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The
DISCIPLINARY BOARD
of the Supreme Court of Pennsylvania

May 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, all county courts are directed to restore a wider range of operations, while giving priority to critical matters and remaining focused on protecting the health and safety of court users, personnel and the public. In an effort to ensure access to open courts in light of remote proceedings, the Supreme Court continues to encourage the use of advanced communication technology that permits access for the public and press.](#)

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

We face unprecedented challenges in these unprecedented times. Our profession is called upon to rise to face these challenges. Our clients, more than ever, need our counsel, our guidance and our help. While we attend to our own families and loved ones, we must not forget that we possess certain skills and abilities which we can use to help those in much more need than ourselves. In a recent letter to the profession, Chief Justice Thomas G. Saylor reminded each of us of the importance of pro bono representation, asking for each lawyer's support in this effort. The Disciplinary Board, too, finds significant value in pro bono representation. Let us not forget the need to help those less fortunate than the members of our profession. We will be judged by how we treat the most needy in our society. It is incumbent upon



us to act to protect not only our own families and friends but also those in need of assistance in these difficult times.

In order to remain eligible to provide legal services, we must not forget that the 2020-2021 Attorney Registration season is upon us. The registration [site](#) hosted by the Unified Judicial System opened to all attorneys eligible to register on April 27, 2020. I encourage you to complete your annual registration by the July 1 deadline to avoid the imposition of any late payment penalties or, in the worst case, administrative suspension of your license.

As attorneys, we occupy a unique position in our society. We have been trained to help our clients to successfully navigate the legal uncertainties they often face. We must remain cognizant of our obligation to do so in an ethical and compassionate fashion. In these troubled times, we must work together to demonstrate to all that members of the legal profession are beacons of compassion, ethics and intelligence in assisting all members of society in our daily struggles to cope and survive.

James C. Haggerty
Board Chair

From the Chief Justice

Chief Justice Pens Letter to Bar on Pro Bono; Asks Support

Chief Justice Thomas G. Saylor has written a letter to all 70,000 Pennsylvania-admitted attorneys, recounting the success of the state's pro bono legal assistance program and requesting all attorneys to consider contributing time and financial support to Pennsylvanians in need of pro bono legal services.

The Chief Justice wrote:

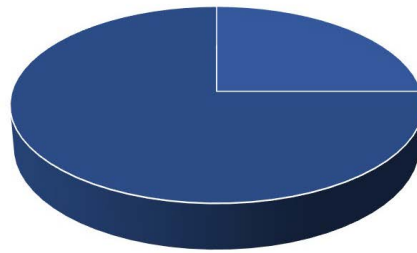
"As I have done in the past, I join with the president of the Pennsylvania Bar Association, Anne John, in calling upon each of Pennsylvania's nearly 70,000 attorneys to provide pro bono service through direct representation of the poor and additional financial support of the Commonwealth's legal aid programs." [Read more...](#)

Social Media

Like us on [Facebook](#), follow us on [Twitter](#), and connect with us on [LinkedIn](#) for more news and information.

Discipline Imposed

April 2020



- Informal Admonition - 0
- Private Reprimand - 0
- Public Reprimand - 0
- Public Censure - 0
- Probation - 0
- Disability Inactive - 0
- Temporary Suspension - 0
- Suspension - 1
- Disbarment - 3

Suspension

[John Louis Kleber, III](#)

Disbarment

[Jonathan F. Altman](#)
[Stephen R. Murphy](#)
[James Robert Protasio](#)

Rules

Board Amends Requirements for Briefs

By an [Order](#) published in the [PA Bulletin](#), the Disciplinary Board has adopted an amendment to Sections [89.163](#) and [89.202](#) of its Rules of Organization and Procedure regarding the content and format of briefs to be filed with the Board.

The new rule limits briefs to 6000 words, as opposed to the prior limit of 30 pages. It also requires that all briefs be set in 14-point Arial font.

Supreme Court Amends Reinstatement Rules

By an [Order](#) dated March 31, 2020, the Supreme Court of Pennsylvania amended [Rule 218](#) of the Pennsylvania Rules of Disciplinary Enforcement affecting applications for reinstatement.

The Court imposed a new filing fee of \$250 for applications for reinstatement from inactive status pursuant to [Pa.R.D.E. 301](#), regarding transfer to inactive status due to disability or incapacity.

It also adopted a new subsection (3), providing that failure to pay expenses taxed in connection with an application for reinstatement will result in imposition of a monthly penalty in the amount of 0.8% of the balance, or such rate as the Court shall set. The rule provides that the Board may waive the penalty for good cause shown.

The rule also imposes a non-refundable filing fee of \$250 for filing of a verified statement by an attorney seeking reinstatement from a suspension of not more than one year.

The Disciplinary Board is proposing [amendments](#) to Sections [89.273](#) and [93.111](#) of its rules to bring them into conformity with the amendments to the Rules of Disciplinary Enforcement.

Supreme Court Allows Temporary 2020 Limited Practice License

By [Order](#) dated April 28, 2020, the Supreme Court of Pennsylvania adopted a recommendation of the Pennsylvania Board of Law Examiners and authorized law graduates unable to sit for the bar examination due to COVID-19 postponements to engage in the limited practice of law.

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. [Read more...](#)

Articles of Interest

ABA Opinion: Lawyer Has Duty to Inquire into Criminal Action of Client

A new ethics opinion from the ABA's Standing Committee on Professional Responsibility, [Formal Opinion 491](#), examines the ethical duties of a lawyer who suspects that a client might be using the lawyer's services to facilitate criminal activity. It concludes that where facts known to the lawyer establish a "high probability" that a client seeks to use the lawyer's services for criminal or fraudulent activity, the lawyer has a duty to inquire further to avoid advising or assisting such activity.

Most lawyers know that [Rule 1.2\(d\)](#) forbids a lawyer to "counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent." The ABA committee notes that lawyers' services are sometimes used to facilitate certain kinds of crimes, such as money laundering. The opinion examines cases decided in several jurisdictions where lawyers were disciplined for participating in schemes which they should have known involved illegal activity, and concluded that "Substantial authority confirms that a lawyer may not ignore the obvious."

If the lawyer is aware of facts that support a reasonable inference that the goal of the client is to engage in illegal activities, the lawyer must conduct an inquiry to either confirm or refute that suspicion. If the client refuses to provide information or asks the lawyer not to evaluate the legality of a transaction, the lawyer should explain to the client that the lawyer cannot undertake the representation unless the client cooperates. If the client does not agree to provide the needed information, then the lawyer must decline the representation or withdraw.

If the lawyer conducts a diligent inquiry which does not establish that the client's intentions are criminal, he or she may continue the representation with appropriate caution.

The Committee cites several rules other than Rule 1.2(d) which impose duties on the lawyer regarding limitations on the lawyer-client relationship and steps the lawyer should take to avoid participating in illegal activity.

Fifth Circuit Panel Holds that Privilege Does Not Protect Client Information from IRS

A [panel of the Fifth Circuit Court of Appeals](#) issued an [opinion](#) holding that attorney-client privilege does not prevent a law firm from complying with an Internal Revenue Service summons seeking information about any clients that created overseas accounts and entities.

The IRS sought the information after a taxpayer audit found that the Taylor Lohmeyer Law Firm of Kerrville, Texas, a tax and estate planning firm, had created offshore accounts that a taxpayer used to evade income taxes in the United States. The IRS wanted to learn whether other firm clients may have employed the law firm to set up similar accounts.

As a general principle, clients' identities are not protected by the attorney-client privilege. Taylor Lohmeyer asserted that its clients' identities were protected under an exception that bars disclosure when it would result in release of a confidential communication, but the Court held that the exception is a "limited and rarely available sanctuary" inapplicable where the fact of retaining an attorney does not reveal motive or legal advice.

New Jersey Bars Lawyer Reinstatement Unless Wife Sequestered

The Disciplinary Review Board of New Jersey is refusing to reinstate a suspended lawyer unless he provides proof that his wife, an employee in his office, has no access to his trust accounts.

Nelson Gonzales was suspended for three months by the state Supreme Court in an [Order](#) dated April 9, 2020. The discipline was based on several violations, including failure to safeguard funds, negligent misappropriation, and failure to comply with recordkeeping requirements. Gonzales had entrusted much of the management of his trust accounts to his wife, even after serious issues with her handling of these matters came to light. She prepared false account statements to hide errors, and hid from Gonzales a fee arbitration matter and two ethics grievances that had been filed against him. A psychologist testified that these problems arose from her desire to avoid conflict.

The Court ordered that Gonzales not employ his wife or give her access to his law practice or his attorney accounts, books and records, and required him to provide proof he had done so to the Office of Attorney Ethics prior to reinstatement to practice.

You Need Pants to Bring a Suit

An Atlanta lawyer is fighting a disqualification motion because he took his pants off while passing through courthouse security.

Robert Ward acknowledged his department while passing through security at the Federal courthouse in Tampa, Florida, where he was appearing *pro hac vice* in a suit against Wyndham Vacation Resorts. He doffed his trousers after objecting to a security officer's request that he remove his belt to pass through a metal detector. A U.S. District Court judge [ordered](#) Ward to show cause why his *pro hac vice* status should not be revoked. Subsequently, Wyndham filed a [response](#) to local counsel's motions to withdraw, seeking revocation of Ward's *pro hac vice* admission among other forms of relief.

In response, Ward filed an "[Attacked Lead Counsel's Request for Leave To Respond to Wyndham's Untoward Comments.](#)" in which he argued that he was given permission to remove his pants after court security officers refused to conduct a standard patdown, that he had apologized, and that the incident caused no one any harm.

Court action on all these motions remains pending.

Judge Warns Lawyers Against Attending Zoom Hearings Shirtless or in Bed

In further attire-related news, a Florida judge [warned lawyers to wear appropriate dress](#) while attending hearings held on Zoom or other online meeting utilities.

Judge Dennis Bailey provided that advice in a [letter to the Weston Bar Association](#) after attorneys appeared in hearings shirtless, poolside in beach cover-ups, or in bed with the covers pulled up. The judge also cautioned lawyers to be aware of issues posed by the online format, such as the need to provide documents in advance, the problems with lag times, and failure to note when objections are made because the audio stays with the person who is speaking.

The judge compared doing hearings on Zoom to running a car with a compact spare tire: “It will get us to where we need to go if we decrease our speed and increase our caution and shorten our trip ... We'll get there, but it may get a little bumpy along the way.”

Attorney Registration

Attorney Registration Portal Opens

It's that time of year when all Pennsylvania attorneys will need to submit their annual registration forms and fees. All attorneys admitted in Pennsylvania must file a registration form and pay the required fee by July 1, 2020.

Letting that date slip by is costly. If an attorney fails to complete the registration requirements by July 16, a late fee of \$200 is automatically assessed. If the registration is still not completed by August 1, a second cumulative late fee of \$200 is assessed. So, a month's delay will cost \$400. Board staff have no discretion to waive or forgive the late fee(s) for any reason. Further delays could put the attorney's right to practice in jeopardy of administrative suspension. If a submitted payment is returned as unpaid, a collection fee of \$100 will be assessed.

It is required that all Pennsylvania attorneys use the Unified Judicial System's [Online Portal](#) to register. The process has been designed to be as quick and manageable as possible. There is an [Online Video Tutorial](#) and a [Help Center](#) to assist with any problems that may arise.

The option to “Pay by Mail” is still available. However, the Board encourages attorneys to “Pay Online” if at all possible. The COVID-19 pandemic has led to a minimal presence in the Board's physical offices making the processing of paper mail much more difficult than in prior years. In addition, the possibility of an estimated half million election ballots flooding the Postal Service may result in delays in delivery. For these reasons, the Board implores attorneys to use the mail-in option only if online payment is impossible due to the attorney's personal circumstances.

Important Dates

Payment Deadline JULY 1

First \$200 Late Fee Assessed After JULY 16

Second \$200 Late Fee Assessed After AUGUST 1

Attorney Well-Being



**Depressed?
Stressed?
Anxious?
Overwhelmed?**

YOU ARE NOT ALONE.

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



Please note the following announcements from the PA CLE Board regarding the impact of the coronavirus on CLE operations:

Distance Learning

- **Limitations Removed for 2020:** On April 15, 2020, the Supreme Court of Pennsylvania issued a [Court Order](#) temporarily waiving the six (6) hour limitation on distance learning credits for 2020 compliance deadlines. Attorneys in Pennsylvania may now complete all 12 hours of their 2020 CLE requirements through approved distance learning activities. Please note the following conditions of this one-time accommodation:
 - Suspension of the distance learning cap will apply to 2020 CLE deadlines and the standard cap of six (6) hours earned through this delivery method will resume with 2021 annual compliance deadlines.
 - In order to contribute toward the CLE requirement, distance learning credits must be earned through participation in approved programs offered by [Accredited Providers of Distance Learning](#).
 - Distance learning credits in excess of twelve (12) will not carry forward towards future annual compliance deadlines.
 - Credits not classified as distance learning will carry forward if applicable.
- **Accreditation Process Updated:** The process for becoming an Accredited Provider of Distance Learning has been streamlined. [More Information](#)

Compliance Group One Deadline Extension

- The April 30, 2020 compliance deadline for completing CLE requirements has been extended until August 31, 2020. [More Information](#)

Current Non-Compliant Attorneys

- A 90-Day hardship extension has been granted for the following:
 - [Compliance Group 2](#): Attorneys who have not complied with the August 31, 2019 CLE requirement by July 17, 2020 will be placed on Administrative Suspension.
 - [Compliance Group 3](#): Attorneys who have not complied with the December 31, 2019 deadline by July 21, 2020 will be assessed a second late fee.
- CLE credit deficiencies for the August and December 2019 compliance deadlines may be completed through approved distance learning.
- If you owe a late fee for non-compliance, we encourage you to use the secure payment feature available through your [MyPacle](#) account. This payment method provides a secure and more immediate fee resolution than mailing a check.

Still have a question? [Email the PA CLE Board Staff](#).

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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