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Attorney News - July 2016



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- **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.***

40 Attorneys Take on Hearing Committee Responsibilities

The disciplinary system in Pennsylvania is a peer-review system. Before discipline can be imposed on any attorney (except in reciprocal discipline situations), he or she is entitled to a hearing before a panel of volunteer attorneys. These attorneys take time from their schedules to sit through hearings, often extended ones, pore through evidence, read briefs, and write detailed reports to guide the Disciplinary Board and the Supreme Court in their determinations. They also review recommendations of Disciplinary Counsel; no case (other than one based on a criminal conviction) can go to private discipline or formal charges until a volunteer hearing committee member has reviewed and approved it.

These 40 attorneys have committed to this substantial service to the profession by accepting appointments as new Hearing Committee members:

District I (Philadelphia County)

Howard Paul Dwoskin

Jerry Michael Lehocky (Previously Served 2000-2006 & 2008-2014)

Kevin J. O'Brien (Previously Served 2007-2013)

William J. O'Brien

Maria-Louise G. Perri (Previously Served 2008-2014)

Charles Jay Schleifer

Howard Glenn Silverman

Andrew Jay Soven

Mark William Tanner

District II

Michael Kuldiner – Bucks

Michael L. Saile, Jr. – Bucks

Cheryl L. Young – Montgomery (Previously Served 1999 – 2005)

Stephanie Hollis Klein – Delaware

Sharon Rose Lopez - Lancaster

Colin J. O'Boyle – Montgomery

Michael Louis Barbiero – Montgomery

R. Tyler Tomlinson – Bucks

District III

Lisa Marie Benzie – Dauphin

Vincent J. Cappellini – Luzerne

Jason C. Giurintano – Dauphin

Gerard Michael Karam – Lackawanna

Francis X. O'Connor – Susquehanna (Previously Served on HC & Board)

Catherine R. O'Donnell – Luzerne

David Joseph Solfanelli – Lackawanna (Previously Served 2008-2014)

Seth Todd Mosebey – Cumberland

Michael W. Winfield – Dauphin

District IV

Charles W. Garbett - Lawrence

Nelson Baker Gaugler – Allegheny

Lauren Michelle Kelly – Allegheny
Richard James Schubert - Allegheny
Eric George Soller – Allegheny (Previously Served 2007-2013)
Gary P. Caruso – Westmoreland
Robert J. Marino – Allegheny
Thomas Patrick McGinnis – Allegheny
David Ridge – Erie (Previously Served 1993 – 1999)
George N. Stewart, IV – Westmoreland
Leslie Michelle Britton – Allegheny
M. Scott Zegeer – Allegheny
Kathryn Mary Kenyon – Allegheny
Ron Godfrey Jones - Allegheny

These attorneys, already serving as Hearing Committee members, have agreed to extend their service by accepting reappointment to an additional three-year term:

District I

Thomas H. Chiacchio, Jr.
Gregory Frank Cirillo
Sayde Joy Ladov
Katherine E. Missimer
Scott H. Mustin
Philip N. Pasquarello
Marc Philip Weingarten

District II

James C. Crumlish, III – Montgomery
Kyle Michael Elliott – Montgomery
James C. Higgins, Jr. – Delaware
Jeffrey Allen Krawitz – Bucks
Charles J. Meyer – Montgomery
Philip David Press – Montgomery

District III

Elaine Cook – Luzerne
Lisa Marie Coyne – Cumberland
Richard F. Maffett, Jr. – Dauphin
Barbara R. McLemore – Cumberland
Robert D. Schaub – Luzerne

District IV

Jennifer R. Andrade – Allegheny
Jill Dominique Sinatra – Allegheny
Richard Tsai Ting – Allegheny

Late Fees Piling Up

We sincerely hope you submitted your annual registration and paid the fee by July 1. If you didn't, a

\$200 late fee will be assessed on August 1. That fee cannot be waived by the staff, so please don't ask. It doesn't matter whether you got your notice or had some reason for nonpayment. Worse yet, if your annual fee and late payment are not received by August 31, a **second \$200 late fee** will attach.

Also, Rule 219(f) states, "the continued failure to comply with this rule shall be deemed a request to be administratively suspended," and the Disciplinary Board sends the names of unpaid attorneys over to the Supreme Court for entry of orders of administrative suspension.

So if you haven't taken care of your fee, you really, really need to do so right now.

Lawyer Suspended for Excesses in Representing Wife

They say love is blind, but being blinded by love can be hazardous to your career.

A Delaware County attorney has been suspended for five years by the Pennsylvania Supreme Court following an extended series of legal actions in which he represented a client, whom he later married. The Disciplinary Board found that **Charles Edward Malloy, III**, of Boothwyn, committed numerous violations of the Rules of Professional Conduct in a series of lawsuits related to a real estate transaction gone bad.

Beginning in 2007, Malloy began representing Deborah Hargy, whom he married in 2011, regarding an agreement of sale for a home in Ashton. Problems arose as early as the walk-through, at which Malloy argued with the developer and sellers. The agreement of sale required Ms. Hargy to apply for a mortgage and attend a settlement, neither of which she did on advice of Malloy. He rejected the seller's offer to return the escrow without payment of additional expenses accrued by Ms. Hargy. When the seller's attorney filed a suit to obtain authorization for release of the escrow, Malloy filed frivolous motions and a counterclaim raising Ms. Hargy's claim from \$1,414 for carpets up to \$66,061 for various claims including legal fees. This led to a five-day bench trial in which the trial judge concluded Malloy was not familiar with litigation practice, was unprepared for trial, and used tactics to obstruct or delay the proceeding. After three years of litigation, the trial court entered a decision for the sellers on all points. Malloy filed a late appeal, which was dismissed by the Superior Court.

After dismissal of the appeal, the sellers filed a petition for counsel fees under 42 Pa.C.S.A. §2503(7), alleging that Malloy had engaged in dilatory, obdurate, vexatious and bad faith acts. In response Malloy filed a number of documents criticizing the trial judge and other jurists. Eventually a different judge entered a sanctions order against the Malloys in the amount of \$63,486. They appealed but the sanction was upheld.

Malloy also filed an ejectment action against the buyers of the property, asserting many of the same arguments he used in the contract action. He also filed a mandamus action seeking removal of the trial judge, disciplinary complaints against opposing counsel, an abuse of process action against opposing counsel for trying to enforce the money judgment, and a malpractice action and a writ of summons for unspecified claims against a real estate broker involved in the transaction. All were dismissed.

In the disciplinary proceeding, Malloy continued to assert arguments that had been rejected by all trial and appellate courts who considered them. He admitted to no misconduct except missing a filing deadline. He did not testify in his own defense.

The Disciplinary Board found that “Respondent's ignorance of the law and incompetence are common threads throughout his representation of Mrs. Malloy. Respondent did not properly represent his client's interests from the time she signed the Agreement of Sale on March 22, 2007, to present.” The Board concluded that Malloy had violated numerous rules including:

- RPC 1.1, competence;
- RPC 3.1, frivolous claims and arguments;
- RPC 3.2, failing to expedite litigation;
- RPC 3.4(c), asserting a personal opinion as to merits and credibility;
- RPC 4.1, false statements to a third party;
- RPC 8.2(a), false accusations against a judicial official; and
- RPC 8.4(d), conduct prejudicial to the administration of justice.

Based on the length of time the actions covered, the multiplicity of actions, and Malloy's failure to acknowledge wrongdoing or recognize a need to reform his actions, the Disciplinary Board agreed with the Hearing Committee's recommendation of a five-year suspension. The Board cited two other cases in which attorneys engaging in long patterns of attacking court officials received five-year suspensions.

In an order dated June 30, 2016, the Supreme Court accepted the Board's recommendation and suspended Malloy for five years.

Tip of the Month: Can I Represent Both Parties in a Transaction?

Lawyers with a varied practice often find themselves facing the question of whether they can represent both parties in a legal matter. The most common situation is when the buyer and seller in an amicable real estate transaction both seek to use the same lawyer to draw up papers. Joint representation issues also arise in commercial transactions, and even sometimes in domestic cases.

Joint representation is addressed by **Rule 1.7(b)** of the Rules of Professional Conduct. The rule provides that a lawyer may proceed where there is a concurrent conflict if all of the following tests are satisfied:

1. The lawyer reasonably believes that competent and diligent representation to each client is practical;
2. The representation is not prohibited by law;
3. The representation does not involve the assertion of a claim by one client against another client whom the lawyer represents in a contested matter; and
4. Each affected client gives informed consent.

The key to such representation is informed consent. “Informed consent” is defined in **Rule 1.0(e)** as “consent by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.” Comment 18 to Rule 1.7 explains:

When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved.

There are several issues which the lawyer approaching common representation must think through

carefully. Comments 29 through 33 to Rule 1.7 discuss several issues arising from common representation, including future cost and inconvenience, confidentiality, and effect on the lawyer's ability to represent each client in the future. Comment 32 includes sage advice: "the lawyer should make clear that the lawyer's role is **not that of partisanship normally expected in other circumstances** and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented" [emphasis added]. The lawyer cannot assume or infer that each client understands these limitations. The lawyer is well advised to document the disclosure that is provided in case misunderstandings arise in the future.

The lawyer making disclosure should also be mindful of **Rule 1.2(c)**, which states that a lawyer may limit the scope of the representation, but only if the client gives informed consent.

Texas Lawyers Serve Up Marijuana Advice in Song

As laws against the possession of marijuana erode across the country, even in **Pennsylvania**, some odd effects take place. In Texas, for instance, possession of marijuana is a misdemeanor, but destroying evidence is a felony. So people who try to dispose of marijuana in their possession when facing arrest may be committing a more serious crime than the possession itself.

This led musically talented Waco attorneys **Will Hutson and Chris Harris** to offer advice for the general order in song, the surprisingly catchy "**Don't Eat Your Weed**."

The bards of the bar have also recorded songs offering preventive advice on insurance claims and Miranda warnings. Can a Greatest Hits album and a gig on **Austin City Limits** be far away?

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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