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

December 2020  
Newsletter



### Unified Judicial System of Pennsylvania Coronavirus Information

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*

The year 2020 has certainly presented many unique challenges. The Board, like you, has adapted to the many issues which have arisen. The Board has striven to advance its mission, namely, to protect the public, to maintain the integrity of the legal profession, and to safeguard the reputation of the Courts. Looking back over the year, we are pleased with all that the Board has accomplished in 2020.

At this time of reflection, we also encourage all attorneys, particularly solo practitioners, to look ahead. The Board suggests to all members of the profession that they develop and maintain succession plans to protect their clients in the event of their retirement, disability, or death. In this month's PBA Section of our Newsletter, you can find registration information for a Succession Planning CLE offering on



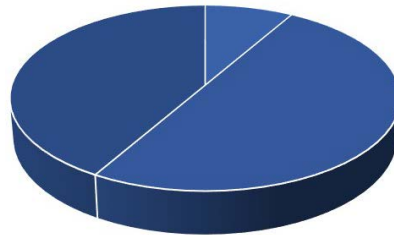
December 16, 2020. A succession plan should be an integral part of your practice for the benefit of both your clients and your families.

Congratulations on surviving a rather tumultuous year. On behalf of the entire Board, we wish you all a safe, happy, and healthy holiday season.

James C. Haggerty  
Board Chair

## *Discipline Imposed*

**November 2020**



- Informal Admonition - 0
- Private Reprimand - 0
- Public Reprimand - 0
- Public Censure - 0
- Probation - 0
- Disability Inactive - 0
- Temporary Suspension - 1
- Suspension - 6
- Disbarment - 5

### **Temporary Suspension**

[Gordon D. Fisher](#)

### **Suspension**

[Barry Jay Beran](#)

[Ryan D. Breen](#)

[David Michael DeClement](#)

[Susan Ann Lowden](#)

[David E. Piver](#)

[Jami Segota](#)

### **Disbarment**

[Robert Barbato Jr.](#)

[Steven Blaine Hayhurst](#)

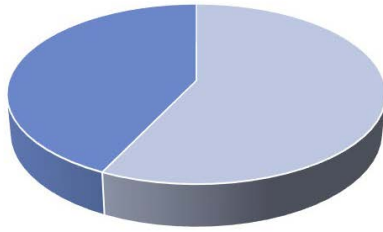
[Mark A. Hoffman](#)

[Lance Timothy Mason](#)

[R. Bruce Ralston](#)

## *Reinstatement Granted*

**November 2020**



- From Inactive - 4
- From Retired - 0
- From Administrative Suspension - 3
- From Disability Inactive - 0
- From Suspension - 0
- From Disbarment - 0

#### **From Inactive Status**

[Charles Ferguson Adams, III](#)  
[Robert Clayton Alspach](#)  
[Monica Atwood Hanover](#)  
[Nicole Victoria Ozeran](#)

#### **From Administrative Suspension**

[Mark Gerard Esposito](#)  
[Michael A. Ferruggia](#)  
[Lori Lowenthal Marcus](#)

*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](http://www.padisciplinaryboard.org).

December 9 **at 12:00 pm** - Stacy Parks Miller Reinstatement Hearing (Cont.)  
 January 4 - Robert J. Colaizzi Reinstatement Hearing  
 January 5 - Brian Joseph Smith Reinstatement Hearing  
 January 7 - Brittany Marie Yurchyk Disciplinary Hearing  
 February 2 - Penelope A. Boyd Disciplinary Hearing

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

## *Rules*

### **Supreme Court Adopts New Comment [5] to Pa.R.P.C. 1.5**

By [Order](#) dated November 25, 2020, the Supreme Court of Pennsylvania amended Rule 1.5 of the Pennsylvania Rules of Professional Conduct, adding a new [Comment \[5\]](#) regarding successor counsel in contingency fee matters.

The new Comment [5] states that in a situation where a client terminates a lawyer hired on a contingent fee basis and retains a new attorney, "successor counsel must notify the client, in writing, that some portion of the fee may be due to or claimed by predecessor counsel for services

performed prior to the termination, and should discuss with the client the effect of that claim on successor counsel's proposed fee agreement."

The new Comment [5] also states that successor counsel's participation in negotiation of fees with predecessor counsel on the client's behalf may result in a conflict of interest, and that successor counsel must advise the client of the conflict and obtain informed consent to the representation as set forth in Rule 1.7. Written consent is not essential under the Pennsylvania rule, but is highly beneficial to both successor counsel and the client.

The new Comment [5] further provides that "if a dispute arises regarding distribution of the recovery, successor counsel must hold the disputed portion of the funds in trust pending resolution, in accordance with Rule 1.15(f)."

This rule change is effective immediately.

## *Disciplinary Board News*

### **Disciplinary Board Publishes Financial Institutions List**

The Disciplinary Board has published its annual list of financial institutions approved for the maintenance of fiduciary accounts. These institutions have agreed to comply with the requirements of Rule 221, Pa.R.D.E, which provides for trust account overdraft notification. The listing may be found at [50 Pa.B. 6662](#) (November 21, 2020).

## *CDC Corner*

### **Dot Your I's, Cross Your T's, and File Your Statement of Compliance**

Fitness to practice law requires many things, among them the competence to learn the rules that govern an attorney's conduct and the resolve to follow them. Recently, the Board explained that failure to follow the Rules of Disciplinary Enforcement can have dire consequences for an attorney who seeks reinstatement after disbarment or suspension.

The Supreme Court's usual order of suspension or disbarment includes the following language: "Respondent will comply with all the provisions of Pa.R.D.E. 217." The Disciplinary Board Prothonotary follows up with a letter to the Respondent which encloses the following:

1. Standard Guidance of the Disciplinary Board
2. Rule 217 of the Pa.R.D.E.
3. Form DB-23, Nonlitigation Notice of Disbarment, Suspension or Transfer to Inactive Status
4. Form DB-24, Litigation Notice of Disbarment, Suspension or Transfer to Inactive Status
5. Form DB-25, Statement of Compliance (for lawyers suspended or more than one year) or DB-25ts (for lawyers temporarily suspended or suspended for a year or less)

These forms can be found [here](#).

Rule 217 imposes a number of obligations on the suspended or disbarred lawyer, all explained in the Rule and the "Standard Guidance." One is that the lawyer must file with the Board and serve on Disciplinary Counsel a "verified statement of compliance" – the form DB-25 or 25ts. See Pa. R.D.E. 217(d)(1).

What if the attorney did everything else Rule 217 requires – stopped practicing law, notified his clients and courts, etc. – but failed to file the statement of compliance?

The Board recently faced this issue. Back in 2015, Petitioner was suspended for five years. The Supreme Court ordered him to comply with Rule 217, and the Board Prothonotary sent him a letter which notified him of his obligations and enclosed the Form DB-25.

Petitioner complied with the requirements of Rule 217, except for one: he did not file a statement of compliance until five years later, in July 2020, when he filed his petition for reinstatement.

The Board Prothonotary refused to accept the petition for filing because under Pa.R.D.E. 217(e)(3), “After the entry of an order of disbarment or suspension for a period exceeding one year, the waiting period for eligibility to apply for reinstatement to the practice of law shall not begin until the formerly admitted attorney files the verified statement required by subdivision (e)(1) of this Rule.” (A different rule governs suspensions of one year or less and suspensions and disbarments made retroactive, see Pa.R.D.E. 217(e)(3), 218(g)(1). See also D.Bd. Rule §89.272).

Petitioner asked the Board to reconsider, but the Board ruled that the Rule had to be enforced as written: *Undoubtedly, the rule’s application to Petitioner’s circumstance yields a very harsh and severely disproportionate result, as Petitioner cannot seek reinstatement until July 30, 2025. However, review of the rules and the case law offers no authority for me to grant Petitioner the relief he requests. Indeed, only the Supreme Court of Pennsylvania has such authority. Therefore, I am constrained to conclude that absent any authority that permits the Board to disregard a provision of the Enforcement Rules, the Board is bound by Pa.R.D.E. 217(e)(3) and must enforce its provisions, however unfortunate. In accordance with the unambiguous language of Pa.R.D.E. 217(e)(3) that the waiting period for eligibility “shall not begin” until the formerly admitted attorney files the Statement, Petitioner is not eligible to file his Petition for Reinstatement at this time.*

A harsh result, indeed, but it is what the rules require. And more than anyone else, lawyers must follow the rules.

Thomas J. Farrell  
Chief Disciplinary Counsel

## *Articles of Interest*

### **Pennsylvania Judge’s Resignation Upheld after Inflammatory Comments**

An Allegheny County judge, charged with making racist and demeaning remarks in court, resigned on the eve of trial and promised never to seek judicial office again. The Court of Judicial Discipline [accepted the resignation](#), holding that both the resignation and promise were “binding and irrevocable.”

Mark V. Tranquilli served as a judge of the Court of Common Pleas since 2014, after a career as a homicide prosecutor. The [complaint filed against Tranquilli](#) alleged that among other incidents, he had:

- Referred to a Black juror who wore a kerchief as “Aunt Jemima,” and remarked that she went home to her “baby daddy” who probably “slung heroin.”
- Told a couple in a custody conciliation conference that he would “split [their] baby in half like Solomon and sleep like a baby that night.”

- Used mock Ebonics while discussing communication with a Black couple.
- Told a mother with two children out of wedlock that she had “lain down with dogs” and that her life could have been different “for the cost of three shiny quarters in any bathroom at any rest stop in the state of Pennsylvania.”
- Told a defendant at sentencing that if he violated probation, Tranquilli would “cast [him] down among the Sodomites in state prison.”
- Suggested to a prosecutor that he should strike a juror solely based on her race.

Tranquilli was scheduled to go to hearing before the Court of Judicial Discipline on November 18, 2020, but the day before, he submitted his resignation and promised never to seek judicial office again.

The Court of Judicial Discipline found that the resignation and pledge were “binding and irrevocable,” and ordered that his judicial salary, which had been withheld since August, would be forfeited. The order left open the question of whether Tranquilli’s judicial pension was affected.

The [Pittsburgh Post-Gazette](#) and [ABA Journal](#) have published details of the case.

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### **Supreme Court, Department of Human Services Convene Discussions on Autism in the Courts**

Autism often presents challenges to the people who experience the syndrome and those who interact with them. Individuals with autism or similar conditions often do not respond to incentives and penalties the way other people do, and when they appear before the courts, the approaches that work for most people often will not be successful.

Supreme Court Justice [Kevin M. Dougherty](#) is spearheading an effort to improve the ability of the courts to understand and deal effectively with people with [Autism Spectrum Disorder](#) (ASD). Under Justice Dougherty’s direction, the Supreme Court and the Department of Human Services, along with representatives from the judiciary, law enforcement, healthcare, social work, and advocacy communities, as well as individuals affected by ASD, are [convening a series of discussions](#) on the response of the courts to ASD. “Education and awareness are critical to ensuring we are providing for the needs of all court users, especially those with an ASD,” Justice 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.”

The first roundtable discussion was held virtually on November 17, 2020. A series of regional discussions will follow. The Court System has established an [“Autism and the Courts” webpage](#) at which interested persons may view video of the discussions. ASERT (Autism Services, Education, Resources, and Training), a partnership of medical centers, centers of autism research and services, universities, and other providers involved in the treatment and care of autism, has also developed a program to train judicial system personnel in autism and its handling. ASERT has created a [Judicial Resources webpage](#) with links and videos to help those involved with the judicial process to understand and deal effectively with autism.

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### **Woman Accused of Posing as Prosecutor, Dropping Charges Against Herself**

[A woman from Littleton, New Hampshire](#), faces new charges that she filed court documents posing as the prosecutor in her criminal case, dropping the charges against herself.

Lisa Landon, 33, was the defendant in drug possession and stalking cases. She used New Hampshire's electronic filing system to file documents purported to contain a nolle prosequi filed by Assistant County Attorney Patrice Casian. She also filed what appeared to be an Order by a retired Superior Court judge to waive filing fees in a lawsuit she brought against Hillsborough County and another on behalf of a relative to halt guardianship proceedings involving Landon's child.

The fraud was discovered by a state forensic examiner, who had been scheduled to perform a competency evaluation on Landon. He noticed the dropped charges in Landon's court file and contacted prosecutors to ask whether the examination should proceed. The fraud unraveled quickly after that.

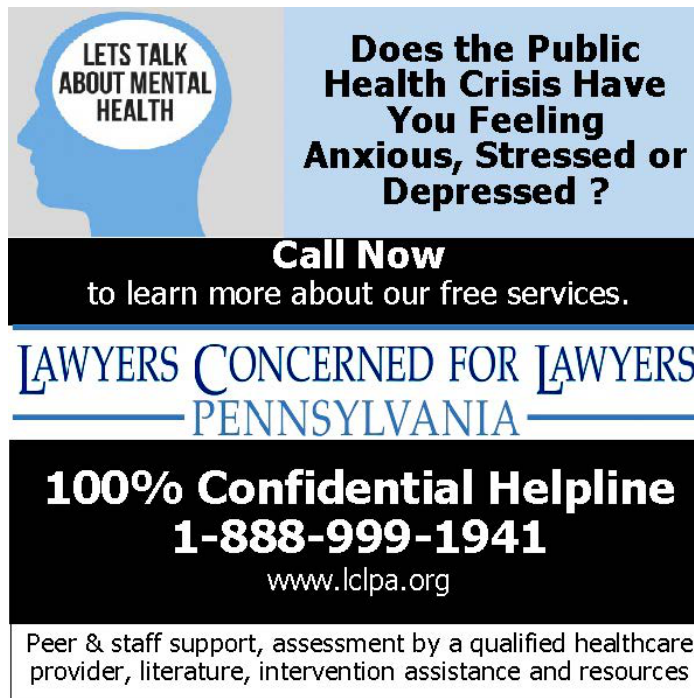
A new indictment charges Landon with one charge of false personation and six charges of falsifying physical evidence.

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### Lawyers Share Best "Gotcha" Moments

These are the moments a trial attorney lives for – when the opponent's case completely blows up in open court. [Thirteen lawyers share the incidents when they knew a case was won.](#)

## Attorney Well-Being



Advertisement for Lawyers Concerned for Lawyers (LCL) Pennsylvania. The graphic features a blue silhouette of a head with a thought bubble containing the text "LET'S TALK ABOUT MENTAL HEALTH". To the right, the text asks, "Does the Public Health Crisis Have You Feeling Anxious, Stressed or Depressed?". Below this, a black banner says "Call Now to learn more about our free services." The LCL Pennsylvania logo is centered, followed by a black banner with the text "100% Confidential Helpline 1-888-999-1941 www.lclpa.org". At the bottom, a white box contains the text: "Peer & staff support, assessment by a qualified healthcare provider, literature, intervention assistance and resources".

[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](http://www.lclpa.org)

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

## *Around the Court*



### **PA Supreme Court's Advisory Council on Elder Justice in the Courts Urges Enhanced Protection of Older People during COVID-19 Pandemic**

The Pennsylvania Supreme Court's Advisory Council on Elder Justice in the Courts recently issued a statement calling on all Pennsylvanians to help protect the rights of residents in long-term care facilities throughout the ongoing pandemic.

In Pennsylvania, there are 1,100 long-term care facilities with known Covid-19 cases.\*

"Since the first documented cases of COVID-19, under the leadership of Governor Wolf and Secretary Levine, action was taken to develop policies and procedures to track, treat, and prevent the virus from spreading, and ongoing efforts and collaboration among state agencies continue," said Senior Judge Paula Francisco Ott, chair of the Advisory Council. "Settings which were impacted the most included long-term care facilities where there were 32,687 cases, many persons were infected, and 5,860 died.\* Over the last eight months, the Commonwealth has responded to this crisis by increasing testing and building stocks of protective personal equipment. As numbers of cases once again surge, we must keep our eyes on this vulnerable population and continue to address any gaps. The Governor's Office, the Department of Health, the Department of Human Services and the Department of Aging are meeting every other week with advocates."

In its statement, the Council urged stakeholders to immediately consider recommendations with respect to the care of older people in Pennsylvania's nursing and long-term care facilities outlined in the [PA Advocates Report](#) recently issued by a coalition of advocates for older persons and persons with disabilities.

Among these recommendations is one that calls for the resumption of on-site access to residents by those who are legally required to protect and assist with decision-making, such as attorneys, counsel, fiduciaries, agents, and guardians, etc. Social isolation is known to be especially



detrimental to older people.

“Our statement reflects that the Advisory Council on Elder Justice in the Courts recognizes the need for Pennsylvania to promptly address the extraordinary challenges created by the COVID-19 pandemic that are severely impacting vulnerable older Pennsylvanians,” said Senior Judge Ott. “Consistent with the recommendations in the PA Advocates and Elder Law Task Force Reports, the Advisory Council is urging all elder care and elder justice stakeholders to provide the necessary access and accommodations to assist older people in protecting their welfare and securing their legal rights.”

*\*State Data and Policy Actions to Address Coronavirus, Covid-19 Metrics by State as of 11/12/20, Kaiser Family Foundation ([www.KFF.org](http://www.KFF.org))*

[NOTE: THE ABOVE STATEMENT REPRESENTS THE VIEWS OF THE ADVISORY COUNCIL ON ELDER JUSTICE IN THE COURTS AND DOES NOT NECESSARILY REPRESENT THE OFFICIAL VIEWS OF THE SUPREME COURT OF PENNSYLVANIA.]

Read the full statement [here](#).

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### **Pennsylvania's Veterans Treatment Courts Make a Difference for Veterans**

Pennsylvania's veteran population ranks fourth in the U.S. with 814,000 veterans as of 2019. Since 2009, [Pennsylvania's Veterans Treatment Courts](#) have been assisting veterans who are charged with crimes and are struggling with addiction, mental illness or other co-occurring disorders.

Veterans Treatment Court participants appear before a judge on a regular basis; receive support and guidance from veteran mentors; and get treatment to address underlying problems often caused by post-traumatic stress disorder. In 2019, 189 veterans graduated from this specialty court, which is a 75 percent successful graduation rate.

In Pennsylvania, 51 of 67 counties currently have treatment courts (Drug, DUI, Mental Health, and/or Veterans Treatment Court) in which veterans can participate if they meet the eligibility criteria. Additionally, all justice-involved veterans are entitled to a [Veteran Justice Outreach](#) (VJO) program specialist to help them navigate the Veterans Affairs system and get them connected with services available to them.

### What are Veterans Treatment Courts?

Veterans Courts assist veterans who are charged with crimes and are struggling with addiction, mental illness or other co-occurring disorders. Veterans Court participants:

- 1) Appear before the judge on a regular basis
- 2) Gain support and guidance from veteran mentors
- 3) Receive supervision by specialized probation officers
- 4) Get treatment and support to address underlying problems often caused by post-traumatic stress disorder
- 5) Work closely with the VA Veterans Justice Outreach coordinators



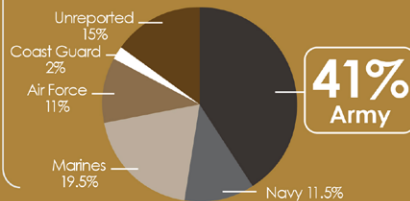
**814,000**  
total veterans in  
Pennsylvania (2019)

Pennsylvania's  
veteran  
population  
ranks  
**4th**  
in the  
United States

The first  
veterans  
treatment  
court  
opened in  
Lackawanna  
County  
**in 2009**

**303** admissions  
in 2019

They came from the following branches of service:



**25** veterans treatment courts in  
Pennsylvania were active in 2019.  
(Common Pleas)

**12** counties have veterans  
diversion programs  
(Magisterial District Court)

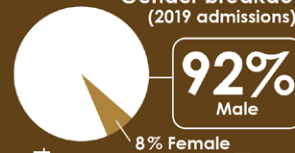
**189** veterans graduated  
in 2019  
which is a **75%** successful  
graduation rate.

**46%** increase in employment  
among successful graduates.

Average age at  
screening was

**44**

Gender breakdown  
(2019 admissions):



Statewide court programming for Veterans Courts and all problem-solving courts are supported by the AOPC.

AOPC

## From the Pennsylvania Bar Association



### Pennsylvania Bar Institute to Host Succession Planning Webcast

On Wednesday, December 16, the Pennsylvania Bar Institute (PBI) will host ["Succession](#)

[Planning for Lawyers: What Will You Do With Your Practice](#)" beginning at 1:30pm. The webcast is 3 hours long earning participants 3 CLE credit hours (2 substantive and 1 ethics).

Whether an attorney's practice is litigation-based or transactional - in a large firm or solo practice - the significant importance of developing a succession plan remains. The obligation to prevent neglect of a client matter extends post attorney death, disability, and retirement.

The PBI webcast will include information on:

- The steps required to wind down a law practice,
- Ethical concerns every attorney should consider prior to transition,
- The importance of maintaining proper malpractice insurance coverage, and
- Detecting the effect(s) of COVID-19 on the succession planning process.

With a proper succession plan, attorneys can proactively protect their clients and colleagues in the event of retirement, disability, or death. [Register now](#) to discover a strategy for developing a succession plan.

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*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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