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Attorney News - May 2017



Articles & Updates

- **2017-18 Annual Attorney Registration has begun!**
- **Supreme Court Amends Enforcement Rules to Enhance Board's Authority to Collect Costs**
- **Board of Law Examiners Proposes Confidentiality Amendment**
- **ABA Opinion Reviews Security of Email**
- **AMA, House Judiciary Chair Seek Disclaimer Requirement on Pharmaceutical Litigation Ads**
- **Robots Change the Face of Legal Practice**
- **Volunteer Opportunity to Be Posted by AOPC**
- **We'll Be Back – in August**

Things to Remember

- **Follow the Disciplinary Board on Twitter**

*This newsletter is intended to inform and educate members of the legal profession regarding activities and initiatives of the Disciplinary Board of the Supreme Court of Pennsylvania. To ensure you receive each newsletter and announcement from the Disciplinary Board of the Supreme Court of PA, please add us to your "safe recipients" list in your email system. **Please do not reply to this email. Send any comments or questions to comments@padisciplinaryboard.org.***

2017-18 Annual Attorney Registration has begun!

Attorneys are required to complete their annual registration online by July 1 through the UJS Portal at <https://ujportal.pacourts.us/>.

Attorneys will receive bi-monthly email reminders to register until their registration is completed. A registration is considered completed once the form is submitted electronically and payment has been received and processed by the Attorney Registration Office.

Important Dates

August 1 – First Late Fee of \$200 Assessed

September 1 – Second Late Fee of \$200 Assessed

If you need assistance with Annual Registration, please reach out to the appropriate resource. For issues related to accessing your UJS Portal account, **contact the AOPC Helpdesk**. For all other registration inquiries, please view the **Disciplinary Board's FAQs** or **contact the Attorney Registration Office**.

When contacting the AOPC Helpdesk or Attorney Registration Office, please leave one voice message or send one email within 2 business days to allow staff time to provide assistance.

As of May 17, nearly 14,000 attorneys have **completed** their annual registration. Only about 63,000 to go...

Supreme Court Amends Enforcement Rules to Enhance Board's Authority to Collect Costs

On April 21, 2017, in a rulemaking published at **47 Pa.B. 2539** (May 6, 2017), the Supreme Court adopted **amendments** to Rules 208, 215 and 219 of the Pennsylvania Rules of Disciplinary Enforcement relating to the imposition of assessed costs against attorneys in disciplinary matters and the consequences of a disciplined attorney's failure to pay. The amended rule took effect May 21, 2017.

Changes to the procedures for taxing expenses allow the Disciplinary Board to track outstanding balances owed by disciplined attorneys more easily and enhance the enforcement power of the Board by incentivizing disciplined attorneys to pay costs in a timely manner or suffer the administrative

suspension of their law licenses.

Attorneys must pay the costs of discipline within 30 days of either the order imposing the discipline or the notice of taxation of expenses, depending on the type of discipline, and may be subject to administrative suspension for failure to timely pay.

In the same issue of the Pennsylvania Bulletin, at **47 Pa.B. 2557**, the Board established the collection fee for checks returned as unpaid and the late payment penalty for the 2017-2018 Registration Year.

Where a check, in payment of the annual registration fee for attorneys, has been returned to the Board unpaid, the collection fee will be \$100.00 per returned item.

Any attorney who fails to complete registration by July 31 will automatically be assessed a late payment penalty of \$200.00. If the attorney fails to complete registration by August 31, a second penalty of \$200.00 will be assessed for a total of \$400. These penalties are non-waivable.

Board of Law Examiners Proposes Confidentiality Amendment

The Pennsylvania Board of Law Examiners (BLE) requests comments on a proposal to request the Supreme Court to amend **Rule 402 of the Pennsylvania Bar Admission Rules**,^[i] regarding confidentiality of bar application proceedings.

The proposal, published April 29, 2017, at **47 Pa.B. 2423**, would add a provision allowing the BLE to share information with disciplinary boards or authorities (including the Disciplinary Board of the Supreme Court of Pennsylvania) which the BLE deems relevant to disciplinary issues. The provision only allows sharing with disciplinary authorities who: 1) agree to use the information only for disciplinary purposes, and 2) have in place a rule or policy assuring the confidentiality of disciplinary materials and records.

Interested persons may submit comments to the Counsel to the Board, Pennsylvania Board of Law Examiners, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 3600, P.O. Box 62535, Harrisburg, PA 17106-2535, no later than May 31, 2017.

ABA Opinion Reviews Security of Email *

A recent formal ethics opinion issued by the **ABA Standing Committee on Ethics and Professional Responsibility** states that under some circumstances, a lawyer may violate his or her duty of confidentiality by communicating sensitive information using email that is not encrypted.

Formal Ethics Opinion 477, issued May 4, 2017, notes that previous ethics opinions as to the security of email took place before significant evolution in the use of technology in legal practice and before the ABA adopted its "Technology Amendments" in 2012. New language was added to **Comment 8 to Rule 1.1**, regarding competency, specifically stating that the lawyer should "should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology ..." The opinion discusses at length the evolving nature of cybersecurity, and concludes that the "reasonable efforts" standard may require different precautions depending on the requirements of the client, the

sensitivity of the information transmitted, the risk of disclosure, the cost and difficulty of adding more safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients, such as by making a device or software excessively difficult to use.

The opinion does not offer simple solutions, but identifies seven considerations a lawyer or firm should take into account in determining the sufficiency of email procedures:

1. The nature of the threat.
2. How confidential client information is transmitted and stored.
3. Reasonable electronic security measures.
4. How electronic communications should be protected.
5. Labeling client information as privileged and confidential.
6. Training lawyers and nonlawyer assistants in technology and cybersecurity.
7. Due diligence on vendors who provide technology services.

*As always, please remember that ethics opinions issued by bar associations are not binding on the Disciplinary Board of the Supreme Court of Pennsylvania.

AMA, House Judiciary Chair Seek Disclaimer Requirement on Pharmaceutical Litigation Ads

On March 7, 2017, the Chair of the House Judiciary Committee, Representative Bob Goodlatte of Virginia, wrote a **letter to the President of the American Bar Association** requesting that the ABA consider an amendment to the Model Rules of Professional Conduct, requiring that lawyers advertising for clients who have been injured by pharmaceutical products warn clients not to discontinue use of medications without consulting their physicians.

The **letter** cites a **resolution adopted by the American Medical Association** at its July 2016 meeting, opining that lawyer ads seeking pharmaceutical plaintiffs often speak about potential complications in an alarming way, leading some patients to stop taking their medications without seeking medical advice.

On March 23, 2017, ABA President Linda A. Klein responded with a **letter** to Representative Goodlatte. She stated that the inquiry has been referred to a working group of the ABA's Standing Committee on Ethics and Professional Responsibility addressing advertising. She noted that a report by the Association of Professional Responsibility Lawyers, an influential association of lawyers with expertise in legal ethics, discipline, and malpractice, recommended making state rules more uniform and focusing on the "false and misleading" standard. She pointed out that injuries and deaths from pharmaceutical products are public health problems themselves. She cited Supreme Court decisions upholding a First Amendment right in advertising by both lawyers [*Bates v. State Bar of Arizona*, 433 U.S. 350 (1977)] and pharmacists [*Virginia State Pharmacy Bd. v. Virginia Citizens Council*, 425 U.S. 748 (1976)]. Finally, she observed that all the states regulate false and misleading advertising, and recommended

that issues of whether advertising is appropriate be directed to the disciplinary authorities of the state where the advertising is published.

Robots Change the Face of Legal Practice

Many industries have turned to robotics to handle jobs formerly performed by humans, and law is no exception. We have previously reported on law firms using **Ross**, an AI (Artificial Intelligence) program powered in part by IBM's Watson, to manage its bankruptcy practice, and **DoNotPay**, an application created by British teenager Joshua Browder, which helps users defeat traffic tickets.

An article in **The Atlantic** examines some of the ways AI programs are used to perform law-related tasks usually handled by lawyers. The author predicts that software will move past mundane tasks like cataloguing exhibits and calendars to predicting outcomes of lawsuits. Applications such as **Lex Machina** and **Premonition** pore over thousands of verdicts and decisions and yield analysis on key issues such as plaintiff/defendant bias in courts, legal strategies offered by opposing counsel and accepted by courts, and other strategic information, allowing them to predict winners and losers.

Chatbot applications work by asking clients questions that enable them to sift through complicated statutes and determine what legal options are available to clients. DoNotPay, which helps users defend traffic cases, is the most famous example, but experts point out other contexts such as bankruptcy, immigration, and divorce cases where complex laws are applied to fact patterns. Chatbots could be particularly useful in representation of low-income clients, many of whom are turned away by legal services programs.

The use of automated legal analysis systems may even find its way into criminal law settings. Already applications are available to help judges sort through cases to make decisions on issues such as setting bail and granting parole. The advent of systems that render information for purposes of sentencing cannot be far behind.

According to the article, AI lawyering may even replace physical courts at some point. In cases where uncontested facts are applied to commonly litigated areas such as landlord-tenant claims, electronic approaches may make it possible for decisions to be reached in minutes rather than months. One company is creating "intelligent contracts" which not only set the terms of an agreement, but also monitor compliance and detect violations. Future applications may carry out remedies as well, such as debiting a tenant's bank account when a violation of the lease terms is detected.

Given the rapid pace of technological change and the acceleration of "smart technology," further advances of automation into the legal field are inevitable. The lawyer who plans to practice far into the future will need to develop the skills to keep up.

Volunteer Opportunity to Be Posted by AOPC

On June 1, 2017, the Administrative Office of the Pennsylvania Courts will post a notice seeking a volunteer for:

- The Court of Judicial Discipline

The open position is for a judge-member. The applicant cannot be registered in the Republican party, in order to maintain the Constitutional requirement that no more than two members appointed by the Supreme Court may be registered in the same political party. On June 1, the details for the positions will be published at the [website of the Pennsylvania courts](#).

Applications will be due June 30, 2017.

We'll Be Back – in August

The Disciplinary Board has planned a shift in the delivery of this newsletter from a monthly to a quarterly basis. After this issue, the next time you will hear from us will be in August, then in November. [\[ii\]](#)

As always, we welcome your thoughts at our [Comments email](#).

[\[i\]](#) Not to be confused with [Rule 402 of the Pennsylvania Rules of Disciplinary Enforcement](#), which deals with the confidentiality of disciplinary proceedings.

[\[ii\]](#) This means two fewer nags reminding you about registration. Just make sure to pay attention to this month's, as by next time your registration would be late. And see the discussion about "non-waivable late payment penalty," above.

Let Us Know

Got a tip, a link, a correction, a question, a comment, an observation, a clarification, a wisecrack, an idea you'd like to see addressed? We are always glad to hear from you. Please do not reply to this email. Write us at comments@padisciplinaryboard.org.

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