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The
DISCIPLINARY BOARD
of the Supreme Court of Pennsylvania

**August 2021
Newsletter**



From the Chair

Congratulations and thank you to all of the Pennsylvania attorneys who completed their annual registration in a timely manner. Unfortunately, on August 11, 2021, our Supreme Court issued an Order administratively suspending 1,192 attorneys for failure to file the registration form and pay the associated fees. This Order becomes effective on September 10, 2021, and any attorney who has not registered and paid by then will lose the privilege of practicing law in the Commonwealth. I strongly urge those of you who have not yet completed registration to do so immediately. I don't want to see you lose your license.



In rule amendment news, the Supreme Court entered an order on July 26, 2021 amending Pennsylvania Rule of Professional Conduct 8.4. This amendment, effective August 25, 2021, revises language of subdivision (g) addressing harassment or discrimination in the practice of law. By Order dated August 10, 2021, the Supreme Court amended Pennsylvania Rules of Disciplinary Enforcement 208(g) and 218(f) and added a new Rule 532 relating to lawyers who become debtors in bankruptcy, effective September 9, 2021.

I hope all of you are enjoying a safe and pleasant summer. Talk to you next month!

Jack P. Goodrich
Board Chair

Annual Attorney Registration

2021-2022 Registration Past Due!

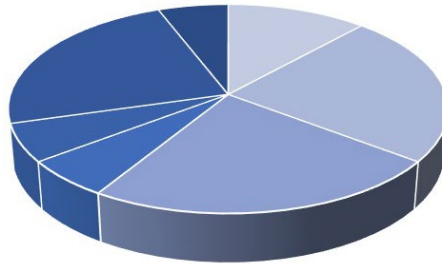
A Supreme Court Order was issued August 11 to administratively suspend the 1,192 attorneys who have not yet completed their annual registration.

REGISTRATION MUST BE COMPLETED BY THURSDAY, SEPTEMBER 9 TO AVOID ADMINISTRATIVE SUSPENSION.



Discipline Imposed

July 2021



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

Public Reprimand

[George W. Bills, Jr.](#)
[Paul Christopher Dougherty](#)
[Michael B. Howard](#)
[Shawn Kendricks Page, Sr.](#)

Disability Inactive Pa.R.D.E. 301

[Morgan J. Hennessy](#)

Temporary Suspension

[John Anthony Bellino](#)

Suspension

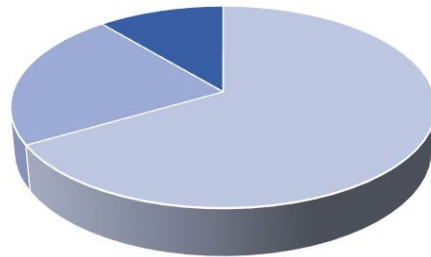
[David Charles Agresti](#)
[Irene Marie Costello](#)
[Susan Ann Lowden](#)
[John J. O'Brien, III](#)

Disbarment

[Chi-Yuan Hwang](#)

Reinstatement Granted

July 2021



- From Inactive - 6
- From Retired - 2
- From Administrative Suspension - 0
- From Disability Inactive - 0
- From Suspension - 1
- From Disbarment - 0

From Inactive

[John Robert Cherry](#)
[Craig Paul Colburn, Jr.](#)
[David Robert Drake](#)
[Nancy A. McPherson](#)
[Sharon Maureen Rupprecht](#)
[Christopher William Weber](#)

From Retired

[Alexis L. Collins](#)
[Stuart S. Mermelstein](#)

From Suspension

[David Michael DeClement](#)

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.padisiplinaryboard.org.

September

September 9 - Anthony M. Crane - Reinstatement Hearing
September 29 - Erik Benjamin Cherdak - Disciplinary Hearing
September 30 - Erik Benjamin Cherdak - Disciplinary Hearing

October

October 5 - John Anthony Costalas - Reinstatement Hearing
October 6 - Joshua M. Briskin - Disciplinary Hearing
October 13 - Joseph A. Gembala, III - Reinstatement Hearing

November

November 4 - Herbert Karl Sudfeld, Jr. - Reinstatement Hearing
November 9 - Milena Mladenovich - Disciplinary Hearing

December

December 2 - Charles P. McCullough - Disciplinary Hearing

To Be Scheduled

Thomas James Fieger, Jr. - Public Reprimand

Scheduled proceedings begin at 9:30 am unless otherwise noted.

Rules

Supreme Court Amends Harassment and Discrimination Provisions of Rule 8.4

By [Order dated July 26, 2021](#), the Supreme Court of Pennsylvania approved an amendment to Rule 8.4 of the Rules of Professional Conduct, Misconduct.

The [amendment](#) revises the language of subdivision (g) of the rule, which addresses harassment or discrimination on the basis of several protected categories in the practice of law. Language prohibiting “knowingly manifest bias or prejudice” is struck out, along with language defining harassment or discrimination “as those terms are defined in applicable federal, state or local statutes or ordinances.”

Instead, the terms harassment and discrimination are defined in changes to the comments on the rule.

Comment [3] is amended to remove reference to “participation in activities that are required for a lawyer to practice law,” and substitutes a list of activities considered within the practice of law. Those activities are:

- (1) interacting with witnesses, coworkers, court personnel, lawyers, or others, while appearing in proceedings before a tribunal or in connection with the representation of a client;
- (2) operating or managing a law firm or law practice; or
- (3) participation in judicial boards, conferences, or committees; continuing legal education seminars; bench bar conferences; and bar association activities where legal education credits are offered.

Certain activities are excluded from the reach of the rule, including speeches, communications, debates, presentations, or publications given or published outside the context established in the comments.

Existing Comment [4], tying the prohibitions to “substantive law of antidiscrimination and anti-harassment statutes and case law,” is deleted.

A new Comment [4] defines harassment as “conduct that is intended to intimidate, denigrate or show hostility or aversion toward a person on any of the bases listed in paragraph (g).” Harassment specifically includes sexual harassment, and examples of conduct constituting sexual harassment are set forth.

New Comment [5] defines “discrimination” as:

Conduct that a lawyer knows manifests an intention: to treat a person as inferior based on one or more of the characteristics listed in listed in paragraph (g); to disregard relevant considerations of individual characteristics or merit because of one or more of the listed characteristics; or to cause or attempt to cause interference with the fair administration of justice based on one or more of the listed characteristics.

The amendment is effective in thirty (30) days, on August 25, 2021.

Justice Mundy filed a [dissent](#) to the order adopting the rule, stating that “the proposed amendments fail to cure the Rule’s unconstitutional nature as articulated by Judge Kenney in [Greenberg v. Haggerty](#), 491 F.Supp.3d 12 (E.D. Pa. 2020).”

Supreme Court Amends Rules on Lawyers in Bankruptcy

By [Order dated August 10, 2021](#), the Supreme Court of Pennsylvania [amended certain of the Pennsylvania Rules of Disciplinary Enforcement](#) relating to lawyers who become debtors in bankruptcy.

The Court amended [Rule 208\(g\)](#), regarding costs in disciplinary proceedings, to add a new subsection (6) requiring that a lawyer who is subject to an administrative fee, expenses, or penalties taxed in a disciplinary proceeding must notify the Executive Director of the Board in writing of the case caption and docket number within 20 days after filing for bankruptcy protection.

[Rule 218\(f\)](#), regarding reinstatement, is amended to add a new subsection (4) imposing the same requirement on a lawyer who owes expenses or penalties taxed in a reinstatement proceeding.

A new Rule 532 is added to the [rules regarding the Pennsylvania Lawyers Fund for Client Security](#), to impose a requirement that a lawyer who has been notified of a pending claim, or on account of whom the Fund has made a disbursement which the lawyer has not reimbursed in full must notify the Executive Director of the Fund of the case caption and docket number within 20 days. If a lawyer receives notice of a claim or disbursement after filing of the bankruptcy petition but before it is concluded, the lawyer must also give notice.

The proposed amendments were [published in the Pennsylvania Bulletin on October 31, 2020](#). They take effect September 9, 2021.

CDC Corner

For this month, we are reprinting an article by Jessica Chapman (nee Torres), Disciplinary Counsel in our District III office, which ran in the Summer Edition of the Montgomery County Bar Association’s Sidebar Magazine. The article urges lawyers to attend to their physical and mental well-being. This topic is not restricted to the pandemic era. Every year, practicing law - heck, just getting through daily life - can be a challenge, and, yes, sometimes depressing. We all owe it to ourselves, our clients, and to the people we love to take care of ourselves. Jessica offers some helpful suggestions. In addition, if you feel you need help, don’t hesitate to contact [Lawyers Concerned for Lawyers](#) at (888) 999-1941. They do great work.

Thomas J. Farrell
Chief Disciplinary Counsel

The following is reprinted with permission from the Summer Issue of the Montgomery County Bar Association's Sidebar publication.

DID YOU KNOW?

By Jessica L. Torres, Esq.

Vice-Chair of the Diversity, Equity, and Inclusion Committee, Montgomery County Bar Association

Mental health is as important as physical health and it is time we stop minimizing the importance of staying mentally healthy and seeking help when we feel like we need it. There used to be a stigma associated with seeking counseling or therapy and, unfortunately, there still is to some extent. That is exactly why we need to talk about it, we need to create awareness, and we need to address it. The Diversity, Equity, and Inclusion committee asked its members for some things to do to stay mentally healthy:

1. If a task is too large and overwhelming, break it down into smaller and more manageable steps.
2. Take a break and breathe in some fresh air.
3. Prioritize your sleeping habits.
4. Sit down and listen to your favorite music.
5. Play your favorite sport or get into a new one you have been wanting to try.
6. Take 30 minutes or an hour and exercise.
7. Make tasty, yet healthy treats. Pinterest will be your best friend for this one!
8. Get a pet! Your furry partner will force you to get up and be active while providing you with emotional support.

It is easy to say "I don't have time" but at some point the stress, anxiety, and frustration will catch up with you. For this and many reasons, it is important to dedicate time to yourself, take a break, disconnect, and enjoy all this beautiful planet has to offer.

Articles of Interest

PBA Launches Pennsylvania Free Legal Answers for Pro Bono Opportunities, Access to Justice

The Pennsylvania Bar Association (PBA) is currently gearing up for a new initiative offering pro bono help that will be easy to use by those seeking advice and those lawyers willing to provide it. In collaboration with American Bar Association Free Legal Answers (ABA FLA), the PBA has launched [Pennsylvania Free Legal Answers](#). The program offers attorneys a convenient pro bono opportunity and, more importantly, narrows the access to justice gap.

PBA President Kathleen D. Wilkinson said the need for pro bono service is especially acute. "The pandemic has had a profound impact upon low-income people and has caused financial and family stressors to continue to mount. Pennsylvania Free Legal Answers has the potential to help thousands of people who qualify for pro bono assistance." [Read more about PBA's new initiative.](#)

Pro Hac Vice No Substitute for Active Status

New Jersey-based lawyer [Edward Heyburn](#) was admitted to the Pennsylvania bar in 1997, but he was placed on administrative suspension in 2006 for failure to complete continuing legal education credits. He apparently didn't miss his Pennsylvania license all that much, as he never got it reinstated.

So when Heyburn was asked to appear as co-counsel in a Monroe County case in 2017, he needed that Pennsylvania license again. Rather than go through the steps for reinstatement, he agreed to apply for admission *pro hac vice*.

The form for his admission specifically stated that *pro hac vice* status is only intended for out-of-state attorneys who are not admitted to the practice of law in Pennsylvania. The motion form also required him to verify that he was not the subject of any disciplinary proceedings.

Heyburn's verified form failed to reveal that he was admitted in Pennsylvania, and stated that New Jersey was the only jurisdiction where he was admitted. He also failed to mention that he was the subject of three disciplinary proceedings in New Jersey, each of which resulted in censure.

Heyburn explained in his disciplinary hearing that he "was doing three things at once and did not fully understand that [he] had to report any prior ethical violations as part of that application." He further stated that he read over the documents "way too quickly." He said that he assumed his Pennsylvania licensure was lapsed and thus not required to be reported, and that his New Jersey disciplinary matters were public record and "assumed anybody who Googled me knew" he had been publicly disciplined.

The Disciplinary Board found aggravating factors in his failure to correct the misinformation in further filings, his lack of response to or cooperation with the Pennsylvania disciplinary inquiry, and his New Jersey disciplinary record. The Board recommended a suspension of eighteen months. The Pennsylvania Supreme Court went further and suspended Heyburn for three years, with two Justices favoring a suspension for five years.

Oregon Bar Takes Steps Toward Alternative Paths to Law Licensure

The Oregon State Bar has [endorsed a task force report](#) which recommends the establishment of paths to law licensure presenting alternatives to traditional licensure through the bar examination. The [report of the Alternatives to the Exam Task Force](#) recommends establishment of two alternative paths to licensure: one through experiential learning, and another by supervised practice.

The Oregon Experiential Pathway (OEP) would require applicants to complete a set curriculum during law school, including legal research and writing, issue spotting, legal analysis, argument development, understanding of the law, attention to detail, written and oral advocacy, and teamwork. The curriculum would offer practical instruction in the creation of documents (transactional and litigation-focused), simulated client interviews, negotiation, depositions, and trial practice, as well as practice management skills such as time management, fee agreements, engagement letters, billing, and the use of legal technology.

Assessment of those skills would take place while the student is still in law school by: (1) incorporation of formative feedback from professors throughout the program, (2) intensive self-reflection by participants, and (3) feedback and assessment provided by a dedicated bar examiner at the end of each semester throughout the program. The OEP option is primarily designed for students who attend law school in Oregon with an intent to practice in Oregon, though other ABA-accredited law schools could apply to participate.

The supervised practice pathway would open an avenue for applicants who complete between 1,000 and 1,500 hours, with supervision by a licensed Oregon lawyer who has at least five years of practice experience and no record of public discipline, and who submit an Exam Alternative Portfolio of non-privileged writings. The report notes supervised practice programs operating in Canada and Utah, but crafts its own goals and requirements. This path would be available to people who graduated from ABA-accredited, out-of-state law schools.

One of the motivations for the bar's exploration of these alternative paths is equity. The ABA's most recent [Bar Passage Questionnaire](#) revealed that while 88% of White applicants passed the 2020 bar exam, the passage rate for Black applicants was 66% and for Hispanic applicants 76%.

The Bar submitted its recommendations to the Supreme Court of Oregon for determination of whether the recommended changes should be adopted.

Should Lawyers Call Each Other More Often?

Email is a marvelous convenience that has transformed the practice of law. Many a lawyer has discovered that email is a preferable alternative to "telephone tag." But might it be better practice for lawyers to email each other less and call each other more often? Jordan Rothman makes that case in a column at [Above the Law](#).

Rothman acknowledges the convenience of email, its value at making a written record, and the fact that introverted and younger lawyers accustomed to electronic applications may find email a more comfortable means of communication.

Still, he argues, there are benefits to direct conversation that may be undervalued in the current climate. Email communications can be ambiguous or unclear, requiring more emails to resolve, or, worse yet, leading to misunderstanding if not caught and resolved. Tone of voice and mood often don't come across in emails, leading to the possibility the writer's intent may be misunderstood.

Telephone conversations can be more productive in resolving complex issues. The opportunity to ask questions and clarify answers on the fly leads to better understanding and more efficient communication. Telephone conversations allow the participants to better get to know each other and form working relationships and rapport. Often, lawyers may be willing to discuss and reveal information in a conversation that they would be hesitant to put down in writing, knowing they may be held to whatever they put into an email. Frank, off-the-record discussions over the telephone may better allow the parties to understand the subtleties of each other's points of view than the formality of written communications like email.

So, while email will always be a principal tool of the practice, lawyers might find it useful to sometimes pick up the phone and have a conversation.

Federal Prosecutors Sell One-Of-A-Kind CD Obtained by Forfeiture

Hey, do you have Wu-Tang Clan's *Once Upon a Time in Shaolin* in your CD collection?

Just kidding. You don't, because there is only one copy of that CD in existence, with a hand-carved nickel-silver box and a leather-bound manuscript containing lyrics and a certificate of authenticity. It was purchased for \$2 million by former pharmaceutical mogul Martin Shkreli, back

in his heyday of 2015.

Shkreli doesn't have it either, though. It was [seized by Federal marshals as a forfeiture](#) in connection with Shkreli's 2017 conviction for securities fraud.

Now the world's most valuable CD has a new owner. [Federal prosecutors sold it in a secret auction](#) to help pay off Shkreli's \$7.36 million forfeiture judgment. The buyer and the terms of the sale are secret, but it is reported that the auction price was "substantially more" than the \$2 million Shkreli paid for it, as the \$2.2 million balance on the forfeiture judgment was satisfied. The buyer will be bound by Shkreli's [agreement not to release the recording commercially for 88 years](#), but a lawyer who heard the recording reports, "It's a banger, man. It's a banger."

Attorney Well-Being


Bloomberg Law Survey Finds Lawyer Well-Being in Decline

The economy may be in recovery from the pandemic, but lawyer well-being is not keeping pace, according to the [second Attorney Workload & Hours Survey](#), conducted in April and May by Bloomberg Law.

The survey, following one completed in January 2021, covered the first quarter of 2021. 614 attorneys responded to the survey, of whom 64% work for a law firm and 36% work for an in-house legal department. They represent organizations of various sizes, from one attorney up to more than 500 attorneys. Attorneys had an average of 18 years in practice.

Nearly half of respondents reported that their quality of life worsened during the first quarter, compared to only 24% who said it improved. The decline was steeper among junior and midlevel attorneys with less than 7 years' experience. Two-thirds of this group reported a decline in well-being, while only 41% of senior associates reported such a decline. Also, respondents reported experiencing burnout 50% of the time during the first quarter, an increase from 40% in 2020.

Bloomberg Law offers a [Lawyer Well-Being page](#), on which many articles and links to resources for lawyer well-being are available.



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

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to learn more about our free services.

LAWYERS CONCERNED FOR LAWYERS
PENNSYLVANIA

100% Confidential Helpline
1-888-999-1941
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. Since 1988, 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



Commonwealth Court Announces Return to In-Person Proceedings

In a Commonwealth Court [Order](#) dated July 29, 2021, Commonwealth Court President Judge P.

Kevin Brobson announced a return to in-person argument sessions and outlined the Court argument schedule for the remainder of 2021.

According to the Order, beginning in September and for the remainder of 2021, monthly oral argument sessions will be held in-person with remote public access available through a live web stream.

“As we welcome litigants and the public back into our courtrooms, the health and safety of all court users and staff remains a top priority,” Brobson said. “Reinstating in-person argument while providing public access through a live web stream strikes an appropriate balance as we continue to navigate the ongoing pandemic.”

Argument sessions originally scheduled for Pittsburgh (October) and Philadelphia (November) will be held in Harrisburg in the Pennsylvania Judicial Center on October 18-22 and November 15-19. Links to the remote proceedings will be made available on the [Court website](#) and Twitter page [@CommCtofPA](#).

The Court plans to resume regular argument sessions in Harrisburg, Philadelphia and Pittsburgh in 2022.

More information about the Commonwealth Court including upcoming argument schedules is available [here](#).

From the Pennsylvania Bar Association



The Pennsylvania Bar Association can be a go-to educational resource to help support your practice and professional career. This month, we are highlighting excellent live and on-demand CLE programs, including [Ethics in Legal Writing](#). Just as lawyers sometimes violate ethical rules in verbal communication with clients, judges, and other lawyers, they can also cross the line in writing. Attend this one-hour lunchtime webcast on Monday, August 16 to learn how to avoid some of these common ethical pitfalls. This program is sponsored by the PBA Plain English Committee.

Those in need of credits to meet the upcoming August CLE compliance deadline, check out [PBI's many on-demand CLE courses](#).

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

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