

# Remorse and Acceptance, Lessons From the Disbarments and Suspensions of 2021

*The Legal Intelligencer*

November 19, 2021

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As we all know all too well, 2021 has been a very “different” year for everyone. It appears that this is true for the Disciplinary Board of the Pennsylvania Supreme Court as well. According to the board’s 2019 annual report, between 2014 and 2019, the board averaged 177.5 impositions of discipline a year with a high of 211 in 2019 and a low of 160 in 2016 and 2018. During that same six-year span, the board averaged 33.8 disbarments a year with a high of 46 in 2014 and a low of 19 in 2016.

When the pandemic hit last year, the board implemented operational procedures to allow staff to work remotely and to continue the board’s work through the use of advanced video technology. This has left many of us riveted to the board’s YouTube channel (<https://www.youtube.com/channel/UC7Rzfgcm91b2y3TRTXAViHw>), but has also been accompanied by a decrease in the number of cases resulting in public discipline. As the board’s 2020 annual report noted, there was an 18% reduction in the number of complaints filed during the pandemic and the number of cases where sanctions were imposed fell to 148. The number of disbarments in 2020 was just below the prior six-year average at 30.

The story to date this year looks like things may be very different. As of mid-November, there have only been 16 disbarments in Pennsylvania this year. All but one of those are either disbarments on consent or disbarments reciprocal with another jurisdiction. Both public reprimands and

suspensions also appear to be running at about half of what one would expect to see in a normal year. A flurry of disciplinary actions in the next six weeks seems unlikely as there are only 35 “pending” disciplinary cases listed on the board’s website and hearings have not even occurred in many of those cases. It is looking like 2021 will stand out as a particularly slow year for public discipline of attorneys in Pennsylvania. However, the unfortunate corollary to this is that discipline is likely to be significantly on the increase over the next several years as the Office of Disciplinary Counsel works through a pandemic backlog and begins dealing with the disciplinary issues that many commentators believe will arise out of pandemic challenges.

So, you may ask, what was the one disbarment so far this year that was not on consent or reciprocal to another jurisdiction, and, more importantly, what can we learn from it? It is the case of Donald B. Moreman of Fayette County. Disciplinary hearings in Moreman’s case were held in November 2019. Moreman appeared pro se. The matter was adjudicated by the Disciplinary Board in July 2020, and the Supreme Court issued its order on March 18.

Moreman was the treasurer for the Pleasant Valley Masonic Hall Association. Between June 2017 and September 2018, Moreman forged signatures on 75 checks drawn on Pleasant Valley’s checking account and made unauthorized disbursements from the checking account. In total, Moreman illegally obtained just under

\$50,000 from Pleasant Valley and used it for his own purposes. Moreman pleaded guilty to 75 counts of forgery, four counts of theft by deception, and four counts of theft by unlawful taking.

While Moreman acknowledged his improper conduct, the Disciplinary Board found that the expressions of remorse were tempered by his statement that he entered a guilty plea because he wanted to avoid jail time and the district attorney “threatened” to remove that option. Moreman also expressed his belief that the district attorney and the court wanted to make an “example” out of him. Moreman suggested that he was being repaid for funds that he had expended on behalf of Pleasant Valley, and testified that it was his position that his restitution created a windfall for Pleasant Valley. The Disciplinary Board found Moreman’s testimony that he is remorseful was not credible.

The Disciplinary Board’s opinion stated that contrary to his assertion that he accepts responsibility and is remorseful, Moreman clearly believes he was wronged and he does not accept responsibility for his criminal activities. Importantly, the board found: “Never once on the record did respondent unequivocally own up to his misconduct.” The Hearing Committee and the board both found the failed attempts at expressing remorse actually constituted an aggravation of discipline rather than a mitigation.

It is hard to overstate the factors of acceptance of responsibility and remorse in responding to a disciplinary complaint. Several of the lengthiest suspensions rendered this year underscore the importance of those factors. David C. Agresti of Erie County was suspended for a period of three years for a number of financial improprieties with client funds. The Disciplinary Board included a finding that Agresti “maintained his self-serving claims throughout the disciplinary hearing” and

“failed to demonstrate sincere and credible remorse.”

Allan K. Marshall of Philadelphia County was suspended for 30 months due in large part to failures to provide services to clients. Marshall told one client that he should file for bankruptcy to save his home despite knowing that a sheriff’s sale had already taken place. The Disciplinary Board’s opinion noted Marshall “demonstrated no comprehension of the extent of his wrongdoings and expressed no remorse.” The opinion continued: “Respondent’s position is rooted in his certainty that he did no harm to his clients, that his clients did not appreciate his efforts on their behalf, and that he suffered more harm than they did.”

While it appears that 2021 will be light on public discipline for attorneys, the lessons readily apparent in the discipline that has been imposed are not new or unique to our strange times. While acknowledgement and remorse are not a panacea for all wrongs, they are fundamental when an attorney has committed conduct that violates the Rules of Professional Conduct. Moreman, Agresti and Marshall all chose to represent themselves before the Disciplinary Board. Their collective inability to accept responsibility for their actions and appropriately express remorse served to aggravate the wrongful conduct that was the basis for their disciplinary matters.



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