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Attorney News - March 2015



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*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.***

Significant Disciplinary Cases for 2014

At the end of each year,¹ we review five of the most significant cases decided in the Pennsylvania disciplinary system during the year. Criteria we look for in determining “significance” include:

- High-profile or newsworthy cases;
- Unusual or extraordinary fact situations;
- Decisions which shed light on legal issues that often arise in disciplinary cases;
- Decisions which discuss the meaning of one of the Rules of Professional Conduct or Rules of Disciplinary Enforcement;
- Decisions which present reviews of prior cases on a subject;
- Decisions regarding situations which may arise regularly in the practice of law.

1. Brett Weinstein, No. 2038 Disciplinary Docket No. 3, 54 DB 2011

Weinstein, of Montgomery County, was disbarred by the Supreme Court on July 28, 2014. Weinstein’s problems arose out of his association with various estate planning businesses including American Family Prepaid Legal Corporation, Heritage Marketing & Insurance, Advanced Legal Services, and United Integrity Group. These companies used nonlawyer “Asset Preservation Specialists” or “Certified Senior Advisors” to market living trust estate planning packages to seniors under Weinstein’s name. These representatives explained the trusts and probate terms to clients, and frequently misrepresented their own expertise, the extent of Weinstein’s involvement, and the realities of probate. Weinstein received a fee from each sale, but had little or no individual contact with the clients.

In 2001, Weinstein signed an Assurance of Voluntary Compliance with the Attorney General of Pennsylvania (“AVC”), agreeing to refrain from such activities. However, he continued his association with the companies, leading to an Interim Consent Decree in 2004, in which he agreed to refrain from authorizing and utilizing laypersons to provide legal advice to his clients. He also entered into arrangements with another attorney, Barry O. Bohmueller, under which Bohmueller provided similar services. Weinstein was paid \$1.2 million by Bohmueller under the arrangement.

The Disciplinary Board found that Weinstein violated numerous Rules of Professional Conduct. The Board reviewed the history of discipline of lawyers who assist nonlawyers in the sale of living trust packages, described the case as “an extremely egregious example of the unauthorized practice of law,” and declared that “there is no other comparable case in Pennsylvania in terms of the gravity of the deception, the determined persistence, and the harm to enormous numbers of vulnerable clients.” Aggravating factors were that Weinstein did not acknowledge there was anything wrong with his conduct and that he continued after several determinations it was improper. The Disciplinary Board unanimously recommended disbarment, which the Supreme Court imposed without dissent.

Although the order came down in January 2015, Bohmueller was also **disbarred** by the Supreme Court.

2. Ronald P. Langella, No. 1991 Disciplinary Docket No. 3, No. 102 DB 2012

Ronald Langella was already on probation from a prior disciplinary case when he came before the Disciplinary Board in this matter. In the prior case, Langella had been reprimanded and placed on a five year probation for an earlier failure to properly hold entrusted funds on behalf of clients. The probation

included conditions requiring reimbursement to former clients and the filing of monthly reports to the Office of Disciplinary Counsel. Langella did not comply with either condition.

In the disciplinary proceeding that brought him before the Supreme Court, Langella was charged with various offenses including a failure to maintain client funds intact. As he had in the proceeding that led to his probation, Langella claimed that the trust account deficits were unintentional, due to mistakes by his wife, who was also his secretary. He failed to refund any of the monies, either to his clients or the Pennsylvania Lawyers Fund for Client Security.

Langella pleaded that suspension would essentially end his career, but the Disciplinary Board concluded, "The Board already gave Respondent an opportunity to keep his livelihood while making amends to clients. He squandered his opportunity by failing to abide by the conditions of probation." The Disciplinary Board recommended a suspension for one year and one day.

The Supreme Court reached an even more severe result, suspending Langella for five years, the most severe discipline available short of disbarment.

3. Thomas Russell Quinn, No. 2008 Disciplinary Docket No. 3, No. 97 DB 2012 Nicholas E. Fick, No. 2010 Disciplinary Docket No.3, No. 132 DB 2012 Richard Patrick Reynolds, No. 1895 Disciplinary Docket No. 3, No. 179 DB 2011

These three cases all involve Respondents who committed patterns of conduct involving neglect, lack of diligence, failure to communicate, and related violations. Each had a prior disciplinary history of similar conduct. Each was suspended by the Supreme Court, Quinn and Reynolds for one year and one day,² Fick for eighteen months.

These three cases are significant because the Supreme Court orders included dissents, which are unusual in Pennsylvania disciplinary cases. Justices Baer and Stevens dissented in support of longer suspensions.

In the Quinn case, Justice Baer wrote a dissenting statement in which he advocated a harsher response to cases of recidivist discipline. Judge Baer stated, "I respectfully call for the adoption of a more severe approach to sanctioning attorneys who have failed repeatedly to conform their conduct to the governing standards of the legal profession, and I would begin by imposing a suspension for three years in this case." He added, "There should be no doubt that if Respondent were again to appear before this Court for disciplinary enforcement after being readmitted to the practice of law, I would disbar him."

Justice Stevens joined in this dissenting statement. Both Justices dissented in favor of three year suspensions in the Fick and Reynolds cases as well. These dissents point to the possibility of more rigorous treatment of recidivist conduct in the future.

4. Jeff Foreman, No. 1543 Disciplinary Docket No.3, No. 164 DB 2009 Brett Feese, No. 1839 Disciplinary Docket No.3, No. 57 DB 2012

These cases could be described as "how the mighty have fallen" stories.

Jeff Foreman was once the chief of staff to the Minority Whip of the Pennsylvania House. He pleaded

guilty to two counts of theft by failure to make required disposition based on his activities as a top aide to Representative Michael Veon, who was also convicted. Foreman did substantial amounts of campaign work and legal activity on behalf of his law firm while drawing a state salary. He also billed and received funds for his law firm for work that was indistinguishable from his legislative activities. On three occasions he billed or claimed time in excess of 24 hours per day. As mitigating factors, Foreman expressed shame and remorse, and cooperated with prosecutors.

Nonetheless, the Disciplinary Board recommended disbarment. The Board noted that previous cases in which lawyers serving as public officials were convicted of corruption charges generally resulted in disbarment or the maximum five-year suspension. Based on Foreman's choice of personal enrichment over integrity, the Board concluded that disbarment was the appropriate sanction. The Board recommended retroactivity to the date of Foreman's discharge from his criminal conviction in light of Foreman's remorse and cooperation. The Supreme Court disbarred Foreman retroactively to November 23, 2009, the date of his temporary suspension.

Brett Feese served as a district attorney and also a state legislator. He consented to disbarment based on his criminal conviction for theft, obstruction of the administration of law, and conspiracy. Feese held office as District Attorney of Lycoming County before being elected to the House of Representatives, where he served from 1995 through 2006. Feese's downfall arose from the **Computergate scandal**, in which a number of legislators were convicted for using House personnel and computers to aid political campaigns.

5. F. Paul Barakat, No. 2024 Disciplinary Docket No.3, No. 5 DB 2014

Barakat (also known as Fred Barakat) of Chester County received a two-year suspension, based upon a similar suspension imposed upon him by the Supreme Court of Delaware. Delaware requires a lawyer admitted in that state to maintain a bona fide office for the practice of law within the state. Barakat listed a street address as his Delaware office, but the Court found that he had an arrangement by which employees at the listed address collected his mail and communicated with his clients, but he had no space or staff designated as his own. He rented conference rooms and borrowed staff and office resources for other purposes. The landlord's billing records indicated that Barakat's presence in the office was "sporadic and unscheduled," and limited to a few days a month. Barakat informed the Internal Revenue Service that most of his practice was conducted from his Pennsylvania home, but overstated the extent of his presence in the Delaware office to the Delaware Office of Disciplinary Counsel. For these transgressions, together with issues involving handling funds and bookkeeping, the Delaware Supreme Court suspended Barakat for two years, basing its conclusion on the American Bar Association Standards for Imposing Lawyer Discipline. In an Order dated August 14, 2014, the Supreme Court of Pennsylvania imposed the same sanction as reciprocal discipline.

A similar fact pattern led to a reciprocal one-year suspension³ for **Leonard B. Edelstein in No. 2086 Disciplinary Docket No. 3, No. 109 DB 2014**.

Other cases of interest:

- **Willis W. Berry, Jr., No.2006 Disciplinary Docket No. 3, No.94 DB 2012**: Former judge suspended for conduct before judicial office; aggravating factors included running real estate practice out of judicial chambers.

- **Samuel Foley, No.1801 Disciplinary Docket No. 3, No. 201 DB 2011:** Disbarment after criminal conviction. Extensive discussion of failure to acknowledge wrongdoing in conviction, lack of remorse.
- **Dean I. Orloff, No.2055 Disciplinary Docket No. 3, No. 124 DB 2012:** Cases support the proposition that suspension for one year and one day is appropriate for a single intentional misappropriation of even a small amount of funds, without prior discipline.
- **Kirk Douglas Rhodes, No.786 Disciplinary Docket No. 3, No. 170 DB 2002:** Reinstatement for disbarred former New Jersey lawyer denied, where he never practiced in Pennsylvania and evidence as to his competency and recovery was unconvincing.
- **Lawrence Adlai Neish, No. 2074 Disciplinary Docket No. 3, No. 31 DB 2013:** Lawyer who became aware of misappropriation in title company he owned, and committed various acts trying to resolve the issues, did not mishandle client funds in violation of RPC 1.15 or commit criminal act in violation of RPC 8.4(b), but did violate RPC 8.4(c) by conduct involving dishonesty. Six month suspension imposed, but stayed in full with probation for six months
- **Itzhak E. Kornfield, No. 1333 Disciplinary Docket No. 3, No. 177 DB 2007:** Reinstatement from two-year suspension granted, despite dissent of five Board members over failure to notify employer of suspension, post-suspension activities.
- **Hope Renae D'Oyley, No. 2107 Disciplinary Docket No. 3, No. 137 DB 2014:** Corporate counsel agrees to six-month suspension for continuing to work as in-house counsel after administrative suspension for failure to comply with registration and CLE requirements.

Don't Neglect the New Reporting Requirements for Financial Data

This year, amendments to the Rules of Disciplinary Enforcement require lawyers and law firms to provide more information about bank accounts used in the practice than in the past. Also, don't forget that you are expected to provide the name of the financial institution, location (including state) and account number for:

- **Every account within or outside Pennsylvania** in which the lawyer or employer or law firm holds client or third-party funds subject to Pa.R.P.C. 1.15;
- **Every account** holding funds of a client or third party (**whether or not subject to Pa.R.P.C. 1.15**) over which the lawyer had sole or shared signature authority, or authorization to transfer funds; and
- **Every business/operating account** maintained or used in the practice of law.

Also, remember that the new Official Note to Rule 219(d)(1)(iii) regarding client funds requires that each attorney in a law firm must identify any accounts into which client funds are deposited, whether or not she or he manages the firm account. See **Pa.R.D.E. 219(d)(1)(iii) – (v)**.

Registration forms will be returned if the financial data is incomplete. If you have no accounts to report, check the none/not applicable box.

Haggerty Appointed to 3-Year Board Term

On February 25, 2015, the Supreme Court appointed **James C. Haggerty**, Philadelphia, to a three-year term on the Disciplinary Board commencing April 1, 2015. Haggerty is a founding partner of **Haggerty, Goldberg, Schleifer & Kupersmith**, handling complex civil litigation, personal injury, coverage and bad faith matters.

Eminent Ethics Authority Monroe Freedman Dies

On February 26, the ethics community lost a towering figure with the death, at 86, of **Monroe Freedman**, professor of law and the former dean at the Maurice A. Deane School of Law at Hofstra University.

Freedman wrote numerous articles and books⁴ on ethics, lectured on ethics for many years at Harvard University, and received many of the profession's highest awards including the ABA's Michael Franck Award for Professional Responsibility. Professor Alan Dershowitz told the New York Times, "He invented legal ethics as a serious academic subject.... Monroe brought to the academy the realistic complexity of what lawyers actually face."

Often a gadfly and challenger of the status quo, Freedman was among the first to argue that the First Amendment protected lawyers' rights to publicize cases and to advertise, as well as numerous other iconoclastic positions. One of his most controversial statements, a 1966 article that challenged the conventional wisdom prohibiting criminal defense lawyers from zealously representing clients who lie, led to a call for his disbarment from future Chief Justice of the United States Supreme Court Warren Burger.

He was active in civil rights, gay rights, death penalty cases, and prisoners' rights. His **law school biography** proudly reports that his associations with the American Civil Liberties Union and the National Association for the Advancement of Colored People led to a 1967 entry in his FBI file that read, "He has been extremely outspoken, and his irresponsible mouthings have received an inordinate amount of publicity."

¹ Usually in January, but stuff came up, as stuff does.

² Why a year and a day? **Rule 218(a)(1)** of the Rules of Disciplinary Enforcement requires that a lawyer suspended for a period exceeding one year must be reinstated by order of the Supreme Court after a reinstatement proceeding before returning to the practice of law. A year and a day is the minimum period of suspension which requires the lawyer to go through a reinstatement proceeding to determine his or her fitness to practice.

³ What a difference a day makes.

⁴ The Editor used one of his books, *Understanding Lawyers' Ethics*, as a resource in a legal ethics course he formerly taught at the Widener University School of Law. One rarely agreed with everything Freedman had to say, but he always had a valuable perspective on any issue, and he offered practical perspectives on ethics issues that proved particularly useful for students.

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