Dauphin County Bar Association

DCBA MEMBER BENEFIT
CLE COMPLIANCE SESSION HANDOUTS

WEDNESDAY, AUGUST 5, 2026

Widener Commonwealth Law School
Wolfberg Courtroom (old room A-180)
3737 Vartan Way, Harrisburg

This is a smoke free campus!

Parking: Please do not park in the small lot directly in front of the administration building. This is reserved for staff of the law school.

CAMPUS MAP LEGEND

Numbers on map indicate Building Name & Offices.

1 Classroom and Law Library Building, Classrooms, Faculty Offices, I.T.S., Library

2 Basketball/Tennis Courts

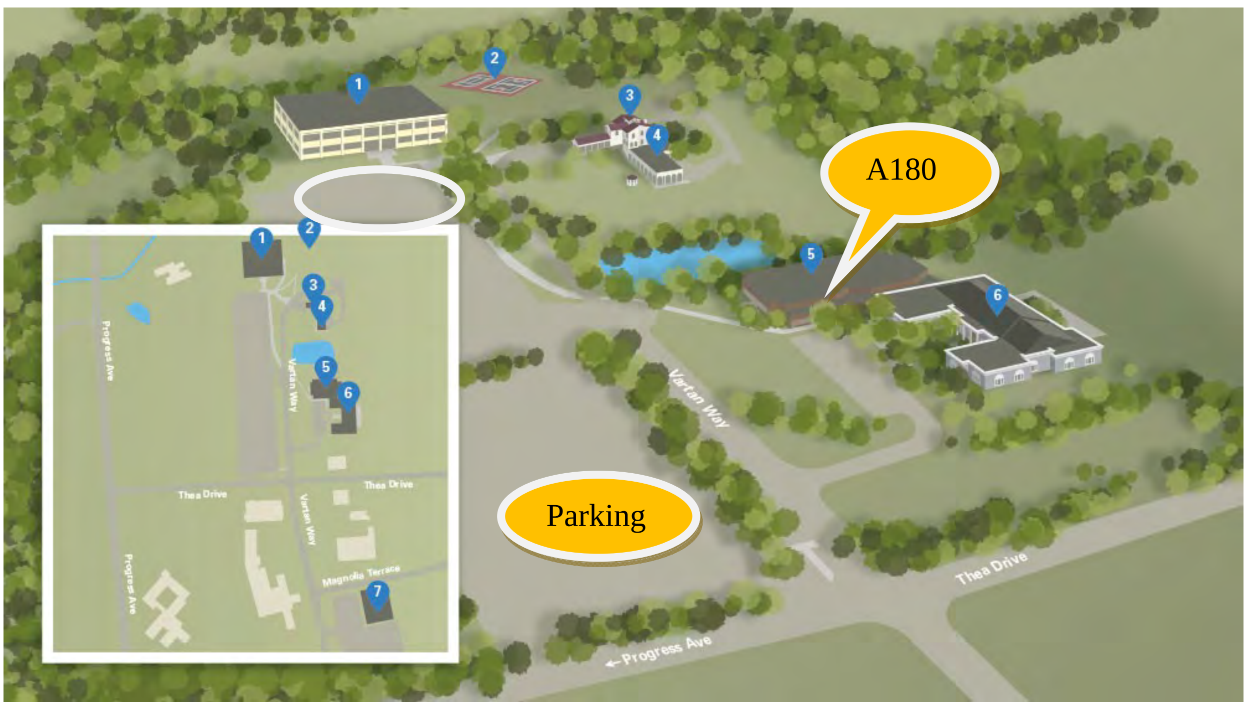
3 Student Activities Offices, Bookstore

4 Cafeteria

5 Wolfberg Courtroom (old A180), Classroom, Nursing School, Moot Courtrooms

6 Administration Building, Deans, Admissions, Career Development, Business Office, Registrar, Financial Aid, Social Work Program

7 Central Pennsylvania Law Clinics



SESSION AGENDA

Widener Commonwealth Law School – Wolfberg Courtroom (old room A-180)
3737 Vartan Way, Harrisburg, PA

Please DO NOT ARRIVE before 8:30.

- 8:30 – 8:55am – Pick up your registration form at registration table
- 9:00 - 10:00am | Session #1 | Pennsylvania Worker's Compensation: Law & Practice Update | Jesse Rhodeside & Craig Love Substantive
- 10:15 - 11:15am | Session #2 | The Ethics Act: A Guide to Stay Out of Trouble (& The News) Substantive
- 11:30am - 12:30pm | Session #3 | PBA Malpractice Avoidance | Robert H. Davis, Jr. & Elizabeth Schmidt-Jerdon | Ethics

LUNCH BREAK
R&K Subs lunches for those that have registered for the lunch.
Please be sure to take the appropriate sub that you ordered.

- 1:30 - 2:30pm | Session #4 | Civility in Family Law Matters | Sanford Krevsky & Jennifer Ellis | Substantive
- 2:45 - 3:45pm | Session #5 | What you need to know about the Guardian Monitor Program | Mary Catherine Scott, Sara Shaffer & Sarah M. Lockwood | Substantive
- 4:00 - 5:00pm | Session #6 | Ethics of Estate Planning and Administration | Thomas P. Gacki | Substantive

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Important Info:

- Please do **NOT** arrive before 8:30 a.m.
- Please do **NOT** park in the lot directly in front of the administration building unless you have been given express permission
- A Wi-Fi password is no longer needed. You will just connect to wuguest.
- You **must be** in attendance for the complete HOUR of a program to receive credit.
- Coffee will be provided in the morning only. Some water and canned soda will also be available.
- After completion of your last session, please drop off your SIGNED CLE form at the registration table at the bottom of the steps.
- Please bring a sweater if you think you may get chilly.
- **PLEASE KEEP ALL CELL PHONE CALLS TO BETWEEN SESSIONS!**

See you at Widener Commonwealth!

Thank you
TO OUR
MEMBER BENEFIT
COMPLIANCE SESSION
Sponsor
DAUPHIN COUNTY BAR ASSOCCATION
MDCCCXCVI
Pam Rajtik, Account Executive
901 Pulaski Park Drive, Suite 417
Baltimore, MD 21220
717-816-6658
EXCELSIA
INJURY CARE
SCAN TO LEARN MORE

Speaker Biographies

Session 1 – Workers Compensation Update

Jesse M. Rhodeside, Esquire – Marzzacco Injury Law

Jesse represents injured workers in workers' compensation matters. He handles workers' compensation litigation before workers' compensation judges across Pennsylvania, and has extensive experience in appellate practice before the workers' compensation appeal board and the Commonwealth Court. He has helped his clients recover millions of dollars in lost wages and medical expenses through his advocacy. Jesse is certified as a specialist in the practice of workers' compensation law by the Pennsylvania Bar Association's Section on Workers' Compensation Law as authorized by the Pennsylvania Supreme Court.

Jesse attended Widener University School of Law in Harrisburg, and received his law degree in 2014. While in law school, he gained valuable experience through internships with the Governor's Office of General Counsel and the Supreme Court of Pennsylvania. He was also a member of the Moot Court Honor Society. Prior to law school, Jesse attended Temple University, and earned his B.A. in 2011.

Areas Of Practice: Workers' Compensation

Bar Admissions: Pennsylvania

Education: Widener University School of Law, Harrisburg, Pennsylvania, J.D., Honors: cum laude; Temple University, Philadelphia,

Pennsylvania Professional Associations and Memberships: Pennsylvania Bar Association, Member; Dauphin County Bar Association, Member; Dauphin County Bar Association, Workers' Compensation Section – Chair; Pennsylvania Association for Justice (PAJ), Member, Pennsylvania Association for Justice (PAJ), Board of Governors – Workers' Compensation Section

Specialties and Certifications: Certified Workers' Compensation Specialist by the Pennsylvania Bar Association Section of Workers' Compensation Law

Honors: Super Lawyers Rising Stars 2024, National Trial Lawyers Association Top 100

Craig H. Love, Esquire – Metzger Wickersham

Attorney Craig Love focuses his practice on personal injury litigation and workers' compensation matters. He is a former finance professional and has held numerous finance and accounting roles. He gained practical legal experience as a law clerk and associate with a local personal injury firm prior to joining Metzger Wickersham. He has practiced and assisted in all aspects of civil litigation, including jury trials, mediations, and arbitrations. Craig protects his client's interests as if they were his own and has handled a large variety of civil cases from minor injuries to catastrophic claims.

Areas Of Practice: Workers' Compensation; Personal Injury

Bar Admissions: Pennsylvania, Maryland

Education: Widener University School of Law, J.D.; Penn State, MBA; Susquehanna University, BA – Economics

Professional Associations and Memberships: Pennsylvania Bar Association, Member; Dauphin County Bar Association, Member; Dauphin County Bar Association, Workers' Compensation Section – Secretary; Pennsylvania Association for Justice (PAJ), Member

Session 2 – The Ethics Act: A Guide to Stay Out of Trouble

Julie Karabin, Esquire – PA State Ethics Commission

Julie Karabin has served as Assistant Counsel for the Pennsylvania State Ethics Commission since November 2024. Previously, she worked as a VOCA Staff Attorney for Neighborhood Legal Services in their Beaver County Office. While there, Ms. Karabin's practice focused on domestic violence and custody cases.

Ms. Karabin earned her law degree from the University of Pittsburgh School of Law in 2023. She also attended the University of Pittsburgh for her undergraduate education in Public Service and Social Sciences, earning a Bachelor of Arts in 2020. She has been licensed to practice law in Pennsylvania since 2023.

Session 3 – PBA Malpractice Avoidance

Robert H. Davis, Jr, Esquire – Law Office of Robert H. Davis, Jr.

Mr. Davis, is still, after 51 years of practice in Georgia, West Virginia and Pennsylvania, actively engaged in the solo private practice of law in Harrisburg, PA. He spent his first 21 years of practice as Assistant Bar Counsel to the State Bar of Georgia, as Counsel to the West Virginia State Bar and Deputy Chief and Chief Counsel to the Pennsylvania Disciplinary Board serving as an ethics prosecutor in all three states, and is a past President of the National Organization of Bar Counsel. His current practice focuses upon representation and advice to lawyer respondents, judicial officers, government employees and officials and others in Pennsylvania and West Virginia before professional and judicial discipline boards and the PA State Ethics Commission.

He counsels law firms, lawyers, judges, government officials and employees and other professionals on questions of professional responsibility, ethics, malpractice avoidance and the law of lawyering. Bob also provides advisory opinions and serves as an expert witness on questions of professional responsibility, ethics, fiduciary duties of lawyers and other professionals and the law of lawyering. Mr. Davis has taught numerous classes and seminars on legal ethics and professionalism and malpractice avoidance for the Widener University Law School, the Pennsylvania Bar Institute, the West Virginia State Bar, Pennsylvania Bar Association, Dauphin County Bar Association, American Bar Association and a number of other state and private continuing legal education organizations. He provides written materials for most of the CLE classes he has taught and has written articles for publication on ethics and professional responsibility topics.

Mr. Davis is an adjunct professor at the Widener University- Commonwealth School of Law in Harrisburg since 1994, teaching professional responsibility and an advanced ethics problems seminar. He is the 2004 recipient of the Adjunct Faculty Distinguished Service Award from Widener and two leadership awards from the Pennsylvania Bar Association. He currently serves as an active Co-Vice-Chair of the Pa Bar Association Committee on Ethics and Professional Responsibility.

Elizabeth Schmidt-Jerdon, Esquire - Partner | Kane, Pugh, Knoell, Troy & Kramer

Elizabeth Schmidt-Jerdon is a partner at Kane, Pugh, Knoell, Troy & Kramer. She currently practices professional and general liability defense. Elizabeth is a member of the Pennsylvania and Montgomery Bar Associations. In 2022, Elizabeth graduated from the Montgomery Bar Association's Leadership Academy. Elizabeth presents continuing legal education courses on topics including professional liability and risk management for lawyers. She is admitted to practice in the Commonwealth of Pennsylvania and the United States District Court for the Eastern District of Pennsylvania.

Prior to joining the firm in October 2018, Elizabeth clerked for two judges in the Montgomery County Court of Common Pleas. Most recently, Elizabeth clerked for the Honorable Jeffrey S. Saltz in the court's civil division.

Elizabeth graduated from Drexel University Thomas R. Kline School of Law in 2017, where she was a member of the school's moot court board. While at Kline Law, Elizabeth interned for the Honorable Richard P. Haaz in the Montgomery County Court of Common Pleas as well as the Law Division of the City of Philadelphia District Attorney's Office. As part of Kline Law's Co-op Program, Elizabeth completed a semester-long co-op with the United States Attorney's Office in the Eastern District of Pennsylvania, where she first gained trial experience. Upon graduation, Elizabeth won the Faculty Award for Outstanding Achievements in Experiential Education.

Elizabeth graduated magna cum laude from Drexel University in 2012 with a Bachelor of Arts in English.

Elizabeth, her husband, William, and two sons, reside in West Chester, Pennsylvania.

Session 4 – Civility in Family Law Matters

Hon. Courtney K. Powell – Dauphin County Court of Common Pleas

The Honorable Courtney K. Powell attended the Pennsylvania State University where she majored in Speech Communications and minored in Business Administration. She received her Juris Doctorate from the Widener University School of Law in 1997, and then spent the next 25 years in both the public and private sectors.

After graduating from law school, Judge Powell served three years in the Dauphin County Public Defender's office representing minors in juvenile delinquency proceedings, and later adults in all stages of their criminal matters, including appeals to both the Pennsylvania Superior and Supreme Courts. Upon leaving her role with the Public Defender's office, she received a Proclamation from the Dauphin County Commissioners for her years of outstanding service and legal work for the community and county.

In 2001, Judge Powell turned her focus to private practice, and in 2002 joined the Hershey firm of James, Smith, Dietterick and Connelly, now known as JSDC Law Offices when she practiced both family law and criminal law. She became a partner with JSDC Law Offices in 2022. Judge Powell also served as one of the Solicitors for Dauphin County Area Agency on Aging, where she handled guardianship matters.

Professionally, Judge Powell is a member of the Pennsylvania and Dauphin County Bar Associations, and the William W. Lipsitt American Inn of Court. She is active in her community, and volunteers with her children's schools and activities, and the Calvery United Methodist Church food pantry. She resides in Harrisburg with her husband Mark, and two children.

Sanford A. Krevsky, Esquire – Custody Conciliator, Dauphin County

Sanford Krevsky is the full time Custody Conciliator for Dauphin County charged with engaging parents counsel, and other participants in custody actions to reach a pretrial resolution of custody disputes.

Mr. Krevsky received his Bachelor of Arts degree from Temple University in 1969 and his Juris Doctorate degree from Dickinson School of Law in 1972 Mr. Krevsky's background includes extensive trial work as a criminal defense attorney and later in family law. He was the long time Hearing Officer for Dauphin County Juvenile Probation and Dauphin County Children and Youth Services. He has presented at Weidner Law School and the Dauphin County Bar Association

Mr. Krevskys' commitment to the Central Pennsylvania community is evidenced by his recipient of numerous awards for civic, professional and volunteer work and membership on numerous boards, including The Harrisburg Area Community College Paralegal Advisory Board, past President of the Susquehanna Township School Board, Co-president of his synagogue and Chairman of the Susquehanna Township Civil Service Commission.

Mr. Krevsky is a Mentor for Dauphin County's Guardianship Mentoring program and Dauphin County's Self-help Committee.

Mr. Krevsky is married to his trophy wife Sandra, father of five children and grandfather of three grandchildren with, God willing, one more rounding 3rd and heading home.

He loves being a member of the legal profession and is offended by lawyer jokes. His mantra is *how would you like to be treated if you switched places with your client or adversary.*

Jennifer Ellis - Jennifer Ellis, JD, LLC

Jennifer Ellis is a Pennsylvania attorney and legal technology consultant whose work focuses on legal ethics, professional responsibility, law practice management, and the practical use of technology in legal practice. She has more than 25 years of experience at the intersection of law, technology, and legal education, and advises lawyers and legal organizations on ethics compliance, artificial intelligence, cybersecurity, electronic discovery, and practice management. She has held numerous leadership roles within the Pennsylvania Bar Association and the American Bar Association, including serving as founding Co-Chair of the Pennsylvania Bar Association Technology Committee and as a member of the ABA Standing Committee on Ethics and Professional Responsibility.

Jennifer is a frequent speaker and educator, presenting throughout Pennsylvania and nationally on legal ethics, artificial intelligence, cybersecurity, privacy, and law practice management, and she regularly develops continuing legal education programs for bar associations and legal organizations. She writes the Product Watch column for Law Practice Magazine, has contributed to Law Practice Today and other ABA publications, and is the author of an ABA publication on WordPress-based websites. She earned her Juris Doctor, cum laude, from Widener University Delaware Law School and is admitted to practice in Pennsylvania.

Teresa C. Marino, Esquire - Saxton & Stump, LLC

Teresa Marino is a shareholder and co-chair of the Family Law group, leading the firm's family law practice across Pennsylvania. With nearly 20 years of experience in and out of the courtroom, she provides strategic leadership while guiding clients through complex and often deeply personal legal matters with experience, compassion, and practical insight.

Teresa's practice encompasses all aspects of family law, including divorce, equitable distribution, child and spousal support, alimony, prenuptial and postnuptial agreements, child custody, grandparents' rights, and stepparent adoptions. She is particularly experienced in handling high-conflict and high-net-worth matters, including cases involving business ownership, stock options, and other complex assets. Teresa also manages appellate matters for the family law practice.

Teresa develops strategies tailored to each client's personal and financial priorities, whether through litigation, negotiated settlement, or alternative dispute resolution. She has practiced collaborative law since 2017 and is a certified mediator in family law matters. She is active in the Collaborative Professionals of Central Pennsylvania, where she previously served as co-president.

Prior to joining Saxton & Stump, she practiced family law at both large regional and smaller private practice settings, representing clients across Central and Southeastern Pennsylvania. Prior to entering private practice, she served as a law clerk to the Honorable David R. Workman of the Lancaster County Court of Common Pleas, where she worked on family law and juvenile delinquency matters.

Allissa McDonald Myers, Esquire - McDonald Myers Law

Allissa McDonald Myers graduated Temple University Beasley School of Law in 2019. Allissa is now the owner and managing attorney of McDonald Myers Law where she focuses her practice on family law matters including divorce, child custody, support, and protection from abuse matters. Attorney McDonald also serves as a Guardian Ad Litem representing the best interest for dependent children in Dauphin County. Through her practice, Allissa regularly appears before Pennsylvania trial courts and is dedicated to providing compassionate advocacy and practical solutions facing challenging legal issues. Allissa is actively involved in local professional organizations in central Pennsylvania counties and currently serves as a Treasurer/Secretary for the York County Yount Lawyers Section and Treasurer of the Cumberland County Young Lawyers Division.

Session 5 – What you need to know about the Guardian Monitor Program

Mary Catherine Scott, Esquire - Associate Clinical Professor - Director, Central Pennsylvania Law Clinic

Professor Scott has been with Widener Law Commonwealth's Central Pennsylvania Law Clinic since 2002, first as a supervising attorney and more recently as its director. The clinic is distinguished in two primary ways. It provides free legal assistance to those in our community who cannot afford legal services as it prepares law students to become lawyers. This real world experience gives students an opportunity to practice in a supervised setting and handle real cases with real elderly and indigent clients in areas of law that include administrative law, family law, landlord tenant law, consumer law and elder law.

Professor Scott recognizes that the access to justice for such underserved clients is wide and the clinical program at Widener Law Commonwealth steps in to help fill this gap. Many practicing attorneys in our region have participated in the clinic while at Widener, assisting those who needed legal help, and are now successful practitioners.

In addition to her work at the clinic, Professor Scott is active in the Dauphin County Bar Association Public Services Committee, where she works with other practicing attorneys providing pro bono opportunities in the community. She is also a board member on the Advisory Council of Elder Justice in the Courts, where she works with other elder law experts to identify and understand elder justice issues for one of Pennsylvania's most vulnerable populations.

Sara Intrieri Shaffer, Deputy Court Administrator for Civil, Family & Orphan's Court

Sara Shaffer is the Deputy Court Administrator for Civil, Family & Orphans' Court in Dauphin County. She manages the assignment of cases to judges, hearing officers, and arbitration panels. Sara also handles other administrative court duties, such as court calendars, and statistical reporting to the AOPC. In addition, administers the Pro Bono Guardianship Monitor program and contributes to various Courthouse and Bar Association committees.

Sarah M. Lockwood, Esquire – JSDC Law

Sarah earned her bachelor's degree in legal studies and her associate's degree in paralegal studies from Central Pennsylvania, graduating magna cum laude. She then proceeded to obtain her juris doctorate degree and graduate cum laude from Widener University Commonwealth Law School, where she earned the "American Academy of Matrimonial Lawyers Eric D. Turner Award." While completing her undergraduate degree and law school, she worked as a full-time paralegal for nine years.

Sarah is licensed to practice in all Pennsylvania courts, as well as the United States District Court for the Middle District of Pennsylvania, the United States District Court for the District of Columbia, and the United States Court of Appeals for the Third Circuit.

Sarah currently serves on the Board of the Dauphin County Bar Association, the Dauphin County Bar Foundation, and she is a member of the Pennsylvania Bar Association, Pennsylvania Association of Criminal Defense Lawyers, and the National Association of Criminal Defense Lawyers.

EDUCATION: Widener University School of Law, Harrisburg, Pennsylvania, Juris Doctorate (Cum Laude); Central Pennsylvania College, Summerdale, Pennsylvania; Bachelor of Science (Magna Cum Laude), Major: Legal Studies, Associate of Science, Major: Paralegal Studies

PROFESSIONAL ASSOCIATIONS: Pennsylvania Association of Criminal Defense Lawyers (PACDL); National Association of Criminal Defense Lawyers (NACDL); Dauphin County Bar Association, Young Lawyer Section Chair; Harrisburg Young Professionals

BAR ADMISSIONS: Pennsylvania; Middle District of Pennsylvania; U.S. District Court of the District of Columbia; U.S. Court of Appeals for the Third Circuit

Session 6 – Ethics of Estate Planning and Administration

Thomas P. Gacki, Esquire - Law Office of Thomas P. Gacki

After more than 20 years as a member of a law firm with 400 lawyers, Tom decided to return to my roots as a solo practitioner. He joined a large firm to gain experience with more complex transactions and larger estate matters, and I accomplished those goals. By going solo, he is able to offer his expertise to his clients at much more reasonable rates and without the Big Law bureaucracy.

Responsiveness and creativity are his watchwords. He looks for the simplest, most cost-effective solutions to my clients' problems.

Bar Admissions: Licensed to Practice in Pennsylvania and the Federal Court—Middle District of PA

Education: Dickinson School of Law, Juris Doctor 1985. Member—Woolsack Honor Society;
Gannon University, Bachelor of Arts 1982. National Merit Scholar, magna cum laude

SESSION #1

Pennsylvania Worker's Compensation: Case Law & Practice Update

Presented by:

Jesse M. Rhodeside, Esquire
& Craig H. Love, Esquire

DAUPHIN COUNTY BAR ASSOCIATION
CONTINUING LEGAL EDUCATION

Pennsylvania Workers' Compensation: Case Law & Practice Update

Jesse Rhodeside, Esq.
Craig Love, Esq.

1

Grow v. PECO Energy Company

Commonwealth Court of Pennsylvania — Decided January 8, 2025

THE FACTS

- Claimant fractured his neck (C3–C4) in 2013; disc fusion surgery followed and benefits were later suspended on return to work.
- The neck condition worsened over the years, requiring a second, different-level surgery (C6–C7 disc replacement) in December 2021.
- In January 2022 — eight years after benefits were suspended — Claimant petitioned to reinstate benefits and expand the injury description to include C6–C7.

THE HOLDING

- A "consequential" amendment (a new condition arising after the original injury, though caused by it) requires a Petition to Review filed within three years of the last compensation payment — not merely within three years of the injury.
- Because the petition came eight years after the last payment, both the Review and Reinstatement Petitions were time-barred, even though the C6–C7 condition was undisputedly related to the original injury.

!

PRACTICE POINTER

Distinguish "corrective" amendments (fixing an error in the original injury description — no time bar) from "consequential" amendments (a new, later-developing condition — subject to the 3-year clock). Calendar that clock from the date of last payment, not the date of injury.

Grow v. PECO Energy Co. (WCAB) Pa. Commw. Ct., Jan. 8, 2025

2

700 Pharmacy v. Bureau of WC Fee Review Hearing Office

Supreme Court of Pennsylvania — Decided June 16, 2026

PRACTICE POINTER

Self-referral objections that succeed for other services won't necessarily defeat in-house pharmacy dispensing. Reassess standard self-referral defenses against the Schmidt/700 Pharmacy patient-access reasoning before raising them.

THE FACTS

- Claimant's treating pain physicians referred his prescriptions to a pharmacy that those same physicians owned, raising the question of whether this was a prohibited self-referral under the Act.
- The Bureau's Fee Review Hearing Office and the case's procedural history required the Supreme Court to weigh in on whether self-referred prescriptions could still be reimbursed.

THE HOLDING

- The Court held self-referrals for prescription medications are permitted, reasoning that the Act exists to protect injured workers' access to necessary treatment without unnecessary delay.
- The opinion cited Schmidt v. Schmidt, Kirifides & Rassias nine times, extending that decision's patient-access rationale into the self-referral context.

700 Pharmacy v. Bureau of WC Fee Review Hearing Office (SWIF), Pa., June 16, 2026

3

Schmidt v. Schmidt, Kirifides & Rassias, PC

Supreme Court of Pennsylvania — Decided March 2025

PRACTICE POINTER

Don't assume a non-FDA-approved or alternative treatment automatically falls outside "medicines and supplies." Look at whether it was part of a physician's documented treatment plan for the work injury — that is the operative test.

THE FACTS

- Claimant suffered a 2017 work-related back injury; his physician recommended a trial of CBD oil to avoid escalating opioid use and the risks of surgery.
- The insurer refused to reimburse the cost, arguing CBD oil was not FDA-approved and was not a "pharmaceutical drug" and therefore fell outside "medicines and supplies."

THE HOLDING

- The Court held that an item included in a physician's treatment plan for a work injury can qualify as "medicines and supplies" under the Act — FDA approval and a formal prescription are not required.
- Because an injured worker (unlike a medical provider) is not subject to the provider fee schedule, the worker may recover the full cost incurred for a qualifying item.

Schmidt v. Schmidt, Kirifides & Rassias, PC, Pa., March 2025

4

Brown v. Gaydos

Supreme Court of Pennsylvania — Decided 2026, No. 22 WAP 2024

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PRACTICE POINTER

Watch for dual-business or dual-role fact patterns. Immunity analysis isn't just about the parties' general employment relationship — it requires asking what capacity the alleged tortfeasor was acting in when the negligent act occurred.

THE FACTS

- Gaydos was Brown's employer and co-worker on one job site, but also separately owned a distinct, unrelated business.
- Brown sued Gaydos personally, alleging that negligent conduct connected to that separate business — not the shared job — caused his workplace injury. Gaydos claimed co-worker immunity barred the suit entirely.

THE HOLDING

- The Court held that co-worker immunity turns on the capacity in which the alleged tortfeasor was acting at the time of the negligent act.
- Because the negligence was tied to Gaydos's separate business — not the job where the two were co-workers — he was not a "co-worker" for immunity purposes at that time, and the exclusivity bar did not apply.

Brown v. Gaydos, No. 22 WAP 2024, Pa., 2026

5

Steets v. Celebration Fireworks, Inc.

Supreme Court of Pennsylvania — Decided May 30, 2025 (matter of first impression)

THE FACTS

- Claimant was catastrophically injured in an explosion, losing the use of both arms. The WCJ awarded 840 weeks of specific-loss benefits under Section 306(c).
- The employer appealed. During the pending appeal, Claimant died. Her Estate sought payment of the specific-loss benefits; the WCJ, WCAB, and Commonwealth Court all denied that request.

THE HOLDING

- The Supreme Court reversed, holding that under Section 410, specific-loss benefits pending adjudication at the time of the claimant's death survive and are payable to dependents, or — absent dependents — to the estate.
- Two dissenting Justices (Wecht, Brobson) would have denied recovery, reasoning the claimant was on total disability and never actually entitled to specific-loss payments while alive.

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PRACTICE POINTER

A pending, undecided specific-loss claim does not necessarily terminate with the claimant. Reassess reserves and settlement posture the moment a specific-loss petition is filed and an appeal remains open.

Steets v. Celebration Fireworks, Inc. (WCAB), Pa., May 30, 2025

6

Erie Insurance Property & Casualty Co. v. Heater

Supreme Court of Pennsylvania — Decided 2026, No. 103 MAP 2024

THE FACTS

- A sole proprietor — both the owner and the only employee of his business — was injured on the job and told his insurance broker about it, but the insurer argued it never received proper notice.
- Erie contended that where the business is a single-person entity, notice must go to the insurer directly, since the injured worker and the "employer" were effectively the same person.

THE HOLDING

- The Court held that the Act separately defines "employer" and "insurer," and requires notice only to the employer.
- A sole proprietor's own direct, personal knowledge of the incident satisfies the notice requirement to the employer, absent fraud or an attempt to prevent the insurer from investigating the claim.

!

PRACTICE POINTER

Don't read an insurer-notice requirement into Section 311 that the statute doesn't contain — particularly for sole proprietors and single-person business entities where owner and employer are legally the same actor.

Erie Ins. Prop. & Cas. Co. v. Heater, No. 103 MAP 2024, Pa., 2026

7

Factory Grinding Services, Inc. v. Hanna

Commonwealth Court of Pennsylvania — Decided November 7, 2025

THE FACTS

- A traveling salesman for Factory Grinding Services (FGS) was badly injured in a motor vehicle accident driving home from a sales route. FGS had just been acquired by FoodPrep Solutions, leaving it with two valid WC policies: its own through SWIF, and FoodPrep's through Berkshire Hathaway.
- SWIF issued a medical-only NCP finding "no physical injury" and stopped paying; Berkshire issued a TNCP accepting only a "skull contusion" but kept paying as Claimant's condition evolved, eventually covering back surgery and wage loss.
- Berkshire petitioned to expand the injury description to include a lumbar aggravation and to force SWIF to reimburse 50% of all past and future medical and indemnity benefits.

THE HOLDING

- The WCJ, WCAB, and Commonwealth Court all agreed: Section 413(a) lets a WCJ expand an accepted injury description whenever proof shows the disability has "increased, decreased, recurred, or... ceased" — no separate finding that the NCP was "materially incorrect" is required when the medical picture simply evolved after acceptance.
- Because both carriers had valid, overlapping coverage and conceded FGS was the true employer, the Court distinguished Reading Anthracite and ordered SWIF to reimburse Berkshire for 50% of all medical and indemnity benefits tied to the expanded diagnosis.

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PRACTICE POINTER

When a business acquisition or restructuring leaves two policies in force at the time of injury, don't assume the first carrier to accept the claim bears it alone. A WCJ can order proportional reimbursement between carriers as the diagnosis evolves — investigate coverage overlaps early and preserve reimbursement rights.

Factory Grinding Servs., Inc. v. Hanna (WCAB), Pa. Commw. Ct., Nov. 7, 2025

8

Questions & Discussion

9

SESSION #2

"The Ethics Act: A Guide to Stay Out of Trouble"

Presented by:

Julie E. Karabin, Esquire

PENNSYLVANIA STATE ETHICS COMMISSION

THE ETHICS ACT

A Short Guide On How To Stay Out of the Newspapers

1

DO YOU TRUST YOUR GOVERNMENT?

2

CORE MISSION

The Pennsylvania State Ethics Commission's core mission and guiding principle is that public office is a public trust and that any effort to realize personal financial gain through one's public office is a violation of that trust.

3

THREE PRIMARY FUNCTIONS

INVESTIGATIONS

ADVICES AND OPINIONS

STATEMENTS OF FINANCIAL INTERESTS

4

Restricted Activities

5

STATE ETHICS COMMISSION JURISDICTION

PUBLIC OFFICIALS

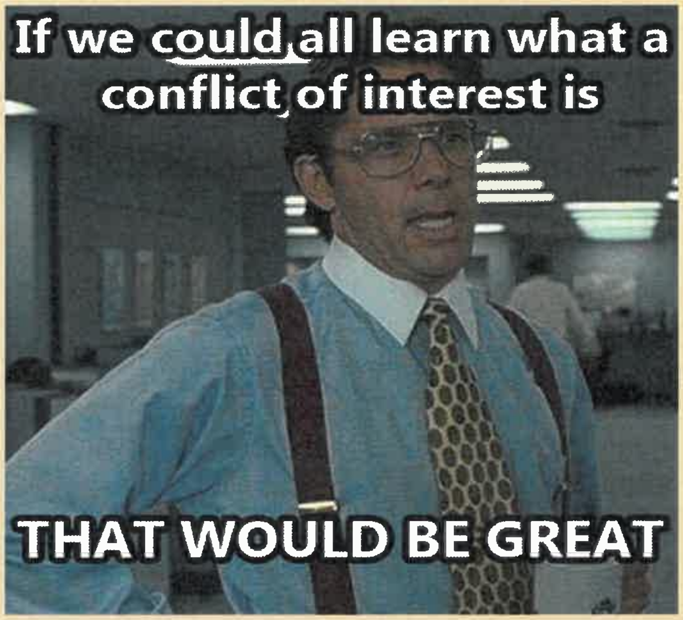
Any person elected by the public or elected or appointed by a governmental body or an appointed official in the executive, legislative or judicial branch of this Commonwealth or any political subdivision thereof.

PUBLIC EMPLOYEES

Any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with regard to:

- contracting or procurement;
- administering or monitoring grants or subsidies;
- planning or zoning
- inspecting, licensing, regulating or auditing any person; or
- any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.

6



7

Conflict of Interest: 1103(a)

No public official or public employee shall engage in conduct that constitutes a conflict of interest.

Use of Authority of Office or Confidential Information

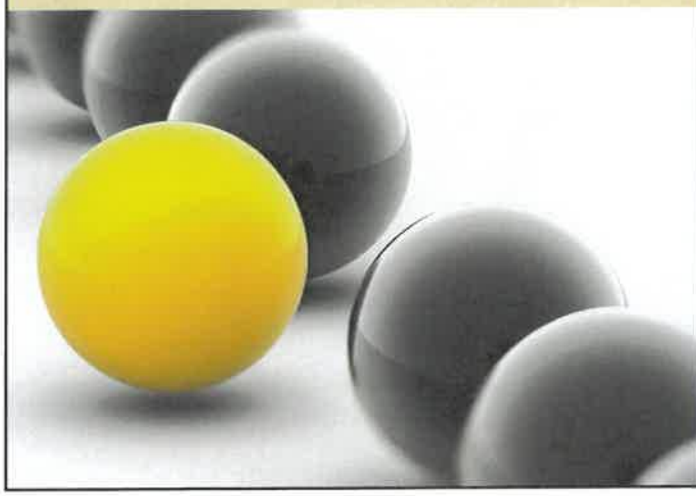
For the private pecuniary benefit of

Themselves, a member of their immediate family, or a business with which they are associated.

Profit?

8

Exceptions



Actions having a de minimis economic impact

Affects to the same degree a class consisting of the general public

Subclass consisting of an industry, occupation, or other group

9

PLCB BOURBON LOTTERY

PLCB Member and Employees used confidential information to purchase highly sought-after bottles of bourbon left over from a public lottery.

No private pecuniary benefit, so no Ethics Act violation.

10

Nepotism

When can a family member work at the same governmental entity?

11

12

If you have a conflict:

AND publicly announce and disclose nature of your interest in a written memo with the person recording the meeting minutes.

13

USE OF GOVERNMENT ASSETS

14

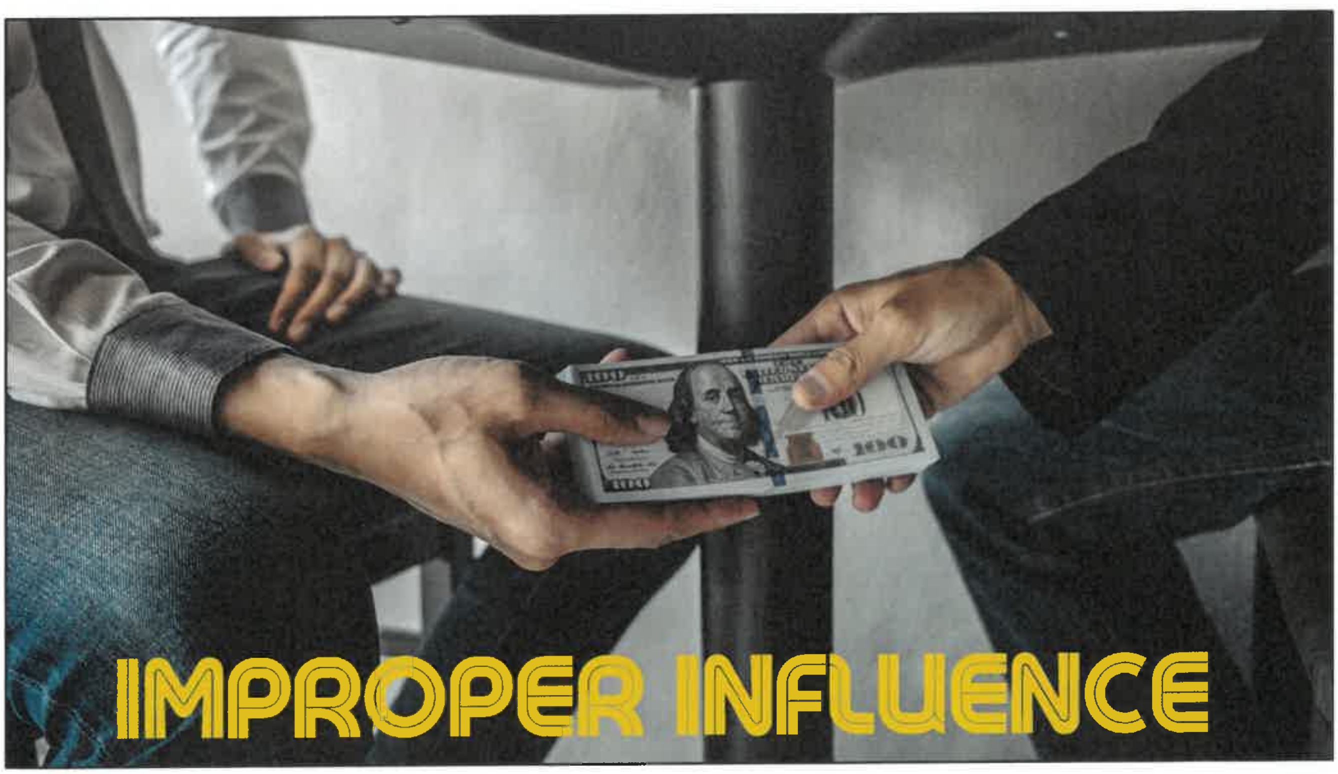
GIFTS, TRAVEL, LODGING, HOSPITALITY

15

16


Attending Conferences in New Orleans & Chicago? Reimbursement for reasonable expenses is fine! Approving your own expenses for upgraded hotel rooms, sightseeing, and a Jazz Brunch? Arriving two days early? Paying for a travel companion's meals & sightseeing? Not so much!

17


IMPROPER INFLUENCE

18

Honorarium - 1103(d)

ARE PROHIBITED

Payment made in recognition of public works/appearances	Not intended as compensation	Nonpublic Occupational or Professional in Nature

19

Revolving Door: 1103(g)

No <u>former</u> public official or public employee shall

Represent a "person"	For promised or actual compensation	Before their former governmental body	For one year after leaving.

20

21

Contracting with your governmental body: 1103(f)

If you, your spouse, or your child - or a business with which you, your spouse, or child is associated - wishes to enter into a contract or subcontract with your governmental body valued at $500 or more:

The contract must have been awarded through an open and public process including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded,

AND

You shall not have any supervisory or overall responsibility for the implementation or administration of the contract.

22

Breaking a Tie

Section 1103(j) contains very specific conditions and scenarios when a public official or public employee may vote even if they have a conflict.

23

Reliance on Solicitor's Opinion – 1109(g)

A public official of a political subdivision who acts in good faith reliance on a written, nonconfidential opinion of the solicitor of the political subdivision or upon an opinion of the solicitor of the political subdivision, publicly stated at an open meeting of the political subdivision and recorded in the official minutes of the meeting, shall not be subject to [criminal] penalties ... nor for the treble damages .... However, this subsection shall not apply in situations where the solicitor's opinion has been rendered under duress or where the parties seeking and rendering the solicitor's opinion have colluded to purposefully commit a violation of this chapter.

Relying on a Solicitor's Opinion does not shield a public official or public employee from an Ethics Act Investigation or Violation!

24

"Next, we observe that Solicitor X's advice concerning the Authority reimbursing travel costs of Authority Board Members' guests was in error. Allowing Authority Board Members to financially benefit by having the Authority pay for the travel expenses of spouses and other guests contradicts the very foundation of the Ethics Act. Similarly, Solicitor X's testimony that he likely would not have changed his opinions regarding Authority Board Member travel even if Members never attended any of the conference for which they were traveling to attend is also quite concerning. Common sense dictates that public monies should not be utilized for Member travel, meals, and other hospitality unless there is some benefit to the business of the Authority. Clearly, there was little, if any, such benefit here.

In addition to the poor advice given by the Solicitor, we note that the courts have concluded that acting in good faith on the advice of the solicitor and other sources is not sufficient cause to absolve an individual from penalties of the law. See Hoak/ McCutcheon v. State Ethics Commission, 466 A.2d 283 (Pa. Cmwlth. 1983), Cotlar v. Westminster Township, 302 A.2d 859 Pa. Cmwlth. 1973)."

Kean Staab, Order No. 1842

25

Advices and Opinions

26

WHAT IS AN ADVICE?

The Commission provides advice and guidance regarding the duties of those who are subject to the Ethics Act

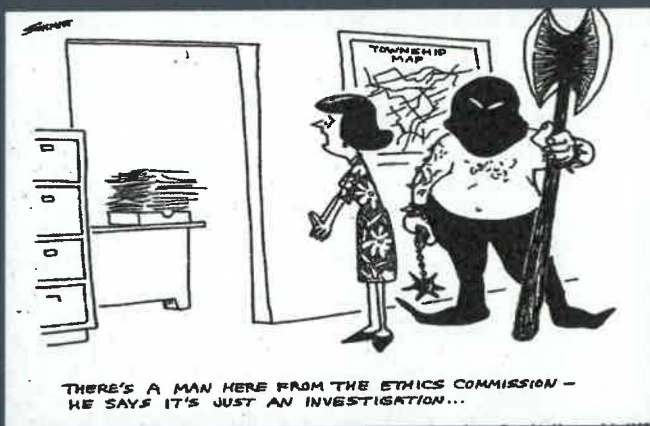
Such advice and guidance is in the form of Advices of Counsel and Opinions of the Commission

27

PROSPECTIVE

NOT PROSPECTIVE

28



Investigations

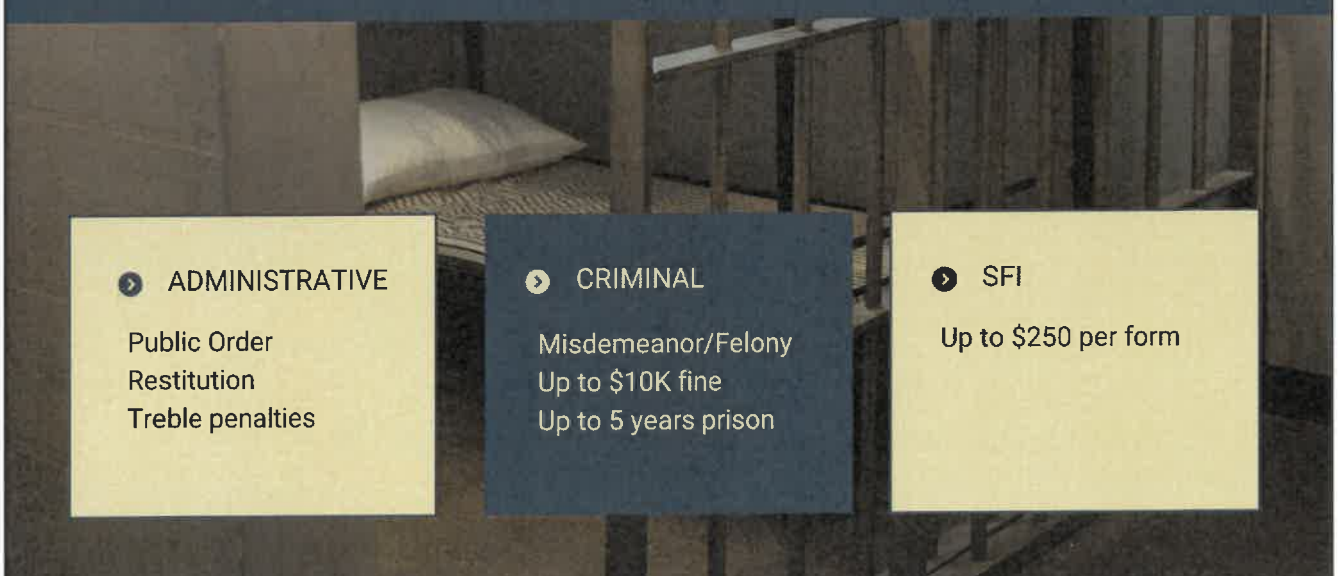
Proceedings and records relating to an investigation are confidential

Identity of a complainant is confidential

Final Order is a public record

29

PENALTIES



ADMINISTRATIVE

Public Order
Restitution
Treble penalties

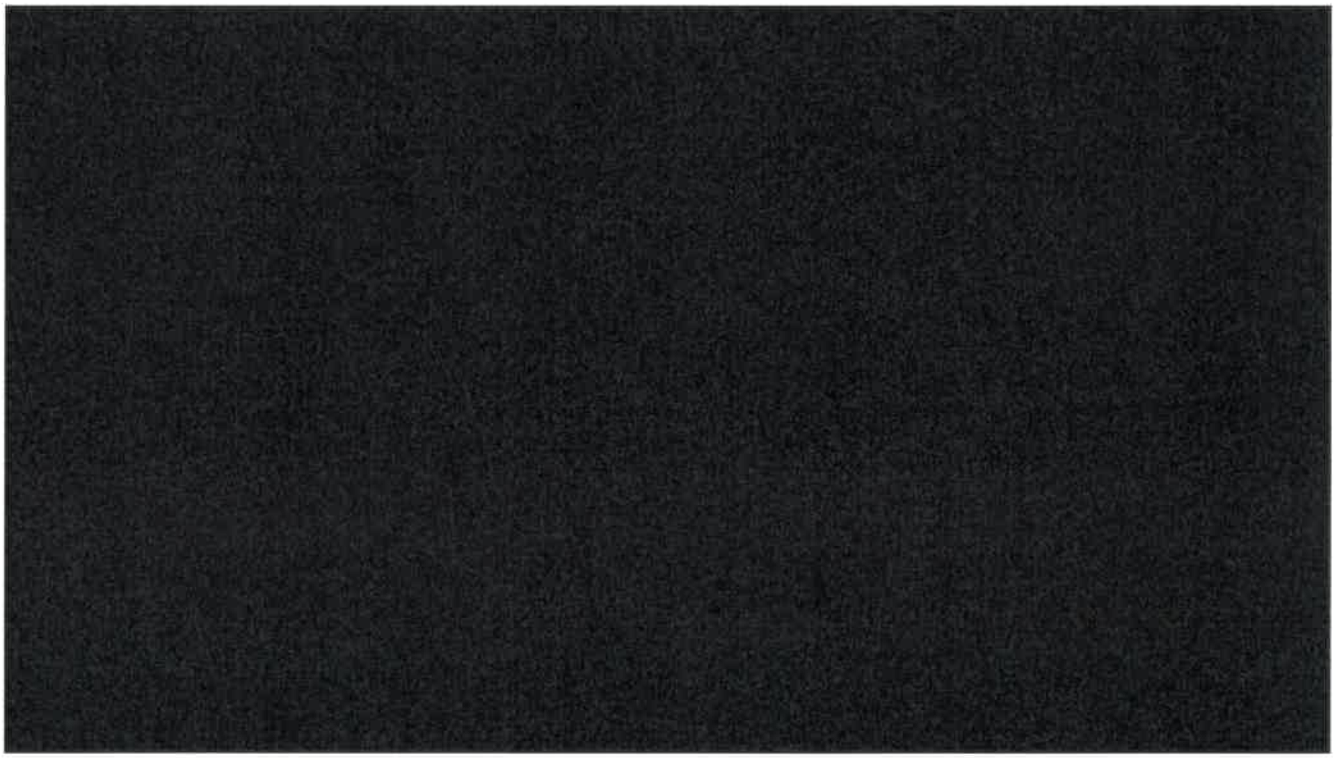
CRIMINAL

Misdemeanor/Felony
Up to $10K fine
Up to 5 years prison

SFI

Up to $250 per form

30



31

Statements of Financial Interests are Public Records!

"All statements of financial interests filed pursuant to the provisions of this chapter **shall be made available for public inspection and copying during regular office hours**, and copying facilities shall be made available at a charge not to exceed actual cost." Ethics Act, Section 1104(e).

"A governmental body required to maintain [SFIs] **shall make them available for public inspection and copying during regular business hours**." Ethics Regulations, Section 19.4(b).

"Statements of Financial Interests more than 1 year old will be made available for public inspection and copying within 2 working days after the request has been made for the [SFIs]."
Ethics Regulations, Section 19.4(c).

"The [SFIs] shall be kept on file for 5 years after the Commission or governmental body receives the [SFIs]."
Ethics Regulations, Section 19.4(c).

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COMMONWEALTH OF PENNSYLVANIA

STATE ETHICS COMMISSION

Finance Building
613 North Street, Room 309
Harrisburg, PA 17120-0400
(717) 783-1610 or Toll Free 1-800-932-0936
www.ethics.pa.gov
ra-ethicswebmaster@pa.gov
Fax: (717) 787-0806

STATEMENT OF FINANCIAL INTERESTS

THIS FORM IS CONSIDERED DEFICIENT IF ANY BLOCK IS NOT COMPLETED OR IF SIGNATURE OR DATE IS MISSING.

THOSE INDIVIDUALS WHO HOLD MORE THAN ONE OFFICE AND/OR POSITION MUST FILE A COPY OF THEIR FORM AT EACH FILING LOCATION.

YOU MAY FILE ONLINE AT: WWW.ETHICS.PA.GOV. A PAPER COPY MAY STILL BE REQUIRED TO BE SUBMITTED TO YOUR FILING LOCATION. FILERS SHOULD CHECK WITH THEIR FILING LOCATION FOR REQUIREMENTS.

THIS FORM MUST BE COMPLETED AND FILED BY:

A Candidates - Persons seeking elected state, county and local public offices, including first-time candidates, incumbents seeking re-election, and write-in candidates who do not decline nomination/election within 30 days of official certification of same.

B Nominees - Persons nominated for public office subject to confirmation.

C Public Officials - Persons serving as current state/county/local public officials (elected or appointed). The term includes persons serving as alternates/designees. The term excludes members of purely advisory boards.

D Public Employees - Individuals employed by the Commonwealth or a political subdivision who are responsible for taking or recommending official action of a non-ministerial nature with regard to: contracting or procurement; administering or monitoring grants or subsidies; planning or zoning; inspecting, licensing, regulating or auditing any person; or any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person. The term does not include individuals whose activities are limited to teaching.

A former public official or former public employee must file the year after termination of service with the Commonwealth or political subdivision.

E Solicitors - Persons elected or appointed to the office of solicitor for political subdivision(s).

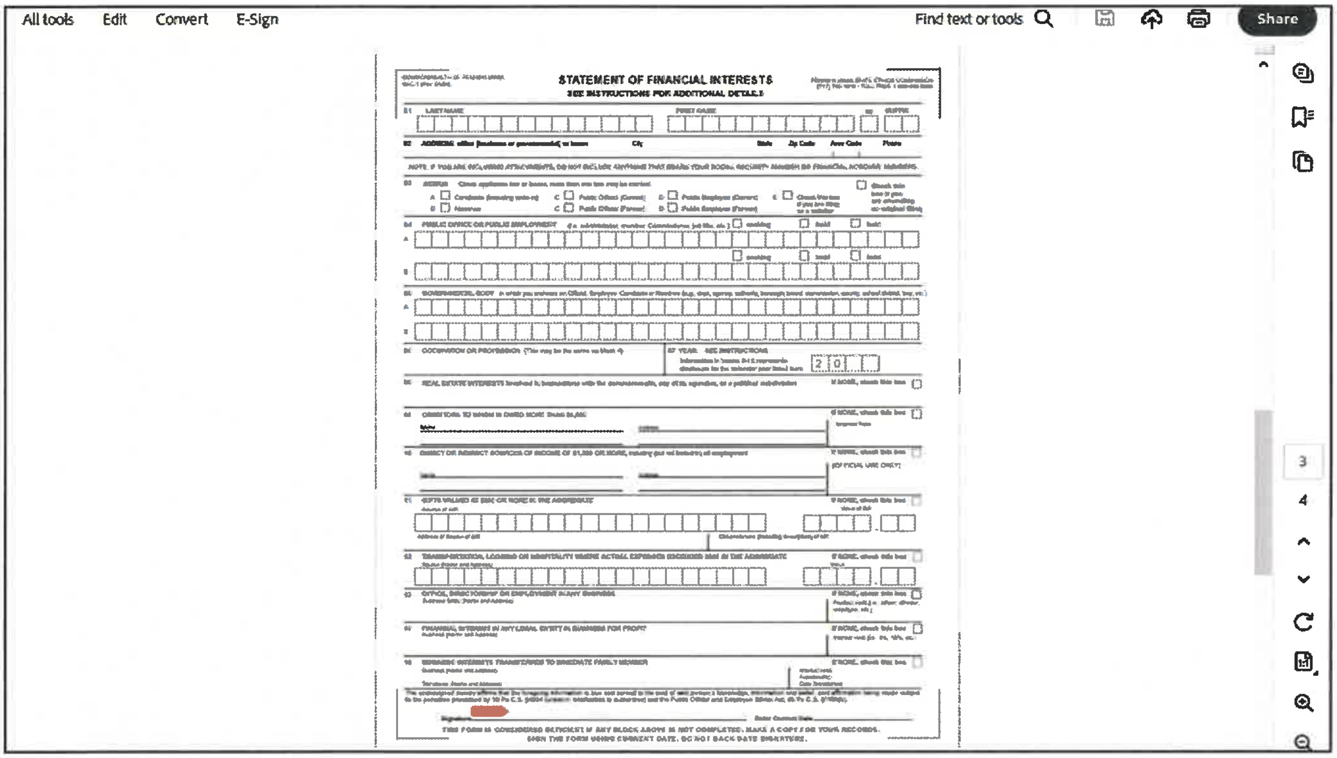
IMPORTANT: Please read all instructions carefully prior to completion of form. Also, review the filing chart for proper filing location. Any questions may be directed to the State Ethics Commission at (717)783-1610 or Toll Free at 1-800-932-0936.

The Form is required to be filed pursuant to the provisions of the Public Official and Employee Ethics Act "Ethics Act," 65 Pa.C.S. § 1101 et. seq.

33

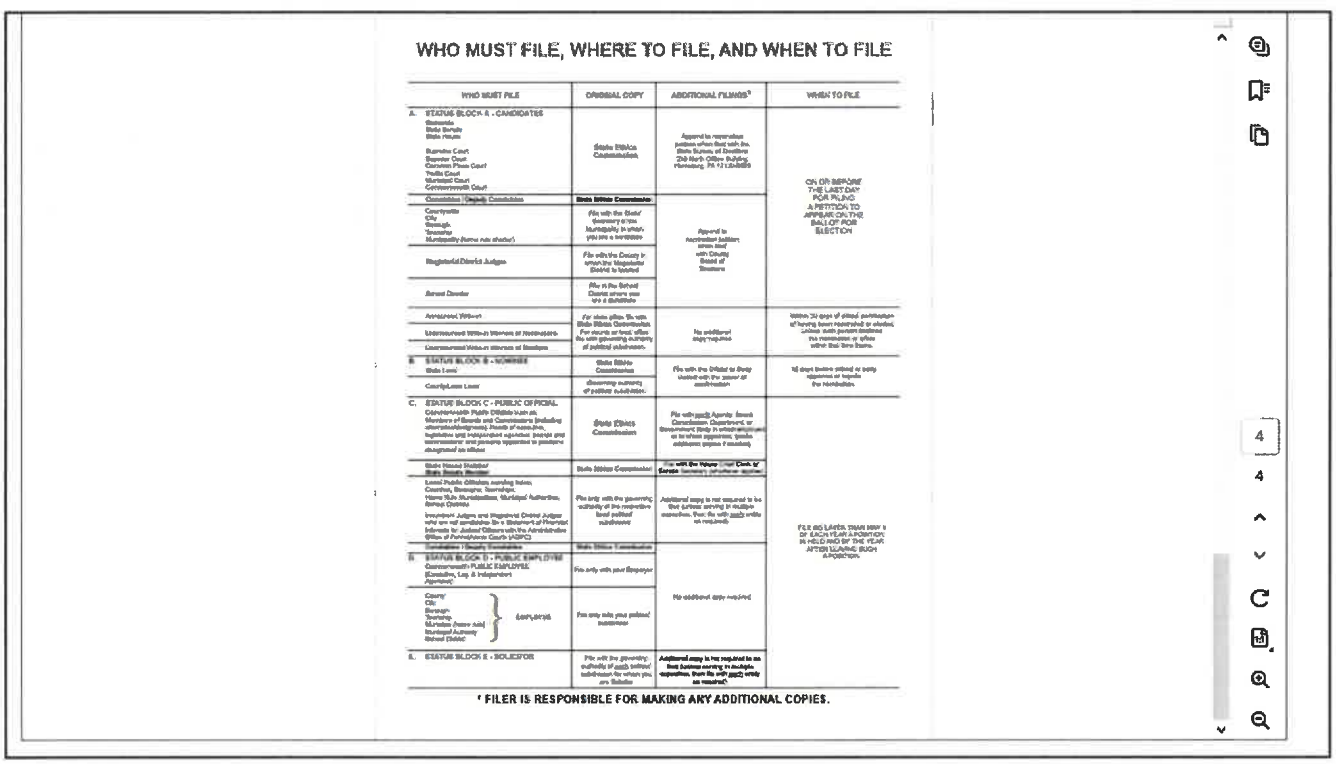
STATEMENT OF FINANCIAL INTERESTS INSTRUCTIONS

34



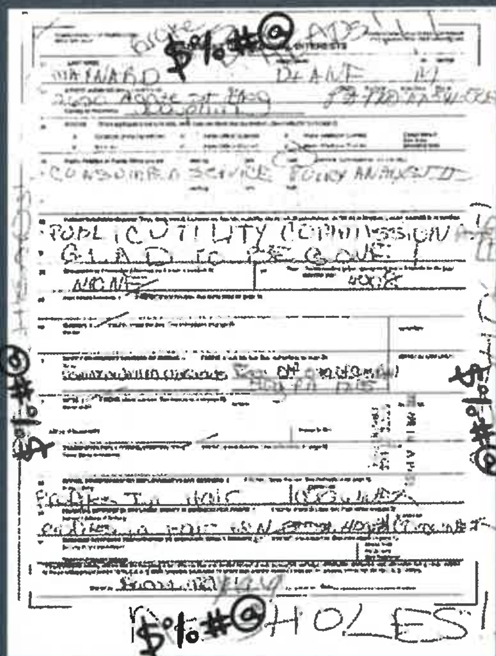
All tools
Edit
Convert
E-Sign
Find text or tools
Share
STATEMENT OF FINANCIAL INTERESTS
SEE INSTRUCTIONS FOR ADDITIONAL DETAILS

35



WHO MUST FILE, WHERE TO FILE, AND WHEN TO FILE
WHO MUST FILE
ORIGINAL COPY
ADDITIONAL FILINGS*
WHEN TO FILE
A. STATUS BLOCK A - CANDIDATES
ON OR BEFORE THE LAST DAY FOR FILING A PETITION TO APPEAR ON THE BALLOT FOR ELECTION
C. STATUS BLOCK C - PUBLIC OFFICIAL
* FILER IS RESPONSIBLE FOR MAKING ANY ADDITIONAL COPIES.

36



$250.00 Civil Penalty

$371.06 Court Costs

Found in Contempt of Court

Warrant for Arrest

SFI Shown to Whole State

PRICELESS

37

Questions?

Pennsylvania State Ethics Commission
www.ethics.pa.gov
717-783-1610

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SESSION #3
Ethics

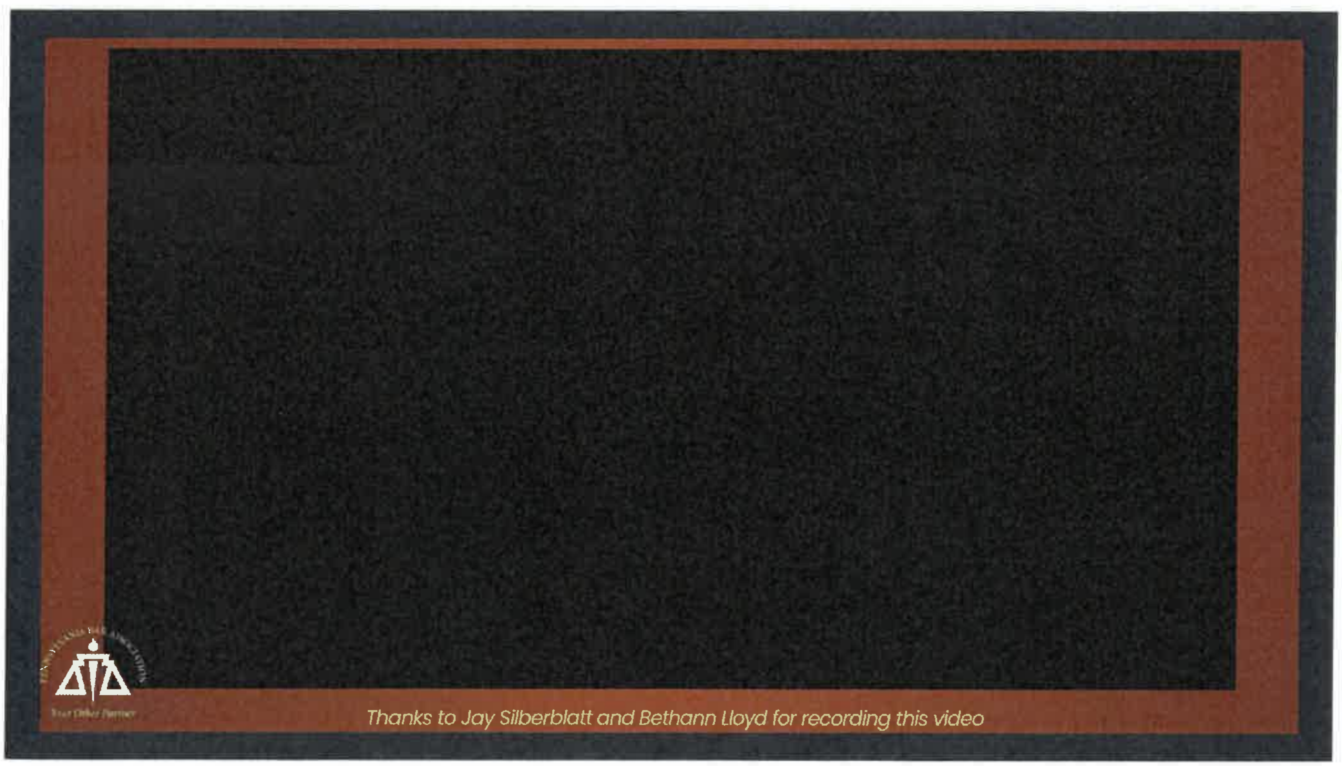
"PBA Malpractice Avoidance"

Presented by:

Robert H. Davis, Jr., Esquire
&
Elizabeth Schmid-Jerdon, Esquire


IN THE HOT SEAT:
An Interview with a Malpractice Defendant
PENNSYLVANIA BAR ASSOCIATION
Your Other Partner
The Pennsylvania Bar Association Insurance Program is advised and administered by USI Affinity, the endorsed broker for the PBA
This program is provided to you as a service of the PBA Professional Liability Committee
"This material is intended only for the use during this program. Unauthorized distribution, recording or copying is strictly prohibited."

1


Thanks to Jay Silberblatt and Bethann Lloyd for recording this video

2

KEY POINTS

- Ethical Considerations
  - Competence (RPC 1.1)
  - Client Communications (RPC 1.4)
  - The Client File (RPC 1.16(d))
  - Conflicts (RPC 1.7)
  - Excessive Fees (RPC 1.5(a))
  - Confidentiality (RPC 1.6)

3

KEY POINTS

- Risk Management Considerations
  - Dabbling
  - Using Document Management
  - Documenting of Advice / Events
  - Supervising Staff
  - Using AI
  - Using Retainer Agreements

4

DABBLING & COMPETENCE

- Avoid matters outside your expertise without a plan
- Options: co-counsel, consult or decline
- Competence includes
  - ➢ Substantive knowledge
  - ➢ Procedural knowledge
  - ➢ Tech proficiency

5

COMMUNICATION & DOCUMENTATION

- The benefits of document management
  - Organization, data preservation, access . . .
  - Use it consistently!
- Emails may be the key to your defense—
  - ✓ IF preserved
  - ✓ IF you can find them
  - ✓ If professional

6

THOUGHTS ON TEXTING

- Why text with clients at all?
- What type of content are you texting?
- Are you thinking before texting?
- Is it professional?
- Is it preserved?
- Is it confidential?

7

THE VALUE OF ENGAGEMENT LETTERS

- Sets the tone
- Identifies the client (person, entity, both)
- Defines scope
- Addresses document retention
- Requests your client to sign off on the terms.

8

Even more on engagement letters . . .

- Tailor it
- Consider conflicts
- Explain joint representation issues
- Outline client obligations
- Request a retainer (and consider what kind)
- Use the CNA Toolkit to help craft language!!!

9

WE ALL WANT TO GET PAID!

- Understand evergreen/security retainers; trust accounting.
- Avoid vague entries; reflect supervision
- Consider withdrawal when the client ceases payment
- Be cautious suing for fees; invites counterclaims.
- Align billing when AI accelerates tasks; be transparent

10

WHAT IS A CLIENT FILE?

- The clients demands the file—now what?
  - ✓ Include paper
  - ✓ Include digital / ESI (e.g. email)
  - ✓ Include relied-upon AI outputs
  - ✓ Keep a copy!!!
- *PBA Formal Op. 2007-100*

11

SUPERVISION OF PEOPLE & TECH

- Supervise associates, staff, vendors
- Consider an AI Use Policy
- Give additional consideration to remote staff:
  - ➢ How is confidentiality being maintained?
  - ➢ How are you monitoring quality control?
  - ➢ How are you mentoring younger lawyers?

12

AI IN LEGAL PRACTICE

- **Risks**
  - Confidentiality
  - Accuracy/hallucinations
  - Bias
  - Billing integrity
- **New tool; same legal responsibilities**
- **New Cases re Privilege and Use of AI**

13

CONFLICTS OF INTEREST

- Individual vs. entity interests may diverge
- Third-party payment complicates loyalty & privilege
- Analyze conflicts at intake and on change of facts
- Obtain informed written consent or withdraw

14

ETHICS + RISK MANAGEMENT

= BEST PRACTICES !!

15

RESOURCES

RISK CONTROL HOTLINE

888-200-5212

A risk control hotline, staffed by a Pennsylvania law firm, provides CNA policy holders with a resource for discussing issues and questions that arise in the day-to-day practice of law.

16

RESOURCES

USI AFFINITY

For questions about your insurance coverage with PBA's endorsed broker, USI Affinity, please contact

Mark Lefever at
Tel: 610-537-1435
Cell: 717-572-2858
mark.lefever@usi.com

17

RESOURCES

PBA'S PROFESSIONAL LIABILITY INSURANCE CARRIER

CNA

Use the QR code to access the CNA Lawyers' Toolkit 5.0

18

RESOURCES

PBA ETHICS HOTLINE

800-932-0311 or 717-238-6715

https://www.pabar.org/site/For-Lawyers/Ethics-Opinions

The Ethics Hotline is a service for Pennsylvania Bar Association members only. We welcome Pennsylvania lawyers who are not members to join the PBA in order to use this service.

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RESOURCES

THANK YOU TO THE MEMBERS OF THE PBA PROFESSIONAL LIABILITY COMMITTEE FOR THEIR COMMITMENT TO CREATE AND PROVIDE IMPORTANT RISK MANAGEMENT PROGRAMS.

For more information about the PBA Professional Liability Committee, please contact Executive Administrator/Insurance & Trust Fund Manager Sandra Graver.

Sandra.graver@pabar.org

717-238-6715, ext. 2221

www.pabar.org

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ABOUT THE PBA PROFESSIONAL LIABILITY COMMITTEE

The mission of the PBA Professional Liability Committee is to monitor and make recommendations concerning lawyers' liability case law and related statutes and administrative developments, including lawyers' liability insurance coverage and the market for that insurance, the formation and operation of any PBA-related lawyer liability insurer, and PBA-sponsored or endorsed lawyers' liability insurance programs. The committee prepares and conducts this and other legal malpractice avoidance and loss-prevention programs to help reduce the incidence of malpractice claims within the PBA LPL Program. Committee members work with USI Affinity (PBA endorsed broker), CNA (PBA LPL Insurance Carrier) to bring you the most up-to-date risk control information.

"This presentation is for informational and educational purposes only and does not constitute legal, financial, or professional advice."

21

THANK YOU FOR ATTENDING TODAY'S PROGRAM!

pabar.org | Linked in Pennsylvania Bar Association | /PaBarAssn | 800.932.0311

22

In the Hot Seat: An Interview with a Malpractice Defendant

PENNSYLVANIA BAR ASSOCIATION

Your Other Partner

Professional Liability Committee

Neither the Pennsylvania Bar Association nor the Pennsylvania Bar Institute render any legal, accounting or other professional services. The Association's and the Institute's programs and publications are designed solely to help attorneys maintain their professional competence. In dealing with specific legal matters, the attorney using PBA and PBI publications or orally conveyed information should always also research original sources of authority.

Pennsylvania Bar Association, 100 South Street, Harrisburg, PA 17101
800-932-0311 OR 717-238-6715 • WEBSITE: http://www.pabar.org

In the Hot Seat: An Interview with a Malpractice Defendant

2026

I. <u>DESCRIPTION</u>

This program reviews key ethics and risk management issues in legal practice, including competence, effective communication, and proper documentation. It addresses engagement letters, billing and payment strategies, client file management, supervision of staff and technology (including AI), appropriate use of texting, and identifying and managing conflicts of interest.

II. <u>INTRODUCTION</u>

This session, *"In the Hot Seat: An Interview with a Malpractice Defendant,"* is a candid look at legal malpractice from a perspective we don't often hear—the attorney who has lived through it. Hear about first-hand experiences, the challenges of navigating a claim, and the lessons learned along the way.

The goal is to provide practical insights that can help all of us better understand risk, strengthen our practices, and hopefully avoid finding ourselves in a similar situation.

III. <u>INTRODUCTORY VIDEO: "In the Hot Seat: An Interview with a Malpractice Defendant"</u>

IV. <u>DISCUSSION TOPICS</u>

- Ethical Considerations
  - Competence (RPC 1.1)
  - Client Communications (RPC 1.4)
  - The Client File (RPC 1.16(d))
  - Conflicts (RPC 1.7)
  - Excessive Fees (RPC 1.5(a))
  - Confidentiality (RPC 1.6)

- Risk Management Considerations
  - Dabbling
  - Using Document Management
  - Documenting of Advice / Events
  - Supervising Staff
  - Using AI
  - Using Retainer Agreements

- Dabbling and Confidence
  - Avoid matters outside your expertise without a plan

  - Options: co-counsel, consult or decline
  - Competence includes
    - Substantive knowledge
    - Procedural knowledge
    - Tech proficiency

  Competence under **RPC 1.1** means: if you have to Google the basic vocabulary, stop dabbling

- Communication and Documentation
  - The benefits of document management
    - Organization, data preservation, access . . .
    - Use it consistently!
  - Emails may be the key to your defense—
    - IF preserved
    - IF you can find them
    - If professional

  Substantive communications must be preserved because they *are* part of the client file, and courts expect modern firms to maintain defensible records.

  Substantive communications now occur across many channels—email, text, Teams/Zoom chat, client portals. All must be captured.
  Under **Pa. RPC 1.1, 1.4, 1.6(c)**, preservation is part of competence, communication, and safeguarding client information.

- Thoughts on Texting
  - Why text with clients at all?
  - What type of content are you texting?
  - Are you thinking before texting?
  - Is it professional?
  - Is it preserved?
  - Is it confidential?

  Under **Pa. RPC 1.1, 1.4, 1.6(c)**, preservation is part of competence, communication, and safeguarding client information.

  Best practices: save emails to the matter file, export texts, memorialize verbal discussions, disable auto-delete during preservation periods, and use a DMS consistently.

- The Value of Engagement Letters
  - Sets the tone
  - Identifies the client (person, entity, both)
  - Defines scope
  - Addresses document retention
  - Requests your client to sign off on the terms.
  - Tailor it
  - Consider conflicts

    - Explain joint representation issues
    - Outline client obligations
    - Request a retainer (and consider what kind)
    - Use the CNA Toolkit to help craft language!!!

  Engagement letters must explicitly identify *who the client is* and *who is paying*, because misalignment here is the root of many conflicts and malpractice claims. Clearly state whether the client is **the individual**, **the entity**, or **both**.

- We All Want to Get Paid
    - Understand evergreen/security retainers; trust accounting.
    - Avoid vague entries; reflect supervision
    - Consider withdrawal when the client ceases payment
    - Be cautious suing for fees; invites counterclaims
    - Align billing when AI accelerates tasks; be transparent

  Under **Pa. RPC 1.5(b)**, the basis and rate of fees must be communicated to the client **in writing** at or near the start of the representation. This means you need to specify rates, billing increments, flat-fee structures, expenses, and—critically—the **scope of work**. Ambiguity in fee agreements is one of the easiest ways for a dispute to escalate.

  The takeaway is simple: Clear written agreements, proper handling of retainers, transparent billing, and good communication protect both the client and the lawyer. Ethical billing is not just compliance—it's one of the strongest risk-management tools you have."

- What is a Client File?
    - The clients demands the file—now what?
        - Include paper
        - Include digital / ESI (e.g. email)
        - Include relied-upon AI outputs
        - Keep a copy!!!
    - *PBA Formal Op. 2007-100*

- Supervision of People and Tech
    - Supervise associates, staff, vendors
    - Consider an AI Use Policy
    - Give additional consideration to remote staff:
        - How is confidentiality being maintained?
        - How are you monitoring quality control?
        - How are you mentoring younger lawyers?

  You're not just supervising people anymore — you're supervising people *and the technology they swear they're using correctly*.

  RPC 5.1 and 5.3 mean you're responsible for more than assigning tasks — you must ensure no one is storing client files in "Downloads."

- AI in Legal Practice
    - Risks
        - Confidentiality
        - Accuracy/hallucinations
        - Bias
        - Billing integrity
    - New tool; same legal responsibilities
    - New Cases re Privilege and Use of AI

The core principle is simple: AI can assist the lawyer, but it cannot *replace* the lawyer. Under **Pa. RPC 1.1**, competence requires understanding the benefits and limitations of the technology you use. That means you must know what an AI tool can and cannot reliably do.

- Conflicts of Interest
    - Individual vs. entity interests may diverge
    - Third-party payment complicates loyalty & privilege
    - Analyze conflicts at intake and on change of facts
    - Obtain informed written consent or withdraw

Conflicts of interest is one of the most frequent causes of disciplinary complaints and malpractice exposure.

The central rule is Pa. RPC 1.7, which prohibits representation if there is a significant risk that your ability to act for a client will be materially limited by responsibilities to another client, a former client, or your own interests.

Effective conflict management isn't about avoiding every potential issue—it's about rigorous screening, clear communication, and documentation that reflects a thoughtful, ethically grounded process. Conflicts are manageable when you identify them early, discuss them openly, and document your analysis. They become dangerous when they're ignored or rationalized. A strong conflicts system is one of the most important safeguards a lawyer or firm can build."

V. Key Ethical Rules

- Rule 1.1 - Competence
  A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

- Rule 1.4 - Communication
  1. A lawyer shall:
      1. promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
      2. reasonably consult with the client about the means by which the client's objectives are to be accomplished;
      3. keep the client reasonably informed about the status of the matter;

        4. promptly comply with reasonable requests for information; and
        5. consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
    2. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
    3. A lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least $100,000 per occurrence and $300,000 in the aggregate per year, subject to commercially reasonable deductibles, retention or co-insurance, and shall inform existing clients in writing at any time the lawyer's professional liability insurance drops below either of those amounts or the lawyer's professional liability insurance is terminated. A lawyer shall maintain a record of these disclosures for six years after the termination of the representation of a client.

- Rule 1.5 Fees
    1. A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. The factors to be considered in determining the propriety of a fee include the following:
        1. whether the fee is fixed or contingent;
        2. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
        3. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
        4. the fee customarily charged in the locality for similar legal services;
        5. the amount involved and the results obtained;
        6. the time limitations imposed by the client or by the circumstances;
        7. the nature and length of the professional relationship with the client; and
        8. the experience, reputation, and ability of the lawyer or lawyers performing the services.
    2. When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.
    3. A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
    4. A lawyer shall not enter into an arrangement for, charge, or collect:
        1. any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support; or
        2. a contingent fee for representing a defendant in a criminal case.
    5. A lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm unless:

        1. the client is advised of and does not object to the participation of all the lawyers involved; and,
        2. the total fee of the lawyers is not illegal or clearly excessive for all legal services they rendered the client.

- Rule 1.6 – Confidentiality of Information
    1. A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).
    2. A lawyer shall reveal such information if necessary to comply with the duties stated in Rule 3.3.
    3. A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary:
        1. to prevent reasonably certain death or substantial bodily harm;
        2. to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interests or property of another;
        3. to prevent, mitigate or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used;
        4. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim or disciplinary proceeding against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
        5. to secure legal advice about the lawyer’s compliance with these Rules;
        6. to effectuate the sale of a law practice consistent with Rule 1.17;
        7. to detect and resolve conflicts of interest from the lawyer’s change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client; or,
        8. to comply with other law or court order.
    4. A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.
    5. The duty not to reveal information relating to representation of a client continues after the client-lawyer relationship has terminated.

- Rule 1.7 – Conflict of Interest: Current Clients
    1. Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
        1. the representation of one client will be directly adverse to another client; or,
        2. there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
    2. Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
        1. the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
        2. the representation is not prohibited by law;

3. the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and,
4. each affected client gives informed consent.

- Rule 1.8 Conflict of Interest: Current Clients: Specific Rules
  1. A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
     1. the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
     2. the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and,
     3. the client gives informed consent in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
  2. A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.
  3. A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close familial relationship.
  4. Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
  5. A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
     1. a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and,
     2. a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
  6. A lawyer shall not accept compensation for representing a client from one other than the client unless:
     1. the client gives informed consent;
     2. there is no interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship; and,
     3. information relating to representation of a client is protected as required by Rule 1.6.
  7. A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
  8. A lawyer shall not

        1. make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or,
        2. settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.
    9. A lawyer shall not acquire a proprietary interest in a cause of action that the lawyer is conducting for a client, except that the lawyer may:
        1. acquire a lien authorized by law to secure the lawyer's fee or expenses; and,
        2. contract with a client for a reasonable contingent fee in a civil case.
    10. A lawyer shall not have sexual relations with a client unless a consensual relationship existed between them when the client-lawyer relationship commenced. "Sexual Relations" includes, but is not limited to, communications of a sexual nature.
    11. While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

- Rule 1.9 Duties to Former Clients
    1. A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent.
    2. A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
        1. whose interests are materially adverse to that person; and
        2. about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;
        3. unless the former client gives informed consent.
    3. A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
        1. use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
        2. reveal information relating to the representation except as these Rules would permit or require with respect to a client.

- Rule 1.13 Organization as Client
    1. A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
    2. If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any

measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

    1. asking for reconsideration of the matter;
    2. advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and,
    3. referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act on behalf of the organization as determined by applicable law.

3. If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16.
4. In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.
5. A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

- Rule 1.15 Safekeeping Property

1. The following definitions are applicable to Rule 1.15:
    1. *Eligible Institution.* An Eligible Institution is a Financial Institution which has been approved as a depository of Trust Accounts pursuant to Pa.R.D.E. 221(h).
    2. *Fiduciary.* A Fiduciary is a lawyer acting as a personal representative, guardian, conservator, receiver, trustee, agent under a durable power of attorney, or other similar position.
    3. *Fiduciary Funds.* Fiduciary Funds are Rule 1.15 Funds which the lawyer holds as a Fiduciary. Fiduciary Funds may be either Qualified Funds or Nonqualified Funds.
    4. *Financial Institution.* A Financial Institution is an entity which is authorized by federal or state law and licensed to do business in the Commonwealth of Pennsylvania as one of the following: a bank, bank and trust company, trust company, credit union, savings bank, savings and loan association, or foreign banking corporation, the deposits of which are insured by an agency of the federal government, or as an investment adviser registered under the Investment Advisers Act of 1940 or with the Pennsylvania Securities Commission, an investment company registered under the Investment Company Act of 1940, or a broker dealer registered under the Securities Exchange Act of 1934.
    5. *Interest On Lawyer Trust Account (IOLTA) Account.* An IOLTA Account is an income producing Trust Account from which funds may be withdrawn upon request as soon as permitted by law. Qualified Funds are to be held or deposited in an IOLTA Account.
    6. *IOLTA Board.* The IOLTA Board is the Pennsylvania Interest On Lawyers Trust Account Board.

7. *Non-IOLTA Account.* A Non-IOLTA Account is an income producing Trust Account from which funds may be withdrawn upon request as soon as permitted by law in which a lawyer deposits Rule 1.15 Funds. Only Nonqualified Funds are to be held or deposited in a Non-IOLTA Account. A Non-IOLTA Account shall be established only as:
    1. a separate client Trust Account for the particular client or matter on which the net income will be paid to the client or third person; or
    2. a pooled client Trust Account with sub-accounting by the Eligible Institution or by the lawyer, which will provide for computation of net income earned by each client's or third person's funds and the payment thereof to the client or third person.
8. *Nonqualified Funds.* Nonqualified Funds are Rule 1.15 Funds, whether cash, check, money order, or other negotiable instrument, which are not Qualified Funds.
9. *Qualified Funds.* Qualified Funds are Rule 1.15 Funds which are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient income will not be generated to justify the expense of administering a segregated account.
10. *Rule 1.15 Funds.* Rule 1.15 Funds are funds which the lawyer receives from a client or third person in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, or receives as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the lawyer's status as such. When the term "property" appears with "Rule 1.15 Funds," it means property of a client or third person which the lawyer receives in any of the foregoing capacities.
11. *Trust Account*. A Trust Account is an account in an Eligible Institution in which a lawyer holds Rule 1.15 Funds. A Trust Account must be maintained either as an IOLTA Account or as a Non-IOLTA Account.

2. A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.
3. *Required records.* Complete records of the receipt, maintenance, and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later. A lawyer shall maintain the writing required by Rule 1.5(b) (relating to the requirement of a writing communicating the basis or rate of the fee) and the records identified in Rule 1.5(c) (relating to the requirement of a written fee agreement and distribution statement in a contingent fee matter). A lawyer shall also maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l):
    1. all transaction records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks in whatever form, deposited items, and records of electronic transactions; and
    2. check register or separately maintained ledger, which shall include the payee, date, purpose and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction; provided, however, that where an account is used to hold funds of more than one client, a lawyer shall also maintain an

individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were disbursed, and the dates of all deposits, transfers, withdrawals and disbursements.

    3. The records required by this Rule may be maintained in hard copy form or by electronic, photographic, or other media provided that the records otherwise comply with this Rule and that printed copies can be produced. Whatever method is used to maintain required records must have a backup so that the records are secure and always available. If records are kept only in electronic form, then such records shall be backed up on a separate electronic storage device at least at the end of any day on which entries have been entered into the records. These records shall be readily accessible to the lawyer and available for production to the Pennsylvania Lawyers Fund for Client Security or the Office of Disciplinary Counsel in a timely manner upon a request or demand by either agency made pursuant to the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board Rules, the Pennsylvania Lawyers Fund for Client Security Board Rules and Regulations, agency practice, or subpoena.
    4. A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in trust for the client, and deducting the total of all moneys disbursed. On a monthly basis, a lawyer shall conduct a reconciliation for each fiduciary account. The reconciliation is not complete if the reconciled total cash balance does not agree with the total of the client balance listing. A lawyer shall preserve for a period of five years copies of all records and computations sufficient to prove compliance with this requirement.

4. Upon receiving Rule 1.15 Funds or property which are not Fiduciary Funds or property, a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law. Notification of receipt of Fiduciary Funds or property to clients or other persons with a beneficial interest in such Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of confidentiality and notice applicable to the Fiduciary entrustment.
5. Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting, and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.
6. When in possession of funds or property in which two or more persons, one of whom may be the lawyer, claim an interest, the funds or property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property, including Rule 1.15 Funds, as to which the interests are not in dispute.
7. The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held. Only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall

be an authorized signatory or authorize transfers from a Trust Account or any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l).

8. A lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying service charges on that account, and only in an amount necessary for that purpose.
9. A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.
10. At all times while a lawyer holds Rule 1.15 Funds, the lawyer shall also maintain another account that is not used to hold such funds.
11. All Nonqualified Funds which are not Fiduciary Funds shall be placed in a Non-IOLTA Account or in another investment vehicle specifically agreed upon by the lawyer and the client or third person which owns the funds.
12. All Fiduciary Funds shall be placed in a Trust Account (which, if the Fiduciary Funds are also Qualified Funds, must be an IOLTA Account) or in another investment or account which is authorized by the law applicable to the entrustment or the terms of the instrument governing the Fiduciary Funds.
13. All Qualified Funds which are not Fiduciary Funds shall be placed in an IOLTA Account.
14. A lawyer shall be exempt from the requirement that all Qualified Funds be placed in an IOLTA Account only upon exemption requested and granted by the IOLTA Board. If an exemption is granted, the lawyer must hold Qualified Funds in a Trust Account which is not income producing. Exemptions shall be granted if:
    1. the nature of the lawyer's practice does not require the routine maintenance of a Trust Account in Pennsylvania;
    2. compliance with this paragraph would work an undue hardship on the lawyer or would be extremely impractical, based either on the geographical distance between the lawyer's principal office and the closest Eligible Institution or on other compelling and necessitous factors; or
    3. the lawyer's historical annual Trust Account experience, based on information from the Eligible Institution in which the lawyer deposits funds, demonstrates that the service charges on the account would significantly and routinely exceed any income generated.
15. An account shall not be considered an IOLTA Account unless the Eligible Institution at which the account is maintained shall:
    1. Remit at least quarterly any income earned on the account to the IOLTA Board;
    2. Transmit to the IOLTA Board with each remittance and to the lawyer who maintains the IOLTA Account a statement showing at least the name of the account, service charges or fees deducted, if any, the amount of income remitted from the account, and the average daily balance, if available; and
    3. Pay a rate of interest or dividends no less than the highest interest rate or dividend generally available from the Eligible Institution to its non-IOLTA customers when the IOLTA Account meets the same minimum balance or other eligibility qualifications, and comply with the Regulations of the IOLTA Board with respect to service charges, if any.
16. A lawyer shall not be liable in damages or held to have breached any fiduciary duty or responsibility because monies are deposited in an IOLTA Account

pursuant to the lawyer's judgment in good faith that the monies deposited were Qualified Funds.

17. There is hereby created the Pennsylvania Interest On Lawyers Trust Account Board, which shall administer the IOLTA program. The IOLTA Board shall consist of nine members who shall be appointed by the Supreme Court. Two of the appointments shall be made from a list provided to the Supreme Court by the Pennsylvania Bar Association in accordance with its own rules and regulations. With respect to these two appointments, the Pennsylvania Bar Association shall submit three names to the Supreme Court, from which the Court shall make its final selections. The term of each member shall be three years and no member shall be appointed for more than two consecutive three-year terms. The Supreme Court shall appoint a Chairperson. In order to administer the IOLTA program, the IOLTA Board shall promulgate rules and regulations consistent with this Rule for approval by the Supreme Court.
18. The IOLTA Board shall comply with the following:
    1. The IOLTA Board shall prepare an annual audited statement of its financial affairs.
    2. The IOLTA Board shall submit to the Supreme Court for its approval a copy of its audited statement of financial affairs, clearly setting forth in detail all funds previously approved for disbursement under the IOLTA program and the IOLTA Board's proposed annual budget, designating the uses to which IOLTA Funds are recommended.
    3. Upon approval of the Supreme Court, the IOLTA Board shall distribute and/or expend IOLTA Funds.
19. Income earned on IOLTA Accounts (IOLTA Funds) may be used only for the following purposes:
    1. delivery of civil legal assistance to the poor and disadvantaged in Pennsylvania by non-profit corporations described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
    2. educational legal clinical programs and internships administered by law schools located in Pennsylvania;
    3. administration and development of the IOLTA program in Pennsylvania; and
    4. the administration of justice in Pennsylvania.
20. The IOLTA Board shall hold the beneficial interest in IOLTA Funds. Monies received in the IOLTA program are not state or federal funds and are not subject to Article VI of the act of April 9, 1929 (P.L. 177, No. 175) known as The Administrative Code of 1929, or the act of June 29, 1976 (P.L. 469, No. 117).
21. Every attorney who is required to pay an active annual assessment under Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement (relating to annual registration of attorneys) shall pay an additional annual fee of $30.00 for use by the IOLTA Board. Such additional assessment shall be added to, and collected with and in the same manner as, the basic annual assessment. All amounts received pursuant to this subdivision shall be credited to the IOLTA Board.
22. Unclaimed or Unidentifiable IOLTA Funds
    1. When a lawyer or law firm cannot, using reasonable efforts for a minimum of two (2) years, identify or locate the owner of funds in either its Pennsylvania IOLTA account or the Pennsylvania IOLTA account of a deceased lawyer whose estate is represented by the lawyer or law firm, it shall pay the funds to the Pennsylvania IOLTA Board. At the time such funds are remitted, the lawyer or law firm shall submit to the IOLTA Board the name and last known address of each person appearing from the lawyer's or law firm's records to be entitled to the funds, and

the amount of unclaimed funds to which each owner is entitled, if known; the amount of any unidentifiable funds; and a description of the efforts undertaken to identify and locate the owner(s).

2. If, after making a payment of unclaimed or unidentifiable funds to the Pennsylvania IOLTA Board, the lawyer or law firm identifies and locates the owner of funds paid, the IOLTA Board shall refund the sum to the lawyer or law firm. The lawyer or law firm shall submit to the IOLTA Board a verification attesting that the funds have been returned to the owner. The IOLTA Board shall review claims submitted by purported owners of funds when the lawyer or law firm that originally remitted the funds to the IOLTA Board is no longer available. The IOLTA Board shall maintain a sufficient reserve to pay all claims for such funds.
3. Should the Pennsylvania Lawyers Fund for Client Security pay an award to a former client of a lawyer, law firm, or deceased lawyer who has remitted funds under this Rule to the IOLTA Board, the Pennsylvania Lawyers Fund for Client Security may pursue a reimbursement of such award from unclaimed funds remitted by the lawyer, law firm, or deceased lawyer to the IOLTA Board in which the former client held an ownership interest. In no event would a reimbursement to the Pennsylvania Lawyers Fund for Client Security exceed the amount of funds remitted to the IOLTA Board by the subject lawyer, law firm, or deceased lawyer.
4. A lawyer shall not be liable in damages or held to have breached any fiduciary duty or responsibility as a result of his or her good faith adherence to the unclaimed or unidentifiable IOLTA fund requirements in this subsection.

- Rule 1.16 Declining or Terminating Representation
  1. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
     1. the representation will result in violation of the Rules of Professional Conduct or other law;
     2. the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or,
     3. the lawyer is discharged.
  2. Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
     1. withdrawal can be accomplished without material adverse effect on the interests of the client;
     2. the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
     3. the client has used the lawyer's services to perpetrate a crime or fraud;
     4. the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
     5. the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
     6. the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or,
     7. other good cause for withdrawal exists
  3. A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal,

a lawyer shall continue representation notwithstanding good cause for terminating the representation.
4. Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

- Rule 5.1 Responsibilities of Partners, Managers and Supervisory Lawyers
    1. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall 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.
    2. A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
    3. A lawyer shall be responsible for another lawyer’s violation of the Rules of Professional Conduct if:
        1. the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
        2. the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

- Rule 5.3 Responsibilities Regarding Nonlawyer Assistance
    1. With respect to a nonlawyer employed or retained by or associated with a lawyer:
    2. a partner and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the lawyer.
    3. 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; and,
    4. a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
        1. the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
        2. the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and in either case knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Avoiding Liability

Reader Suggestions on Nonengagement

By Paul C. Troy and Andrew M. Lamberton

In response our last article, "Congratulations! You are Nonengaged," we received a very insightful email from attorney Maurice A. Nernberg with some great suggestions for crafting a disengagement letter. We knew his recommendations would be especially helpful because his email started by referencing his over 60 years of legal experience. As Julius Caesar wrote in his civil war commentaries, *De Bello Civili*, "ut est rerum omnium magister usus," which roughly translates to "experience is the teacher of all things."

Statute of Limitations

Maurice first suggests being very careful when addressing the statute of limitations. Many times, the question is more complicated than simply adding two years to an incident date. So, an attorney would need to spend unpaid time trying to determine the proper limitations period as well as risk being wrong. Maurice cautions against turning down a case because you think and tell the individual it would be time barred and, if you're incorrect, opening the door to a malpractice claim. He suggests stating as follows:

"You should be aware that your claim may be subject to a statute of limitations. Because I do not represent you, I cannot offer you legal advice and the application of a statute of limitations is often a very complex matter, but I want to inform you that the statute of limitations is a consideration that should be shared with a lawyer who does represent you. Thus, if you wish to pursue this matter you should act with haste."

If Maurice is concerned the person doesn't know what a statute of limitations is, he would add, "Most legal actions must be brought within a certain time period and if not, the legal action can no longer be brought. That is referred to as a 'statute of limitations.'"

Disclaiming Advice

Deciding whether to take on a client isn't as simple as sitting quietly, hearing the person's story and saying yes or no to the request for representation. The attorney needs to ask questions to fully understand the situation. For instance, a lawyer may need to explain the elements necessary to prove a cause of action to preface questions to determine if the potential client's situation fulfills each element. The attorney might also express concerns with aspects of the prospective claim. Maurice suggests the following disclaimer:

"In our discussion, I may have offered some thoughts on the legal issues in the matter we discussed. Please do not treat that as legal advice as those were merely expressions of my own thinking in evaluating whether to undertake representing you in the matter brought to me and not intended to be legal advice to you. Those comments were without the required legal research needed before rendering opinions or advice to clients. And that research would only be undertaken were I to represent you."

We are particularly fond of including such language, as it will go a long way in overcoming an implied attorney-client relationship. As we've written about previously, a purported client trying to establish such an implied relationship must prove "1) the purported client sought advice or assistance from the attorney; 2) the advice sought was within the attorney's professional competence; 3) the attorney expressly or impliedly agreed to render such assistance; and 4) it is reasonable for the putative client to believe the attorney was representing him." *Commonwealth v. Brensinger*, 218 A.3d 440, 451 (Pa. Super. 2019). With Maurice's disclaimer, a nonclient would have a difficult time proving such a reasonable belief that the attorney was representing him or her.

Post-Declination Communication

Maurice's final comments address the potential for further communication between the nonclient and attorney after the nonengagement letter. While the attorney may later change his or her mind and take the person on as a client, Maurice suggests explicitly requiring a written agreement to establish any attorney-client relationship. He would write, "Please also note that any engagement by this firm must be spelled out in a written engagement agreement signed by both of us and, if required, the payment of a retainer fee. Unless and until we have a signed engagement letter and the payment of any required retainer fee, this firm will not be considered as your counsel." Once again, such language preempts someone claiming a reasonable belief that the attorney was representing the individual without a subsequent written retention agreement.

We would like to thank Maurice for his advice and hope it will help prevent a few headaches for attorneys throughout Pennsylvania. We encourage anyone reading our articles to send us comments, questions or suggestions that may benefit other readers in the new year. Until then, we hope everyone has a pleasant holiday season.

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Paul C. Troy is a partner at Kane Pugh Knoell Troy & Kramer LLP, focusing his practice on trial advocacy. ptroy@kanepugh.com

RESOURCES REFERENCED IN THIS PRESENTATION

RISK CONTROL HOTLINE

888-200-5212

A risk control hotline, staffed by a Pennsylvania law firm, provides CNA policy holders with a resource for discussing issues and questions that arise in the day-to-day practice of law.

PBA'S PROFESSIONAL LIABILITY INSURANCE CARRIER

CNA

Use the QR code to access the CNA Lawyers' Toolkit 5.0

USI AFFINITY

For questions about your insurance coverage with PBA's endorsed broker, USI Affinity, please contact

Mark Lefever at
Tel: 610-537-1435
Cell: 717-572-2858
mark.lefever@usi.com

PBA ETHICS HOTLINE

800-932-0311 or 717-238-6715

https://www.pabar.org/site/For-Lawyers/Ethics-Opinions

The Ethics Hotline is a service for Pennsylvania Bar Association members only. We welcome Pennsylvania lawyers who are not members to join the PBA in order to use this service.

Pennsylvania Bar Association — Your Other Partner

For more information about the PBA Professional Liability Committee, please contact Executive Administrator/Insurance & Trust Fund Manager Sandra Graver.

Sandra.graver@pabar.org

717-238-6715, ext. 2221

www.pabar.org

Pennsylvania Bar Association — Your Other Partner

Professional Liability Committee

"This presentation is for informational and educational purposes only and does not constitute legal, financial or professional advice."

SESSION #4

"Civility in Family Law Matters"

Presented by:

Hon. Courtney K. Powell; Sanford A. Krevsky, Esquire; Jennifer Ellis, JD, LLC; Teresa C. Marino, Esquire; Allissa McDonald Myers, Esquire

Civility in Pennsylvania Practice: What the Code Asks and What the Rules Require

Dauphin County Bar Association | Civility Panel | August 2026
Panel handout
Prepared by Jennifer Ellis

Pennsylvania has a Code of Civility, but that code cannot be used as a basis of discipline. The Code reads that its principles shall not "be used as a basis for litigation, lawyer discipline or sanctions." (204 Pa. Code § 99.1.)[1] The Code describes how judges and lawyers should treat one another and asks for voluntary compliance. The source of any penalty will be the Pennsylvania Rules of Professional Conduct[2] and the impact on one's reputation among other lawyers and Pennsylvania jurists. With this in mind, this handout sets out what the Code of Civility asks of lawyers, which Rules make incivility sanctionable, and where the line between them falls.

The Code of Civility: What it Asks

The Pennsylvania Supreme Court adopted the Code of Civility effective December 6, 2000, and amended it in 2005. (204 Pa. Code §§ 99.1 to 99.3.) It applies to every judge and lawyer in the Commonwealth. The Code has three parts: a preamble (§ 99.1), a section on a judge's duties to lawyers and other judges (§ 99.2), and a section on a lawyer's duties to the court and to other lawyers (§ 99.3). We will focus on the lawyers' section today.

Two features define the Code. First, it is aspirational. It asks judges and lawyers to make "a voluntary and mutual commitment" to its principles. Second, as noted, it carries no enforcement of its own. Its principles do not supersede the disciplinary rules and cannot be the basis for discipline or sanctions. The Code names the ideal. It does not police it.

The Rules That Give Civility Teeth

So where does incivility become a disciplinary matter? When the same conduct also breaks a Rule of Professional Conduct. Most of the lawyers' duties in § 99.3 have an enforceable counterpart in the Rules. The table below pairs them.

Code of Civility principle (§ 99.3)	Enforceable Rule	What the Rule requires
(5) and (6) Disparaging remarks, acrimony, unfounded accusations, or personal attacks on counsel	**Rule 4.4(a)**	While representing a client, this rule forbids conduct that has no substantial purpose other than to embarrass, delay, or burden a third person.
(8) No misrepresenting, mischaracterizing, misquoting, or misciting to the court	**Rules 3.3(a)(1) and 4.1(a)**	No knowing false statement of fact or law to the tribunal or to a third person; duty of candor to the court.
(10) Avoid ex parte contact with the court	**Rule 3.5(b)**	No *ex parte* communication during a proceeding unless authorized by law or court order.

(3) No conduct that diminishes courtroom dignity or decorum	**Rule 3.5(d)**	No conduct intended to disrupt a tribunal. The duty reaches depositions as well.
(7) Refrain from bias or prejudice	**Rule 8.4(g)**	Forbids conduct in the practice of law that the lawyer knows is harassment or discrimination.
(9), (11), (15) Punctuality, respect for the court's time, verifying availability	**Rule 3.2**	Reasonable efforts to expedite litigation. The comment: dilatory practices bring the administration of justice into disrepute.
(16) Treat court personnel with courtesy	**Rule 8.4(g), Comment**	The practice of law reaches interactions with court personnel and others.
(18) Protect the judiciary from unjust criticism	**Rule 8.2(a)**	No statement about a judge's integrity or qualifications that the lawyer knows to be, or recklessly disregards as, false.

Four Rules deserve separate mention. Rule 3.1 forbids frivolous claims and contentions. Rule 4.2 forbids contacting a person the lawyer knows to be represented by counsel, and Rule 8.4(d) is the catch-all against “conduct that is prejudicial to the administration of justice[.]” This Rule is the broadest civility-adjacent rule.

Rule 3.4 is the fourth rule that requires separate mention because it focuses on the concept of fairness. Specifically, Rule 3.4 requires fairness to the opposing party and counsel, and forbids obstructing another party’s access to evidence, falsifying evidence, paying a witness for the content of testimony, and asking a non-client to withhold relevant information from the other side. It also forbids a lawyer appearing before a tribunal from asserting a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused, though the lawyer may argue those points from an analysis of the evidence. The Code asks lawyers to treat everyone with fair consideration. Rule 3.4 makes part of that enforceable.

Rule 8.4(d) has limits. In a decision dated October 24, 2024, the Pennsylvania Supreme Court dismissed a disciplinary proceeding and held that filing a clearly excessive attorney-fee petition did not amount to conduct prejudicial to the administration of justice.[3] The Court distinguished its earlier 8.4(d) cases, which involved deception or actual obstruction of a proceeding, and reasoned that consuming judicial time and resources is not by itself the prejudice the Rule is intended to reach. The lesson is that the enforceable line sits well past ordinary discourtesy. Rudeness offends the Code long before it violates Rule 8.4(d). Simple offense is not enough for disciplinary action by Pennsylvania disciplinary authorities. It may, however, give rise to a finding of contempt by a judge.

The power of contempt is broad but not unlimited. One basis for contempt is relevant for purposes of civility and that is the misbehavior of any person in the court’s presence that obstructs the administration of justice.[4] Direct criminal contempt requires misconduct in the court’s presence, with intent to obstruct, that actually obstructs the proceedings.[5] Discourtesy that disrupts nothing will generally not sustain “a conviction for direct criminal contempt…”

It is important to remember that several of the most specific civility duties have no enforceable counterparts at all. Nothing in the Rules requires a lawyer to address opposing counsel by surname and title (§ 99.3(12)), to open with “May it please the court” (§ 99.3(13)), or to return another lawyer’s phone calls and keep scheduling commitments (§ 99.3(17)). These are pure professional courtesy, and they are often the civilities whose absence is remembered longest. No rule punishes a lawyer for failing to return an adversary's call or keep an informal scheduling commitment; the communication duty in Rule 1.4 runs to the client, not to opposing counsel. But unenforceable does not mean cost-free. A judge who sees a lawyer as uncooperative or unresponsive has wide discretion and a long memory, and the conduct can create real problems short of discipline. The reputational cost is its own sanction. Lawyers who are uncivil with one another will often find that that conduct makes other attorneys less willing to aid them when they need assistance such as agreeing to a delay when a normally uncivil lawyer asks for one.

The Code and the Rules Mark Different Lines

The Code marks the professional ideal, the way lawyers should treat each other when no one is enforcing anything. The Rules mark the floor, below which conduct becomes sanctionable. Most incivility lives in the space between them: unenforceable, and corrosive to the uncivil lawyer's reputation.

A note on the ideal. Review the 2018 memorial resolution for Robert B. Hoffman,[6] a Dauphin County lawyer remembered for how he practiced. Mr. Hoffman was known for being patient, willing to listen, treating partners and associates alike with civility, deconstructing a problem rather than billing through it. The resolution describes a manner of practice that "harkened back to a more genteel time." No rule required Mr. Hoffman to behave as he did. He simply believed it was the right thing to do. The resolution put it plainly, "Bob was a model of civility to his adversaries, in word and in deed. In our fractious age, Bob stood firmly on the perch of honorable behavior."

Sources and citations

[1]204 Pa. Code §§ 99.1 to 99.3 (adopted Dec. 6, 2000, 30 Pa.B. 6541; amended Apr. 21, 2005, 35 Pa.B. 2722). Official text: https://pacode.com/secure/data/204/chapter99/chap99toc.html

[2]Pennsylvania Rules of Professional Conduct (amendments through Nov. 14, 2024), Disciplinary Board of the Supreme Court of Pennsylvania. Rules cited: 1.4, 3.1, 3.2, 3.3, 3.4, 3.5, 4.1, 4.2, 4.4, 8.2, 8.4. https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/204/chapter81/subchapAtoc.html&d=

[3]*Office of Disciplinary Counsel v. Anonymous Attorney*, 327 A.3d 192 (Pa. 2024), https://www.padisciplinaryboard.org/Storage/media/pdfs/20250305/154601-odcvanonymousattorney2024.10.24.pdf

[4]42 Pa.C.S. § 4132.

[5]*Commonwealth v. Moody*, 125 A.3d 1, 5 n.4 (Pa. 2015), https://www.courtlistener.com/opinion/3149919/commonwealth-aplt-v-moody-k/

[6]Robert B. Hoffman Memorial Resolution (2018), Dauphin County Bar Association, https://www.dcba-pa.org/UserFiles/files/Memorial%20Resolutions/HoffmanRobertB.pdf

Robert B. Hoffman, Esquire
Memorial Resolution

TO THE HONORABLE JUDGES OF THE COURT, our colleagues at the Bar, and friends in attendance:

On Friday November 3, 2017, our friend and esteemed colleague Robert B. Hoffman, Esquire departed this life at age 68.

Bob was born on February 13, 1949 in Cleveland, Ohio. He was a 1971 graduate of the University of Pennsylvania and 1976 graduate of the Boston College Law School.

Early in his legal career Bob joined the Pennsylvania Office of the Attorney General, eventually serving as Assistant Counsel for Department of Public Welfare.

Bob left public service to start the career which fashioned him into an accomplished health care lawyer and litigator. In 1986, Bob partnered with the Pennsylvania Medical Society in a joint endeavor which shaped the course of Pennsylvania law regarding medical care and which caused his involvement in almost every significant health care case in the PA Supreme Court in the last 25 years.

But it was Bob's facility as an advocate for almost any issue which demonstrated how talented he truly was. By way of example, Bob argued PA's first "right to die" case but Bob's skill also led him to become involved in numerous appellate cases involving constitutional issues of all stripes. In fact, to the substantial frustration of many of his law partners, Bob argued several cases involving an effort to keep beer out of grocery stores.

If you did have a legal problem (or any problem), Bob would always find time to talk in both the depth and time necessary to understand the issue. At a time when everyone else wanted to cram every billable hour into a day, Bob listened with patience and wisdom. His manner of practice harkened back to a more genteel time whose (at least partial) passing has made us all a bit poorer.

When you took a legal problem to Bob, he would deconstruct it, think about it and pronounce his verdict. He would rarely provide a pat or cookie cutter answer but would really think deeply about your issue and often spot things about which you had not previously thought. If he disagreed with a court's opinion, a result or a line of attack, he would say, with an almost Gallic shrug, "Eh, well, I just don't think that's right."

He was a great comfort to those of us finding our way through the fog of a case. Because of his experience, equanimity and fairness, Bob's approval was comforting and any disagreement meant that you probably should re-examine your prior thoughts on a case.

Bob's patience was extended to both partners and associates for Bob never believed in any kind of artificial hierarchy. The number of associates who found their way to his door seeking a guiding hand stretch over the life of three law firms. More than that, he sought to truly explain how he got from one point to another, how he used a particular case or why he thought a particular edit was worth making.

Bob was a model of civility to his adversaries, in word and in deed. In our fractious age, Bob stood firmly on the perch of honorable behavior. And he was appreciated for that -- by the Court, by his clients, and by all in the mix of heated debate.

Bob's commitment to the law was really a commitment to answering this question: what is just? A great example of that defining principle was his commitment to pro bono and service activities. Bob was a great supporter of the DCBA Camp Intern program, a steadfast participant in trial advocacy training and an advocate for numerous community organizations. Bob knew that those values had to be transmitted to the upcoming generations of lawyers and, each July, Bob spoke eloquently of civility to those L1 law students who participated in the CAMP program.

It is sometimes a great failing of lawyers to attempt to reduce human endeavor to milestones and achievement as a way of reducing a life to metrics. In Bob's case, to know him only as a lawyer was to miss a great deal more.

Everyone who knew Bob was grateful for his wide breadth of knowledge, not only about the law but also issues outside the law. Bob was a consumer of the world and its issues and if you mentioned something in the news to Bob, you were entitled to his opinion which was neither boring nor trite. Occasionally (often), a simple hallway conversation could last more than a few minutes but when done, Bob had a singular way of concluding the conversation with a wave of the hand and a cheery but definitive, 'that's it!"

Bob's idiosyncrasies did not end with hallway discussions but extended to his entire mode of being. On any given day he could be found wearing one of his many plaid shirts combined with a pair of unusually decorated socks. He had a seemingly inexhaustible collection of patterned ties kept on the back of his door which were available for loan but not adverse possession. When one lawyer kept one of Bob's ties too long because he got a favorable result wearing it and wanted more, Bob reclaimed the tie so that its winning mojo was available to others.

The centerpiece of Bob's life, however, was his deep and abiding love for his family, his friends and his former colleagues. It would be fair to observe that Bob's manner of practicing law was founded on the love and respect he had for the people with whom he interacted.

Perhaps, in the end, that is the best tribute to Bob—whose actions as a lawyer directly reflected his values and his profound humanity. Bob had the great gift of being himself and living the same values—kindness, humility, diligence, perception and a willingness to seek and accept truth—both in his public and private life and, from his example, perhaps we can all learn much.

THEREFORE, be it resolved that in the passing of Robert B. Hoffman, the Bar, the Court and the community have lost a friend, mentor, professional colleague and valued citizen. We recognize the loss to our bar and, as a body, we tender our sympathy and condolences to his wife, children, family and friends.

BE IT FURTHER RESOLVED that copies of this memorial resolution be spread upon the record of the Dauphin County Courts and the Dauphin County Bar Association, that the original and a copy be filed with the Prothonotary, and copies transmitted to his family members.

Respectfully submitted,

The Robert B. Hoffman Memorial Resolution Committee

Daniel Clearfield

Daniel Clearfield

Grainger Bowman

Grainger Bowman

Loudon L. Campbell

Louden "Hap" Campbell

Renee Mattei Myers

Renee C. Mattei Myers

Jessie L. Smith

Jessie Smith

LeRoy Zimmerman

LeRoy Zimmerman

CHAPTER 99. CODE OF CIVILITY

Sec.

99.1. Preamble.
99.2. A Judge's Duties to Lawyers and Other Judges.
99.3. The Lawyer's Duties to the Court and to Other Lawyers.

Source

The provisions of this Chapter 99 adopted December 6, 2000, effective December 6, 2000, 30 Pa.B. 6541; amended April 21, 2005, effective May 7, 2005, 35 Pa.B. 2722. Immediately preceding text appears at serial pages (276507) to (276508) and (272355) to (272356), unless otherwise noted.

§ 99.1. Preamble.

The hallmark of an enlightened and effective system of justice is the adherence to standards of professional responsibility and civility. Judges and lawyers must always be mindful of the appearance of justice as well as its dispensation. The following principles are designed to assist judges and lawyers in how to conduct themselves in a manner that preserves the dignity and honor of the judiciary and the legal profession. These principles are intended to encourage lawyers, judges and court personnel to practice civility and decorum and to confirm the legal profession's status as an honorable and respected profession where courtesy and civility are observed as a matter of course.

The conduct of lawyers and judges should be characterized at all times by professional integrity and personal courtesy in the fullest sense of those terms. Integrity and courtesy are indispensable to the practice of law and the orderly administration of justice by our courts. Uncivil or obstructive conduct impedes the fundamental goal of resolving disputes in a rational, peaceful and efficient manner.

The following principles are designed to encourage judges and lawyers to meet their obligations toward each other and the judicial system in general. It is expected that judges and lawyers will make a voluntary and mutual commitment to adhere to these principles. These principles are not intended to supersede or alter existing disciplinary codes or standards of conduct, nor shall they be used as a basis for litigation, lawyer discipline or sanctions.

§ 99.2. A Judge's Duties to Lawyers and Other Judges.

1. A judge must maintain control of the proceedings and has an obligation to ensure that proceedings are conducted in a civil manner.

2. A judge should show respect, courtesy and patience to the lawyers, parties and all participants in the legal process by treating all with civility.

3. A judge should ensure that court-supervised personnel dress and conduct themselves appropriately and act civilly toward lawyers, parties and witnesses.

4. A judge should refrain from acting upon or manifesting racial, gender or other bias or prejudice toward any participant in the legal process.

5. A judge should always refer to counsel by surname preceded by the preferred title (Mr., Mrs., Ms. or Miss) or by the professional title of attorney or counselor while in the courtroom.

6. A judge should not employ hostile or demeaning words in opinions or in written or oral communications with lawyers, parties or witnesses.

7. A judge should be punctual in convening trials, hearings, meetings and conferences.

8. A judge should be considerate of the time constraints upon lawyers, parties and witnesses and the expenses attendant to litigation when scheduling trials, hearings, meetings and conferences to the extent such scheduling is consistent with the efficient conduct of litigation.

9. A judge should ensure that disputes are resolved in a prompt and efficient manner and give all issues in controversy deliberate, informed and impartial analysis and explain, when appropriate, the reasons for the decision of the court.

10. A judge should allow the lawyers to present proper arguments and to make a complete and accurate record.

11. A judge should not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which he or she represents.

12. A judge should recognize that the conciliation process is an integral part of litigation and thus should protect all confidences and remain unbiased with respect to conciliation communications.

13. A judge should work in cooperation with all other judges and other jurisdictions with respect to availability of lawyers, witnesses, parties and court resources.

14. A judge should conscientiously assist and cooperate with other jurists to assure the efficient and expeditious processing of cases.

15. Judges should treat each other with courtesy and respect.

§ 99.3. The Lawyer's Duties to the Court and to Other Lawyers.

1. A lawyer should act in a manner consistent with the fair, efficient and humane system of justice and treat all participants in the legal process in a civil, professional and courteous manner at all times. These principles apply to the lawyer's conduct in the courtroom, in office practice and in the course of litigation.

2. A lawyer should speak and write in a civil and respectful manner in all communications with the court, court personnel, and other lawyers.

3. A lawyer should not engage in any conduct that diminishes the dignity or decorum of the courtroom.

4. A lawyer should advise clients and witnesses of the proper dress and conduct expected of them when appearing in court and should, to the best of his or her ability, prevent clients and witnesses from creating disorder and disruption in the courtroom.

5. A lawyer should abstain from making disparaging personal remarks or engaging in acrimonious speech or conduct toward opposing counsel or any participants in the legal process and shall treat everyone involved with fair consideration.

6. A lawyer should not bring the profession into disrepute by making unfounded accusations of impropriety or personal attacks upon counsel and, absent good cause, should not attribute improper motive or conduct to other counsel.

7. A lawyer should refrain from acting upon or manifesting racial, gender or other bias or prejudice toward any participant in the legal process.

8. A lawyer should not misrepresent, mischaracterize, misquote or miscite facts or authorities in any oral or written communication to the court.

9. A lawyer should be punctual and prepared for all court appearances.

10. A lawyer should avoid ex parte communications with the court, including the judge’s staff, on pending matters in person, by telephone or in letters and other forms of written communication unless authorized. Communication with the judge on any matter pending before the judge, without notice to opposing counsel, is strictly prohibited.

11. A lawyer should be considerate of the time constraints and pressures on the court in the court’s effort to administer justice and make every effort to comply with schedules set by the court.

12. A lawyer, when in the courtroom, should make all remarks only to the judge and never to opposing counsel. When in the courtroom a lawyer should refer to opposing counsel by surname preceded by the preferred title (Mr., Mrs., Ms. or Miss) or the professional title of attorney or counselor.

13. A lawyer should show respect for the court by proper demeanor and decorum. In the courtroom a lawyer should address the judge as ‘‘Your Honor’’ or ‘‘the Court’’ or by other formal designation. A lawyer should begin an argument by saying ‘‘May it please the court’’ and identify himself/herself, the firm and the client.

14. A lawyer should deliver to all counsel involved in a proceeding any written communication that a lawyer sends to the court. Said copies should be delivered at substantially the same time and by the same means as the written communication to the court.

15. A lawyer should attempt to verify the availability of necessary participants and witnesses before hearing and trial dates are set or, if that is not feasible, immediately after such dates have been set and promptly notify the court of any anticipated problems.

16. A lawyer should understand that court personnel are an integral part of the justice system and should treat them with courtesy and respect at all times.

17. A lawyer should demonstrate respect for other lawyers, which requires that counsel be punctual in meeting appointments with other lawyers and considerate of the schedules of other participants in the legal process; adhere to commitments, whether made orally or in writing; and respond promptly to communications from other lawyers.

18. A lawyer should strive to protect the dignity and independence of the judiciary, particularly from unjust criticism and attack.

19. A lawyer should be cognizant of the standing of the legal profession and should bring these principles to the attention of other lawyers when appropriate.

Pennsylvania Rules of Professional Conduct Related to Civility

204 Pa. Code Chapter 81. Rules Of Professional Conduct

81.1. **Preamble: A Lawyer's Responsibilities.**
81.2. **Scope.**

1.4. **Communication.**

3.1. **Meritorious Claims and Contentions.**
3.2. **Expediting Litigation.**
3.3. **Candor Toward the Tribunal.**
3.4. **Fairness to Opposing Party and Counsel.**
3.5. **Impartiality and Decorum of the Tribunal.**
3.6. **Trial Publicity.**
3.8. **Special Responsibilities of a Prosecutor.**

4.1. **Truthfulness in Statements to Others.**
4.2. **Communication with Person Represented by Counsel.**
4.4. **Respect for Rights of Third Persons.**

8.2. **Statements Concerning Judges and Other Adjudicatory Officers.**
8.3. **Reporting Professional Misconduct.**
8.4. **Misconduct.**

§ 81.1. Preamble: A Lawyer's Responsibilities.

(1) A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having a special responsibility for the quality of justice.

(2) As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

(3) In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

(4) In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

(5) A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

(6) As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to

strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence 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. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

(7) Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

(8) A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

(9) In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

(10) The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government

and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

(11) To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

(12) The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

(13) Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

Source

The provisions of this § 81.1 amended August 23, 2004, effective January 1, 2005, 34 Pa.B. 4818. Immediately preceeding text appears at serial pages (272345) to (272346) and (218525).

§ 81.2. Scope.

(14) The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall'' or "shall not.'' These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may'' or "should,'' are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should.'' Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

(15) The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law. Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

(16) Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

(17) Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

(18) Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and

seriousness of the violation, extenuating factors and whether there have been previous violations.

(19) Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra disciplinary consequences of violating such a duty.

(20) These Rules were first derived from the Model Rules of Professional Conduct adopted by the American Bar Association in 1983 as amended. Those Rules were subject to thorough review and restatement through the work of the ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission''), and have been subject to certain modifications in their adoption in Pennsylvania. The Rules omit some provisions that appear in the ABA Model Rules of Professional Conduct. The omissions should not be interpreted as condoning behavior proscribed by the omitted provision.

(21) The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

Source

The provisions of this § 81.2 amended August 23, 2004, effective January 1, 2005, 34 Pa.B. 4818. Immediately preceeding text appears at serial pages (218525) to (218527).

Rule 1.4. Communication.

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least $100,000 per occurrence and $300,000 in the aggregate per year, subject to commercially reasonable deductibles, retention or co-insurance, and shall inform existing clients in writing at any time the lawyer's professional liability insurance drops below either of those amounts or the lawyer's professional liability insurance is terminated. A lawyer shall maintain a record of these disclosures for six years after the termination of the representation of a client.

Comment:

(1) Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

(2) If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

(3) Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

(4) A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

Explaining Matters

(5) The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(e).

(6) Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from

diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

(7) In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interests or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client.

Disclosures Regarding Insurance

(8) Paragraph (c) does not apply to lawyers in full-time government practice or full-time lawyers employed as in-house counsel and who do not have any private clients.

(9) Lawyers may use the following language in making the disclosures required by this rule:

(i) No insurance or insurance below required amounts when retained: "Pennsylvania Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have professional liability insurance of at least $100,000 per occurrence and $300,000 in the aggregate per year and if, at any time, a lawyer's professional liability insurance drops below either of those amounts or a lawyer's professional liability insurance coverage is terminated. You are therefore advised that (name of attorney or firm) does not have professional liability insurance coverage of at least $100,000 per occurrence and $300,000 in the aggregate per year.''

(ii) Insurance drops below required amounts: "Pennsylvania Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have professional liability insurance of at least $100,000 per occurrence and $300,000 in the aggregate per year and if, at any time, a lawyer's professional liability insurance drops below either of those amounts or a lawyer's professional liability insurance coverage is terminated. You are therefore advised that (name of attorney or firm)'s professional liability insurance dropped below at least $100,000 per occurrence and $300,000 in the aggregate per year as of (date).''

(iii) Insurance terminated: "Pennsylvania Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have professional liability insurance of at least $100,000 per occurrence and $300,000 in the aggregate per year and if, at any time, a lawyer's professional liability insurance drops below either of those amounts or a lawyer's professional liability insurance coverage is terminated. You are therefore advised that (name of attorney or firm)'s professional liability insurance has been terminated as of (date).''

(10) A lawyer or firm maintaining professional liability insurance coverage in at least the minimum amounts provided in paragraph (c) is not subject to the disclosure obligations mandated by the rule if such coverage is subject to commercially reasonable deductibles, retention or co-insurance. Deductibles, retentions or co-insurance offered, from time to time, in the marketplace for professional liability insurance for the size of firm and coverage limits purchased will be deemed to be commercially reasonable.

Source

The provisions of this Rule 1.4 amended October 22, 2013, effective in 30 days, 43 Pa.B. 6641. Immediately preceding text appears at serial pages (316365) to (316367).

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. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment:

(1) The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

(2) The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

(3) The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

Rule 3.2. Expediting Litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Comment:

(1) Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of

the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Rule 3.3. Candor Toward the Tribunal.

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence before a tribunal or in an ancillary proceeding conducted pursuant to a tribunal's adjudicative authority, such as a deposition, and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(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.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Comment:

(1) This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of "tribunal.'' It also applies

when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

(2) This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

(3) An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4(b).

Legal Argument

(4) Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

(5) Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

(6) If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

(7) The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment (9).

(8) The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

(9) Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment (7).

Remedial Measures

(10) Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when

the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done—making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

(11) The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

(12) Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

Duration of Obligation

(13) A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably

definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

(14) Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

(15) Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16 to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

Rule 3.4. Fairness to Opposing Party and Counsel.

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness' testimony or the outcome of the case; but a lawyer may pay, cause to be paid, guarantee or acquiesce in the payment of:

(1) expenses reasonably incurred by a witness in attending or testifying,

(2) reasonable compensation to a witness for the witness' loss of time in attending or testifying, and

(3) a reasonable fee for the professional services of an expert witness;

(c) when appearing before a tribunal, assert the lawyer's personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but the lawyer may argue, on the lawyer's analysis of the evidence, for any position or conclusion with respect to the matters stated herein; or

(d) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information and such conduct is not prohibited by Rule 4.2.

Comment:

(1) The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

(2) Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

(3) With regard to paragraph (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

(4) Paragraph (d) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also Rules 4.2 and 4.3(b).

Rule 3.5. Impartiality and Decorum of the Tribunal.

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment; or

(d) engage in conduct intended to disrupt a tribunal.

Comment:

(1) Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the Code of Judicial Conduct and/or the Rules Governing Standards of Conduct for Magisterial District Judges, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

(2) During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law or court order.

(3) A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

(4) The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

(5) The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0(m).

Source

The provisions of this Rule 3.5 amended December 5, 2016, effective in 30 days, 46 Pa.B. 8011. Immediately preceding text appears at serial page (309446).

Rule 3.6. Trial Publicity.

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of the matter is in progress ;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Comment:

(1) It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

(2) Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such rules.

(3) The Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the Rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

(4) Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

(5) There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

(6) Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

(7) Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

(8) See Rule 3.8(e) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

Rule 3.8. Special Responsibilities of a Prosecutor.

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for, obtaining counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

Comment:

(1) A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

(2) In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Paragraph (c) does not apply, however, to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

(3) The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

(4) Paragraph (e) supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor’s extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

Rule 4.1. Truthfulness in Statements to Others.

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid aiding and abetting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Comment:

Misrepresentation

(1) A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Statements of Fact

(2) This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.

Crime or Fraud by Client

(3) Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being

deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6. Rule 1.6 permits a lawyer to disclose information when necessary to prevent or rectify certain crimes or frauds. See Rule 1.6(c). If disclosure is permitted by Rule 1.6, then such disclosure is required under this Rule, but only to the extent necessary to avoid assisting a client crime or fraud.

Rule 4.2. Communication with Person Represented by Counsel.

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Comment:

(1) This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation.

(2) This Rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

(3) The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

(4) This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make.

Also, a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so.

(5) Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include constitutionally permissible investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

(6) A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

(7) In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

(8) The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0(f). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

(9) In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

Rule 4.4. Respect for Rights of Third Persons.

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document, including electronically stored information, relating to the representation of the lawyer's client and knows or reasonably should know that the document, including electronically stored information, was inadvertently sent shall promptly notify the sender.

Comment:

(1) Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

(2) Paragraph (b) recognizes that lawyers sometimes receive a document, including electronically stored information, that was mistakenly sent or produced by opposing parties or their lawyers. A document, including electronically stored information, is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document, including electronically stored information, is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document, including electronically stored information, was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the document, including electronically stored information, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document, including electronically stored information, has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document, including electronically stored information, that the lawyer knows or reasonably should know may have been inappropriately obtained by the sending person. For purposes of this Rule, "document, including electronically stored information," includes, in addition to paper documents, email and other forms of electronically stored information, including embedded data (commonly referred to as "metadata''), that is subject to being read or put into readable form. Metadata in electronic

documents creates an obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

(3) Some lawyers may choose to return a document or delete electronically stored information unread, for example, when the lawyer learns before receiving it that it was inadvertently sent. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

Source

The provisions of this Rule 4.4 amended October 22, 2013, effective in 30 days, 43 Pa.B. 6641. Immediately preceding text appears at serial page (309455).

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.2. Statements Concerning Judges and Other Adjudicatory Officers.

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct and/or the Rules Governing Standards of Conduct for Magisterial District Judges, as applicable.

Comment:

(1) Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

(2) When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

(3) To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Source

The provisions of this Rule 8.2 amended December 5, 2016, effective in 30 days, 46 Pa.B. 8011. Immediately preceding text appears at serial page (369550).

Rule 8.3. Reporting Professional Misconduct.

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

Comment:

(1) Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

(2) A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

(3) If a lawyer were obligated to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The duty to report involves only misconduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. The term "substantial'' refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

(4) While a lawyer may report professional misconduct at any time, the lawyer must report misconduct upon acquiring actual knowledge of misconduct. The discretionary reporting of misconduct should not be undertaken for purposes of tactical advantage over another lawyer, to punish or inconvenience another for a personal or professional slight, or to harass another lawyer.

(5) A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

(6) The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

(7) Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and to the public. The Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

(8) In addition to reporting a violation of another lawyer, a lawyer is required by the Pennsylvania Rules of Disciplinary Enforcement to self-report in certain circumstances. Pa.R.D.E. 214(a) provides that an attorney convicted of a crime shall report the fact of that conviction within 20 days to the Office of Disciplinary Counsel. For purposes of that rule, the term "crime'' means an offense that is punishable by imprisonment in the jurisdiction of conviction, whether or not a sentence of imprisonment is actually imposed. It does not include parking violations or summary offenses, both traffic and non-traffic, unless a term of imprisonment is actually imposed.

(9) Likewise, Pa.R.D.E. 216(e) requires an attorney who has been transferred to disability inactive status or disciplined in another court or by any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys by any state or territory of the United States or of the District of Columbia, a United States court, or by a federal administrative agency or a military tribunal, by suspension, disbarment, or revocation of license or pro hac vice admission, or who has resigned from the bar or otherwise relinquished his or her license to practice while under disciplinary investigation in another jurisdiction, to report the fact of that transfer, suspension, disbarment, revocation or resignation to the Disciplinary Board of the Supreme Court of Pennsylvania within 20 days after the date of the order, judgment or directive imposing or confirming the discipline or transfer to disability inactive status.

Source

The provisions of this Rule 8.3 amended March 19, 2012, effective in 30 days; 42 Pa.B. 1637; amended April 18, 2019, effective in 30 days, 49 Pa.B. 2209. Immediately preceding text appears at serial pages (385452) and (369551).

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(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, except that a lawyer may advise, direct, or supervise others, including clients, law enforcement officers, and investigators, who participate in lawful investigative activities;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) in the practice of law, knowingly engage in conduct constituting harassment or discrimination based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude advice or advocacy consistent with these Rules.

Comment:

(1) Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client of action the client is lawfully entitled to take.

(2) Notwithstanding the general restriction against engaging in deceit, this Rule does not prohibit a lawyer from advising or supervising another who engages in an otherwise lawful and ethical undercover investigation, in which the investigator does not disclose his or her true identity and motivation, regardless of the nature of the matter or substantive area of law involved. This Rule does not change the scope of a lawyer's obligations under Rule 4.2 and thus a lawyer must take reasonable measures so that the investigator does not communicate with a represented party in violation of Rule 4.2, does not seek to elicit

privileged information, and otherwise acts in compliance with these Rules, court orders, and civil and criminal law.

(3) Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude.'' That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

(4) For the purposes of paragraph (g), conduct in the practice of law includes: (i) interacting with witnesses, coworkers, court personnel, lawyers, or others, while appearing in proceedings before a tribunal or in connection with the representation of a client; (ii) operating or managing a law firm or law practice; or (iii) participation in judicial boards, conferences, or committees; continuing legal education seminars; bench bar conferences; and bar association activities where legal education credits are offered. The term "the practice of law'' does not include speeches, communications, debates, presentations, or publications given or published outside the contexts described in (i)—(iii).

(5) "Harassment'' means conduct that is intended to intimidate, denigrate or show hostility or aversion toward a person on any of the bases listed in paragraph (g). "Harassment'' includes sexual harassment, which includes but is not limited to sexual advances, requests for sexual favors, and other conduct of a sexual nature that is unwelcome.

(6) "Discrimination'' means conduct that a lawyer knows manifests an intention: to treat a person as inferior based on one or more of the characteristics listed in paragraph (g); to disregard relevant considerations of individual characteristics or merit because of one or more of the listed characteristics; or to cause or attempt to cause interference with the fair administration of justice based on one or more of the listed characteristics.

(7) A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith

challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

(8) Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

Source

The provisions of this Rule 8.4 amended June 8, 2020, effective in six months, 50 Pa.B. 3011; amended July 26, 2021, effective in 30 days, 51 Pa.B. 4260; amended July 26, 2021, effective in 30 days, 51 Pa.B. 5190; amended April 3, 2024, effective in 30 days, 54 Pa.B. 1946. Immediately preceding text appears at serial pages (406128) to (406129).

SESSION #5
Ethics

"What you need to know about the Guardian Monitor Program"

Presented by:

Mary Catherine Scott, Esquire
Sarah M. Lockwood, Esquire
&
Sara Intrieri Shaffer
Deputy Court Admin. for Civil, Family & Orphan's Court

DAUPHIN COUNTY GUARDIANSHIP MONITOR PROGRAM

- Volunteers become the "Eyes and Ears" of the Court to ensure the proper function of guardianship cases
- Notify the court if there is any;
  - Physical Mistreatment
  - Neglect
  - Financial exploitation

1

DAUPHIN COUNTY GUARDIANSHIP MONITOR PROGRAM

- But first...
- What is Guardianship?

2

DAUPHIN COUNTY GUARDIANSHIP MONITOR PROGRAM

3 Basic Components of the Program:

1. Review Current Status
2. Meet with the Guardian and Ward once/year
3. Submit a Report to the Court

3

DAUPHIN COUNTY GUARDIANSHIP MONITOR PROGRAM

Review Current Status

4


DAUPHIN
COUNTY
GUARDIANSHIP
MONITOR
PROGRAM
Meet with Guardian and Ward

5


DAUPHIN
COUNTY
GUARDIANSHIP
MONITOR
PROGRAM
Submit a Report to the Court

6

DAUPHIN COUNTY GUARDIANSHIP MONITOR PROGRAM

Dauphin County Orphans' Court

7

DAUPHIN COUNTY GUARDIANSHIP MONITOR PROGRAM

Reminders from Judge McNally
Dauphin County Orphans' Court

8

DAUPHIN COUNTY GUARDIANSHIP MONITOR PROGRAM

How to Become a Monitor

9

IN RE: PRO BONO GUARDIANSHIP MONITORING PROGRAM : IN THE COURT OF COMMON PLEAS : DAUPHIN COUNTY, PENNSYLVANIA

: Orphans' Court No. 2224-0001

: AO-34-2024

FILED JUN 20 2024 JEAN MARFIZO KING REGISTER OF WILLS AND CLERK OF THE ORPHANS' COURT

ADMINISTRATIVE ORDER

AND NOW this 20th day of June 2024, in furtherance of the Pro Bono Guardianship Monitoring Program ("Guardianship Monitoring Program"), it is hereby ordered that:

1. Court Administration shall maintain a roster of attorneys who agree to participate in the program.
2. Court Administration shall identify guardianship cases to assign to each participating attorney. Whenever possible, each attorney shall be assigned two cases. Attorneys interested in monitoring more than two cases shall notify Court Administration.
3. Court Administration shall prepare and distribute any orders related to the appointment or discontinuance of attorneys appointed as Pro Bono Guardianship Monitors. Said orders shall be filed with the Clerk of the Orphans' Court.
4. Appointed attorneys shall act as the "eyes and ears" of the court by meeting with the guardian(s) and incapacitated person one or more times each year. Attorneys may also meet with any other person or agency who assists in the care of the incapacitated person.
5. Appointed attorneys shall file a report within ninety (90) days of their initial appointment and annually thereafter on a form provided by Court Administration.

6. Appointed attorneys shall not act as the guardian(s) attorney or the guardian for the incapacitated person. Appointed attorneys are prohibited from providing legal advice in their role as Pro Bono Monitor. No attorney-client relationship shall be entered into between the guardian(s) or the incapacitated person.
7. Dauphin County Bar Association ("DCBA") Members who participate in the program shall receive pro bono credit for their participation. Court Administration shall notify DCBA each month of those attorneys who have submitted pro bono monitor reports in the previous month.
8. Attorneys appointed as monitors prior to the issuance of this order shall remain unchanged.

BY THE COURT:

Scott Arthur Evans, President Judge

DISTRIBUTION:
Scott Arthur Evans, President Judge
Judge Deborah E. Curcillo
Judge Andrew H. Dowling
Judge William T. Tully
Judge Edward M. Marsico, Jr.
Judge John Joseph McNally
Judge Royce L. Morris
Judge Jeffery B. Engle
Judge Courtney Powell
Jean Marfizo King, Register of Wills/Clerk of Orphans' Court
Stephen B. Libhart, District Court Administrator
Sara Shaffer, Deputy Court Administrator-Civil
Dauphin County Bar Association

<u>DAUPHIN COUNTY'S PRO BONO GUARDIANSHIP MONITORING PROGRAM</u>

Jean Marfizo King
Register of Wills &
Clerk of the Orphans' Court

Honorable John J. McNally
Court of Common Pleas

Mary Catherine Scott, Esq.
Widener Law
Commonwealth
Central PA Law Clinic

Program Overview

The Honorable Todd A. Hoover Pro Bono Guardianship Monitoring Program began in 2007. The late Judge Hoover established this program to appoint attorneys or paralegals to monitor guardianship cases to assist the Court in its continuing duty to monitor all guardianship cases.

Monitors act as the eyes and ears of the Court when they visit and speak with guardians, incapacitated persons, and other service and care providers one or more times each year.

Whenever possible, monitors are assigned two cases each. We welcome monitors to take on more cases as they are able.

After appointment, monitors meet with the guardian(s), incapacitated person, and other care providers to assess the guardianship. Monitors e-mail a report for filing once each year where they indicate if the ward is cared for appropriately, and if they have any recommendations regarding the guardianship.

Participants receive pro bono acknowledgement through the Dauphin County Bar Association.

Statistics

- There are 528 active guardianship cases in Dauphin County.
- There are currently 76 monitors.
- Of the 500+ active cases, only 170 are assigned a pro bono monitor.
- Typically monitors are assigned to cases with a lay guardian, and not a professional guardian.
- Professional guardians are appointed to 219 of the guardianships.
- This leaves a gap of 139 cases in which we would like to have monitors appointed.

CONTACT INFORMATION

Sara Shaffer
Deputy Court Administrator
Civil, Family & Orphans' Court
sshaffer@dauphincounty.gov
717-780-6646

- Administers Program
- Assigns and Discontinues Monitors
- Collects Monitor Reports

Amanda (Mandy) Miller
Second Deputy Orphans' Court
amiller@dauphincounty.gov
717-780-6498

- Provides Access to Files in Orphans' Court
- Provides remote access to GTS to review Annual Reports
- Collects Statements of Confidentiality

Guardianship Tracking System (GTS) Helpdesk
GTSAOPC@pacourts.us
1-877-227-2672, Opt. 1

- Available for Guardians or Court Users with questions regarding the UJS Web Portal
- Available Monday through Friday from 8:00 AM to 4:30 PM

September 2, 2025

IN THE MATTER OF:	**: IN THE COURT OF COMMON PLEAS**
	: _______________ COUNTY, PENNSYLVANIA
	:
____________________	**: ORPHANS' COURT DIVISION**
Incapacitated Person	**: NO._______________**

SUMMARY REPORT OF PRO BONO MONITOR

I, __________________ , the undersigned monitor, duly appointed by the court, aver that I have met with the guardian and incapacitated person (IP) (and if not, the reasons therefore are stated below), and aver as follows:

The undersigned monitor assesses the IP's care as:

☐ EXCELLENT: care is markedly better than adequate, beyond meeting basic needs of the IP.

☐ SATISFACTORY: care is adequate to meet the basic needs of the IP.

☐ MARGINAL: overall care or specific areas of care are less than adequate but not dangerous to the IP.

☐ UNACCEPTABLE: inadequate care is causing or about to cause harm or a serious negative effect on the IP's health or welfare; remedial action is required.

The undersigned monitor requests/recommends the following:
(Possible recommendations include: no further action; a visitor follow up visit; court order directing specific action; court order referring to another agency; court order setting a hearing; court order appointing new guardian; court order terminating guardianship.)

The undersigned monitor submits the following additional comments:

.

Respectfully submitted,

Date: ________________________ ____________________________________

IN THE MATTER OF: : IN THE COURT OF COMMON PLEAS
: _______________, PENNSYLVANIA
: ORPHANS' COURT DIVISION
: NO. _______________

____
Incapacitated Person

MONITOR'S NOTES FOR SUMMARY REPORT
IP INFORMATION

Guardianship type:
(Check all that apply)

☐ Person - Plenary
☐ Person - Limited
☐ Estate - Plenary
☐ Estate - Limited

Date of contact: ________________________

☐ In person
☐ By phone
☐ No contact (please explain):

Age: ____________________________
Sex: ____________________________
Marital status: ____________________
Race/Ethnicity: ___________________

Reason for guardianship:

☐ Intellectual disability
☐ Alzheimer's/dementia/related disorders
☐ Chronic mental illness
☐ Chronic alcohol/drug use
☐ Head injury/stroke
☐ Unknown
☐ Other (please specify):

Annual Income:

☐ under $10,000
☐ $10,000-25,000
☐ $25,000-50,000
☐ $50,000-100,000
☐ over $100,000
☐ cannot determine

Size of Estate (Real/Personal Property):

☐ under $15,000
☐ $15,000-25,000
☐ $25,000-50,000
☐ $50,000-100,000
☐ over $100,000
☐ cannot determine

All monthly pension, annuity, government benefits received (indicate amount per month and source):

Has eligibility for such programs as Social Security, SSI, Medicare, Medicaid, and Food Stamps been checked?

☐ Yes
☐ No

Has a burial allowance been set aside?

☐ Yes
☐ No

IP resides in:

☐ own home
☐ guardian's home
☐ relative's home
☐ nursing home
☐ hospital/state hospital
☐ group home
☐ other (please specify):

If in a facility:

Facility name: ____________________
Address: ________________________
Phone number: ___________________

GUARDIAN INFORMATION

Guardian/IP Relationship:

☐ Spouse
☐ Parent of IP
☐ Child of IP
☐ Other relative
☐ Friend
☐ Professional guardian/agency
☐ Other (please specify):

Date of contact:

☐ In person
☐ By phone
☐ No contact (please explain):

If the IP does not live with the guardian, how often does the guardian visit the IP?

What does the guardian do for the IP? (check all that apply)

☐ Manage financial affairs
☐ Housekeeping
☐ Provide transportation
☐ Arrange social services/training
☐ Feed
☐ Other (please specify):

☐ Provide necessities
☐ Take on outings
☐ Bathe
☐ Provide continuous care
☐ Visit

In the past year, what changes in the IP's physical or emotional health, intellectual functioning, and/or living situation, if any, does the guardian note?

MONITOR OBSERVATIONS

Please assess the IP's status in the following areas:

	Excellent	Satisfactory	Fair	Poor	Unknown
Physical health	☐	☐	☐	☐	☐
Emotional health	☐	☐	☐	☐	☐
Intellectual function	☐	☐	☐	☐	☐
Living situation	☐	☐	☐	☐	☐

Please record any observations/concerns that may be helpful to the court. Attach additional pages if needed.

Respectfully submitted,

____________________ ______________________________

Date , Monitor

CONTACT INFORMATION

Monitor

Name: ______________________________

Pa. Supreme Court Identification #: __________

Telephone: ______________________________

Address: ______________________________

Email: ______________________________

Guardian

Name: ______________________________

Telephone: ______________________________

Address: ______________________________

Email: ______________________________

IP

Name: ______________________________

Telephone: ______________________________

Address: ______________________________

Email: ______________________________

IN THE MATTER OF: [redacted] **: IN THE COURT OF COMMON PLEAS**
: DAUPHIN COUNTY, PENNSYLVANIA
:
: ORPHANS' COURT DIVISION
Incapacitated Person **: NO. [redacted]**

SUMMARY REPORT OF PRO BONO MONITOR

I, [redacted], the undersigned monitor, duly appointed by the court, aver that I have met with the guardian and ward (and if not, the reasons therefore are stated below), and aver as follows:

The undersigned monitor assesses the ward's care as:

☒ EXCELLENT: care is markedly better than adequate, beyond meeting the basic needs of the ward.

☐ SATISFACTORY: care is adequate to meet the basic needs of the ward.

☐ MARGINAL: overall care or specific areas of care are less than adequate but not dangerous to the ward.

☐ UNACCEPTABLE: inadequate care is causing or about to cause harm or a serious negative effect on the ward's health or welfare; remedial action is required.

The undersigned monitor requests/recommends the following (please specify: possible recommendations include no further action; a monitor follow up visit; court orders directing specific action; court order referring to another agency; court order setting a hearing; court order appointing new guardian; court order terminating guardianship. No further action at this time

The undersigned monitor submits the following additional comments: I spent approximately 45 minutes with [redacted], [redacted], [redacted] and their sister [redacted] at [redacted] home. I have no concerns at this time .

Respectfully submitted,

[redacted]

Date: April 30, 2026

IN THE MATTER OF: [redacted] : IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA
:
: ORPHANS' COURT DIVISION
Incapacitated Person : NO. [redacted]

PRO BONO MONITOR'S NOTES FOR SUMMARY REPORT

WARD INFORMATION: Date of Contact: ~~May 20, 2025~~ April 30, 2026

In person: ☒ phone: ☐ No contact: ☐ If no contact, please explain:

Age: 67 Sex: Female Marital Status: Unmarried

Guardianship: Person: ☐ Estate: ☐ Both: ☒
Other: ☐ If other, please explain:

Reason for guardianship: Intellectual Disability ☒
Alzheimer's/Dementia/Related Disorders ☐
Chronic Mental Illness: ☐
Chronic Alcohol/Drug Use: ☐
Head Injury/Stroke: ☐
Other (please specify): ☐
Unknown: ☐

Annual Income:

☐ under $10,000
☒ $10,000-25,000
☐ $25,000-50,000
☐ $50,000-100,000
☐ over $100,000
☐ cannot determine

Size of Estate (Real/Personal Property):

☐ under $15,000
☐ $15,000-25,000
☐ $25,000-50,000
☐ $50,000-100,000
☒ over $100,000
☐ cannot determine

Monthly pension, annuity, government benefits received monthly (indicate amount and source:

1. $1,796.90 (1,594) /month for 2026
2.
3.
4.

Has eligibility for such programs as Social Security, SSI, Medicare, Medicaid, Food Stamps been checked? Yes ☒ No ☐ Has a burial allowance been set aside? Yes ☒ No ☐

Ward resides:
- ☒ in own home
- ☐ guardian's home
- ☐ relative's home
- ☐ nursing home
- ☐ hospital/state hospital
- ☐ group home
- ☐ other

If in a facility:
Name of facility:
Address:
Telephone number:

GUARDIAN INFORMATION: Date of Contact: 0

In person: ☒ By telephone: ☒ No contact: ☐ If no contact, please explain:

Guardian/Ward Relationship: ☐ Spouse ☐ Parent of ward ☐ Child of ward ☒ Other relative ☐ Friend ☐ Public guardian/Agency ☐ Other

Does ward live with the guardian Yes ☐ No ☒ If no, how many times does Guardian visit Ward each month? Weekly, Guardians are sisters of ward, care provider for ward is also a sister. [redacted] is fully integrated into this tight-knit family and included in all things.

What does Guardian do for Ward (check all that apply)?

- ☒ Manage financial affairs
- ☒ Housekeeping
- ☐ Provide transportation
- ☒ Arrange social services/training
- ☐ Feed
- ☐ Other (list):
- ☒ Provide necessities
- ☒ Take on outings
- ☐ Bathe
- ☒ Provide continuous care
- ☒ Visit

Does Guardian note the occurrence of any significant change in Ward's physical health, intellectual functioning, emotional health, and/or living situation over the past year No changes over the past year

MONITOR OBSERVATIONS: Please record any observations/concerns that may be helpful to the Court: [redacted] appears to be well cared for and is happy. Her present needs are met and there is adequate provision being made for her future care. Please see attached summary of observations for additional comments.
8-19-21

ASSESSMENT OF WARD: EXCELLENT - SATISFACTORY - FAIR - POOR - UNKNOWN

Physical health ☒ Excellent ☐ Satisfactory ☐ Fair ☐ Poor ☐ Unknown
Emotional health ☐ Excellent ☒ Satisfactory ☐ Fair ☐ Poor ☐ Unknown
Intellectual function ☐ Excellent ☐ Satisfactory ☐ Fair ☒ Poor ☐ Unknown
Living situation ☐ Excellent ☒ Satisfactory ☐ Fair ☐ Poor ☐ Unknown

RESPECTFULLY SUBMITTED,

[redacted]

[redacted], Monitor

Date: April 30, 2026

CONTACT INFORMATION:

Monitor Information:

Name: [redacted]

Pa. Supreme Court Identification Number: [redacted]

Telephone: [redacted]

Address: [redacted]

Email: [redacted]

Guardian Information:

Name: [redacted]

Telephone: [redacted]

Address: Refa: [redacted]

Email: [redacted]

Ward Information:

Name: [redacted]

Telephone: N/A

8-19-21

Address: [redacted]

Email: N/A

SUMMARY OF MONITOR'S OBSERVATIONS

SEE ATTACHED 4/30/26 [redacted]

In the Matter of [redacted], an Incapacitated Person, No. [redacted]

[redacted] MONITOR'S OBSERVATIONS- **April 30, 2026**

For my 2026 visit, I met with [redacted] her sisters and guardians [redacted] and [redacted] and sister/caretake [redacted] on Thursday, April 30 at [redacted] home. She continues to reside at her family home with [redacted] and her partner [redacted]

In contrast to the last visit, [redacted] was much more conversant with me. I attribute this to being in the comfort of her own home and my deliberate effort to ask questions directly to her an converse with her. [redacted] appeared to be clean, with her hair recently done. There was plenty of food in the house.

[redacted] is now 67. She was able to tell me her age by calculating from her birthday, which was really interesting to see. She is in great health and hasn't had any health issues besides common colds. She has an upcoming annual wellness check, which includes a memory check. She has had some dental issues and she is going to the periodontist next Tuesday due to bone loss. The plan is to remove three teeth on the bottom and put a partial bridge in place. They are also going to pull a broken tooth.

[redacted] continues to enjoy doing puzzles with [redacted] During my visit, she was completing a 1000 piece puzzle featuring pop icons and historical references from the 1980s. I was able to observe [redacted] identifying matches and placing pieces, and we collaborated on a few together. [redacted] enjoys eating the deer meat harvested by [redacted], who is now retired. They have not done any travelling as previously planned.

[redacted] also likes Cheese Puffs from Utz. [redacted] shared that she was excited for Friday since that's the day she does laundry, which she does on her own. She shared that she got a new TV for her room. [redacted] continues to be at the center of family life. [redacted] shared that she continues to cook for holidays because that's what their parents did and she wants to continue for [redacted]. The family is planning on a bedroom makeover for [redacted] this year- paint, a new bed, and new curtains.

Guardians

[redacted] health has continued to be a challenge in the past year, but is currently feeling much better. She continues to think about the future, and [redacted] is now in charge of completing the reports. They have not submitted their 2026 report yet. Otherwise, [redacted] and [redacted] are content service as guardians and are committed as a family of continuing to care for [redacted] throughout her life.

Finances

[redacted] continues to be well provided for through her Special Needs Trust which totals approximately $130,000. Based on the records provided to me, it appears she has a CD (Acct. ****4669) with a balance of $61,236 with a maturity date of August 25, 2027. She also has a Money Market Account (****8744) which has a balance of $69,184 as of 4/29/26, which the maturation of the second CD. [redacted] did not renew the CD because she would like to have more of the money available for the upcoming dental work, which is reasonable. There is also a Checking Account in [redacted] name at Truist with a balance of $2,781.22 ($1,594.00 after deductions for Medicare), which is used for her regular expenses and is where her Social Security is deposited. For 2026, her SSI is $1,796.90 based on COLA increase.

A rental house nearby remains a source of additional income for [redacted]. The guardians have not proceeded with repairs to the house previously mentioned but still plan to make these repairs. I encouraged them to maintain the house to preserve its value.

[redacted]

IN THE MATTER OF: [redacted]

	: IN THE COURT OF COMMON PLEAS
	: DAUPHIN COUNTY, PENNSYLVANIA
	:
	: ORPHANS' COURT DIVISION
Incapacitated Person	**: NO.** [redacted]

SUMMARY REPORT OF PRO BONO MONITOR

I, [redacted], the undersigned monitor, duly appointed by the court, aver that I have met with the guardian and ward (and if not, the reasons therefore are stated below), and aver as follows:

The undersigned monitor assesses the ward's care as:

☒ EXCELLENT: care is markedly better than adequate, beyond meeting the basic needs of the ward.

☐ SATISFACTORY: care is adequate to meet the basic needs of the ward.

☐ MARGINAL: overall care or specific areas of care are less than adequate but not dangerous to the ward.

☐ UNACCEPTABLE: inadequate care is causing or about to cause harm or a serious negative effect on the ward's health or welfare; remedial action is required.

The undersigned monitor requests/recommends the following (please specify: possible recommendations include no further action; a monitor follow up visit; court orders directing specific action; court order referring to another agency; court order setting a hearing; court order appointing new guardian; court order terminating guardianship.

The undersigned monitor submits the following additional comments: See Attached.

Respectfully submitted,

[redacted]

Date: 7/8/2026

7-15-15

IN THE MATTER OF: [redacted]
[redacted]

: **IN THE COURT OF COMMON PLEAS**
: **DAUPHIN COUNTY, PENNSYLVANIA**
:
: **ORPHANS' COURT DIVISION**
Incapacitated Person : **NO.** [redacted]

PRO BONO MONITOR'S NOTES FOR SUMMARY REPORT

WARD INFORMATION: Date of Contact: July 7, 2026

In person: ☒ phone: ☐ No contact: ☐ If no contact, please explain:

Age: 23, Born 6/5/03 Sex: M Marital Status: Single

Guardianship: Person: ☐ Estate: ☐ Both: ☒
Other: ☐ If other, please explain:

Reason for guardianship: Intellectual Disability ☒
Alzheimer's/Dementia/Related Disorders ☐
Chronic Mental Illness: ☐
Chronic Alcohol/Drug Use: ☐
Head Injury/Stroke: ☐
Other (please specify): ☒ Seizure Disorder.
Unknown: ☐

Annual Income:	Size of Estate (Real/Personal Property):
☐ under $10,000	☐ under $15,000
☒ $10,000-25,000	☐ $15,000-25,000
☐ $25,000-50,000	☐ $25,000-50,000
☐ $50,000-100,000	☐ $50,000-100,000
☐ over $100,000	☐ over $100,000
☐ cannot determine	☐ cannot determine

Monthly pension, annuity, government benefits received monthly (indicate amount and source:

1. $994 a month, Social Security Disability
2. $1176 a month, withdrawal from Able Account

7-15-15

MONITOR OBSERVATIONS: Please record any observations/concerns that may be helpful to the Court: See attached

ASSESSMENT OF WARD: EXCELLENT - SATISFACTORY - FAIR - POOR - UNKNOWN

Physical health ☒ Excellent ☐ Satisfactory ☐ Fair ☐ Poor ☐ Unknown
Emotional health ☐ Excellent ☒ Satisfactory ☐ Fair ☐ Poor ☐ Unknown
Intellectual function ☐ Excellent ☐ Satisfactory ☐ Fair ☒ Poor ☐ Unknown
Living situation ☒ Excellent ☐ Satisfactory ☐ Fair ☐ Poor ☐ Unknown

RESPECTFULLY SUBMITTED,

[redacted]

Date: 7/8/2026

CONTACT INFORMATION:

Monitor Information:

Name: [redacted]

Pa. Supreme Court Identification Number: [redacted]

Telephone: [redacted]

Address: [redacted]

Email: [redacted]

Guardian Information:

Name: [redacted]

Telephone: [redacted]

Address: [redacted]

Email: [redacted]

Ward Information:

Name: [redacted]

7-15-15

Telephone:

Address: Same

Email:

Addendum to 2026 Guardianship Monitor Report for [redacted]

I met with the ward [redacted] and guardian [redacted] for the second time in the home they share in an upscale residential neighborhood in Lower Paxton Township. The home is beautiful, clean and spacious. [redacted] sister [redacted], age 19, is attending Kutztown University and was staying in the home when I visited. Also at the home was [redacted], [redacted] mother and [redacted] grandmother. [redacted] lives minutes away and provides a great deal of care to [redacted] (see below). Everyone was welcoming and extremely cordial.

[redacted] was tragically stricken with a seizure disorder when he was six years old that has caused profound disability, mental and physical. He continues to have daily seizures. [redacted] was having a much better day this year than when I met with him last year. He was alert and animated, and we talked about the Phillies for a few minutes. I think I underestimated his mental capacity following the visit last year as a result of his condition on that day, but he cannot read or write and it is clear that the guardianship will need to continue for the rest of [redacted] life absent an incredibly dramatic medical breakthrough.

[redacted] loves sports, and his bedroom is festooned with a great deal of sports memorabilia. [redacted] did indicate that his mother takes good care of him and he is happy where he is. It is hard to envision a more ideal living situation for him. I saw a lot of closeness between [redacted] and [redacted] this year, and they even headed out to pick up takeout food together at the end of our visit.

[redacted] financial situation has now become much more stable than when I reported last year. [redacted] retired after 26 years working with the Pennsylvania House of Representatives in order to be able to care for [redacted] full-time. As a full-time caregiver, [redacted] now receives a little under $1,700 every two weeks in County CMU assistance, and [redacted] receives half of that every two weeks as a part-time caregiver. So far, the funding has not been affected by federal budget cuts to the Medical Assistance program. As noted in the main report, [redacted] receives $994 a month in Social Security Disability benefits. As part of their divorce proceedings, [redacted] and her ex-husband, [redacted] combined separate 529 plans and converted them into an ABLE account controlled by [redacted] She withdraws $1176 a month from that to help support [redacted]. She is confident that she will be able to withdraw that amount from the account indefinitely. [redacted] does not provide any support.

[redacted] continues to struggle with his personal issues. He is currently incarcerated for violating a PFA , and gun charges, [redacted] believes. He will be released later this year. He has attempted to reach [redacted] by telephone on several occasions, but [redacted] has shown no desire to talk to him, according to [redacted]. [redacted] suggested to [redacted] that he write to [redacted] from prison and he has done so. [redacted] reads the letters to [redacted] to the extent their contents are appropriate. [redacted] did not indicate a desire to respond to the letters, but he recently agreed to sign a birthday card to his father for his 50th birthday expressing his love, which [redacted] mailed on his behalf. [redacted] has a long way to go, obviously, before he could rekindle a relationship with his son, if he really wants one, but I will continue to monitor the situation in future visits.

SESSION #6

“Ethics of Estate Planning and Administration”

Presented by:

Thomas P. Gacki, Esquire

Ethics in Estate Planning and Administration—Thomas Gacki, August 5, 2026

I. Who is the client?

   A. Estate Administration

      1. Representing a fiduciary

      2. Division of labor

      3. Fees—Percentage vs. Hourly

   B. Estate Planning

      1. Husband and Wife

         a. Second Marriages

         b. Separate Counsel?

         c. Pre-nuptial and Post-nuptial agreements

      2. Powers of Attorney and Guardianships

   C. Representing Beneficiaries

II. Clients with Diminished Capacity

   A. Model Rule 1.14 (a), Comment 2

   B. Taking Protective Action

   C. Emergency Legal Assistance

III. Fiduciary Negligence or Misconduct

IV. Other Relevant Model Rules

V. Golden Rules of Estate Administration/War Stories

1.14 Client with Diminished Capacity

1. When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
2. When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
3. Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Comment:

1. The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.
2. The fact that a client suffers a diminished capacity does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.
3. The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the

presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

4. If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

Taking Protective Action

5. If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

6. In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

7. If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

8. Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

9. In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take

legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

10. A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

1.16 Declining or Terminating Representation

1. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
    1. the representation will result in violation of the Rules of Professional Conduct or other law;
    2. the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or,
    3. the lawyer is discharged.
2. Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
    1. withdrawal can be accomplished without material adverse effect on the interests of the client;
    2. the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
    3. the client has used the lawyer's services to perpetrate a crime or fraud;
    4. the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

5. the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
6. the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or,
7. other good cause for withdrawal exists

3. A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

4. Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Comment:

1. A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment [4].

Mandatory Withdrawal

2. A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

3. When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The

court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

4. A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

5. Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

6. If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

7. A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

8. A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

9. Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

4.3 Dealing with Unrepresented Person

1. In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested.

2. During the course of a lawyer's representation of a client, a lawyer shall not give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the lawyer knows or reasonably should know the interests of such person are or have a reasonable possibility of being in conflict with the interests of the lawyer's client.

3. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer should make reasonable efforts to correct the misunderstanding.

Comment:

1. An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13(d).

2. The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own

view of the meaning of the document or the lawyer's view of the underlying legal obligations.