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The  
**DISCIPLINARY BOARD**  
of the Supreme Court of Pennsylvania

**November 2021**  
**Newsletter**



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## *From the Chair*

Did you know that the Supreme Court of Pennsylvania is the oldest appellate court in the nation? Established in 1722 (more than 65 years before the U.S. Supreme Court), it has played a crucial role in the history and laws of the Commonwealth for almost 300 years. To commemorate its 300th anniversary, the Court is planning special events aimed at highlighting its unique role and how its decisions impact every Pennsylvanian. Slated for May 17-20, 2022, I encourage you to review the [schedule of events](#) and to plan to take part in this historic occasion. I would like to thank my fellow Disciplinary Board members Bob Mongeluzzi and David Senoff, former Disciplinary Board member Gerald Lawrence, Hearing Committee member Sharon López, and the entire Celebration Committee for their hard work in planning these festivities!



Additionally, the Disciplinary Board will celebrate its 50<sup>th</sup> anniversary on March 21, 2022. I will share more information with you in the coming months as we prepare to celebrate this milestone.

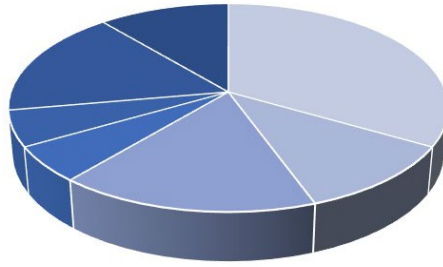
In last month's newsletter, we shared the Court's video highlighting the important role of interpreters in our legal system. This month as a tie-in, I want to share the [ABA Ethics Opinion](#) clarifying the lawyer's ethical duties in situations where language barriers exist.

On behalf of the entire Board, I wish you all a safe and happy Thanksgiving!

Jack P. Goodrich  
Board Chair

## *Discipline Imposed*

**October 2021**



- Informal Admonition - 6
- Private Reprimand - 2
- Public Reprimand - 3
- Public Censure - 0
- Disability Inactive - 1
- Temporary Suspension - 1
- Suspension - 3
- Disbarment - 2

**Public Reprimand**

[Julie Chovanes](#)  
[Thomas James Fieger, Jr.](#)  
[Anne Marie Howells](#)

**Disability Inactive Pa.R.D.E. 301**

[James David Casale](#)

**Temporary Suspension**

[Jeffrey Lynn Thomas, II](#)

**Suspension**

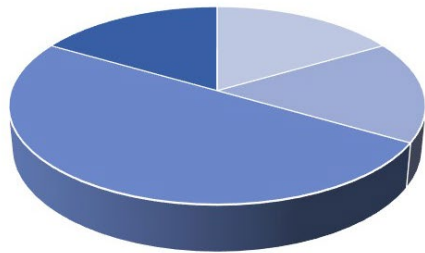
[Scott J. Capriglione](#)  
[Charles C. Daley, Jr.](#)  
[Joshua Louis Thomas](#)

**Disbarment**

[Adam Luke Brent](#)  
[Gerald Hecht](#)

## *Reinstatement Granted*

**October 2021**



- From Inactive - 1
- From Retired - 1
- From Administrative Suspension - 3
- From Disability Inactive - 0
- From Suspension - 1
- From Disbarment - 0

**From Inactive Status**

[Randall Pyles](#)

**From Retired Status**

[Maria Verardi Durrant](#)

**From Administrative Suspension**

[Bertrand Conroy Harry](#)  
[Michael Alan Katz](#)  
[Kenneth P. Primola](#)

**From Suspension**

[Debra L. Ackerman](#) (to Retired)

*Note: The above-listed reinstatements reflect only those granted by Supreme Court Order. An attorney listed above whose current license status does not reflect reinstatement has yet to submit the fees necessary to finalize reinstatement.*

## *Upcoming Public Proceedings*

We encourage you to observe our public disciplinary and reinstatement hearings, oral arguments, and public reprimands on the [Board's YouTube channel](#). View "Upcoming Public Proceedings" at the bottom of the Board's home page, [www.padisiplinaryboard.org](http://www.padisiplinaryboard.org).

### ***November***

November 18 - Joshua Lawrence Gayl - Reinstatement Hearing  
November 19 - Joshua Lawrence Gayl - Reinstatement Hearing  
November 30 - Michael Andrew Rabel - Reinstatement Hearing

### ***December***

December 9 - Alan Kane - Disciplinary Hearing  
December 10 - Alan Kane - Disciplinary Hearing  
December 13 - William James Helzlsouer - Reinstatement Hearing  
December 14 - Toussaint T. Tyson - Reinstatement Hearing  
December 15 - Shawn-Ryan White - Disciplinary Hearing

### ***January***

January 4 - William Jay Gregg - Reinstatement Hearing  
January 26 - Joshua M. Briskin - Disciplinary Hearing

### ***February***

February 23 - Milena Mladenovich - Disciplinary Hearing

***Scheduled proceedings begin at 9:30 am unless otherwise noted.***

## *Disciplinary Board News*

### **Upcoming CLE Opportunity**

It's never too early to start planning for retirement, but there are steps that you must take before walking out the door. The Disciplinary Board and Pennsylvania Bar Association have collaborated to present to you "[The Retirement Discussion](#)", which will include the following topics:

- Succession Planning
- License Status Options
- Applicable Rules
- Ethical Implications

[Register now](#) for the November 23 event!



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### **Succession Planning & Demographic Data Released**

The Board collected succession planning and demographic data from attorneys during the 2021-2022 Annual Attorney Registration process. The aggregate results of the collected [succession planning](#) and [demographic](#) data are available on the Board's [website](#).

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### **Annual Training for New and Returning Hearing Committee Members Held**

This past July, 44 Hearing Committee Members agreed to extend their tenure by accepting reappointment to an additional three-year term, and a dozen more were newly appointed to their positions. Currently totaling 179 volunteer members, Hearing Committees perform essential roles in the disciplinary system. These essential functions include conducting disciplinary and reinstatement hearings and recommending dispositions in a written report to the Board. Member efforts aid the Board and the Supreme Court in making their determinations.

Each fall, members of the Board, Hearing Committee, and Office of Disciplinary Counsel and Executive Office staff come together for the annual Hearing Committee Training. Following last year's virtual event, this October's training was held in-person in Hershey. The event kicked off with a reception and dinner, welcoming all attendees and thanking Hearing Committee Members for their dedicated efforts to further the Board's mission. The following day, current and past Board Members, Disciplinary Board staff, Hearing Committees Members, and other personnel provided instruction on the Board's structure and functions, reviewing assignments, and hearing procedures.

With new considerations made to mitigate the spread of the ongoing COVID-19 pandemic, all attendees provided proof of vaccination, and distancing measures were in place to further ensure the safety of guests. The Board offers its sincere gratitude to all Hearing Committee Members who attended the safe and informative event.

# Rules

## Board Revises Rule on Electronic Filing

The Disciplinary Board recently amended [Section 93.52](#) of the Disciplinary Board Rules and Procedures, Communications and Filings Generally, to provide for electronic filing. The amendment adds the language, "Electronic filing may be accomplished by accessing the electronic filing system available on the Disciplinary Board website."

The amendment will take effect thirty days after the publication of the rule change in the *Pennsylvania Bulletin*.

## CDC Corner

### Indigent Defense

Recently, in an [article](#) for *The Legal Intelligencer*, Sam Stretton addressed a question from a public defender about how to handle an impossibly heavy caseload. Mr. Stretton, an attorney who regularly practices before the Disciplinary Board and the criminal courts, gave the appropriate answer: the office's lack of resources does not relieve its public defenders from their obligation to comply with the Rules of Professional Conduct and represent their clients competently and communicate with them adequately. If their caseload prevents them from discharging those duties, they must refuse to accept any more cases.

This reminder of the ugly realities of indigent defense shook me, especially so as Pennsylvania is the only state in the nation that provides no statewide funding for public defenders, imposing the burden on the counties. I started as a public defender. Throughout my career, I represented individuals in criminal cases. Most of our Bill of Rights is concerned with protecting individuals from overreaching criminal investigation and prosecution. Arguably, over the last 50 years, our overuse of the criminal sanction has resulted in a mass incarceration of our citizens that in my opinion amounts to a human rights crisis.

The [Rules of Professional Conduct \(Pa.R.P.C.\)](#) impose an independent ethical obligation on the lawyers who have managerial authority in a law firm - the chief public defender and his or her supervisors - to "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct." See [Pa.R.P.C. 5.1 \(a\)](#). Note that this rule can be violated even without an identifiable ethics violation by an individual lawyer in a particular case. If the office's supervisory, training and case assignment policies and practices are such that they are likely to lead to ethical violations - they fail to provide "reasonable assurance" of ethical conduct, in this case, competent representation and adequate communication with clients - the supervisors may have violated the rules of professional conduct, and some sort of discipline may be appropriate.

Further, any lawyer who knowingly assists or induces another lawyer to commit a violation of the Rules shares responsibility for the violation. See [Pa.R.P.C. 8.4\(a\)](#). Are county officials who fail to fund a public defender's office adequately committing sanctionable misconduct if they are lawyers? It would depend on many factors, but the more important question is are they discharging the responsibility stated in the [Preamble to the Rules of Professional Conduct](#) "to ensure equal access to our system of justice for all those who because of economic or social

barriers cannot afford or secure adequate legal counsel”? ([Comment \[6\]](#)). Likewise, a prosecutor who forces an unprepared overloaded defense attorney to trial or to plead an inadequately investigated case may violate [Pa.R.P.C. 8.4\(a\)](#). See [Virginia Legal Ethics Op. 1857](#) at 3 (2011) (“it is a violation of Rule 8.4(a) for the prosecutor to offer a plea agreement containing a provision that has the intent and legal effect of waiving the defendant’s right to claim ineffective assistance of counsel.”) Judges, too, have an obligation to report violations of the Rules of Professional Conduct and to take action to address it. [Pa. Code of Judicial Conduct 2.15](#).

The disciplinary system does not have authority to enjoin bad practices or overturn convictions resulting from inadequately funded representation. But we do have the obligation to protect the public from violations of attorney ethical duties, to maintain a high standard of integrity in the legal profession, and to safeguard the reputation of the courts of Pennsylvania. I urge any attorneys who reasonably believe that the funding, resources, or caseloads of a public defender’s office will impede its attorneys from complying with their ethical duties to submit complaints to our office.

Thomas J. Farrell  
Chief Disciplinary Counsel

## *Articles of Interest*

### **ABA Ethics Opinion Clarifies Obligations for Communication Across Language Barriers in Attorney-Client Relationships**

A new ethics opinion published by the American Bar Association’s Standing Committee on Ethics and Professional Responsibility, [Formal Opinion 500](#), addresses a lawyer’s ethical duties in situations where the client’s lack of proficiency in the lawyer’s primary language can cause communication difficulties.

The opinion notes that approximately 61.6 million people in the United States speak a language other than English at home, and of these, 25 million are estimated to have limited English proficiency. In addition, many individuals have mental or cognitive disabilities which may impair their ability to understand spoken communications.

The opinion discusses the lawyer’s obligation to evaluate the need for a translator or interpreter or interpretive device, the appropriate qualifications for a person or service providing translation or interpretive services, and the lawyer’s supervisory duties when engaging or directing a translator or interpreter.

If communications issues hamper the client’s ability to participate intelligently in the representation due to inability to understand the lawyer’s advice and other communications, or the lawyer is unable to ascertain the information needed to competently assist the client, the lawyer must take measures to establish a reasonably effective mode of communication. This may involve employment of a translator or translation technology, if available. The lawyer may not passively leave the decision to the client or thrust the responsibility to arrange for interpretation or translation entirely upon the client. The lawyer must take steps to help the client understand the need for and purpose of an interpreter or translator, and, when reasonably necessary, take steps to secure such services. It may also be necessary to secure the translation of written documents to satisfy the duties of communication and competence.

Once the necessity for interpretation or translation is established, the lawyer should verify that the individual is skilled in the particular language or dialect required, and confirm that the individual

has the expertise needed to comprehend the legal concepts/terminology sufficiently to provide the client with accurate information on which to make informed decisions. This can best be accomplished by the use of professional translation/interpretation services. A client's friend or family member may be able to serve competently in such a role, but the lawyer should keep in mind the possibility such a person may have a bias or agenda that could lead to distortion of their communications with the client.

If obtaining necessary services would place an unreasonable financial burden on the lawyer or client, or if such services are unavailable, the lawyer should ordinarily decline or withdraw from the representation. Another option is association with a lawyer or law firm that can appropriately address the language-access issue, such as through a multilingual lawyer or staff member.

As with any person employed to assist in the practice of law, Rule 5.3 establishes the lawyer's duty to appropriately supervise the translator/interpreter and to take reasonable efforts to ensure that the interpretive or translation services are provided in a manner compatible with the lawyer's ethical obligations, particularly the Rule 1.6 duty of confidentiality. The lawyer should communicate directions and take steps to give reasonable assurance that the interpreter or translator understands the lawyer's ethical duty of confidentiality and agrees to abide by it.

Finally, the duty of competence requires close attention to social and cultural differences that can affect a client's understanding of legal advice, legal concepts, and other aspects of the representation, including ethnicity, religion, and national origin.

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### **Lawyer Receives Stayed Suspension for Handgun Violation**

The Supreme Court of Pennsylvania issued an [Order on October 1, 2021](#), approving a Joint Petition in Support of Discipline on Consent in the case of Charles C. Daley, Jr.

At some point prior to September 2018, Daley placed a fully loaded handgun, which he owned legally but did not have a permit to carry, in a knapsack. In September 2018, he put some of his legal files in the knapsack and carried it to a courthouse checkpoint in Ocean County, New Jersey. He placed the knapsack on the conveyor belt for the X-ray machine and passed through the metal detector. Not surprisingly, a sheriff assigned to the checkpoint observed the handgun on the X-ray and detained Daley. Daley explained that he had forgotten the firearm was in the knapsack, and had probably carried it into several courthouses without detection. Although he passed a polygraph confirming he was telling the truth, he was arrested and charged with unlawful possession of a handgun and hollow-point bullets. In June 2019, Daley entered into a conditional plea of guilt to the charge of unlawful possession of a handgun, and entered into an extensive 36-month Pre-Trial Intervention Program, under which he was required to attend weekly therapy sessions, undergo periodic risk evaluations, and was prohibited from possessing handguns and other dangerous weapons.

After a disciplinary inquiry, a five-member panel from the New Jersey Disciplinary Review Board recommended that Daley receive a six-month suspension conditional upon a showing of fitness to practice law. Four members of the Review Board dissented and recommended censure. The Supreme Court of New Jersey censured Daley and required him to show proof of his fitness as attested by an approved mental health professional. Daley submitted the requested fitness evaluation, and the New Jersey Office of Attorney Ethics confirmed that he had satisfied the provisions of the Supreme Court's order.

The Pennsylvania Office of Disciplinary Counsel did not treat the matter as a reciprocal discipline case, but reached an agreement with Daley to file a Joint Petition in Support of Discipline on



Consent, in which Daley agreed to a suspension of three months, stayed in its entirety by a period of probation. The agreement cited aggravating factors in Daley's act of carrying a loaded weapon into a courthouse, thereby creating potential danger to the public, judicial employees, and judges. Mitigating factors included his prompt notification to and cooperation with disciplinary authorities, his lack of a record of discipline, his sincere expression of remorse, and his evidence of good character. The Joint Petition cited previous cases of attorneys convicted of firearms offenses, who had received suspensions ranging from three months to two years. A three-member panel of the Disciplinary Board recommended approval of the Joint Petition and imposition of the agreed-upon discipline.

The Supreme Court approved the Joint Petition and imposed a three-month suspension, stayed in its entirety by a period of probation. Justices Dougherty and Mundy dissented in favor of issuing a rule to show cause why Daley should not be subject to reciprocal discipline in the form of censure, consistent with the decision of the Supreme Court of New Jersey.

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### **Lawyer Who Fed Answers to Client during Zoom Deposition Disqualified, Faces Sanctions**

A Massachusetts lawyer has been [disqualified and referred for possible sanctions](#) after admitting that he whispered answers to his client during a Zoom deposition, which she repeated as her own.

In an [Order dated August 31, 2021](#), Judge Indira Talwani of the United States District Court for the District of Massachusetts found that lawyer Jeffrey Rosin provided answers to his client during a deposition held over Zoom. Both were wearing masks at the time. Counsel for the opposing party heard Rosin whispering an answer and challenged him. He denied coaching his client, but a careful examination of the video recording revealed over fifty instances when Rosin's client repeated answers when he had prompted her.

Rosin did not deny that he had provided his client with answers, but claimed his actions were rooted in frustration at the actions of opposing counsel. He argued that the conduct should not result in sanctions because opposing counsel had "unclean hands," and because the client's answers were truthful. The Court rejected both defenses, and found that Rosin's actions undermined the truth-seeking purpose of discovery and raised doubt in the minds of litigators and judges as to the effectiveness of remote deposition proceedings, which have become an important tool of the court during the public health crisis.

The opposing party requested a range of sanctions. The Court found that dismissal of the client's claims and defenses and preclusion of the client's testimony were too harsh and punished the client for the actions of the lawyer, but agreed that the lawyer should be disqualified from the case and that the opposing party would be allowed to read the lawyer's coaching answers into the record at trial. The Court did not impose disciplinary sanctions on Rosin directly, but referred the matter to the Presiding Judge for appropriate action under the rules of the court.

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### **What a Difference a Word Makes**

A [law review article](#) by [Michael Allan Wolf](#), a professor at the University of Florida Levin College of Law, reveals that a typographical error in the advance sheet of an opinion by the Supreme Court of the United States continues to echo through the law 93 years later.

In the decision of *Seattle Trust Co. v. Roberge*, 278 U.S. 116 (1928), Justice Pierce Butler, writing for a unanimous Court, wrote, "The right of the trustee to devote its land to any legitimate use is



properly within the protection of the Constitution.” However, the initial advance sheet in which the decision was published incorrectly transcribed his words as “The right of the trustee to devote its land to any legitimate use is property within the protection of the Constitution.” The error was promptly corrected, and the word “properly” appears in the [official U.S. Reports](#) at page 121.

However, the typo took on a life of its own. Wolf identified at least 14 court decisions, the most recent in 2019; 11 appellate briefs; a Supreme Court argument; and books and articles in which the incorrect term appeared. The typo is carried over into electronic reports of the case on Lexis, Thomson Reuters Westlaw, [Cornell University Law School's Legal Information Institute](#) site, and on the [Justia](#), [Wikisource](#), [Original Sources](#), and [Fastcase](#) sites.

The error is not trivial, as the intended term conveys a broader concept of public power to regulate land use, while the language in the typo has been employed to argue for a more elevated degree of protection of the landowner under substantive due process.

A dispute about a single word has also led to a [\\$310 million malpractice suit](#) against two law firms. [TerraForm Power LLC, a renewable energy company, sued two law firms](#) over a 2014 purchase agreement dividing the assets of First Wind Holdings, a developer and operator of solar and wind farms, between two buyers: TerraForm, which bought the company’s existing assets, and SunEdison Inc., which acquired its unbuilt development projects. The agreement allows for an accelerated payout in the event of SunEdison’s bankruptcy, which occurred in 2016. TerraForm contends that the agreement stated that “buyers” agreed to this payout, when it was only intended that the provision to apply to “Holdco buyer,” which would only impose liability on SunEdison. A New York judge found TerraForm liable for the payments in 2020.

Both law firms deny the allegations of the complaint and have expressed their intent to defend the lawsuit.

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### **Lawyer/Rideshare Driver Sues Amazon for Wrongful Imprisonment**

A lawyer who moonlights as a rideshare driver has [sued Amazon](#), claiming the company committed wrongful imprisonment when one of its delivery vans boxed his car in for an estimated two to three minutes.

Matthew Donnelly, the principal of his own law firm in Hull, Massachusetts, claims in his [lawsuit](#) that just as he was preparing to pull out of a parking space in front of a restaurant with his rideshare customer, an Amazon delivery van pulled up behind him, blocking his exit. He confronted the driver, who told him he would have to wait a few minutes until the delivery was complete. Another Amazon employee sitting in the van also refused to move it. The driver returned in two to three minutes. Donnelly informed them of his intention to complain to their employer, upon which the employees mocked him and used profane language.

[Donnelly's complaint](#) alleges three counts of Wrongful Imprisonment, Civil Conspiracy to Commit an Unlawful Act, and Caveat Superior. It avers that Donnelly suffered sustained damages including but not limited to the loss of his personal freedom of movement and ability to conduct his business for an appreciable amount of time together with stress, anxiety, apprehension, and humiliation. Jury trial is demanded.

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[Lawyers Concerned for Lawyers](#) (LCL) is a confidential and safe resource for Pennsylvania attorneys and their family members who may be struggling with their mental health or substance use. An astounding one in three legal professionals will face these issues at some point in their career. Since 1988, LCL has confidentially assisted and supported thousands of individuals who have faced a myriad of challenges (including grief, stress, anxiety, depression, eating disorders, gambling problems, problematic alcohol or prescription drug use, etc.), helping them navigate through dark and difficult times. Members of our profession are dying because they are afraid or unable to ask for help. If you or someone you know is struggling, please call us. You may save a life. There is help and there is hope.

### **[Resource Guide for the Legal Profession During COVID-19](#)**

**Confidential 24/7 Helpline: 1-888-999-1941**

Lawyers-only support meetings

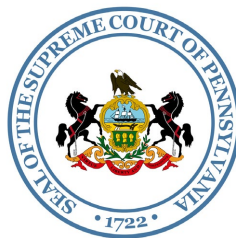
Peer and staff support & resource coordination

LCL resources are free, voluntary, & confidential

Free CLE, resources, and information at [www.lclpa.org](http://www.lclpa.org)

Assessment by a healthcare professional to determine a customized treatment plan, if indicated

## *Around the Court*



### **Supreme Court Amends Case Records Public Access Policy**

On October 6, 2021, the Supreme Court of Pennsylvania published an [Order](#) amending the [Case Records Public Access Policy](#) of the Unified Judicial System. The Order includes an Explanatory Report that describes the amendments and their purpose.

More detailed information, including a copy of the full policy, forms, and samples can be found on the [UJS website](#).

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### **Pennsylvania Supreme Court Announces Plans to Commemorate 300th Anniversary**

The Pennsylvania Supreme Court recently announced future plans to commemorate its 300th anniversary.

The Pennsylvania Supreme Court is the oldest appellate court in the nation, pre-dating the United States Supreme Court by 67 years. The early Court consisted of a Chief Justice and two associate justices. Throughout the centuries it has evolved to its current number of seven sitting justices who make the final decisions interpreting Pennsylvania's laws and Constitution.

The Court has full administrative authority over all aspects of Pennsylvania's judicial system and may also hear cases involving issues of immediate public importance arising in any court in the Commonwealth.

Information about the history of the Court, committee members and upcoming events is available [here](#) and will be shared via Facebook [@PennsylvaniaCourts](#) and Twitter [@PA Courts](#).

## *From the Pennsylvania Bar Association*



### **Upcoming PBA Meetings**

Every November, the PBA holds several [governance](#) meetings over the course of three days. The Board of Governors meets to consider items impacting the operation of the association. Leaders of the PBA's more than 60 committees and sections come together during the Committee and Section Chair Roundtable, which is followed by individual committee and section meetings. On the final day of meetings, the House of Delegates assembles to vote on important resolutions and agenda items.

In 2021, the committee and section meetings will be held virtually, so it will be a great time for PBA members to engage. Why? In addition to the convenience of the virtual format, PBA committees and sections are referred to as the "life blood" of the association. Committees and sections identify issues that matter to the profession at large and to lawyers practicing in a particular area of law. They have a voice in proposed legislation and amendments to court procedures. A camaraderie is fostered amongst practitioners from across the Commonwealth. Members serve as sounding boards for their peers, share best practices, and remind each other of possible practice pitfalls. Committee and section members have a say in the development of

CLE education programs and members often serve as the featured faculty for those programs. Opportunities to write for newsletters and other publications are plentiful as PBA is always looking for great content.

There is no better time to engage with your state bar association. Have a voice in the issues that impact your practice, share your expertise with others, expand your career and leadership skills, and perhaps most importantly be reminded that you have a large statewide support system of resources, information, and people to help you be the best lawyer you can be.

[Register now](#) for the PBA Virtual Committee and Section Day 2021 to be held on Thursday, November 18.

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*Please note that the Disciplinary Board of the Supreme Court of Pennsylvania and the Pennsylvania Bar Association (PBA) are separate organizations. For more information about PBA, visit their [website](#).*

## *We Want To Hear From You...*

We are always on the lookout for stories of interest relating to legal ethics, new issues in the practice of law, lawyer wellness, and funny or just plain weird stories about the legal profession. If you come across something you think might be enlightening, educational, or entertaining to our readers or social media followers, [pass it along](#). If you are our original source, there may be a hat tip in it for you.

## *Resources*

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