Attorney News - April 2016

The Disciplinary Board of the Supreme Court of Pennsylvania

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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 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****.*

Electronic Filing: It's Here!

On April 12, 2016, the Supreme Court adopted an **amendment to Rule 219** of the Rules of Disciplinary Enforcement, declaring that all attorney registration forms for the 2016-2017 registration year and subsequent years must be filed electronically. Attorneys may reach the electronic filing system through a link on the Board's website (**http://www.padisciplinaryboard.org**) or directly at **https://ujsportal.pacourts.us**.

The Disciplinary Board will send a notice to register electronically, with instructions and links, to each attorney's registered email address on or before May 15. This notice will go to all attorneys eligible to register, not just those who have previously registered for or used electronic filing. Failure to receive the notice does not relieve the obligation to register, so check your spam folder if you don't see it.**[1]**

Attorneys may pay the annual fee Payment one of two ways: a) electronically, by credit or debit card at the time of electronic transmission of the form through the online system of the Attorney Registration Office, which payment shall include a nominal fee to process the electronic payment**[2]**; or b) by check or money order using a printable, mail-in voucher. Electronic submission represents a certification that the information contained in the electronic filing is true and correct.

The rule also contains a provision requiring attorneys to promptly ensure that IOLTA accounts are properly enrolled with the Pennsylvania IOLTA Board pursuant to the applicable IOLTA regulations.

Electronic filing is not available to attorneys who are administratively suspended or retired. The rule contains special provisions for these attorneys, and for former or retired judges who wish to resume the practice of law.

Supreme Court Expands Rule 219 Definition of Funds Held for Another

On March 17, 2016, the Supreme Court adopted a **revision** to Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement, listing specific examples of "funds of a client or third person" which must be reported on the lawyer's annual registration form. The rule now states that a lawyer must report any account containing funds belonging to another received:

> (A) In connection with a client-lawyer relationship;
>
> (B) As an escrow agent, settlement agent, representative payee, personal representative, guardian, conservator, receiver, trustee, agent under a durable power of attorney, or other similar fiduciary position;
>
> (C) As an agent designated by a client or as a result of a client-lawyer relationship or the lawyer's status as such;
>
> (D) In connection with nonlegal services that are not distinct from legal services;
>
> (E) In connection with nonlegal services that are distinct from legal services, if the attorney knows or reasonably should know that the recipient of the service might believe that the recipient is receiving the protection of a client-lawyer relationship; or

(F) As an owner, controlling party, employee, agent, or as one who is otherwise affiliated with an entity providing nonlegal services and the attorney knows or reasonably should know that the recipient of the service might believe that the recipient is receiving the protection of a client-lawyer relationship.

Examples given of funds of another which do not subject an account to reporting are funds in a personal account held jointly, or in a custodial account for a minor or dependent relative, unless the source of any account funds is someone other than the attorney and spouse.

The revision was published at **46 Pa.B. 1642** (4/2/2016) and took effect April 16, 2016.

Chief Justice Asks Pro Bono Effort from Bar

Chief Justice Thomas G. Saylor of the Supreme Court of Pennsylvania has written a **letter** to all Pennsylvania attorneys requesting their support and participation in pro bono programs to provide legal representation to those unable to afford counsel. Chief Justice Saylor writes, “The Pennsylvania Supreme Court is dedicated to ensuring the civil legal needs of those who cannot afford the services of a lawyer are met. The Court supports civil legal aid in a variety of ways, from funding a loan forgiveness program for legal services practitioners to honoring the work of pro bono volunteers.”

According to the letter, six law firms are responsible for 87% of the $3.4 million that have been generated by the Court's **class action residual program** (**Rule 1716**, Rules of Civil Procedure) since its institution in 2012.

Chief Justice Saylor writes, “Together with Bill Pugh, President of the Pennsylvania Bar Association, I ask each of the nearly 70,000 attorneys registered in the Commonwealth to make a personal commitment to provide whatever pro bono service you can through direct representation of the poor and financial support of our legal aid programs. It is these volunteer efforts, beyond the mandatory payment, that most greatly impact those in need.”

Rule of Professional Conduct 6.1 calls for all lawyers licensed in Pennsylvania to "render public interest legal service."

Lawyers may explore pro bono opportunities at **www.palawhelp.org**. They may register to participate at **www.paprobono.net**.

Supreme Court Disbars Former Legislative Aide in Published Opinion

On March 29, 2016, the Supreme Court of Pennsylvania published an **opinion in the disciplinary case of Brian J. Preski**. Most disciplinary actions are decided by per curiam orders, so the publication of an opinion merits the attention to those who follow professional responsibility law in Pennsylvania.

Preski served as the chief of staff to Rep. John Perzel, former Speaker and Majority Leader of the Pennsylvania House of Representatives. He was charged with numerous crimes relating to diversion of public funds to political campaign operations. Preski was convicted of three counts of conflict of interest,

two counts of theft of services, and five counts of criminal conspiracy, and sentenced to twenty-four to forty-eight months' imprisonment, a five-year term of probation, a $37,500 fine, and $1,000,000 in restitution.

The Disciplinary Board found that Preski violated **Rule of Professional Conduct 8.4(b)**, which states that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, with numerous aggravating factors. It recommended disbarment, citing **Office of Disciplinary Counsel v. Jeff Foreman**, a 2014 case arising from a public corruption conviction which resulted in disbarment.

Preski filed a petition for review, arguing that disbarment was not warranted under the circumstances. The Supreme Court found that more mitigating evidence was present in the Foreman case, which still resulted in disbarment. The Court found that although Preski stated at one point that he took responsibility for his misconduct, he made statements at other times which tended to minimize his responsibility and accountability for the actions, and misstated his role in the conspiracy and a company he founded to profit from the actions. The Court also rejected an argument that because he was not acting as a lawyer at the time of his conduct, his conduct did not reflect adversely on his honesty, trustworthiness, or fitness as a lawyer. The Court determined that disbarment was necessary to underscore the significance of public corruption cases.

Chief Justice Saylor dissented without opinion, expressing a preference for a five-year suspension.

Disciplinary Board 2015 Annual Report Now Available

For those of you who have been waiting with bated breath, the Disciplinary Board has issued its 2015 Annual Report. You can read all the thrills and chills of the crazy ride that was 2015 here [insert link].

A few spoilers:

- 64,509 active and 10,951 inactive paid attorneys are registered as of December 31, 2015. If all these lawyers made up one city, it would be the **sixth largest in Pennsylvania**.
- In 2015, the Office of Disciplinary Counsel received 4,145 new complaints and closed 4,120, 265 of which (6.4%) resulted in discipline.
- The Board's Twitter account **@DboardPa** has 750 followers. Its **LinkedIn page** has 190 followers.
- 143 volunteers serve as Hearing Committee members, reviewing staff recommendations, conducting hearings, and writing detailed reports.
- In April 2015, the **District I Office of Disciplinary Counsel** and Deputy Chief Disciplinary Counsel moved from their longtime quarters at 1635 Market Street to new digs at 1601 Market Street, Philadelphia.
- The Board continues to make improvements in the electronic filing system, which is good news because, as you know if you've read this far, it is mandatory this year. There are now two ways to pay annual fees -– by credit card or by voucher.
- And much, much more.

You Lose, Dude: No Stoner Overturned

In an **opinion** dated April 12, 2016, the Court of Appeals of the state of Washington rejected a private citizen's attempt to bring a case against the American Civil Liberties Union (ACLU) and the National Organization for Reform of Marijuana Laws (NORML) under Washington's Fair Campaign Practices Act for their involvement in Initiative 502, under which the voters in Washington approved the legalization of marijuana for recreational use. A principal case relied on by the court was ***Stoner v. Santa Clara County Office of Education***, 502 F.3d 1116, 1128 (9th Cir. 2007), standing for the proposition that a pro se party may not prosecute a qui tam action on behalf of the United States.**[3]** The court held that such claims must be brought on behalf of the state and bind the state, and thus to allow a person not a lawyer to litigate such a case would be to sanction the unauthorized practice of law.

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[1] Don't worry, we will surely nag you about it this time next month. And the next.
[2] Including the dread nominal convenience fee, which for the record is less than a Frappuccino at Starbucks.
[3] Stoner cited *United States v. Onan*, 190 F.2d 1 (8th Cir. 1951). We so hope that will never be at issue.

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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