Attorney News - October 2015

The Disciplinary Board of the Supreme Court of Pennsylvania

Articles & Updates

- **Commonwealth Court: UCBR May Not Bar Suspended Lawyer from Representing Client in Administrative Proceeding**
- **Florida Court: Rule against Advertising Expertise Is Unconstitutional**
- **Lather, Rinse, Don't Repeat**
- **Google Gaffe: Lawyer Reprimanded for Linking Ad to Opposing Counsel Names**
- **Lost in Translation: Suspended Lawyer Found to Practice as "Translator"**
- **Something Tells Me It's All Happening at the Zoo**

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****.*

Commonwealth Court: UCBR May Not Bar Suspended Lawyer from Representing Client in Administrative Proceeding

By a 2-1 decision, the Commonwealth Court ruled that the Unemployment Compensation Board of Review erred in applying the Pennsylvania Rules of Disciplinary Enforcement to prevent a suspended lawyer from representing a client in an administrative hearing before an unemployment compensation referee.

In the case of **Powell v. Unemployment Compensation Board of Review**, the claimant appeared at the first hearing with a suspended attorney, who was allowed to represent the complainant consistent with **43 P.S. §774**, which states, “Any party in any proceeding under this act before the department, a referee or the board may be represented by an attorney or other representative.” Neither the employer nor the referee objected to the suspended attorney’s participation. The hearing was continued due to an issue with subpoenas.

Before the hearing resumed, the employer retained counsel who notified the Board that he objected to the suspended attorney’s involvement, citing **Rule 217(j)(4)** of the Rules of Disciplinary Enforcement, which prohibits a formerly admitted attorney from “appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing officer or any other adjudicative person or body.” When the hearing was rescheduled, the suspended attorney and the claimant were notified the former attorney would not be allowed to appear on behalf of the claimant, who was given thirty days to obtain a new attorney. At the resumed hearing, the claimant appeared with a new representative, who was also a suspended attorney. The new representative was allowed to attend as an advisor but not to represent the claimant. The claimant presented his own case and received an adverse decision. He appealed to the UCBR, which upheld the decision, concluding that Rule 217(j)(4) prohibits a suspended attorney from representing a client before a UC referee.

The Commonwealth Court reversed and remanded the case to the UCBR, in a decision written by Judge P.Kevin Brobson. The opinion noted that the Supreme Court of Pennsylvania ruled in the case of ***Harkness v. Unemployment Compensation Board of Review****,* 920 A.2d 162 (Pa. 2007), that representation in unemployment compensation proceedings is not the practice of law. The Commonwealth Court then ruled that only the Disciplinary Board and the courts have the power to enforce the Rules of Disciplinary Enforcement, and that the UCBR could not apply the Rules of Disciplinary Enforcement to override 43 P.S. §774 as to the particular class of nonlawyer representatives who are formerly admitted attorneys.

Florida Court: Rule Against Advertising Expertise Is Unconstitutional

A United States District Court in Florida has ruled that Florida's restrictions on lawyers advertising their areas of expertise violates the First Amendment.

In the case of **Searcy v. Florida Bar**, the plaintiffs, a law firm with extensive experience representing plaintiffs, challenged Florida Bar ethics rules saying that advertising statements must be "objectively verifiable" and prohibiting lawyers from making claims that they specialize in or have expertise in a given practice area, even if the statement is true.

The District Court, in an opinion by District Judge Robert L. Hinkle, did not decide the issue of whether the "objectively verifiable" language is constitutional. The bar had not issued a final interpretation on that language, so the Court ruled the challenge was premature.

In determining the constitutionality of the ban on advertising expertise, the Court applied the three-part test stated by the United States Supreme Court in ***Central Hudson Gas & Electric Corp. v. Public Service Commission of N.Y.***, 447 U.S. 557, 563-66 (1980). The *Central Hudson* test states that a restriction on commercial speech is valid only if (1) the asserted governmental interest in restricting the speech is substantial; (2) the challenged restriction directly advances the asserted governmental interest; and (3) the restriction is not more extensive than is necessary to serve that interest.

The Court concluded that the prohibition on expertise violated all three prongs of the *Central Hudson* test. The Court noted that a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree, and must present evidence that supports these conclusions rather than speculation. The Court found that the bar had not offered any evidence showing that the statements were false, that potential clients were likely to be misled, or that the restriction prevents the harm it alleges. Finally, the Court concluded that the interests identified by the state could be met by less restrictive means, but that the bar had not taken steps to do so.

Lather, Rinse, Don't Repeat

A **Louisiana attorney has been disbarred** based on a finding that, among other counts of misconduct, he purchased a "detox shampoo" for a client facing a cuticle and hair follicle drug test, and lied to the court about his client's drug use. The hair follicle test was negative, but the cuticle test yielded positive results for marijuana, amphetamines, and methamphetamines.[1]

The Supreme Court found that the lawyer violated Rules of Professional Conduct relating to candor toward the tribunal, unlawfully obstructing access to evidence, conduct involving dishonesty, fraud, deceit, or misrepresentation, and conduct prejudicial to the administration of justice.

Google Gaffe: Lawyer Reprimanded for Linking Ad to Opposing Counsel Names

A South Carolina lawyer has been **reprimanded** by the Supreme Court of that state for an advertising strategy tied into Google's AdWords feature. Under the AdWords program, a party can bid for inclusion

in the results of Google searches on certain keywords, with the possibility that the party's ad will come up at some point in the search results for such terms. The lawyer, whose firm represented plaintiffs in a number of suits against a timeshare company, put in bids for searches on the name of the timeshare company, and also for three lawyers who had defended the company. The ad that came up in search results did not comply with South Carolina's advertising disclosure requirements.

The lawyer agreed to a reprimand with a finding that he had violated advertising requirements, and also a provision that "pledges to opposing parties and their counsel fairness, integrity, and civility in all written communications and to employ only such means consistent with trust, honor, and principles of professionalism."

Lost in Translation: Suspended Lawyer Found to Practice as "Translator"

In the case of **In re Lehman**, the Supreme Court of Indiana found a suspended attorney in contempt of court and fined him, after finding that he had practiced law while suspended. The respondent entered his appearance as counsel for the mother in a paternity action on or about the time he was suspended, then after the effective date of the suspension, filed a minute entry requesting hearing on the matter be set, listing himself as the mother's translator. The Court held that this was clearly practice of law while suspended, and found the lawyer in contempt.

Something Tells Me It's All Happening at the Zoo

Our **favorite law-related story** this month is almost entirely told by a sentence which has probably never been written before in the English language:

"A former meerkat expert at London Zoo has been ordered to pay compensation to a monkey handler[2] she attacked with a wine glass in a love-spat over a llama-keeper."[3]

---

[1]So his client nearly escaped by a hair, but was nailed after all.

[2]Perhaps some monkey business was going on.

[3]In biological taxonomy, the llama belongs to the species *lama glama.* We couldn't make stuff like that up. [4]

[4]The following footnote contains a very bad pun. If you are one of those who believe that such silliness is inappropriate for the gravitas of the Disciplinary Board or a waste of your valuable lawyerly time, you should probably stop reading right here. [5]

[5]No, really, it's that bad. We aren't kidding. You can still stop. [6]

[6] Okay, but don't say we didn't warn you.[7]

[7] Q: What do you get if a llama rings your doorbell? A: A ***lama glama* ding-dong**.

Let Us Know

Got a tip, a link, a correction, a question, a

Sign Up for Our RSS Feeds

Receive emails or link to your **personal feeder**.

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**.

This newsletter is being sent to you as a courtesy by The Disciplinary Board of the Supreme Court of Pennsylvania, **www.padb.us**. To subscribe, please click **here**. To unsubscribe, please click **here**. All comments and questions can be sent to us via email to **comments@padisciplinaryboard.org**. If you wish to contact us by other means, please address correspondence to:

The Disciplinary Board of the Supreme Court of Pennsylvania
PA Judicial Center
601 Commonwealth Ave., Suite 5600
P.O. Box 62625
Harrisburg, PA 17106-2625
(717) 231-3380