

Attorney News - November 2017



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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 Pennsylvania, 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.

Attorney Reprimanded for Failure to Adhere to Fee Agreement

A Philadelphia attorney received a public reprimand from the Disciplinary Board for failing to follow her own fee agreement when distributing proceeds to her client. The Disciplinary Board found that [Venus Foster](#) executed a fee agreement with her client that provided for reimbursement of her expenses plus a contingent fee of 33.3% of the amount recovered. The

fee agreement failed to specify whether the contingent fee would be calculated on the gross recovery or the net recovery after expenses. Upon conclusion of the case, she issued to the client a settlement statement asserting a contingent fee of 40% of the gross recovery, and billed the client for an overpayment based on sums advanced.

The Disciplinary Board found that the fee agreement failed to comply with [Rule 1.5\(c\)](#) of the Rules of Professional Conduct, based on the failure to clarify whether the contingent fee was calculated on gross or net proceeds. In addition, the Board concluded that Foster charged an excessive fee in violation of [Rule 1.5\(a\)](#), and failed to explain the nature of the fee agreement to the extent necessary to allow the client to make an informed decision, in violation of [Rule 1.4\(b\)](#). The Board also found other violations relating to the advancement of expenses and the way Foster handled the funds.

The case provides a valuable reminder to lawyers on several points:

- The lawyer must draft the fee agreement with care, to assure that it provides guidance for both lawyer and client as to how reasonably foreseeable situations, such as the incurring of expenses, will be handled in the calculation of the fee;
- The lawyer should not simply put the fee agreement in front of the client, but must explain the fee agreement to the client in understandable terms, to be sure the client will not be surprised by the way the fee is calculated at the conclusion of the case; and
- Finally, the lawyer needs to review the fee agreement at the time when calculation of the fee takes place, to assure that the distribution of funds occurs consistent with what the fee agreement provides, and not what the lawyer recalls.

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Things You May Not Know about Attorney Registration

- Since January 1, 2017, over 1,200 new attorneys have been admitted to the Bar of the Commonwealth of Pennsylvania.
- Each year, over 75,000 attorneys are required to complete their annual registration through the UJS Portal by July 1.
- On October 26, 2017, a Supreme Court Order of Administrative Suspension became effective. 514 attorneys who had not yet completed their annual registration were placed on Administrative Suspension, a lower number than last year, which was 655.
- Starting in May 2017, this registration year, the Disciplinary Board began using an internal email address to send all attorney registration communications. This change provided for more consistent and timely delivery of reminders while allowing staff the ability to more effectively manage emails sent and those returned as undeliverable.
- **Be sure to update your contact information, especially your email address, within 30 days of any change to ensure the receipt of important Disciplinary Board communications.**

Questions about Attorney Registration? Email atty.registration@pacourts.us.

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Meet the Pennsylvania Bar Association Review and Certifying Board

Have you ever wondered who determines what specialties lawyers in Pennsylvania may advertise?

[Rule 7.4\(a\) of the Rules of Professional Conduct](#) provides that lawyers may advertise certain specialties, including patent and admiralty law. But it also provides that the Supreme Court may approve other certifications by certain agencies. How does the Court determine what organizations may certify members as specialists?

In 1992, the Supreme Court entered an order creating the Pennsylvania Bar Association Review and Certifying Board. This board reviews applications from organizations who propose to certify lawyers' expertise in a specific field of practice, and makes recommendations to the Supreme Court of Pennsylvania for accreditation or reaccreditation as certifying organizations. In evaluating organizations seeking accreditation, the Review and Certifying Board considers the credentials and stature of the applicant organizations and the methods by which and the extent to which these organizations investigate, assess and evaluate the lawyers they propose to certify.

Currently, four organizations have been approved to certify lawyers in specialty areas of the law:

- the National Board of Trial Advocacy;
- the National Elder Law Foundation;
- the American Board of Certification; and,
- the PBA Workers Compensation Law Section.

Accreditation of organizations is effective for up to five years, and can be renewed upon recommendation of the PBA.

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Who Has Attorney ID Number 1?

Each of us admitted to the Pennsylvania bar has our own unique attorney identification number. But who bears registration number 1?

That honor belongs to [George Boyer Vashon](#) (1824-1878), formerly of Pittsburgh, Pennsylvania. Sadly, Mr. Vashon never lived to see his admission, but his story is fascinating.

Mr. Vashon graduated with bachelor's and master's degrees from Oberlin College. He read law under a judge of the Allegheny County Court of Common Pleas. In 1847, he applied for membership in the Allegheny County Bar, but his application was not considered, entirely based on his race. He was African-American. At the time, the Pennsylvania Constitution of 1838 only extended voting rights to "every white freeman." Since Vashon could not vote, the Bar Association reasoned, he could not be a lawyer. He then applied for admission to the New York Bar and became its first African-American lawyer, and later was admitted to the bar of the Supreme Court of the United States as well. Subsequently, he served as the President of Avery College in Pittsburgh and taught at Howard University and Alcorn University. He succumbed to yellow fever in 1878.

On May 4, 2010, the Supreme Court of Pennsylvania entered a [special order](#) granting Vashon's application for admission to the Pennsylvania bar, retroactive to January 1, 1847. The Court stated:

This Court recognizes that George B. Vashon possessed the necessary credentials, competency, and good character to practice law in Pennsylvania in 1847 based upon his bachelor and masters degrees from Oberlin College, his mentorship with the Honorable Walter Forward of the Allegheny County Court of Common Pleas, and his subsequent admissions to practice law in the State of New York and before the U.S. Supreme Court. ... In acknowledgement of Mr. Vashon's credentials and achievements, this Court hereby admits George B. Vashon to the practice of law in the Courts of this Commonwealth posthumously.

The Court also awarded Vashon Attorney Registration Number 1. This year marks 170 years since the denial of his admission.

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ABA Studies Women Leaving Profession

More women than ever are entering the legal profession. The ABA Commission on Women [reports](#) that 52.7% of Juris Doctor degrees were awarded to women in 2010-2011, and women made up 45% of associates in law firms. Yet, the advancement of women beyond those positions has been a slow process. The same report finds that only 18% of equity partners, 24.8% of Fortune 500 general counsel, and 31% of state court judges were women.

The report concluded that women tend to leave the profession at higher rates than men. To address this issue, the ABA is launching an initiative called "Achieving Long-term Careers for Women in Law." In an [article in the ABA Journal](#), ABA President Hilarie Bass reports on a series of national summit conferences planned to study the problem. Bass states that the initiative will study long-term career trajectories using life-cycle models borrowed from sociology, social psychology and economics. The first stage of the study will attempt to identify factors that lead women to stay in or diverge from their career paths, and the second will develop policies and practices to assist firms, companies, and employers to promote the retention of senior women lawyers. The goal is for the research findings to be available in time for consideration at the ABA Annual Meeting in August 2018. The American Bar Foundation and other organizations are collaborating in the study.

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Quick Hits in Ethics

A few items from ethics cases and opinions around the country:

- Is it an unconstitutional denial of due process for a criminal defense lawyer to concede the client's guilt without the client's consent? The [United States Supreme Court](#) has granted certiorari on a case raising that issue.
- Can a lawyer working for a public interest nonprofit organization provide limited legal services indirectly by advising nonlawyer professionals who work directly with clients? A formal opinion of the [New York City Bar's Committee on Professional Ethics](#) approves the concept, but provides a lengthy discussion of precautions and limitations the lawyer should observe.

- Can a lawyer accept payment in Bitcoin? A [Nebraska ethics opinion](#) says yes, but advises to convert it into dollars as quickly as possible.
- Is a government lawyer's private email account beyond the reach of discovery in a suit against the state? The [Supreme Court of Vermont](#) ruled that the state has a duty to at least inquire into whether government lawyers have discoverable information on private accounts and computers.
- If a prosecutor is fired, is a criminal defendant entitled to access to the personnel file of the prosecutor to look for exculpatory evidence? The [U.S. Court of Appeals for the D.C. Circuit](#) says no, at least on the facts before them.
- Is the fact that a judge is a Facebook friend with a lawyer on a case reason enough to disqualify the judge from a case? A [Florida Court of Appeal](#) found that the mere fact of a Facebook friendship is not evidence of a close relationship significant enough to disqualify the trial judge.
- Does the suspension of a lawyer's license give him a basis to seek discharge of \$500,000 in student loans for law school? No way, according to a judge of the [U.S. District Court for the Northern District of Illinois](#).
- Are Artificial Intelligence programs on the verge of acquiring a form of legal personhood? They may be in [Estonia](#).

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Legal Profession Earns High Marks for Cybersecurity

A [cybersecurity rating firm has determined](#) that the legal profession as a whole is doing a good job in protecting its data from hackers and other electronic threats.

[BitSight](#), a firm specializing in evaluating and preventing cybersecurity threats, studied 2,295 law firms of different sizes and geographical locations. It used more than 20 categories to create a cybersecurity score for financial, government/political, legal and retail industries. The company concluded that law firms in general were doing a good job of managing and preventing threats like botnet infections, spam, malware, ransomware and adware. Law firms also scored well in practices such as keeping their computer operating systems up-to-date and avoiding peer-to-peer file sharing and pirated software, which open avenues for electronic attacks. The company concluded that the legal industry as a whole is maintaining security as effectively as the financial industry, where protection of data integrity is particularly important.

The company did note that there is room for improvement, particularly in increasing the use of SSL encryption, which protects websites and its users from attacks in which communications between a user and a server are interrupted and information is stolen.

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Music with a Hook (and Loop)

Quick - what do you call that fuzzy stuff you use to fasten clothing and shoes, and which gives that satisfying zip when you pull it off? If you answered "Velcro," the legal team at Velcro Companies, manufacturers of VELCRO®, would like you to stop.

Since the company's patent on the sticky stuff has expired, other manufacturers make it as well. The only protection Velcro Companies has is its trademark on the VELCRO® brand name. But under trademark law, a trademark owner can lose protection if the trade name becomes common generic usage for the product, which is how [Bayer lost its trademark for "aspirin"](#)^[i] and several other companies [lost what used to be trademarked names](#).

The legal team feels so strongly about this that they have burst into [song](#).

[i] Bayer lost the trademark to "heroin" at the same time, but for some reason that isn't mentioned as often.

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