

REPRIMANDED, SUSPENDED OR DISBARRED

Pennsylvania's 2018 Top Ten

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April 24, 2019 In-House Counsel Conference

Presenters:

- Andrew W. Boczkowski
 - Assistant General Counsel
 - GlaxoSmithKline
- John J. McAleese, III
 - McCarter & English, LLP
 - Philadelphia Office Managing Partner
 - Disciplinary Board of the Supreme Court of Pennsylvania, Hearing Committee Member

Some Background

- Pennsylvania attorneys are subject to the Pennsylvania Rules of Professional Conduct (Pa. R.P.C.)
- The disciplinary process is governed by the Pennsylvania Rules of Disciplinary Enforcement (Pa. R.D.E.)

The Basic Procedure

- The disciplinary procedure is somewhat complex but can be summarized as follows:
 - Complaint or other initiating factor
 - Office of Disciplinary Counsel investigates and recommends
 - Informal admonition, private reprimand, public reprimand or formal charges
 - Attorney may request formal proceeding for informal admonition, private reprimand or public reprimand
 - Formal proceedings held before 3 member of Hearing Committee
 - Hearing Committee recommends to Disciplinary Board
 - Disciplinary Board recommends to Supreme Court
 - Supreme Court issues ultimate discipline
- Supreme Court Disciplinary Orders can be found on-line at www.padisciplinaryboard.org

THE TOP TEN IN 2018

The Pennsylvania 2018 Statistics

- 52 Attorneys Informally Admonished
- 10 Attorneys Privately Reprimanded
- 19 Attorneys Temporarily Suspended
- 32 Attorneys Suspended
- 18 Attorneys Publicly Reprimanded
- 32 Attorneys Disbarred

10. Office of Disciplinary Counsel v. E.H (40 DB 2018)

- The Facts:
 - E.H. not licensed in NJ, but represented criminal defendant in NJ court and failed to so inform the court
 - In Pa criminal case, he failed to file the appeal brief resulting in dismissal of conviction appeal
 - Failed to respond to ODC charge letter (a DB-7 Letter)
- The Rules Violated
 - R.P.C. 1.3, 1.4(a)(3), (a)(4), (b), 1.16(d), 3.3(a)(1), 5.5(a), 7.1, 8.4(a), (c) and (d)
 - Pa. R.D.E. 203(b)(7)
- The Discipline
 - Public Reprimand

10. Office of Disciplinary Counsel v. E.H (40 DB 2018)

- Highlighted Rule
 - R.P.C. 5.5 **Unauthorized Practice of Law; Multijurisdictional Practice of Law**
 - (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
 - But see R.P.C. 5.5(c)
- The Takeaway:
 - It takes a lot to be suspended or disbarred

9. Office of Disciplinary Counsel v. D.M. (184 DB 2017)

- The Facts:
 - Admitted *pro hac vice* in Delaware
 - In a med mal case, D.M. allowed altered documents and false testimony by a doctor and a physician's assistant, and even highlighted the false evidence in closing statements
- The Rules Violated
 - De. R.P.C. 3.3(b), 3.4(a) and (c), 4.1(b), 8.4(c) and (d)
- The Discipline
 - Consent 3-year suspension

9. Office of Disciplinary Counsel v. D.M. (184 DB 2017)

- Highlighted Rules:

- R.P.C. 8.5 **Disciplinary Authority; Choice of Law**

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits shall be applied, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

- R.P.C. 3.3 **Candor Toward the Tribunal**

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

- The Takeaway:

- There is no ostrich defense

8. Office of Disciplinary Counsel v. C.P. (5 DB 2018)

- The Facts:
 - C.P. represented client in civil rights action against school district, principal and superintendent
 - Jury verdict in favor of C.P.'s client for \$325,000
 - Judge granted new trial on the grounds that C.P. mischaracterized evidence, expressed personal outrage and attempted to inflame the jury
 - New trial found in favor of the defendants
 - C.P. appealed to 3rd Circuit, which affirmed except for an improper dismissal of one defendant
 - C.P. filed petition for fees in the amount of \$727,000
 - Judge denied and imposed \$25,000 sanction, calling petition “mind boggling” “outrageously excessive” and that it “felt more like an attempted bank robbery.”

8. Office of Disciplinary Counsel v. C.P. (5 DB 2018)

- The Rules Violated
 - R.P.C. 1.1, 1.5(a), 3.1, 3.2, 4.4(a) and 8.4(d)
- The Discipline
 - Public Reprimand
- Highlighted Rule
 - **Rule 3.1 Meritorious Claims and Contentions**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law...
- The Takeaway
 - Basis in law *and* fact

7. Office of Disciplinary Counsel v. A.S. (73 DB 2015)

- The Facts:
 - A.S. plead guilty to bank fraud, conspiracy to commit money laundering and failure to file tax returns
 - Sentenced to one day in jail and three years of probation
- The Rule Violated
 - Pa.R.D.E. 203(b)(1)
- The Discipline
 - Suspended for 5 years

7. Office of Disciplinary Counsel v. A.S. (73 DB 2015)

- Highlighted Rules

- Pa.R.D.E. 203(b)(1)

- (b) The following shall also be grounds for discipline:

- (1) Conviction of a crime

- Pa.R.D.E. 218 (a)(1)

- (a) An attorney may not resume practice until reinstated by order of the Supreme Court after petition pursuant to this rule if the attorney was:

- (1) Suspended for a period exceeding one year

- Pa.R.D.E. 214(a)

- (a) An attorney convicted of a crime shall report the fact of such conviction within 20 days to the Office of Disciplinary Counsel. The responsibility of the attorney to make such report shall not be abated because the conviction is under appeal or the clerk of the court has transmitted a certificate to Disciplinary Counsel pursuant to subdivision (b).

6. Office of Disciplinary Counsel v. D.W. (140 DB 2018)

- The Facts:
 - Was lawyer at MyPhillyLawyer firm
 - Struck up business relationship with disbarred lawyer A.M
 - A.M. had business card that read “A.M. JD MyPhillyLawyer,” conducted client intake at a satellite office with “MyPhillyLawyer” sign outside
 - D.W. aware of business card and A.M.’s actions
- The Rules Violated
 - R.P.C. 5.3(b), 7.1, 8.4(a) and (d)
 - Pa.R.D.E. 203(b)(3) via 217(j)(6), 217(j)(2)(ii), (3), (4)(ii) and (4(v), 217(d)(2),
- The Discipline
 - Public Reprimand

6. Office of Disciplinary Counsel v. D.W. (140 DB 2018)

- Highlighted Rule

- R.P.C. 5.3 **Responsibilities Regarding Nonlawyer Assistance**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer

- The Takeaway

- Be careful of actions of paralegals, administrative assistants and others in how they are assisting you in your legal responsibilities

5. Office of Disciplinary Counsel v. J.G. (79 DB 2016)

- The Facts:
 - General Counsel at VO Financial
 - Started working for VO after a number of public indictments of owners and officers of VO
 - J.G. charged with obstruction of justice for tampering with witnesses and providing false documents
 - Pled guilty to one count of conspiracy to obstruct justice
- The Rules Violated
 - Pa.R.D.E 203(b)(1)
- The Discipline
 - Resignation from bar
- The Takeaway
 - Be very careful when involved in corporate investigations

4. Office of Disciplinary Counsel v. M.P. (88 DB 2017)

- The Facts:
 - Complaint filed by client with ODC
 - ODC notified M.P. of complaint through a letter (DB-7) requiring a response
 - M.P. did not respond
 - ODC decided that an Informal Admonition was appropriate
 - M.P. failed to appear for Informal Admonition
 - ODC held a Disciplinary Hearing
 - M.P. said he “panicked” when he received letter from ODC and coped by ignoring them
- The Rules Violated
 - R.P.C. 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(b) and 8.1(b)
 - Pa. R.D.E. 203(b)(7), 204(b) and 203(b)(7)
- The Discipline
 - Public Reprimand

4. Office of Disciplinary Counsel v. M.P. (88 DB 2017)

- Highlighted Rules

- Pa.R.D.E. 203(b)(2)

- (b) The following shall also be grounds for discipline:

- (2) Willful failure to appear before the Supreme Court, the Board or Disciplinary Counsel for censure, public or private reprimand, or informal admonition.

- Pa.R.D.E. 208(b)(3)

- (b) Formal Hearing. Formal disciplinary proceedings before a hearing committee or special master shall be as follows:

- (3) Within 20 days after such service, the respondent-attorney shall serve an answer upon Disciplinary Counsel and file the original thereof with the Board. **Any factual allegation that is not timely answered shall be deemed admitted.**

- The Takeaway

- Do not panic and ignore the Disciplinary Board of Counsel

3. Office of Disciplinary Counsel v. M.C. (204 DB 2017)

- The Facts:
 - M.C. purchased a GPS tracker and an audio recorder and snuck into his ex-girlfriend's garage and installed devices
 - Tried on 3 or 4 occasions to recover devices, but each time the car was locked
 - Of course, she found the devices
 - MC pled guilty to criminal trespass
- The Rules Violated
 - R.P.C. 8.4(b), (c) and Pa.R.D.E. 203(b)(1)
- The Discipline
 - 5-year suspension, 4 of which were stayed pending completion of probation

3. Office of Disciplinary Counsel v. M.C.

- Highlighted Rule:

- R.P.C. 8.4

It is professional misconduct for a lawyer to:

(b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

- The Takeaway:

- Try match.com

2. Office of Disciplinary Counsel v. R.K. (152 DB 2017)

- The Facts:
 - Miss Pennsylvania eliminated in first round of 2012 Miss USA Pageant, and she posted on Facebook and told Today Show that pageant was “rigged”
 - Miss Universe Organization (MUO) filed an arbitration demand in the amount of \$10 against Miss Pa claiming breach of contract
 - R.K., Miss Pa’s attorney, advised her that she did not have to participate in arbitration because her copy of the contract was not signed by either party
 - MUO awarded \$5 million in arbitration
 - MUO filed in S.D.N.Y. to confirm award; court confirmed, citing to R.K.’s “ineptitude”
- The Rules Violated
 - R.P.C. 1.1, 1.4(b)
- The Discipline
 - Public Reprimand (and a malpractice action)

2. Office of Disciplinary Counsel v. R.K. (152 DB 2017)

- Highlighted Rule

- **Rule 1.1 Competence**

A lawyer shall provide competent representation to a client. Competent representation requires legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

- The Takeaways

- Legal knowledge, skill, thoroughness and preparation still matter
 - Be careful when you say bad things about Trump

1. Office of Disciplinary Counsel v. M.G. (121 DB 2017)

- The Facts:
 - M.G. placed on administrative suspension for failing to comply with CLE requirements
 - Continued to represent criminal defendant without notifying client or court
 - Lied to court in another case where he was confronted by opposing counsel about being on administrative suspension
 - Found to be in criminal contempt and fined \$500
 - Failed to respond to DB-7 letter from ODC
- The Rules Violated
 - R.P.C. 1.16(a)(1), 3.3(a)(1), 5.5(a), 8.4(b), (c) and (d)
 - Pa.R.D.E. 203(b)(1), (3) and (7)
- The Discipline
 - **Disbarred!**

1. Office of Disciplinary Counsel v. M.G. (121 DB 2017)

- Highlighted Rule

- R.P.C. 8.4 (b), (c) and (d) **Misconduct**

It is professional misconduct for a lawyer:

- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
 - (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
 - (d) engage in conduct that is prejudicial to the administration of justice.

- The Takeaway

- GET YOUR CLE CREDITS!

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