



The
DISCIPLINARY BOARD
of the Supreme Court of Pennsylvania

September 2022 Newsletter



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From the Chair

As we begin this new season, I want to thank all Pennsylvania attorneys who timely completed their 2022-2023 Annual Attorney Registration. With the close of another efficient and successful registration period, I would also like to take this opportunity to extend my gratitude to Disciplinary Board staff for their dedication to the registration process and the organization at large.

September is Suicide Prevention Awareness Month. Despite high rates of depression throughout the legal community, far too few are educated about mental health and suicide prevention. Thankfully, there are myriad resources tailored to the unique experiences of the profession.

The Institute for Well-Being in Law (IWIL) has focused its September [well-being guide](#) on suicide prevention and awareness, offering tips for recognizing crisis warning signs in colleagues and loved ones as well as a list of available resources. Later this month, IWIL will host a free [webinar](#) on how to effectively discuss suicide prevention and seek assistance.

In addition to numerous services and online resources, our friends at [Lawyers Concerned for Lawyers](#) (LCL) provide a confidential hotline at 1-888-999-1941 open to all Pennsylvania lawyers, judges, law students, and family members of legal professionals in need of support. Last year, LCL also partnered with the Texas Lawyers' Assistance Program to produce a powerful [educational video](#) raising awareness about mental health issues within the legal profession. Lawyers who themselves have struggled with anxiety and depression share their stories of seeking and receiving help.

There is always help, and there is always hope.

Finally, as we move forward from certain stages of the pandemic and reflect upon its evolution of professional communications, the Board recognizes that increased transparency and access to public proceedings has furthered its mission of service to Pennsylvania communities. Public proceedings will continue to be livestreamed via the Board's [YouTube channel](#).

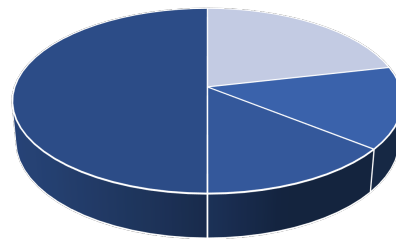


Stay well,

Jerry M. Lehocky
Board Chair

Discipline Imposed

August 2022



- Informal Admonition - 3
- Private Reprimand - 0
- Public Reprimand - 0
- Public Censure - 0
- Disability Inactive - 0
- Temporary Suspension - 2
- Suspension - 2
- Disbarment - 7

Temporary Suspension

[Corey John Kolcharno](#)
[Brad Joseph Koplinski](#)

Suspension

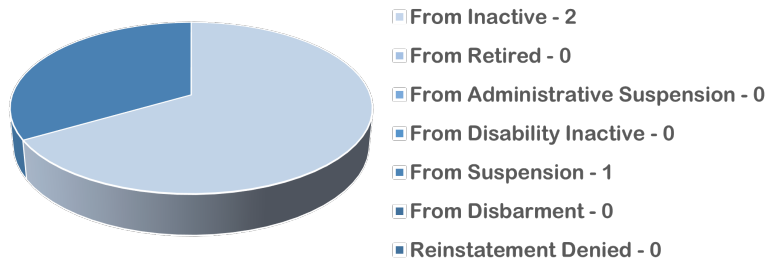
[Daniel Warren Morse](#)
[Lee Eric Oesterling](#)

Disbarment

[Freddie Jay Berg](#)
[Thomas A. Fadner, II](#)
[Valerie Andrine Hibbert](#)
[James Thomas Hytner](#)
[Vincent J. Mitchell](#)
[Royce W. Smith](#)
[Nicholas Urick](#)

Reinstatements

August 2022



From Inactive

[Ashley Marie Altomare](#)
[Douglas Matthew Risen](#)

From Suspension

[Herbert Karl Sudfeld, Jr.](#)

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

Disciplinary Board News

2022-2023 Annual Attorney Registration Summary

Annual Attorney Registration opened on April 25 to over 75,400 attorneys who were eligible (and required) to complete annual registration by July 1. By the July 1 deadline, nearly 88% of attorneys had completed their registration. Prior to the assessment of the first late fee on July 17, nearly 97% of attorneys had complied. Prior to the assessment of the second late fee on August 2, over 98% of attorneys had completed the registration process.

Throughout the registration season, numerous email reminders are sent to attorneys with an outstanding requirement at the time of email distribution. These reminder emails (sent from PAAttorneyRegistration@pacourts.us) continue to be sent until an attorney's registration is complete or until a Supreme Court Order for Administrative Suspension of the attorney is effective. Emails are sent to various groupings, including:

- all attorneys whose registration is incomplete;
- attorneys who chose to create a mail-in payment voucher, but payment has not yet been received; and
- attorneys admitted to the Pennsylvania bar during the previous registration year (first timers).

Because communications regarding the registration requirement are only sent electronically, it is crucial that all Pennsylvania attorneys ensure that [current contact information](#) is on file with the Disciplinary Board – specifically within 30 days of any change pursuant to [Pa.R.D.E. 219\(d\)\(3\)](#). Without current contact information, successful communication regarding outstanding requirements is quite difficult – if not impossible.

On August 10, a Supreme Court Order was issued for Administrative Suspension of the remaining noncompliant attorneys. Prior to the effective date of the Order, attorneys can complete their registration and thus be removed from the list of those to be administratively suspended. On September 9, 2022, a record low 272 attorneys were administratively suspended for continued failure to comply.

Thank you to all the attorneys who registered timely this year!

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](#). You can also view "Upcoming Public Proceedings" at the bottom of the Board's [home page](#).

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

<i>September</i>		
September 22	Brian Frederick Levine	Disciplinary Hearing
<i>October</i>		
October 5	Glenn Paul Cummings	Disciplinary Hearing
October 6	John A. Gallagher	Reinstatement Hearing
October 13	John T. Lynch, Jr.	Reinstatement Hearing
October 25 October 26	James P. Miller	Disciplinary Hearing
October 27	Glenn Paul Cummings	Disciplinary Hearing
<i>November</i>		
November 2 November 3	Louis Alfred Piccone	Reinstatement Hearing
November 29	Matthew J. Reusing, Jr.	Reinstatement Hearing
November 30	Michael Eric Adler	Disciplinary Hearing
<i>December</i>		
December 1	Michael Eric Adler	Disciplinary Hearing
December 13 December 14	Craig B. Sokolow	Reinstatement Hearing
December 19	Gina Yvonne Toppin	Disciplinary Hearing
<i>January</i>		
January 11 January 12	Anthony C. Cappuccio	Reinstatement Hearing
January 23 January 24 January 25	Joseph D. Lento	Disciplinary Hearing
January 31	Lawrence E. Bolind, Jr.	Disciplinary Hearing
<i>To Be Scheduled</i>		
Laurence Anthony Narcisi, III - Public Reprimand		
Anthony Hugh Rodriques - Public Reprimand		
Steven Ronald Savoia - Public Reprimand		
Timothy Nicholas Tomasic - Public Reprimand		

Rules

Disciplinary Board Amends Rules for Annual Fee Amount and Waiver

In May the Supreme Court of Pennsylvania [amended Rule 219](#) of the Pennsylvania Rules of Disciplinary Enforcement to allow an attorney to apply for waiver of the active annual registration fee on the basis of financial hardship. By an Order published August 13, 2022, at [52 Pa.B. 4915](#), the Disciplinary Board adopted an amendment to [§ 93.141 of the Disciplinary Board Rules](#) providing for the waiver procedure as well as updating the amount of the annual fee. As the requirements of Rule 219 are already in effect and apply to the 2022-2023 registration year, the amendment was to bring the Board rule into conformity with the Rules of Disciplinary Enforcement, and a proposed rule with a comment period was not necessary.

Articles of Interest

Pennsylvania Lawyer Suspended after Rage Shooting Conviction

A Cumberland County attorney agreed to a retroactive five-year suspension based on his conviction of the offenses relating to his actions in firing a weapon in his townhome.

The disciplinary charges against [Lee Eric Oesterling](#) arose out of a 2014 incident arising from a domestic dispute between Oesterling and his wife. After his wife left their townhome, Oesterling went to a property where he thought she might be and committed damage to the property. He returned to his townhome, and when police arrived to talk to him, he picked up a rifle and brandished it at the police. After he was arrested, police found that five shots had been fired in the living room. His adjacent neighbors were home at the time.

Oesterling pleaded guilty to one count each of simple assault and reckless endangerment of another person. He was sentenced to twenty-three months imprisonment and ordered to pay a fine and costs. He completed his sentence and probation/parole without incident.

Oesterling was serving a suspension dating to 2014 in an unrelated matter at the time of the incident. He agreed to imposition of a five-year suspension retroactive to May 19, 2015, the date of his guilty plea. Mitigating factors included his remorse, acceptance of responsibility, and cooperation with the disciplinary inquiry. He acknowledged that his prior discipline was an aggravating factor. He also had failed to timely file a verified statement of compliance with the terms of his prior suspension.

The Supreme Court approved the Joint Petition in Support of Discipline on Consent. The five-year retroactive suspension was served as of May 2020, but Oesterling remains under the suspension imposed in 2014, so he will have to petition for reinstatement to the bar and demonstrate his current fitness to practice.

Massachusetts High Court Addresses Disclosure Responsibilities of Criminal Defense Counsel

The Supreme Judicial Court of Massachusetts [discussed](#) the ethical duties of criminal defense counsel who become aware of the location of incriminating evidence in an [opinion](#) handed down August 22, 2022.

The case involved Will Tate, who was convicted of second-degree murder in 2014. Tate's defense counsel became concerned when Tate's mother informed him that she found in her basement a jacket and a gun connected to the shooting with which Tate was charged. Counsel met with Tate and informed him that he had an ethical obligation to report the location of the evidence to the prosecution. Believing he had no option, Tate consented to the disclosure. Law enforcement obtained a search warrant and found the jacket and gun which proved to be important evidence leading to Tate's conviction.

Successor counsel sought a new trial based on ineffective assistance of counsel. The Supreme Judicial Court determined that Tate's counsel did not have an ethical duty to report the location of

evidence he neither possessed nor concealed or destroyed the evidence. The Court concluded that remaining silent was an available option which counsel should have disclosed to and considered with his client and thus that Tate did not freely and voluntarily consent to the disclosure. The Court held that due to his mistaken belief he was required to disclose the information, defense counsel had a conflict of interest, and that the act of disclosing it was a breach of confidentiality.

The Court stated that the duties of loyalty and confidentiality owed to the clients outweighed the imperative to disclose information and that if counsel felt his ability to defend the interests of the client were compromised, he should have withdrawn. "We emphasize that attorneys confronting similar circumstances to those counsel did here, where they know of the location of possibly incriminating information but take no action to obtain possession of or to conceal or destroy any potentially inculpatory objects, violate no ethical rule by remaining silent," the Court stated.

DC Court Addresses Intent to Convert

The District of Columbia Court of Appeals was called upon to examine the question of whether a lawyer's conversion of funds was negligent, reckless, or intentional. The case of [In Re Ponds](#) arose out of a flat fee the lawyer kept for his own benefit.

Ponds undertook representation of a client in a criminal matter, and charged a nonrefundable flat fee of \$20,000, which he commingled with his own funds. He met with the client a few times and performed no other services. When the client was charged, Ponds demanded an additional \$30,000 to represent him in the proceeding. The client, unable to pay the additional funds, demanded his \$20,000 back. Ponds refused and never refunded the money, even after an arbitration panel ruled in the client's favor.

In the disciplinary case, a hearing panel found that Ponds had intentionally or recklessly converted the client's funds, and recommended disbarment. The Board on Professional Responsibility concluded that the conversion was negligent, based on Ponds' misunderstanding of case law, and recommended a suspension for nine months. The issue the Court of Appeals considered was whether his action was reckless, warranting disbarment, or negligent, for which suspension would be appropriate.

The Court of Appeals agreed with the hearing panel and concluded that Ponds' conversion of funds was reckless. While the Court conceded that some aspects of the case decision that governed the matter were imprecise, it found that the decision clearly stated that flat fees paid in advance are client property and must be treated accordingly unless the client gives informed consent to a different arrangement and that informed consent required the disclosure of specific items of information in writing which were not incorporated into Ponds' fee agreement. The Court concluded that no reasonable reading of the requirements of the decision could support the fee agreement Ponds wrote, and that the drafting of the agreement and his subsequent conduct belied his claim to a good-faith mistake of law. The Court therefore concluded that Ponds "at a minimum demonstrated conscious indifference" to the requirements of the decision, and that his conduct was reckless. Accordingly, it imposed disbarment.

Ohio Board: Lawyers May Hold Cryptocurrency in Escrow for Clients

The Ohio Board of Professional Conduct has issued an [ethics opinion](#) on whether lawyers can hold cryptocurrency in escrow for clients. The Board [concluded](#) that they may do so subject to

certain safeguards.

The Board noted that financial institutions do not accept or hold cryptocurrency, so it is not possible to handle such assets through lawyer trust accounts in the ways required for handling of client funds.

The Board noted that the Internal Revenue Service views cryptocurrency as property rather than money. The Board concluded that lawyers may hold such assets as property, but that they should follow the general requirements for protection of client property as set forth in the Rules of Professional Conduct. They must segregate cryptocurrency that is client or third-party property from their own property, properly identify the property, and maintain a record of when the property was received, on whose behalf it is held, and the date of any receipts or distributions. The Board also recommends that a lawyer maintain separate records that document all exchanges or other dispositions of cryptocurrency and the value of the cryptocurrency at the time of each transfer or disposition.

The Board also noted other considerations that apply to the holding of cryptocurrency. Because crypto relies on complicated and fast-changing technology, the lawyer must exert special effort to maintain the requisite knowledge and skill to keep abreast of the risks associated with the technology used to transfer and hold cryptocurrency. The Board noted that “there are several recommended methods to safeguard cryptocurrency held in escrow (e.g., cold storage wallets, encryption and back up of private keys, multi-signature accounts)” and that the lawyer should thoroughly research these and employ techniques best designed to protect the client’s interests. Also, the lawyer has an obligation to inform clients of the risks of holding and transferring cryptocurrency and explain the steps the lawyer will undertake to safeguard the client’s property.

Because cryptocurrency is unregulated and frequently used in connection with criminal enterprises, the Board cautioned lawyers to require a detailed written escrow agreement that identifies the parties to the transaction (possibly using know-your-customer identity verification methods) as well as the underlying transaction for which the escrow account will be used.

Second Mistrial in Murder Case Declared After Prosecutor’s Group Text

We all get frustrated sometimes, and the temptation to complain to our peer group is strong. Yielding to that temptation [went very wrong](#) for one Florida prosecutor, though.

Assistant State Attorney Katya Palmiotto lost a ruling when Broward County Judge Peter Holden refused to allow a 911 call as evidence against Corey Gorden in his murder trial. Palmiotto vented her unhappiness about the ruling in a text to a group of current and former homicide prosecutors. She was evidently unaware that Judge Holden, a former prosecutor who was elevated to the bench in 2018, was still a member of the group she texted, and he saw the text.

Upon learning of the incident, defense counsel filed for a mistrial on the basis that the text was an *ex parte* communication with the Court. The motion noted that Judge Holden grilled the prosecutor and “was visibly upset and appeared angry.” Judge Holden granted the motion for mistrial. A motion to dismiss the case remains under consideration.

The mistrial was the second in the case. In May, another judge declared a mistrial when prosecutors asked a witness a prohibited question about Gorden’s refusal to give a statement.

Don't Monkey with a Monkee

Back in the mid-'60s, many of us watched the antics of the made-for-TV rock band The Monkees on their eponymous sitcom. But we weren't the only ones watching; [so, apparently, was the FBI](#).

Although they may claim That Was Then, This is Now, it appears the FBI maintained at least two documents on the Monkees, one grounded in anti-Vietnam War protests, and the other redacted in full. The sole surviving Monkee, Mickey Dolenz, is apparently enough of a Daydream Believer that he thought he should see the Words the FBI kept on him. So he filed a [Freedom of Information Act lawsuit](#) against the Department of Justice, hoping it would be a Steppin' Stone to gaining access to the FBI's file. Although the FBI might argue that It's a Little Bit Me, a Little Bit You, it probably won't be a Pleasant Valley Sunday for the FBI counsel charged with responding to the suit.

As Joe Partice of *Above the Law* said, "I wasn't sure the FBI had files on the Monkees, but then I saw this complaint, now I'm a believer."

Attorney Well-Being

Upcoming Free Virtual CLE Event: Mental Health Is Health

Open to all legal professionals, Thomas R. Kline School of Law of Duquesne University and Lawyers Concerned for Lawyers (LCL) will host "Mental Health IS Health", a free one-hour virtual CLE program (PA - 1.0 Ethics) discussing mental health within the legal community. To be held on Monday, October 10, 2022, a panel of legal professionals from around the commonwealth, including LCL Executive Director Laurie Besden, will explore the frequency of mental health and substance use challenges within the profession and urge the normalization of seeking support. To learn more and register for this event, visit Duquesne University's [website](#).



Mental Health IS Health

THOMAS R. KLINE SCHOOL OF LAW OF DUQUESNE UNIVERSITY
MENTAL HEALTH DAY

OCTOBER 10, 2022 | NOON TO 1:00 P.M.

VIRTUAL EVENT

Please join us for this collaborative program between Thomas R. Kline School of Law of Duquesne University and Lawyers Concerned for Lawyers.

The prevalence rates of mental health and substance use challenges in the legal profession are alarming. This program will address those challenges and the importance of mental health through a robust, vulnerable and candid panel discussion with some of the finest legal professionals in the Commonwealth of Pennsylvania. Asking for support is a sign of strength and our panel will continue the conversation, ultimately normalizing the ask.



The Honorable Ann Butchart
Philadelphia Court of Common Pleas



Michele Haggerty, Esquire
Washington County



C. Reginald Johnson, Esquire
Philadelphia



Anabelle Nietupski
3L & SBA President, Duquesne Kline School of Law



Laurie J. Besden, Esquire
Executive Director, Lawyers Concerned for
Lawyers of Pennsylvania



Our free, one-hour program is open to all legal professionals nationally. All attendees will earn one CLE hour for Pennsylvania.



Register at duq.edu/lawmentalhealth
After registering, you will receive a link to the virtual event.



THOMAS R. KLINE
SCHOOL OF LAW

Free Online Replay: Lawyers Concerned for Lawyers CLE Event

Long stints of screen time can affect well-being through a wide range of factors from anxiety and depression to disrupted sleep and stifled melatonin production. Through "[Shackled to Our Screens: How Technology Has Imprisoned the Legal Profession](#)", first presented earlier this year, Lawyers Concerned for Lawyers Executive Director Laurie Besden discussed how dependence on screens negatively impacts mental health and, potentially, one's ability to honor the Rules of Professional Conduct. View the free CLE session (PA - 1.0 Ethics) replay via [Lawline](#).



LAWYERS CONCERNED FOR LAWYERS
PENNSYLVANIA

LCL offers nonjudgmental, discreet, and confidential assistance to lawyers, judges, and law students struggling with alcohol, drugs, depression, anxiety, stress, gambling, or other mental health issues.

1-888-999-1941
www.lclpa.org

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

Around the Court



SUPREME COURT OF PENNSYLVANIA

Pennsylvania Interest on
Lawyer Trust Accounts Board

PBA Formal Opinion Issued on the Use of IOLTA Accounts for Real Estate Settlement Transactions

The Pennsylvania Bar Association Legal Ethics and Professional Responsibility Committee recently issued PBA Formal Opinion 2022-200: Use of Attorney IOLTA Accounts for Real Estate Settlement Transactions. The Opinion explains that, consistent with Pennsylvania Rule of

Professional Conduct 1.15, attorneys must deposit any funds received while conducting real estate settlements and related transactions into their IOLTA accounts and may not deposit those funds into non-IOLTA accounts unless the funds are Nonqualified Funds which must be deposited in Non-IOLTA accounts. Access the full opinion [here](#).



Pennsylvania Court Interpreters Play an Important Role in the Commonwealth's Judicial System

The Unified Judicial System recently [released](#) a new infographic highlighting key data about court interpreters across the commonwealth. Facilitating over 36,000 statewide requests in 2021, court interpreters play an important role in providing more equal access to justice in Pennsylvania. Language services for individuals who speak limited English or who are deaf or hard of hearing ensure that they are able to participate fully in judicial proceedings and court services.

Visit the Unified Judicial System's [website](#) to learn about the interpreter program.

Court interpreter –

A trained language professional who facilitates communication and access to court services for a person with limited English proficiency or who is deaf or hard of hearing by orally interpreting or signing.

Top 10 languages requested in 2021:

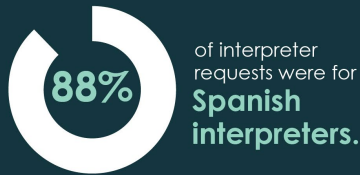


In 2021...

36,140 interpreter requests were made.

244 interpreters representing **38** languages were on the courts' statewide roster.

\$4.2 million was spent on county interpreter expenses.



Top 10 counties for language access and interpreter expenses:



Data was extracted from the Language Access Data Collection application and only reflects interpreter encounters that were tracked through that application.

AOPC

From the Pennsylvania Bar Association



Celebrating Constitution Day with the Pennsylvania Bar Association

September 17 is Constitution Day, but all year long, the Pennsylvania Bar Association provides [programs and resources](#) to teach future generations about our constitution, the rule of law, and the critical role our judicial system plays as one of our three branches of government. Lawyers are an essential partner in ensuring our constitution guides our daily lives and that we continue to work toward “a more perfect union.” PBA invites you to join in the many educational initiatives developed and supported by PBA committees, sections, and members. Be inspired as you watch this quick [video](#) in celebration of Constitution Day and the “many people, many beliefs, one constitution” that continue to move this nation forward.

Copies of the Constitution of the United States are available upon [request](#). Approximately 20,000 copies are sent to courts, schools, and community groups each year through funding from the PA Bar Foundation. Please consider investing in this initiative by [contributing](#) to the PA Bar Foundation.

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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