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The
DISCIPLINARY BOARD
of the Supreme Court of Pennsylvania

September 2020
Newsletter



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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

It is with sincere sadness that we mourn the passing of Justice Ruth Bader Ginsburg. Small in stature but a giant in the law, the "Notorious RBG" was a person of principal and integrity. As attorneys, there are lessons we should all learn from her, namely fight for your beliefs, support the rule of law and honor and respect your opponents. Her passing is a loss to us all. We need to strive to emulate her example in our everyday practice of the law.

The right to practice law is a privilege. We should treat it as such. It is a right not easily earned but sometimes unfortunately forfeited. Our goal on the Disciplinary Board is to protect the public while helping fellow members of the Bar who may be experiencing difficulties. Lawyers Concerned for Lawyers (www.lclpa.org) is an organization we need to value and support.

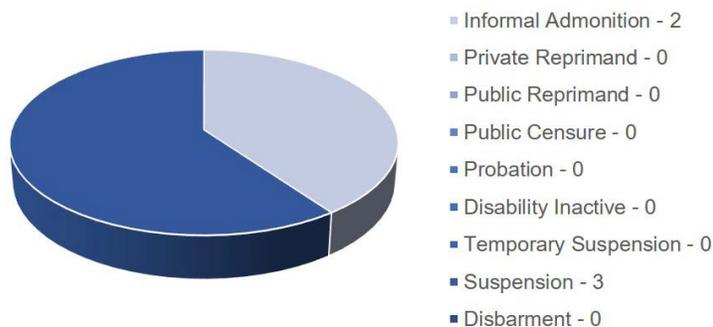


We enjoy the ability to represent clients in the ever changing maze of laws and regulations. We need to remember that we occupy a unique role in society. We must not lose sight of the fact that our clients are persons who often turn to us in times of need. Our opponents are men and women of integrity, striving to do their best in representing clients. They all deserve our respect and admiration. The practice of the law is a privilege. Please treat it as such.

James C. Haggerty
Board Chair

Discipline Imposed

August 2020



Suspension

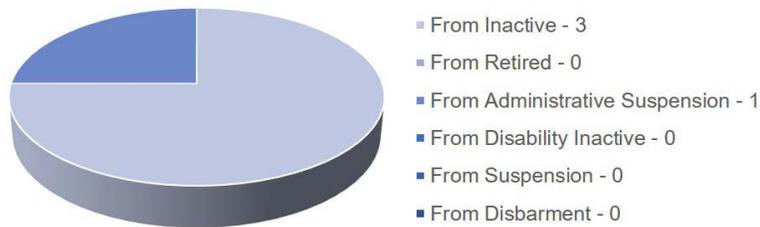
[Methuselah Z.O. Bradley, IV](#)

[Michael Bruce Greenstein](#)

[Darren Keith Parr](#)

Reinstatement Granted

August 2020



From Inactive

From Administrative Suspension

[Lenard Fredrick Collett](#)
[Joseph Vern Erwin](#)
[Samantha Tran Estevez](#)

[Janice Elaine Butler](#)

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.

Disciplinary Board News

Public Proceedings Scheduled for October; Available on YouTube Channel

The Disciplinary Board has scheduled the public proceedings listed below for October. All may be viewed by members of the public on YouTube. The public may observe all 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, for future scheduled proceedings.

[10/7 - Oral Argument](#)

[10/8 - Disciplinary Hearing](#)

[10/13 - Public Reprimands & Oral Argument](#)

[10/27 - Disciplinary Hearing](#)

CDC Corner

Must Disciplinary Violations Be Intentional?

That's a hard no.

While the Supreme Court's answer is straightforward, the way it was developed and explained have important implications.

The Court faced this issue head-on in [ODC v. Anonymous Attorney A](#). A prosecutor failed to comply with his discovery obligations in a criminal case but represented to the Court, falsely, that he had. This resulted in reversal of the conviction and a disciplinary action which charged a violation of the fraud or misrepresentation rule, RPC 8.4(c).

The Disciplinary Board dismissed the action because ODC failed to prove that the misrepresentation was made with knowledge of its falsity. The Court reversed. It held that while negligence is insufficient to prove a Rule 8.4(c) violation, recklessness suffices.

In [ODC v. Price](#), the Court extended the recklessness standard to rules other than RPC 8.4(c) which use the word "know" or some variation, such as "known" or "knowingly". *Price* involved false accusations against a judge and other false statements, charged as violations of RPC 3.1, 3.3(a) (1), 4.1(a), 8.2(b), 8.4(c) and 8.4(d). The Court held that the *Anonymous Attorney A* standard governed all the violations. Further, in determining if recklessness is proven, once falsity is shown "[t]he burden then shifts to the respondent to establish that the allegations are true or that he had an objective reasonable belief that the allegations were true, based upon a reasonably diligent

inquiry.”

Finally, in [ODC v. Surrick](#), the Court held that the obligation on the respondent to demonstrate a reasonable basis for his statements means the recklessness standard is an objective not a subjective one: “To substitute a subjective approach merely because a different rule of professional conduct is at issue is not a valid basis for distinguishing *Price* from the case at issue. The measure of whether conduct was knowing or reckless can be ascertained by an objective analysis. In fact, to utilize a subjective approach would prevent this court from establishing a clear demarcation as to the standard of behavior that is expected from all members of the bar. Just as the law measures liability against the standard of the reasonable man, so do the rules of disciplinary conduct measure the ethical behavior of the members of the bar by the standard of the reasonable lawyer.”

From these cases, three lessons: (1) Proof of a reckless disregard for the truth establishes “knowledge” for disciplinary violations. (2) This is an objective standard. A lawyer has an obligation to show a reasonable basis for her assertions and a reasonable effort to determine their truth. Insistence on subjective good faith doesn’t cut it. (3) Ignorance of the law is no excuse, for a reasonable lawyer has an obligation to know the law. So, for example, a prosecutor’s ignorance of caselaw construing the breadth of her obligation to search for and produce exculpatory evidence is no defense to a Rule 3.8(d) violation. It might bear on the severity of the sanction, but not on the fact of the violation.

Thomas J. Farrell
Chief Disciplinary Counsel

Attorney Registration

2020-2021 Attorney Registration Summary

Annual Attorney Registration opened on April 27 this year. Over 76,000 attorneys were eligible (and required) to complete annual registration by July 1. Over 85% of attorneys completed their registration by the July 1 deadline. Prior to the assessment of the first late fee, 97% of attorneys had completed their registration. Over 98% of attorneys completed their registration prior to the assessment of the second late payment penalty on August 2.

Registration commencement also kicks off a schedule of *numerous* email reminders sent to attorneys still needing to complete their registration at the time of email delivery. These reminder emails (sent from PA.AttorneyRegistration@pacourts.us) continue to be sent until an individual's registration is complete. Emails are sent to a variety of groupings: all attorneys needing to register, those who created a voucher but payment has not yet been received, those attorneys recently admitted to the Pennsylvania bar, etc. Regular communications regarding registration requirements are only sent electronically. Because of this, it is crucial that all Pennsylvania attorneys comply with [Pa.R.D.E. 219\(d\)\(3\)](#) regarding submitting all contact information changes within 30 days of a change. If you don't notify us of your new contact information, we can't notify you of your outstanding requirement(s).

On August 12, a Supreme Court Order was issued to administratively suspend the remaining non-compliant attorneys. In the 30 days prior to the effective date, attorneys have the opportunity to complete their registration and thus be removed from the list of those to be administratively suspended. On September 11, 2020, [374 attorneys were administratively suspended](#) for continued failure to complete their annual registration. The number of attorneys administratively

suspended this year is significantly less than usual. Thank you to all of the attorneys who registered timely!

Articles of Interest

Disbarred Former Attorney Charged with Theft of Half of Massive Settlement

A disbarred former attorney from Bucks County has been [charged with multiple felony theft offenses](#) based on allegations he stole more than \$500,000 of a client's million-dollar settlement and applied the funds to financing his own lavish lifestyle.

Montgomery County District Attorney Kevin R. Steele [announced](#) the arrest of disbarred attorney [Michael F. Bradley](#), of Warrington, on August 20, 2020, on charges including Dealing in Proceeds of Unlawful Activities, Theft by Unlawful Taking or Disposition, Theft by Deception, Receiving Stolen Property and Theft by Failure to Make Required Disposition of Funds Received.

The charges arise from Bradley's representation of Branden Thornton, who was seriously injured as a pedestrian in a motor vehicle accident in 2012. Bradley negotiated an insurance settlement which resulted in the payment of over \$1 million for Thornton's medical expenses and lifelong care. The funds were delivered to Bradley for distribution and deposited into his bank account. Bradley was entitled to a contingent fee of \$276,250 for his services.

The charging documents allege that Bradley misappropriated \$563,840.75 of the \$1,105,000 settlement funds. They further allege that Bradley commingled the funds in his business account and used them for personal purposes, including mortgage payments, renovations to his home, new furniture, vacations, plastic surgery, jewelry, college tuition, student loan payments, vehicle payments, and nearly 1,000 purchases from Amazon.

Thornton's mother became suspicious when Bradley told her the settlement funds were depleted. She filed a complaint with the Office of Disciplinary Counsel who referred the matter for criminal investigation, which led to the charges filed. Bradley was [disbarred by consent](#) on February 8, 2019.¹

Bradley's attorney William J. Brennan commented, "It's important to remember that he's presumed innocent... [W]hen I have the opportunity to review the discovery in this case, we will decide on an appropriate way to resolve this matter."

Lawyer Suspended after Paying Clients from Own Funds for False Case Outcomes

A Montgomery County lawyer has agreed to a four-year suspension after admitting he falsely told clients their cases had settled, and paid out their settlements from his own money. [Keith Michael McWhirk](#), of Skippack, [agreed to a four-year suspension](#) of his license, retroactive to his temporary suspension effective February 25, 2016.

McWhirk's actions came to light after he collapsed at a work function and underwent hospitalization. While he was hospitalized, other staff of his firm went through his case files in order to cover his work. They discovered discrepancies that led to his termination from the firm and a report to the Office of Disciplinary Counsel. Subsequently McWhirk self-reported his actions to Disciplinary Counsel.

In the Joint Petition in Support of Discipline on Consent, McWhirk admitted that he failed to act on several cases, and represented to the clients that he had pursued their cases and obtained settlements, awards, or proceeds. In four cases he paid the clients out of his own funds, in a total amount of \$534,500. He also admitted to having misrepresented the status of cases and actions he had taken to seven other clients. He created fictitious court documents to send clients in support of his misrepresentations. None of his misrepresentations were directed to any tribunal. These actions took place over a period of six years. He also misled his firm as to his actions once it undertook an investigation of his cases.

McWhirk agreed that this conduct violated numerous Rules of Professional Conduct regarding diligence, competence, honesty, and communication. He agreed to a violation of [RPC 1.15\(h\)](#) only to the extent that he commingled personal funds into a trust account for the purpose of making payouts to clients.

The Joint Petition also noted several mitigating factors, including McWhirk's self-reporting and cooperation, remorse, and clear prior record. McWhirk also took the position that if the matter went to hearing, he would assert a claim for *Braun* mitigation due to a diagnosis of anxiety, depression, and a lifelong learned pattern of conflict avoidance.

Judge Apologizes for Comments to and about Parties in Domestic Relations Case

Judge Alan Rubenstein of Bucks County has apologized for comments made to a woman who appeared before him in a domestic abuse case, after the Superior Court criticized him for the comments on an issue raised sua sponte.

In the case of [E.K. v. J.R.A.](#), the Superior Court addressed comments Judge Rubenstein made to and about both parties during the hearings, although neither party had raised the issue. It noted that the judge had referred to the father as "punk," "[t]ough guy," "knucklehead," and made aspersions about his anatomy. He addressed the mother as a "little blond honey" who was "too dumb to leave" and lacks "self-respect," and questioned her as to why she remained in the relationship. The Superior Court noted that the comments to the mother "evinced a fundamental misunderstanding of the dynamics of intimate partner violence They also are belittling to Mother, and may serve to discourage victims from seeking help from the judicial system." The Court also criticized the judge's characterizations of the father as disrespectful, predicted they may "invoke anger or shame in a party who was just adjudged to have engaged in abuse and sanctioned by significant repercussions," and warned that such comments may place others at risk.

After review of the Superior Court's decision, Judge Rubenstein [issued an apology](#). "My comments with regard to both litigants were absolutely wrong and not justifiable under any circumstances," he said. "It was more than inappropriate; it was dead wrong. I offer my apologies to the litigants and to the Superior Court." He added that he was "outraged and angry at the life-threatening abuse that the woman had undergone for 17 years."

The woman's attorney, Jan Grossman, said that his client was not offended by the remarks and thought of it as a "generational thing." He added, "Everybody is up in arms about what the judge said, but 95 percent of his ruling was a fantastic protection for women and victims."

Donor or Daddy? Contracts Matter

A New York man thought he was doing an ex-girlfriend a favor when he agreed to donate sperm to a fertility clinic for her to conceive a child. He would later learn just how much of a favor.

In the [Matter of Claudia B. v Darrin M.](#), the parties had dated but ended their relationship. Subsequently, the woman asked the man to donate sperm so that she could conceive a child. The parties agreed orally that he would not be named as the father on the birth certificate and would not be liable for paternity or child support. A draft agreement was reviewed by the parties, but never signed. The man donated 17 vials of sperm to the clinic.² After the fact, the woman requested a new written agreement under which the man would be named as the father, contrary to the previous understanding. Neither written agreement was ever executed. Three years later, the woman gave birth to a child using the donor's sperm.

Four years after the birth, the mother filed a paternity petition seeking to have respondent declared the father of her child. The man claimed that equitable estoppel barred the claim for paternity, because he had donated the samples under an understanding that he would not be considered the father. However, the Court of Appeals held that no oral agreement existed because the terms were still under negotiation when the sample was provided, and neither of the written agreements was ever executed. The court thus concluded that neither a contract nor equitable estoppel barred the claim for child support.

Ellen Trachtman, an attorney specializing in assisted reproductive technology law, [argues](#) that the result may have been different in another jurisdiction, as the man made the contribution based on an oral understanding he was a donor only and the rejected written agreements were offers to amend an existing oral contract.

In any case, men considering sperm donation would be well advised to get it down on paper before delivering the goods in the clinic.

¹ The article states that the investigation led to Bradley's disbarment, but under the Rules of Disciplinary Enforcement Bradley's resignation statement remains a closed document. ODC referred the matter for criminal investigation.

² Pretty big favor, we guess.

Attorney Well-Being

Eating Disorders: The Secret Shame of Lawyers

We have written often in this Newsletter of wellness issues involving alcohol, drugs, gambling, depression, and other challenges. But one malady may be more common among lawyers than we usually realize: eating disorders.

Brian Cuban, a formerly practicing attorney and addict who has recast his career as a writer and consultant on addiction and recovery in the legal profession, addresses his own struggle with bulimia and compulsive exercise in [this video](#).

He observes that it is hard for all lawyers to admit to eating disorders, as they are expected to be in command of their behavior. It is particularly difficult for male lawyers, as bulimia and other eating disorders are more commonly associated with women. However, a study by the Journal of

Legal Education found that 27% of law students tested positive on markers for eating disorders, including 18% of male and 34% of female students. Yet only 3% of the students had been diagnosed or received any kind of treatment for the disorder.

Eating disorders often develop as a means of combating stress in educational and early professional years, and victims often believe they can control this behavior whenever the stress lessens or they put their mind to it. Childhood trauma is another common cause of the disorder. Binging, purging, and compulsive exercise to burn off calories are common side effects of eating disorders.

Cuban argues that admitting one's vulnerability is an essential step to getting control of an eating disorder. Such an admission is often difficult in the macho culture of the legal profession. Cuban argues that eating disorders are as real as other dependencies such as alcohol and drugs, and that the profession should support lawyers with the strength to admit their vulnerability and seek a path to recovery.



LETS TALK ABOUT MENTAL HEALTH

Depressed?
Stressed?
Anxious?
Overwhelmed?

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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

Around the Court



Temporary 2020 Limited Practice License

In April, the Supreme Court issued an [Order](#) allowing temporary (limited practice) admission for law graduates unable to sit for the bar examination due to COVID-19. The option is available to juris doctor graduates of an ABA-accredited law school who filed an application to sit for the July 2020 bar examination, which has been postponed. Applicants who have previously failed the bar examination or have been determined by the Board of Law Examiners not to meet the character and fitness requirements are not eligible.

2020 limited practice licensees are permitted to:

- Counsel clients on legal issues.
- Prepare documents for a supervising attorney to file in court.
- With the presence of the supervising attorney or a qualifying attorney, appear for any activity subsumed in the practice of law.

A 2020 limited licensee must be supervised by a licensed attorney with at least five years in practice. The supervising attorney may not supervise more than two limited licensees and must assume personal professional responsibility for the limited licensee's actions.

The limited license terminates on the date of the next Pennsylvania bar exam, if the limited licensee does not sit for the exam, or on the date the results of the exam the licensee has taken are announced. A limited licensee who passes the exam may continue to practice until formally admitted.

Application information can be found on the [Pennsylvania Board of Law Examiners' 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](#)

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