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Attorney News - February 2015



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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

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2014 in Review: Disciplinary Board Issues Annual Report, Discipline Statistics

The Disciplinary Board has issued its **Annual Report** and updated **Discipline Chart**.

The disciplinary system had a busy year, reaching 296 determinations, up 19% from 248 in 2013. Informal admonitions were up by 58% (from 48 to 76), suspensions by 31% (to 42 from 32), and disbarments by 15% (46 from 40). This was the greatest number of disbarments in the history of the Disciplinary Board, surpassing 45 in 2010. Continuing a trend toward discipline by consent, 14 suspensions and 28 disbarments were by consent. Reinstatements rose by 34% (107 from 80), while only one reinstatement was denied. 91 of the reinstatements (85%) ended inactive or retired status or administrative suspension; only 16 followed disciplinary suspension or disbarment.

A few highlights from the Annual Report:

- The number of attorneys as of December 31, 2014 was **64,161** active and 10,805 inactive paid attorneys. In 1972-1973, the first year of the Disciplinary Board, there were 13,057 active attorneys.
- During the 2014 year, 24 Joint Petitions in Support of Discipline on Consent were filed with the Board. 19 joint petitions were approved and one was denied. Of those approved, two resulted in private discipline and 17 resulted in public discipline. Four joint petitions remained pending as of December 31.
- At the request of the Board, the Chief Disciplinary Counsel, the Executive Director and the Secretary of the Board have taken steps to speed up the disposition of complaints. The Board believes complainants and respondents deserve to have cases handled promptly.
- Four sets of rules amendments were approved, including major amendments regarding the handling of client funds **approved by the Supreme Court** on December 30, 2014.
- In July, the Board agreed to change the notices published in the daily paper and legal journal when attorneys are suspended or disbarred to include the attorney's ID number as well as his or her last public address of record, to avoid embarrassment to other attorneys with similar names. In addition, the Board received permission from the Supreme Court to begin issuing regional press releases when attorneys are suspended or disbarred to expand the coverage beyond the county where the attorneys maintained their offices.

Disciplinary Board Adopts Rule Changes to Reflect Recent RDE Amendments

The Disciplinary Board has **adopted a set of changes** to its rules and procedures, most of which track amendments the Supreme Court made to the Pennsylvania Rules of Disciplinary Enforcement in its **order** of December 30, 2014. We discussed those amendments in the **January** issue of the Newsletter. The Board rule amendments were published at **45 Pa.B. 544** on January 31, 2015, and take effect March 2, 2015.

The amendments to the Disciplinary Board rules deal at length with disciplinary procedures for investigations and conduct required of suspended or disbarred attorneys. They also address certain requirements imposed on all attorneys, reflecting changes made in the amendments to the Rules of Disciplinary Enforcement.

Provisions that amend procedures relating to disciplinary investigations and sanctions include:

- Attorneys requested to supply required documents in response to a DB-7 Request for Statement of Position must supply such documents within 10 days of service, a shorter interval than that allowed for response to the letter. An attorney who fails to comply with such a request may be subject to temporary suspension.
- Changes are made to the provisions and compliance requirements for resignation statements. The waiting period for reinstatement does not begin until the respondent files the required statement of compliance. The fact that a resignation statement has been filed becomes public record when delivered to the Board.
- The procedures for challenging subpoenas are amended.
- The steps suspended and disbarred attorneys must take to comply are amended.
- Amendments to Section 91.177, Required Records, reflect changes in required records made to Enforcement Rule 221(e).
- The cost of publishing notices in the legal journal and a newspaper of general circulation will be added to the costs that can be charged to a respondent in a disciplinary proceeding.
- Every account that held funds of a client or third party, over which the attorney had sole or shared signature authority or authorization to transfer funds to or from the account, and every business operating account maintained or utilized by the attorney in the practice of law must be reported on the annual fee form.

The Disciplinary Board adopts two statements of policy as to investigations regarding handling of funds:

- Where the Office of Disciplinary Counsel has some factual basis to support a suspicion or concern that there has been improper commingling or mishandling of entrusted funds or a failure to promptly account for or distribute such funds by a respondent-attorney, it is the policy of the Board that Disciplinary Counsel shall make a request or demand to the respondent-attorney for all relevant records; and
- Where the Office of Disciplinary Counsel receives evidence of the misappropriation or conversion of entrusted funds by a respondent-attorney, it is the policy of the Board that Office of Disciplinary Counsel shall seek to obtain relevant records and, where appropriate or necessary, seek the issuance of a subpoena duces tecum to the respondent-attorney and relevant financial institutions for required records.

Cordisco Appointed to Disciplinary Board; Schwager Reappointed

By **order** dated January 26, 2015, the Supreme Court of Pennsylvania appointed **John F. Cordisco** to a three-year term on the Disciplinary Board, commencing April 1, 2015. Cordisco is the founder and principal of Cordisco Law, LLC, of Langhorne, Bucks County. He also continues to work of counsel with his previous firm, Stark & Stark. A former member of the Pennsylvania House of Representatives,

Cordisco has been recognized for his work as a personal injury lawyer in Southeast Pennsylvania, including Bucks County and Philadelphia. Since July 2010, he has served as a Hearing Committee Member in the District II region.

By **order** dated January 30, 2015, the Court reappointed **David E. Schwager** to a second three-year term on the Disciplinary Board. Schwager is a partner in Chariton, Schwager and Malak, Wilkes-Barre, Luzerne County.

Registration Season Coming Up; Get Your Accounts Ready Now

Preparing your Account

Annual registration forms will be mailed in May, but don't wait until then to create your Attorney or Proxy Accounts. Since **efiling is the future**, we recommend you start preparing to eFile your annual fee form before the July 1 deadline approaches.

The Unified Judicial System's **Portal** is always available to create, update and manage your profile. To reset your password, click "Forgot my Password" at the Account Login screen. If you are a first-time user working or living in a foreign country, including U.S. territories, and you cannot access the website, your IP address may be blocked. For technical support please contact the Help Desk at **ccpaopc@pacourts.us**.

Late and Returned Check Fees

Just so you know, any attorney who fails to complete registration by July 31 shall be automatically assessed a \$150.00 non-waivable late payment penalty. A second, non-waivable late payment penalty of \$150.00 shall be automatically added to the delinquent account of any attorney who has failed to complete registration by August 31.

If a check in payment of the annual registration fee for attorneys is returned to the Board unpaid, the collection fee will be \$100.00 per returned item.

Attorneys whose checks are returned for any reason will be considered unregistered and marked unpaid. Continued failure to comply with this rule shall be deemed a request to be administratively suspended.

Disciplinary Board Gets Linked In

If you maintain connections through Linked In, as many professionals do these days, you can now follow communications from the Disciplinary Board on that site. Find the Disciplinary Board on Linked In **here**.

The Cat that Didn't Come Out of the Closet

One of the downsides of solo practice is that the practitioner must serve the client and meet the expectations of courts and opposing counsel regardless of the toll it takes on the individual. But few have faced the **month of travails** experienced by Washington D.C. solo James Fournier, detailed in a **pleading** that may be the legal equivalent of the Book of Job.

Facing a deadline to respond to a motion to dismiss, Fournier's problems began when he was felled by a simultaneous attack of gout and pneumonia. Emerging from the hospital, he sought a three-day extension in an admittedly "wildly optimistic" belief he would recover quickly.

Unfortunately, a regimen of the painkillers Percodan and Percocet and the steroid Indomethacin proved not to be conducive to productivity, and Fournier missed the first extended deadline. Just when he was preparing to focus on his response arose the saga of Alvin the Cat (so referenced in its own section of the pleading). Alvin was reported missing for about a week by Fournier's children. In the words of the pleading, "A grand, somewhat wild search of the house with six children ensued, and two hours later, Alvin was found dead in a closet. After considerable effort, involving two shovels and rubber gloves, plaintiff's counsel placed Alvin in a box and told the kids that we would bury him tomorrow." It is not surprising that little work got done in that interval.

Of course the commitment of Alvin to the **Rainbow Bridge** commanded the practitioner's attention, but in the process of digging the grave he struck his gout-stricken foot with the shovel, leading to a further downward spiral in his already grim medical situation.

Despite these woes, Fournier soldiered on and prepared a response, but later conceded "the opposing papers did not look as good as they did while on pain killers." He endeavored to expand his response with further tribulations, including a multifunctionally malfunctioning scanner. After a week of unsanctioned delay, Fournier managed to prepare his response, along with an 8-page pleading detailing his journey through the vale of sorrow. At press time the disposition of the motion was undetermined, but one could hardly blame Fournier should he fail.

Let Us Know

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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

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