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The
DISCIPLINARY BOARD
of the Supreme Court of Pennsylvania

October 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

These difficult times have forced us to adapt to the unusual circumstances within which we currently practice. Zoom calls, once a vague concept, are now an everyday occurrence. The Disciplinary Board, too, has adapted to our new environment. Hearings, Oral Arguments, and Public Reprimands are now done remotely and streamed live on YouTube. The participation of attorneys in the Commonwealth is necessary for the efficient operation of these processes. Each spring, the Disciplinary Board appoints new Hearing Committee members. Any Pennsylvania lawyer interested in serving as a Hearing Committee member is encouraged to contact our Executive Director, Jesse Hereda (jesse.hereda@pacourts.us).



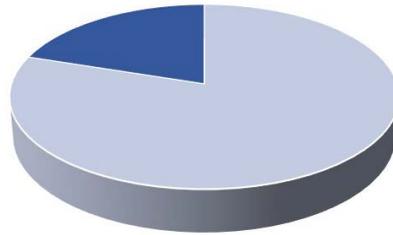
In the meantime, all attorneys are encouraged to view the proceedings of the Board in order to

witness the remarkable volunteer efforts of our attorneys in the everyday workings of our process of self-regulation. It will make you proud to be a lawyer. And it might even be more entertaining than a cat on a Roomba!

James C. Haggerty
Board Chair

Discipline Imposed

September 2020



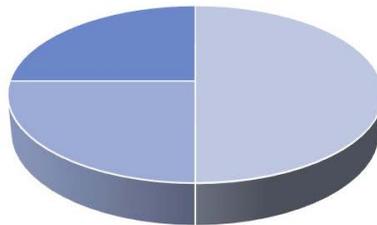
- Informal Admonition - 4
- Private Reprimand - 0
- Public Reprimand - 0
- Public Censure - 0
- Probation - 0
- Disability Inactive - 0
- Temporary Suspension - 0
- Suspension - 1
- Disbarment - 0

Suspension

[Jack M. Bernard](#)

Reinstatement Granted

September 2020



- From Inactive - 8
- From Retired - 4
- From Administrative Suspension - 4
- From Disability Inactive - 0
- From Suspension - 0
- From Disbarment - 0

From Inactive Status

[Heather Ann Cicalese](#)
[Daniel Adam Fuchs](#)
[Lisa B. Gregory](#)
[Chris William Kemprowski](#)

[Elizabeth Fleurette Mieliwocki](#)
[Benjamin Clifton Mull](#)
[Christine A. Sereni](#)
[Carrie Boodin Zehfuss](#)

From Retired Status

[Nina L. Cohen](#)
[Rita Marie Ewing](#)
[A. Victoria Shilton](#)
[Thomas George Welshko](#)

From Administrative Suspension

[Anita Jane Amato](#)
[Rebecca Braglio](#)
[Reiner R. Mauer](#)
[Loren Evans Mulraine](#)

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.

October 27, 9:30am - Michael Eric Greenberg Disciplinary Hearing
November 4, 9:30am - Edward Harrington Heyburn Disciplinary Hearing
November 9, 9:30am - Andrew Wilson Barbin Disciplinary Hearing
November 10, 9:30am - Andrew Wilson Barbin Disciplinary Hearing (continued)
November 12, 9:30am - Brittany Marie Yurchyk Disciplinary Hearing
November 17, 9:30am - Joseph Nicholas Sciulli Disciplinary Hearing
November 20, 9:30am - Frederick Seth Lowenberg Disciplinary Hearing
November 23, 9:30am - Stacy Parks Miller Reinstatement Hearing

Vacancies

The Supreme Court of Pennsylvania is aided by select boards, committees, commissions, and councils consisting of more than 180 appointed volunteers - most, but not all, are lawyers and judges. The panels have a wide range of responsibilities and functions. Some make recommendations to the Court for amendments, revisions, or simplification of court procedural rules. Others regulate the practice of law, oversee continuing legal education for lawyers, and administer funds to assist individuals unable to pay for legal services. Still others advise on keeping the courts free of bias and discrimination and on long-range planning.

There are currently vacancies on the following panels:

- [Criminal Procedural Rules Committee](#) - There are **three** positions available. Applicants should be knowledgeable about the Pennsylvania Rules of Criminal Procedure and experienced in state criminal practice in Pennsylvania. One of these vacancies must be filled by a magisterial district judge who is also an attorney.
- [Orphans' Court Procedural Rules Committee](#) - There is **one** position available. Applicants should be knowledgeable about the Pennsylvania Orphans' Court Rules and experienced in Orphans' Court practice in Pennsylvania.
- [Continuing Legal Education Board](#) - There is **one** position available. Applicants must be active members of the Pennsylvania Bar with their primary residency in Pennsylvania. In

addition, applicants should be knowledgeable about legal practice and procedures in Pennsylvania state or federal courts.

Application Instructions

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

Applications are due by October 31, 2020.

CDC Corner

Joint Petitions for Discipline on Consent

Faced with disciplinary charges, a respondent can consent to disbarment under Rule 215(a). Subsection (d) of that rule authorizes the Office of Disciplinary Counsel (ODC) and Respondents to agree upon some lesser sanction through a joint consent petition. Some observations on navigating the process follow.

The respondent and ODC may file a joint petition in support of discipline on consent at any stage of a disciplinary investigation or proceeding. The petition must include specific factual allegations, the rules violated and a specific joint recommendation for discipline. Pa. R.D.E. 215(d). Accompanying it must be an affidavit from the respondent which, among other things, “acknowledges that the material facts set forth in the Petition are true.” *Id.* at 215(d)(3), (4). If the petition consents to a public censure or suspension, a three-member panel of the Disciplinary Board must approve, and then the Supreme Court reviews and enters an order either granting or denying the petition. *Id.* at 215(g). If the petition consents to a public reprimand, only the Board reviews the petition.

Consent discipline has several advantages: it abbreviates the proceedings, saves time and money, and may enable the respondent to start a suspension sooner and thereby advance the date to petition for reinstatement. It eliminates uncertainty, and, by demonstrating acceptance of responsibility, it may ameliorate the sanction.

A crucial difference between joint petitions on the one hand and most civil settlements or criminal plea agreements on the other: the Board and Court review the petitions carefully and occasionally reject them. This is not apparent to the public, because a denied petition does not become part of the public record. In fact, the proceedings resume “as if the Petition had not been filed and neither the Petition may be used against the attorney in any disciplinary proceeding or any other judicial proceeding.” *Id.* at 215(h).

What can a respondent do to increase the likelihood that the petition is granted? Many rejections occur because the Court or Board indicates that it did not consider the discipline sufficient (while the orders are brief, they will cite other disciplinary cases in which more discipline was imposed). The Board and Court rightly consider it their duty to compare all cases, including

consent petitions, to similar ones to ensure that discipline is reasonably uniform.

Respondents should seek to include in the joint petition a thorough statement of the mitigating facts which support the suggested discipline. Emphasize the respondent's acceptance of responsibility, thereby easing the burden on the disciplinary system. Note, if applicable, how foregoing a hearing saved the complainant expense, anxiety, and embarrassment. If *Braun* mitigation exists, share it with ODC and describe it in the Petition. Brevity matters, but offer good character evidence. Finally, survey the decisions (all public discipline is searchable on www.padisciplinaryboard.org) and describe in the Petition which decisions support the suggested sanction and distinguish those seemingly similar ones that resulted in harsher discipline.

Thomas J. Farrell
Chief Disciplinary Counsel

Articles of Interest

Contemplating Retirement?

The end of 2020 is (thankfully) approaching! Retirement tends to be a common end-of-year event. So, if you are considering ending your practice of law in Pennsylvania, what should you do about your license? **Do NOT do nothing.** Your retirement from the practice of law only affects your license status if you effect a change. If you simply choose to not complete your annual registration or your CLE requirement, you will receive penalties and ultimately be administratively suspended. Alternatively, choose to pursue one of the following options:

- **Continue maintaining active status.** If you would like to keep your ability to practice open, continue to maintain active status by completing all requirements of an actively licensed attorney (annual registration, CLE, etc.).
- **Assume inactive status.** While inactive status still requires annual registration, assuming such status automatically defers your CLE requirement. If you are unsure of your need to practice law in the future, consider maintaining inactive status. Please see the [Reinstatement](#) page for information about reinstatement from inactive status.
- **Assume retired status.** If you believe that your need to practice law in Pennsylvania has concluded, assuming retired status will end your annual requirements (annual registration, CLE, etc.). Please see the [Reinstatement](#) page for information about reinstatement from retired status.
- **Assume emeritus status.** After assuming retired status, an attorney may request to assume emeritus status. Emeritus status allows a retired attorney to provide pro bono services to eligible Legal Aid Organizations. For more information, please see the [FAQs](#) regarding emeritus status.

Visit the [Disciplinary Board's Forms](#) page to find appropriate forms to request for the above status changes. A status change to inactive or retired status may also be made when completing your annual registration.

Supreme Court Amends Case Records Public Access Policy

On September 15, 2020, the Supreme Court of Pennsylvania published an [Order](#) amending the

Case Records Public Access Policy of the Unified Judicial System. A few changes should be of general interest to the Pennsylvania legal community.

An amendment to Section 7.0(D) on confidential information provides that the certification of compliance with the confidentiality policy may be inserted into a document filed, rather than as a separate certification form.

The commentary to Section 7.0 reminds the bar that “Rules 1.1 and 1.6 of the Rules of Professional Conduct require familiarity and compliance with this policy.”

The commentary further notes that for documents e-filed through PACFile, available in the appellate courts and some common pleas courts, the filer can certify compliance by checking a box. The AOPC included the certification in the Confidential Information Form and also created a sample stand-alone certification form that parties and attorneys may use or simply incorporate the language into their filed documents.

The Order includes an Explanatory Report that describes the amendments and their purpose.

AOPC Warns of Phone Scam

The Administrative Office of the Pennsylvania Courts (AOPC) has issued a [warning about a telephone scam targeting Pennsylvanians](#). The scam involves calls that “spoof” or mimic the AOPC’s telephone number. These are family imposter calls, in which the caller claims to be a relative who needs funds for bail, fines and other court expenses.

The AOPC stresses that it will never place calls or solicit payment by credit card, gift card, or any other means of electronic funds transfer for any reason. It recommends that anyone receiving such calls should not provide any personal financial information, but should hang up and contact state and/or local police as well as the Pennsylvania Office of Attorney General, Bureau of Consumer Protection at (800) 441-2555 or scams@attorneygeneral.gov.

Professor Offers Four Lessons from the Pandemic

Heidi K. Brown is an associate professor of law and director of legal writing at Brooklyn Law School, and the author of two books on introverted lawyers and the role of fear in legal practice. She argues in an [article in the ABA Journal](#) that the legal profession can learn four important lessons from the COVID experience.

1. Our definition of talent needs to expand. Brown notes that the mass transformation to distance and work-at-home strategies has revealed that different individuals flourish in traditional and nontraditional working environments. A profession that traditionally looks for academic excellence and outgoing personalities needs to recognize those with alternative skills, such as the ability to work productively in changing environments and to adapt and be creative in nontraditional situations.

2. Our communication skills are overdue for an upgrade. Brown points out that the virtual environment has changed how many people interact in that environment. In live settings the virtues of quick thinking and aggressive, interrupting styles are often successful. But in virtual settings, the need to defer to others and speak in sequence has brought out the voices of less assertive people. She cites the example of Justice Clarence Thomas, who has in the past been

reticent in boisterous Supreme Court arguments, but has spoken out more frequently in virtual arguments. Thomas has explained that his introversion and unwillingness to interrupt plays a part in his aversion to oral argument, and Brown speculates that the more ordered virtual setting has enabled him to speak more freely.

3. To amplify unheard voices, we must change how we engage. Citing the observation of many educators that formerly quiet students seem more engaged in virtual teaching, where tools such as chat and electronic hand-raising make their contributions more visible, Brown argues that a broader range of techniques for interaction will enable more voices who have been silent under traditional approaches.

4. Serious well-being initiatives are as essential as oxygen. Brown observes that the pattern of sheltering at home, striving to be productive and keep businesses going has led many employees and colleagues to deal with trauma, fear, anxiety, loss, pain, depression and grief. While applauding the efforts the profession has made in recent years to confront these issues of well-being, she argues that the changed circumstances create an even stronger need for employers and institutions to attend to and address issues of employee well-being.

Disbarred Lawyer Convicted Though Twin Brother Confessed to Crime

A disbarred former lawyer in Florida has been [found guilty of creating a counterfeit court order](#), although his twin brother testified that he created the document in question.

Former attorney Christopher Brady represented his brother Matthew Brady in a custody action. In December 2018, Christopher and Matthew appeared at the home of the mother of Matthew Brady's child with what appeared to be an "Order of Default and Writ of Habeas *[sic]* Corpus" requiring the mother to surrender custody to Matthew. In the order, the judge's title was misspelled "Honorable." It was dated on a Saturday, when the Clerk's office does not file orders. Court records did not show any such order being issued. An individual who answered the door recognized the Bradys and refused to comply with the order, upon which they left. Christopher Brady was suspended on an unrelated matter two weeks later and subsequently disbarred.¹

At Christopher Brady's trial, Matthew Brady appeared as a witness and testified under oath that he created the fictitious document. The jury evidently did not believe him, and convicted Christopher of forgery.

Bulldog Tenacity: Jack Daniels Takes "Bad Spaniels" Dog Chew Case to Supreme Court

We understand that holders of trademarks need to be vigilant about protecting them,² lest they lose their trademark coverage to "common use." But Jack Daniel's, one of the most famous names in whiskey, may have bitten off more than it could chew in its trademark infringement action against VIP Products, the manufacturers of a [bottle-shaped dog chew toy called "Bad Spaniels."](#)

The toy at issue, which mimics Jack Daniel's black-and-white label and famed "The Old No. 7" (with a scatologic renumbering), is not the only beverage parody VIP markets in its Silly Squeaker series. The company also offers Smella Arpaw (Stella Artois), Heinie Sniff'n (Heineken), Blameson Triple Steak (Jameson), Killer Bite (Miller Lite), Barkparty (Bacardi), Hairball (Aperol), Chewy Breederer (Louis Roederer) and Doggie Walker (Johnnie Walker).

After a cease and desist warning, VIP sued for declaratory judgment, and Jack Daniel's won at the district court level. But [the Court of Appeals reversed](#), finding that VIP's use of familiar brand names was parody protected by the First Amendment. The Court of Appeals applied the *Rogers* test, which requires that the party alleging infringement must show the use is "not artistically relevant to the underlying work" or "explicitly misleads consumers as to the source or content of the work."³

Jack Daniels has filed a [petition for writ of certiorari](#) to the United States Supreme Court. Apparently, like some dogs we know, they just won't let go.

Oh, Say, Can You Sue?

Finally, there is this [list of really weird lawsuits](#) people have brought. Our favorite is the one where the mayor of Batman, Turkey, threatened to sue ... well, read the list.⁴

¹ His [disbarment story](#) is interesting as well. A video allegedly showed Brady and his brother backing a truck up to his former law firm from which he had been fired, tying a rope to the front door, using the truck to rip the door open, and removing a safe and the computer server. Brady also held himself out as the owner of the law firm soon after his firing by creating a new firm of the same name registered as a professional association under "P.A." instead of "PA."

² Some of these efforts are [very creative](#).

³ The Rogers of the *Rogers* test is none other than Ginger Rogers, who sued to prevent the use of her name in the film *Ginger and Fred*, which was directed by Federico Fellini and depicted a pair of fictional Astaire and Rogers imitators. [Rogers v. Grimaldi, 875 F.2d 994 \(2d Cir. 1989\)](#).

⁴ Though we also identify with the Dutch gentleman who sued to change his age. That reminds us of the person who opined that she was not going to count 2020 in her age, because she didn't use it.

Attorney Well-Being

Covid-19 and Lawyer Well-Being: A Lawyer's Guide to Coping with Anxiety and Stress During These Uncertain Times

Earlier this year, Laurie J. Besden, Esq., Executive Director of [Lawyers Concerned for Lawyers of Pennsylvania](#), led an interactive virtual conversation during a [Pennsylvania Bar Association](#) event. In uncertain times, anxiety, stress, fear, and negative thoughts can easily take control. Topics discussed during the event included: the early warning signs of anxiety, stress, and depression due to COVID-19, and ways to reduce or alleviate these conditions; fear associated with the uncertainty surrounding the future of the legal industry; and dilemmas created by the coronavirus crisis, including remote supervision of attorneys and staff, record and timekeeping, data security and confidentiality in the remote office setting. Statistics, strategies, and resources are provided in the [presentation information](#).



Does the Public Health Crisis Have You Feeling Anxious, Stressed or Depressed ?

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www.lclpa.org

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.

LCL publishes a useful 63-page [guide](#) to resources for lawyers and law firms in the time of COVID. Its most recently updated version includes links to:

- Tips for cost-effective and efficient law firm marketing during COVID;
- Principles for workplace suicide prevention
- Red flags for spotting addiction

[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

Do you Bank on Justice?

The IOLTA Program's revenue for funding the civil legal aid system in Pennsylvania rises and falls with interest rates. In this low interest rate environment, we are especially grateful for our Platinum Leader Banks' commitment to ensuring the legal aid system has the funding it needs to assist low-income Pennsylvanians. Platinum Leader Banks pay a premium interest rate on IOLTA accounts. If you bank with a [Platinum Leader Bank](#), we invite you to join the "[I Bank on Justice](#)" campaign.

If you don't currently bank with a Platinum Leader Bank, and have questions about opening an additional IOLTA account at a Platinum Leader Bank to facilitate additional revenue for civil legal aid, please do not hesitate contact us by e-mail at paiolta@pacourts.us.

For a list of the legal aid organizations that receive grant funding from the IOLTA Board, click [here](#).

To volunteer with a legal aid organization, click [here](#).

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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