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The
DISCIPLINARY BOARD
of the Supreme Court of Pennsylvania

April 2019
Newsletter



From the Chair

Today, it is my honor to write to you as Chair of the Disciplinary Board. Together with Vice Chair James C. Haggerty, I want to assure our readers that our Board is more determined than ever to ensure the Pennsylvania attorney regulatory system remains one of the finest in the nation. We do, at all times, seek to protect the public, maintain the integrity of the legal profession, and safeguard the reputation of the courts.

At the outset, I want to express my appreciation to former Chair Brian J. Cali for his mentorship and dedication to the Board throughout his tenure on the Board and particularly his service as Board Chair. He worked tirelessly in the Board's efforts to reorganize and modernize the Disciplinary Board's operations and in advocacy of the profession. He set a high standard which we will strive to maintain.



Our Board spent much time and energy reviewing best practices to address attorney succession planning. When Pennsylvania attorneys complete their annual registration requirement beginning in mid-May, they will notice the new voluntary succession planning question. We believe by asking the question and sparking dialogue in the profession, perhaps we can address the concern that exists nationwide. For more information on this topic, please review the thoughtful article previously presented by Board Member Dion G. Rassias [here](#).

Demographic information collected during the 2018-2019 Attorney Registration cycle has been compiled in the aggregate and placed on our website. You may review the data [here](#). The same voluntary information will be collected again during the 2019-2020 Attorney Registration cycle.

Please welcome Ms. Gretchen A. Mundorff to our Board, whose [term commenced](#) on April 1, 2019.

Along with Vice Chair Haggerty, I expect that the coming year will present the Disciplinary Board with opportunities to continue to become even more efficient and modern. We are grateful for the opportunity to lead such a distinguished organization.

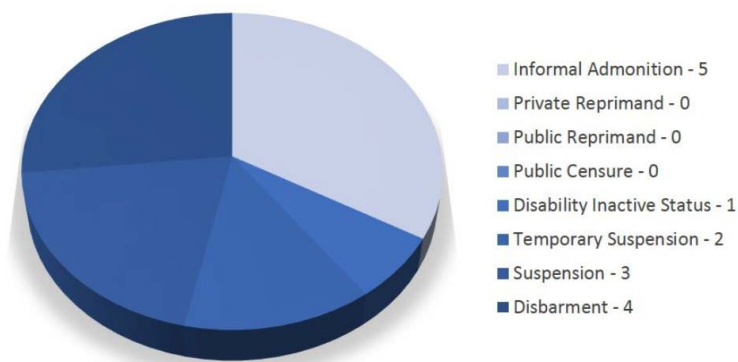
Andrew J. Trevelise, Esquire
Board Chair

Social Media

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Discipline Imposed

March 2019



Suspension

[William J. Weiss](#)
[Catherine Ann Muldoon](#)
[Dominic A. Penna](#)

Disbarment

[Theodore Hauptle Smith](#)
[Joseph Q. Mirarchi](#)
[Kathleen Granahan Kane](#)
[Dan Haendel](#)

Temporary Suspension

[Miles K. Karson, Jr.](#)
[John Kelvin Conner](#)

Articles of Interest

Ethics for Feds: Supreme Court Considering Ethics Code, Federal Judiciary Bars Sexual Harassment

U.S. Supreme Court Justice Elena Kagan [told a House subcommittee](#) exploring judicial accountability that Chief Justice John Roberts is considering the adoption of a code of ethics specifically for Supreme Court justices. Kagan and Justice Samuel Alito [both told the committee](#) that due to the unique nature of the high court, there are practical and Constitutional reasons not to hold the justices to the same code of judicial conduct that governs the rest of the Federal judiciary.

Also in March, the Judicial Conference of the United States, which leads in policy matters for the Federal judicial system, [adopted a package of amendments](#) to the [Code of Conduct for U.S.](#)

[Judges](#), the [Code of Conduct for Judicial Employees](#), and the [Judicial Conduct and Disability \(JC&D\) Act Rules](#) designed to prevent sexual harassment and ensure the integrity of the misconduct complaint process in judicial workplaces.

The Judicial Conference press release notes that many of the changes are implicit in the existing codes, but the amendments are intended to make clear that unwanted, offensive, or abusive sexual conduct, retaliation, or concealment are unacceptable. Complaint procedures are strengthened and streamlined, and additional training and alternative options are made available.

Kathleen Kane, Former Attorney General, Disbarred

The remarkable saga of the short and turbulent term of Kathleen Granahan Kane as Attorney General of Pennsylvania is coming to a close. By an [order dated March 22, 2019](#), the Supreme Court of Pennsylvania accepted Kane's resignation statement and disbarred her on consent. Her resignation statement cited her [convictions in the Court of Common Pleas for Montgomery County](#) of several offenses related to her actions as Attorney General. She is currently serving a 10 to 23 month sentence at the Montgomery County Correctional Facility.

Outsourcing: An Attractive Idea, but Ethical Implications Apply

In an era where many lawyers and law firms seek to run lean as a way of keeping costs down, many practices find that outsourcing services once performed in-house by law firms can be a wise financial move. Examples of services that are often outsourced include use of:

- Investigative or paralegal services;
- Third party vendors for scanning, replication, or printing of documents;
- Graphic arts firms or consultants for the creation of exhibits;
- Internet-based services to store client information;
- Document management company for creation and maintenance of complex litigation databases;
- Third-party vendors to provide and maintain a law firm's computer system, accounting and bookkeeping, marketing, call handling, and legal research.

As practices become more specialized and support options proliferate, even more activities traditionally handled by lawyers may come to be outsourced in the future.

A [presentation at the ABA's Techshow](#) in Chicago examined ethical considerations of outsourcing. One of the presenters noted that the [ABA's Commission on Ethics 20/20 report](#) from 2012 made several recommendations as to outsourcing, most of which have since been incorporated into the comments on Pennsylvania's [Rules of Professional Conduct](#). Comments to two of the Pennsylvania Rules of Professional Conduct follow the recommendations of that panel. Comments 6 and 7 to [Rule 1.1, Competence](#), provide guidance on retaining or contracting with lawyers outside the firm, and obligations where lawyers from more than one firm or practice provide legal services to a client in the same matter. Comments 3 and 4 to Rule 5.3, Responsibilities Regarding Nonlawyer Assistance, address the use of nonlawyer services in client matters.

[ABA Formal Opinion 08-451](#) (2008) also addresses issues arising from outsourcing, particularly to lawyers. Precautions addressed in the opinion include:

- Conducting research and background checks on third party vendors to assure their

- reliability;
 - Assessing the quality of legal education of lawyers in other countries to whom work is delegated;
 - Consideration of the legal landscape of countries where vendors are located as to search and seizure, protection of client rights, and legal and administrative remedies;
 - Communicating with the client about the delegation and perhaps obtaining informed consent;
 - Reasonableness of fees. The outsourced services should be billed to the client at cost, not with a markup except as is necessary for administrative purposes;
 - Assuring that the persons performing outsourced work are legally qualified to perform that service in the jurisdiction where they are located.
-

Judge's Order Freezes Old Man Winter from Snowing

A judge in Minnesota (of course) has entered an [emergency temporary restraining order](#) barring certain defendants from dropping any more snow on certain areas of Minnesota.

Judge Kevin S. Burke acted on behalf of the citizens of Minnesota, reportedly represented by the law firm of Sue, Grabit, and Run. The defendants are Minnesota meteorologists, Old Man Winter, and Mr. Snow.¹

The Court, while skeptical as to whether service could be made, determined that issuance of the order was supported by Article I Section 8 of the Minnesota Constitution, states in relevant part, "Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive....."

The Court then considered the four factors for injunctive relief, and found all were met. The first factor is the relationship of the parties. The Court noted that Minnesotans by necessity have a long and generally positive relationship with Defendant Winter, but found that "Defendants have a fiduciary duty to the Plaintiffs not to overdo it."

The second factor, the balance of harm between the parties, was also resolved for the plaintiffs. The Court noted that the defendants could dump all the snow they wanted on the neighboring states of Iowa, South Dakota, North Dakota, and Wisconsin (particularly the City of Green Bay).

Plaintiffs prevailed on the factor of likelihood of success on the merits, as the Court determined that no jury would find in favor of the defendants, "absent a change of venue of this case to Arizona or Florida."

Finally, the Court found in favor of the plaintiffs on public policy considerations, noting compelling evidence in the record that defendant Minnesota Meteorologists have conspired with the other defendants to increase television and radio ratings. The Court added, "Who, for example, would watch the weather in Hawaii where it is always nice?"

Sadly, the limits of judicial power were on display, as a major snowstorm [wrought havoc](#) the week after the order was entered. Minnesotans will no doubt recall the experience of another sovereign of Viking ancestry, [King Canute](#).

¹ In a possible Pennsylvania connection, Punxatawney Phil may be interpleaded as a third-party defendant on a misrepresentation theory.

Disciplinary Board News

Former Board Chair, Brian J. Cali, Leaves Board after Completing Terms of Service



Brian J. Cali, Esquire, of Lackawanna County, left the Board after expiration of his final term as a member of the Disciplinary Board. Mr. Cali was originally appointed to the Disciplinary Board in 2013 and was re-appointed in 2016. In April 2018, he was designated by the Supreme Court of Pennsylvania as Board Vice-Chair and then, in August 2018, as Disciplinary Board Chair. [Read More...](#)

Mr. Cali's work as Chair can be found in the Board's recently released [2018 Annual Report](#).

Attorney Registration

2019-2020 Attorney Registration

- ✓ Mid-May – Registration Opens
- ✓ 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.

Registration Coming Up: Don't Be Late!

Notices for registration for the 2019-2020 will go out in about a month. As always, submission of the registration form and payment of the annual fee are due by **July 1, 2019**.

This year, failing to submit one's registration and fee on time will be costly on a shorter timeframe than ever. In February, the Supreme Court approved an [amendment to Enforcement Rule 219](#)

shortening the periods within which the two penalty assessments attach if the fee is not paid on time.

The first penalty used to be imposed after July 31. That date has been moved up to July 16. The second, separate penalty has been accelerated from August 31 to August 1. Each of these penalties is imposed separately, and they are cumulative. This means that if you fail to pay your fee of \$225² timely, a first penalty of \$200 will be assessed on July 17, bringing your total due to \$425. If you fail to pay this amount by August 1, a second penalty of \$200 will accrue, bringing the total due to \$625. These penalties are mandatory, and Board staff cannot waive or forgive them for mitigating causes, including failure to receive the notice or inability to pay.

It is definitely in the interest of each Pennsylvania lawyer to complete registration and pay the annual fee on a timely basis.

² \$225 for active attorneys. For inactive attorneys, the initial fee is \$100.

Succession Planning

Succession planning is essential to every attorney's practice. Recognizing that the future is unpredictable, attorneys should strive to lessen the impact of unexpected interruption in their relationships with clients by taking protective measures. The Disciplinary Board has spent much time and energy reviewing best practices to address attorney succession planning. As a result, an additional section regarding succession planning will be on the registration form starting this year. The section will require attorneys to indicate whether he or she has or has not designated a successor. Although attorneys are required to provide a response in this section, failure to have a designated successor is NOT a violation of the Rules of Professional Conduct or the Pennsylvania Rules of Disciplinary Enforcement.

For more information on this topic, please review the thoughtful article previously presented by Board Member Dion G. Rassias [here](#).

Demographic Information Collection

During 2018-2019 annual registration, the Disciplinary Board began collecting demographic information to develop a baseline of the current status of diversity within the legal profession in Pennsylvania. Demographic information will continue to be collected and reviewed each year during annual registration. Any response to the demographic questions is stored only in the aggregate form.

Following the conclusion of the 2018-2019 annual registration process, the data was shared with the court; individual selections were not. The aggregate results of the data collected can be viewed [here](#).

Rule Changes

By [Order](#) dated March 26, 2019, the Supreme Court approved an amendment to [Rule 208\(d\) of the Pennsylvania Rules of Disciplinary Enforcement](#), allowing both parties to submit briefs and request oral argument before a panel of the Board. Prior to the amendment, only the Respondent-Attorney had this right.

Around the Court



CLE Credit for Pro Bono Work

A new pilot project approved by the Supreme Court allows lawyers the option to earn continuing legal education (CLE) credits for pro bono work. Attorneys may receive one CLE credit for every five hours of pro bono work completed through an Accredited Provider of Pro Bono CLE. Up to three credits may be applied to the annual CLE requirement. Participation by legal service providers is voluntary and organizations seeking to participate in the pilot may apply for approved status with the Continuing Legal Education Board. Attorneys who wish to participate will receive their case assignments, training and other preparation material through the approved provider. The provider will also handle the filing of CLE credits to the Board. The pilot project began on January 1, 2019 and will run through 2021. This initiative is an example of the CLE Board's efforts to tie educational activities to pro bono work and connect lawyers with legal service providers to boost participation.

Additional information including eligibility requirements, pilot project conditions and a list of approved providers is available on the CLE Board's [website](#).

Resources

[FAQs - For the Public](#)

[Annual Report](#)

[Recent Discipline](#)

[FAQs - For Attorneys](#)

[Rules](#)

[Discipline Statistics](#)

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