action in the bankruptcy proceeding, when warranted, to contest the dischargeability of the debt in furtherance of the goals of discipline. At least one federal court has held that such obligations are nondischargeable because they are in the nature of a fine or penalty.

The Pennsylvania Lawyers Fund for Client Security is also proposing a new Rule 532 imposing the same requirement on any lawyers who have received notice either of a claim pending with the Fund or of any disbursement by the Fund on a claim against the lawyer.

Comments may be submitted until **December 4, 2020** to:

The Disciplinary Board of the Supreme Court of Pennsylvania
601 Commonwealth Avenue, Suite 5600
PO Box 62625
Harrisburg, PA 17106-2625

Disciplinary Board Proposes Amendment to Stale Matters and Tolling Provisions

In a proposed rulemaking published at [50 Pa. Bulletin 5977](#) (10/31/2020), the Disciplinary Board proposes to amend its “Stale Matters” rule, [Section 85.10 of the Disciplinary Board Rules and Procedures](#) (essentially its statute of limitations). The rule as currently written provides that no complaint is to be considered more than four years after the act or omission on which it is based, but allows tolling of this limit during the pendency of litigation. The amendment would eliminate the reference to “tolling” the applicability of the rule during ongoing litigation involving civil fraud, ineffective assistance of counsel or prosecutorial misconduct, and provide instead that the matter does not become stale until four years of the subject acts or omissions, or two years after the litigation in which the finding was made becomes final, whichever date is later.

The comments to the proposed rulemaking provide an extensive explanation of why the Board concluded that the tolling provision was ineffective to protect the public interest in disciplinary consideration of matters that are often only discovered in the course of litigation. The creation of a two-year window after findings of misconduct in which action may commence is intended to assure that misconduct does not escape disciplinary review just because it is not discovered in time.

Comments may be submitted until **December 4, 2020** to:

The Disciplinary Board of the Supreme Court of Pennsylvania
601 Commonwealth Avenue, Suite 5600
PO Box 62625
Harrisburg, PA 17106-2625
Fax (717) 231-3381
Email DBoard.Comments@pacourts.us

Disciplinary Board News

Succession Planning Data Released

The Disciplinary Board of the Supreme Court of Pennsylvania collected succession planning data from attorneys during the 2020-2021 Annual Attorney Registration process. The aggregate results of the collected data are available [here](#).

Demographic Data Released

The Disciplinary Board of the Supreme Court of Pennsylvania collected demographic data from attorneys during the 2020-2021 Annual Attorney Registration process. The aggregate results of the collected data are available [here](#).

CDC Corner

Technology and Ethical Issues

The coronavirus pandemic has turned our lives topsy turvy. Lawyers are fortunate in that we can work remotely. Of course, this increases our reliance on technology.

Thankfully (for your author), this is only a brief newsletter article, and guidance for the ethical use of technology can be briefly stated: one must understand information technology (“IT”) sufficiently to use it effectively in one’s representation and to avoid blunders, principally the inadvertent disclosure of confidential information.

Competence

The competence rule, RPC 1.1, states, “Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Comment [8] explains, “a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.”

In its recent opinion in [ODC v. Baldwin](#), the Supreme Court applied this rule and sanctioned Penn State University’s General Counsel (“GC”) for her failure to investigate the University’s electronically stored documents and find documents that would have enabled her to prepare and counsel her clients adequately for grand jury testimony. The opinion teaches three important lessons about IT competence. First, use the experts. The Court cited GC’s failure to consult with the Penn State IT unit as part of the reason for finding a Rule 1.1 competence violation. Second, do not rely on your non-expert clients. The GC asked her clients to search for responsive documents. That request did not satisfy the Court. Third, if you need time (and resources) to perform a thorough electronic search, get it. The Court acknowledged that the grand jury subpoena left insufficient time for investigation and preparation. But, the Court ruled, she should have requested or moved for a continuance.

Remote hearings and arguments

Many courts, including the Pennsylvania appellate courts and the Disciplinary Board, have turned to remote video for conferences, arguments and even evidentiary hearings using platforms like Zoom and Webex. This innovation probably will survive the current pandemic. While some attorneys believe that they lose the opportunity to persuade a room with their charisma, it saves time and money, improves safety, and increases accessibility for many litigants and witnesses.

The technology is simple. Schoolchildren use it. Learn it, ask questions, prepare. Ensure that you have a robust uninterrupted connection. Practice how you will stand or sit, how you will arrange your background, and how you will address the screen.

Confidentiality

Numerous ethics opinions and articles have been issued on the need to secure confidential information when teleworking. *E.g.*, [PBA Formal Opinion 2020-300](#); [ABA Formal Opinion 482](#); [ABA Formal Opinion 483](#); [Ethics in the COVID-19 Pandemic \(Michigan State Bar\)](#). In especially

sensitive circumstances, that may require encryption of communications. ([ABA Formal Opinion 477R](#)). But a few minimal standards do emerge. Do not conduct calls or video conferences in the presence of third-parties. Secure devices, such as smart phones or computers, or those files within them that hold privileged information, with passwords. If you want a discussion to be privileged, ensure that all participants are within the attorney-client tent – clients, signatories to an explicit common interest agreement, or consultants within the privilege. Finally, do not bcc (“blind carbon copy”, from when there were such things), clients on emails with third-parties. See [PBA Formal Opinion 2020-100](#).

The use of social media can raise numerous issues beyond the scope of this article – advertising issues, the inadvertent creation of an attorney-client relationship by giving advice, improper contacts with jurors and parties (see, e.g., [ODC v. Stacey Parks Miller](#)) – but a reminder of one bearing on confidentiality: Rule 1.6’s requirement of confidentiality extends beyond the attorney-client privilege and forbids disclosure, absent the client’s informed consent, of all “information relating to representation of a client.” Therefore, exercise caution when posting about your victories, telling war stories, or complaining about your clients online.

Communication

A final observation about information technology. You should assume that anything you email, message, or video-confer will be recorded – for posterity. Be discrete, be professional, be courteous, be ethical in everything you say and write, even into the electronic ether.

Thomas J. Farrell
Chief Disciplinary Counsel

Articles of Interest

When Must a Personal Relationship Be Disclosed? ABA Formal Opinion Weighs In

A new opinion by the American Bar Association’s Standing Committee on Ethics and Professional Responsibility, [Formal Opinion 494](#), provides guidance as to what kind of personal relationships must be disclosed to a client to obtain informed consent. The ABA provides a [summary](#) of the opinion.

[Rule 1.7 of the Rules of Professional Conduct](#) prohibits a lawyer from representing a client if he or she has a concurrent conflict of interest, which occurs when there is a significant risk that the representation of the client will be materially limited by the lawyer’s responsibilities to a third person or by a personal interest of the lawyer. Under Rule 1.7(a)(2), the lawyer may proceed with the representation if the client gives informed consent. Under the definition of [Rule 1.0\(e\)](#), informed consent is only possible if the lawyer has communicated adequate information and explanation about the conflict to allow the client to make an informed decision. A concurrent conflict can arise where a lawyer has a personal relationship with opposing counsel or another significant actor in the matter.

The opinion addresses three categories of relationships: intimate relationships, friendships, and acquaintances. [Read more...](#)

ABA Young Lawyers Study: Student Debt Crushing Young Lawyers

The ABA's Young Lawyers Division has released its [2020 Law School Student Debt Survey Report](#), which contains some dramatic findings about the effect of student debt on law students and young lawyers. The Division published a [summary of the report](#). The [ABA Journal](#) and the [Legal Intelligencer](#) have provided coverage on the report.

The survey found that more than 75% of respondents had at least \$100,000 in student loans at graduation; over half had more than \$150,000; and more than a quarter had \$200,000 or more. In 2019, law graduates owed an average \$145,000 when they left campus, compared with about \$80,000 in 2003. [Read more...](#)

Judge Orders Every Federal Prosecutor in Manhattan to Read Opinion

A Federal judge in Manhattan was so incensed by the conduct of prosecutors in a case before her that she wrote a [scathing opinion](#), and ordered every Federal prosecutor in Manhattan to read it.

[U.S. District Judge Alison J. Nathan of the Southern District of New York](#) found that prosecutors failed to make numerous required disclosures to the defense, made them late when required, and misrepresented facts to the court when called to account, concluding that they "at best, toed the line with respect to their duty of candor."

The defendant, Ali Sadr Hashemi Nejad, was charged and initially convicted for violating sanctions against Iran. After the failures of disclosure came to light, the government then agreed to drop the case, and Nathan vacated the verdict and dismissed the indictment with prejudice. In her September 16 opinion, however, Nathan made it clear dismissal did not end her inquiry into the conduct of the U.S. Attorney's Office. Nathan wrote, "To be clear, the Court does commend the USAO for admitting error and ultimately seeking to do justice in this case. But the dismissal of charges is not a basis for sweeping the Government's repeated failures under the rug."

She ordered that the Acting United States Attorney ensure that all current Assistant US Attorneys and Special Assistant US Attorneys in the jurisdiction read the opinion, and submit a declaration affirming this has occurred. She further ordered all trial team members, supervising unit chiefs, and Special Assistant US Attorneys to submit individual declarations regarding their knowledge of and actions in the case.

Fifteen Ways to Spot a Deepfake

As we have [written before](#), new techniques for creating false but remarkably realistic videos, known as "deepfakes," have created a risk that video evidence will be altered and compromised. This creates a need for lawyers who work extensively with video evidence to develop an ability to detect video compromised with deepfake technology.

Norton, a leading company in the field of digital security, has [published a useful guide](#) to spotting deepfakes. The article identifies fifteen signs that the video may have been altered. [Read more...](#)

Doobie Brothers Send Bill Murray Epic Cease and Desist Letter

Cease and desist letters have become something of a literary genre in legal writing. Over the years we have noted many well-written and amusing ones in this space. [A new example](#) from counsel for 2020 Rock and Roll Hall of Fame inductees The Doobie Brothers to Bill Murray joins our gallery of classics.

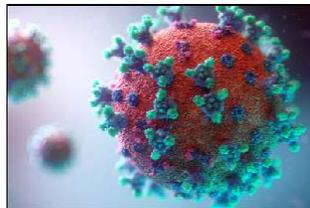
Murray owns a line of golf apparel. The company used the Doobies' hit song "Listen to the Music" without permission in ads for a shirt called "Zero Hucks Given." This prompted a cease and desist letter from Doobies counsel Peter T. Paterno, who noted, "given that you haven't paid to use it, maybe you should change the name to 'Zero Bucks Given.'"

Far from finished, Paterno adds, "This is the part where I'm supposed to cite the United States Copyright Act, excoriate you for not complying with some subparagraph that I'm too lazy to look up and threaten you with eternal damnation for doing so. But you already earned that with those Garfield movies."

Not to be outdone, Murray's counsel Alexander Yoffe responded with a [settlement offer](#): "Please provide us with the shirt size for yourself, Tom Johnston, Patrick Simmons, Michael McDonald, and John McFee, along with which of our client's shirts you find the least offensive, and we will happily upgrade your wardrobes and hopefully win each of you over as new fans of the brand."

"At least that's [what this fool believes.](#)"

Attorney Well-Being



Coping with COVID-19?

LAWYERS CONCERNED FOR LAWYERS
— PENNSYLVANIA —

Overwhelmed? Anxious?

Concerned about your own mental health or
substance use during these stressful times?

Concerned about the mental health of a
family member or colleague?

100% Confidential Helpline
1-888-999-1941

www.lclpa.org

[Lawyers Concerned for Lawyers](#) (LCL) 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.

[Resource Guide 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

Around the Court



Pennsylvania Supreme Court, Department of Human Services to Hold Statewide Discussions about Autism in the Courts

Committed to access to justice for Pennsylvanians with an autism spectrum disorder (ASD), the Pennsylvania Supreme Court, along with the Pennsylvania Department of Human Services (DHS), today announced plans for regional discussions aimed at learning about court experiences from individuals with an ASD.

Spearheaded by Supreme Court Justice Kevin Dougherty on behalf of the Court, the virtual kickoff roundtable will be held Nov. 17, with regionally scheduled discussions to follow.

“Earlier this year, the Supreme Court signaled its commitment to Pennsylvanians with autism by forming a first-of-its-kind partnership with the Department of Human Services to heighten our focus on helping judges better understand and communicate with individuals with an ASD,” said Justice Dougherty.

“Education and awareness are critical to ensuring we are providing for the needs of all court users, especially those with an ASD,” Dougherty said. “The more we learn, the more we grow as a system and as a community, but most importantly in our ability to be part of the type of positive change that will impact Pennsylvania families.”

[Read the full press release.](#)

From the Pennsylvania Bar Association



The Disciplinary Board would like to welcome the Pennsylvania Bar Association (PBA) to our newsletter! Look here for PBA-provided information in future newsletters. We thank the PBA for this collaborative effort to provide information to our subscribers!

2020 is a year of challenges. Lawyers like you are feeling the impact of COVID-19 on their careers. The Pennsylvania Bar Association (PBA) is hard at work providing tools and insights and prompting changes that are pushing back on the pandemic. These are some of the actions taken by the PBA so far this year:

- Advocating with the Supreme Court of Pennsylvania and its CLE Board for an extension of the April CLE compliance period and for allowing all 2020 CLE credits to be done through distance learning
- Advocating for a provisional law license for law school graduates in light of the postponement of the bar exam to October and establishing the PBA Project Board that lists professional assignments for these law graduates
- Partnering with the Pennsylvania Board of Law Examiners to help connect candidates for the bar with quiet rooms with doors that close and stable Wi-Fi when taking the online bar exam
- Extending eligibility for the Wills for Heroes program to provide estate planning documents to health care professionals fighting on the front lines against COVID-19
- Issuing the first-in-the-nation formal ethics opinion regarding lawyers' ethical obligations when working remotely
- Lobbying for extension of the paycheck protection program leading to the enactment of the Paycheck Protection Program Flexibility Act
- Lobbying in Harrisburg for remote notarization and remote municipal meetings, which was ultimately enacted as Act 15 of 202
- Advocating with the Administrative Office of Pennsylvania Courts for the wearing of masks in courthouses

Please note that the Disciplinary Board of the Supreme Court of Pennsylvania and the Pennsylvania Bar Association (PBA) are separate organizations. For more information about PBA, visit their [website](#).

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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