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Attorney News - September 2016



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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

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Supreme Court Encourages People to Apply For Appointments to Advisory Panels

The Pennsylvania Supreme Court is undertaking an initiative to make it easier for people to express interest in being appointed to court advisory panels.

Chief Justice Thomas G. Saylor said the intention of the initiative is to broaden participation in the Supreme Court's boards and committees.

Justice David N. Wecht will supervise the project's implementation, with the support of the full court.

Legal training, experience and expertise are necessary for many assignments, but there are appointments for nonattorneys as well.

Justice Wecht noted that making it easier to apply for positions on the advisory boards and announcing those positions to a broader audience will ensure that the court will have a more diverse pool of applicants. The hope is that a broader array of candidates, and consequently panel members, will bring new perspectives to the important work of the panels. He said the court appreciates the time and effort board and committee members dedicate to their roles.

The Unified Judicial System website at www.pacourts.us will serve as the central resource for the new initiative. As vacancies arise, they will be featured on the home page, usually beginning the first week of the month. Clicking on the announcement will lead readers to a list of vacancies with links to information about the mission of that panel, including terms of service, as well as an application and directions for submission. Applicants will have one month to apply.

The first positions will be featured on the website on Oct. 3. They will include vacancies on the Continuing Legal Education Board and the Orphans' Court Procedural Rules Committee.

More than 180 volunteers sit on Supreme Court panels and have a wide range of responsibilities and functions. Some panels 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 service. Although the number varies, approximately 20 vacancies occur each year.

For more information, visit the [UJS website](#).

Attorney Suspended for Improper Use of Charging Lien

By order dated July 14, 2016, attorney **Terry Elizabeth Silva** of Delaware County was suspended by the Supreme Court based on her handling of the proceeds of a lawsuit. Silva refused to disburse the funds received, asserting a charging lien on the recovery to which the Disciplinary Board determined she was

not entitled.

Silva represented an 82-year-old woman in a slip and fall case. The woman's son accompanied her to all meetings and conducted many of the communications with Silva on his mother's behalf. The fee agreement provided for Silva to receive a contingent fee of 33 1/3%.

The case was settled, and Silva's staff deposited the check into her operating account. A month later her office delivered a check for one third of the proceeds to the client's daughter. Silva withheld a third of the check for her advanced expenses and a Medicare lien of less than \$1,000.

While still holding the remaining third of the proceeds, Silva wrote several checks which reduced the balance in the account to \$1,852. She made no further distribution over the following two and a half years, until the client filed a complaint with the Office of Disciplinary Counsel and a claim with the Lawyers Fund for Client Security. Silva defended those complaints with a claim she was entitled to a charging lien on the proceeds, based on her representation of the son and his wife in an unrelated matter. She also claimed that the mother authorized the use of the proceeds to pay debts of the son.

The Disciplinary Board found that Silva's exercise of a charging lien was improper, because the son was not a client in the slip and fall case that generated the recovery. The Disciplinary Board found that she violated several of the Rules of Professional Conduct pertaining to competence, communication, handling of client funds, and honesty. The Hearing Committee recommended suspension for one year and one day, but after reviewing prior cases, and taking into account Respondent's lack of remorse and continued denials of wrongdoing, the Disciplinary Board recommended a three-year suspension. The Supreme Court accepted the Board's recommendation and suspended Silva for three years.

Look Up an Attorney Feature Working Again

The most frequently used feature on the Disciplinary Board web site is the "Look Up an Attorney" function. As many of you have discovered, the Look Up function was disabled for a period of time while improvements were added. We are pleased to report that the Look Up function is now back to full service. We hope that the newly improved model will be even more useful to the public and the legal community.

Former Legal Secretary Sentenced for Fake Legal Career

On July 19, 2016, a former legal secretary who posed for ten years as a lawyer was **sentenced** in the Court of Common Pleas of Huntingdon County to two to five years' imprisonment, more than twice the sentence recommended by Pennsylvania's guidelines.

Kimberly Kitchen claimed to have graduated first in her class from Duquesne University School of Law and to have taught estate planning at Columbia Law School, and created documents purporting to show these and other credentials. She became an estate-planning partner with a Huntingdon County law firm, and even served as president of the Huntingdon County Bar Association. Her ruse was exposed when a lawyer developing a seniority list for the bar association checked her admission and found nothing.

He Didn't Admit He was Admitted

We often hear stories about people who claim to be lawyers when they aren't, but a South Carolina attorney has been suspended for saying he wasn't admitted to the bar when he was. **Justin J. Trapp** was appointed to represent a client in a post-conviction matter, but took no action on behalf of the client. When the prosecuting attorney's office contacted him about the matter being listed for the upcoming term of court, he told them he was not admitted in South Carolina, and a new attorney was appointed. Although he had been placed on administrative suspension a month earlier, he was duly admitted to the bar at all times during his appointment. He was suspended for one year retroactive to the date of his interim suspension.

Pointer of the Month: Just Kidding, Really; Humor in Litigation

Humor can be a great aid in coping with the stress and solemnity of the law.^[1] But careers have been derailed or ended by ill-advised attempts at humor which were misinterpreted, or which did not come across as humorous in writing, or which revealed attitudes not funny at all.

A seminar at the ABA Annual Meeting addressed the use of jokes and insults. Entitled "**Thou Poisonous Bunch-Back'd Toad: Ethics of Insults Through the Centuries**," the session juxtaposed a comic recitation of epic insults from Shakespeare with a serious discussion of the role of humor in litigation by experienced litigators and judges. Some of the points the panelists made:

- The key to humor is context. A joke that is perfectly appropriate in a private setting may be disastrous in open court.
- Statements that are obviously humor when heard aloud may look entirely different in writing on a transcript, with the lack of emotional context in the dry text.
- Humor in emails is particularly risky. Many stories have arisen from emails that were thought to be private but found their way into other hands. As the saying goes, "Dance like no one is watching; email like it may someday be read in a deposition."
- Humor often does not translate across generational lines. Older adults may use humor with stereotypes or assumptions that were common once, but are now offensive to younger people; and young people often find humor in phrases and references that are lost (or have a different meaning) to those of more advanced age.^[2]

Eastern District Clerk Retires After 54-Year Run

It must have been strange for Michael Kunz, chief clerk for the U.S. District Court for the Eastern District of Pennsylvania in Philadelphia, not to show up for work on July 1. Prior to his **retirement on that day**, Mr. Kunz served for 54 years as a clerk for the Court, making him the longest tenured clerk in the entire U.S. Federal Court system. When he started work in 1962, John F. Kennedy was President, the IBM Selectric was the latest innovation in office technology, and the first modern commercial fax machine was still on the drawing board at Xerox, two years away from production.

Congratulations to Mr. Kunz on a long and distinguished career, and a well-earned retirement.

[1] This revelation will come as no surprise to regular readers of this newsletter.

[2] The joke is told: A young lawyer tries a case before an older judge. After the case, the judge calls the lawyer into her chambers. "You have a lot of skills," she tells him, "but I have a suggestion that will help you in your practice. You have a tendency to use two words that are not appropriate for a courtroom setting. Those words are cool and awesome."

The young lawyer bowed his head. "I appreciate your concern and your willingness to provide me with guidance, your Honor. Now what are the two words?"

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