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### Unified Judicial System of Pennsylvania Coronavirus Information

The Pennsylvania Judiciary has provided <u>updates</u> regarding local court operations and proceedings. The Court continues to monitor developments regarding the spread of the coronavirus (COVID-19) and its impact on court operations.

Contact your local court for more information or <u>visit their website</u>. Learn more about <u>filing emergency</u> <u>PFAs</u> during this pandemic. You can also learn more about mitigating the spread of the virus at <u>Health.pa.gov</u>.

# From the Chair

I wish to convey one important message in this month's newsletter – please complete your annual attorney registration on or before July 1. The registration <u>site</u> hosted by the Unified Judicial System opened to all attorneys eligible to register on April 26, 2021. The Board strongly urges you to complete your registration by the July 1 deadline to avoid the imposition of any late payment penalties or, in the worst case, administrative suspension of your license. Of note, more than 61% of attorneys have completed registration by June 15, 2021.



The Administrative Office of Pennsylvania Courts (AOPC) compiled

Pennsylvania data on identity theft offenses over a 5 year period. You can find the infographic developed by the AOPC in the <u>Around the Court</u> section of our newsletter. To learn more about uncovering and reporting identity theft, visit the <u>Department of Revenue's ID Theft Victim Assistance</u> page.

On May 21, 2021, <u>former Chief Justice Stephen A. Zappala, Sr. passed away</u> at the age of 88. As Chief Justice Max Baer wrote in his statement, "The Court has lost a great member and leader in former Chief Justice Zappala. He will be sorely missed by those who worked with him and those who followed him on the Court." Our heartfelt condolences go out to his family.

Jack P. Goodrich

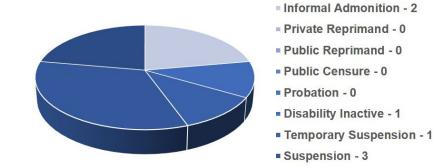
# Annual Attorney Registration

2021-2022 Registration Due By July 1





May 2021



Disability Inactive Pa.R.D.E. 301 Kristine W. Holt

> Suspension Debra L. Ackerman Barry Jay Beran Timothy Robert Hough

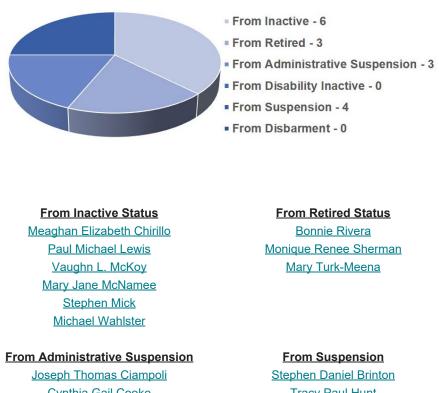
Temporary Suspension Diane L. Rohrman

Disbarment - 2

Disbarment Ernest Paul Francis Kenelm L. Shirk, III







Cynthia Gail Cooke Kimberley Ann Scarborough <u>Stephen Daniel Brinton</u> <u>Tracy Paul Hunt</u> <u>Angeles Roca</u> <u>Dawn A. Segal</u>

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

# Upcoming Public Proceedings

We encourage you to observe our public disciplinary and reinstatement hearings, oral arguments, and public reprimands on the <u>Board's YouTube channel</u>. View "Upcoming Public Proceedings" at the bottom of the Board's home page, <u>www.padisciplinaryboard.org</u>.

June

June 17 - John Anthony Costalas - Reinstatement Hearing June 24 - Charles M. Naselsky - Reinstatement Hearing

July

July 7 at **10 am** - Jay Marc Berger - Oral Argument July 13 - Sandra Couch Collins - Reinstatement Hearing July 14 - Patrick O'Hare Regan - Reinstatement Hearing July 15 - Paul Christopher Dougherty - Public Reprimand July 15 - Michael B. Howard - Public Reprimand
July 15 - Shawn Kendricks Page, Sr. - Public Reprimand
July 15 at **10:15 am** - Robert J. Colaizzi - Oral Argument

#### August

August 2 - John Michael Pisanchyn, Jr. - Dispositional Hearing August 3 - John Michael Pisanchyn, Jr. - Dispositional Hearing August 10 - Peter Richard Henninger, Jr. - Disciplinary Hearing August 11 - Peter Richard Henninger, Jr. - Disciplinary Hearing

### September

September 29 - Erik Benjamin Cherdak - Disciplinary Hearing September 30 - Erik Benjamin Cherdak - Disciplinary Hearing

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

## Vacancies

The Supreme Court of Pennsylvania is aided by select boards, committees, commissions, and councils consisting of more than 180 appointed volunteers - most, but not all, are lawyers and judges. The panels have a wide range of responsibilities and functions. Some make recommendations to the Court for amendments, revisions, or simplification of court procedural rules. Others regulate the practice of law, oversee continuing legal education for lawyers, and administer funds to assist individuals unable to pay for legal services. Still others advise on keeping the courts free of bias and discrimination and on long-range planning.

#### There are currently vacancies on the following panels:

- <u>Domestic Relations Procedural Rules Committee</u> There is <u>one</u> position available. Applicants should be knowledgeable about the Pennsylvania Rules of Civil Procedure governing domestic relations matters, and experienced in family law practice in Pennsylvania.
- IOLTA Board There is <u>one</u> position available. Applicants should be familiar with legal practice and procedure in Pennsylvania federal or state courts. Experience with financial institution practices is also beneficial. Applicants should have an understanding of and/or appreciation for the delivery of civil legal aid to the indigent.

### **Application Instructions**

If you would like to be considered to serve on a board, committee, advisory group, or related independent entity, email the <u>application</u>, cover letter, resume, and other pertinent information expressing your reasons of interest to <u>SCApplications@pacourts.us</u>. Application information may be found on the <u>Unified Judicial System of Pennsylvania</u> website.

Applications are due by June 30, 2021

# Rules

### Disciplinary Board Proposes Amendment to Confidentiality Rule for LCL Referrals

The Disciplinary Board has published a proposed rulemaking that would amend <u>Rule 402 of the</u> <u>Pennsylvania Rules of Disciplinary Enforcement</u>, concerning confidentiality, to allow Disciplinary Counsel to refer lawyer-respondents to <u>Lawyers Concerned for Lawyers of Pennsylvania</u> when issues of mental health or substance abuse are apparent. The proposal is published at <u>51 Pa.B. 2486</u> (5/8/2021).

The proposed amendment would add a new Subsection (d)(4), which states:

(d) This rule shall not be construed to:

Prevent the Office of Disciplinary Counsel from making an informal referral of an attorney to Lawyers Concerned for Lawyers of Pennsylvania, Inc. (LCL-PA), if Disciplinary Counsel believes that the attorney may benefit from the services of LCL-PA. Disciplinary Counsel may share with LCL-PA information deemed confidential under these Enforcement Rules as part of the referral. LCL-PA shall not report information about the subject attorney to Disciplinary Counsel or to any staff of the Office of Disciplinary Counsel. The fact that a referral was made and its outcome shall not be relevant for any purpose and may not be considered or disclosed by Disciplinary Counsel in any proceeding under these Rules.

The amendment also amends  $\underline{\text{Rule } 402(c)(3)}$  to clarify that proceedings leading to temporary suspension based on a criminal proceeding shall be public.

Comments may be submitted until June 14, 2021, to:

The Disciplinary Board of the Supreme Court of Pennsylvania 601 Commonwealth Avenue, Suite 5600 PO Box 62625, Harrisburg, PA 17106-2625 Facsimile number: (717-231-3381) Email address: <u>DBoard.Comments@pacourts.us</u>

# Disciplinary Board News

# Christopher M. Miller, Esq. and Hon. Robert L. Repard Reappointed Members of Pa. Disciplinary Board

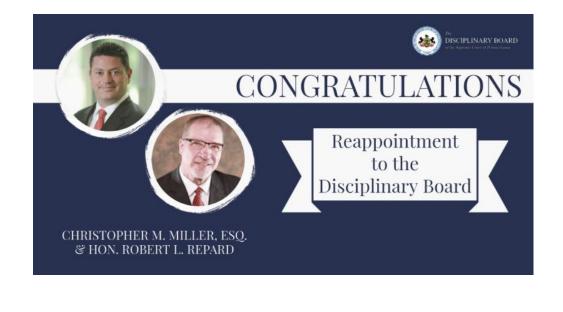
On June 11, 2021, the Disciplinary Board announced the <u>reappointments</u> of Allegheny County attorney Christopher M. Miller and Tioga County Magisterial District Judge Robert L. Repard as members of the Board. Both members were first appointed to the Disciplinary Board in 2018. Their reappointments are effective September 1, 2021.

**Christopher M. Miller** is a founding partner of the law firm of DelVecchio & Miller, LLC, located in Pittsburgh. He earned his bachelor's degree from the University of Pittsburgh and his law degree from Widener University Delaware Law School. Mr. Miller is licensed in both Pennsylvania and New Jersey. His practice focuses exclusively on representing victims of personal injury accidents, including motor

vehicle, trucking, premises liability, products liability, dram shop, and other negligence cases. Mr. Miller is an active member of the Western Pennsylvania Trial Lawyers Association, the Academy of Trial Lawyers of Allegheny County, and the Board of Governors for the Pennsylvania Association of Justice.

**Robert L. Repard** currently serves as a Magisterial District Judge in Tioga County. He earned his bachelor's degree from Mansfield University. Mr. Repard spent 26 years with the Tioga County Probation Department, retiring as a supervisor to pursue the office of Magisterial District Judge, assuming that position in January 2012. He is a two-term governor-appointed Commissioner to the County Probation and Parole Officers Firearm Education and Training Commission. In 1989, he was named "Outstanding Law Enforcement Officer" of the year by the Mansfield Area Jaycees, and in 1994, he received the Pennsylvania Juvenile Court Judges Commission Award. A past instructor for the Firearm Education and Training Commission and Harrisburg Area Community College, Mr. Repard is currently an instructor at Penn State's Justice and Safety Institute. He is also a member of the Special Court Judges' Association of Pennsylvania where he serves as Chair of the Constable Relations Committee.

### Read more ...



### Pennsylvania Bar Association Awards Ceremony Held

On Thursday, May 20<sup>th</sup>, the Pennsylvania Bar Association virtually held its 2021 Awards Luncheon amid its Annual Meeting proceedings. Among this year's honorees are four Disciplinary Board Hearing Committee Members and the Board's Executive Director.

**Riley H. Ross, III, Esq.** is the 2020-2021 recipient of the Civil and Equal Rights Champion Award. Honored this year by the Civil and Equal Rights Committee, Attorney Ross is recognized as a highlyrespected community leader and advocate for civil rights across the commonwealth.

Recipients of this year's Diversity and Inclusion Award include **Sharon R. López, Esq. and Jay N. Silberblatt, Esq.** The PBA Diversity Team commended Attorneys López and Silberblatt for their considerable contributions to the PBA Minority Bar Committee Diversity Summit Planning Team and for the group's successful virtual summit focused on diversity, equity, and inclusion within the legal profession.

Nancy Conrad, Esq. is one of seven recipients of the President's Award. Recognized by PBA

President, Kathleen D. Wilkinson, Attorney Conrad is celebrated for leadership in the development of this past year's Diversity and Inclusion Best Practices Series.

Also a recipient of this year's President's Award is **Jesse G. Hereda**, Executive Director of the Disciplinary Board. Executive Director Hereda is honored for his commitment to the Disciplinary Board's partnership with the PBA as well as his leadership in support of PBA initiatives among all Pennsylvania lawyers.

The Disciplinary Board extends its heartfelt congratulations to all who have been recognized this year for their achievements in the legal profession.

For a complete list of this year's winners, visit the Pennsylvania Bar Association's website.



### Nancy Conrad Sharon R. López Riley H. Ross, III Jay N. Silberblatt Disciplinary Board

Disciplinary Board Hearing Committee Members

### Jesse G. Hereda

Disciplinary Board Executive Director

## CDC Corner

### Confidentiality in the Attorney Disciplinary System – Part One

What is confidential within the attorney disciplinary process and from whom is complicated. This month, we'll explain how confidentiality works from the receipt of a complaint through either dismissal or the imposition of "private" discipline - our system's lower forms of discipline, namely, an informal admonition or a private reprimand, <u>Pa.R.D.E. 204(a)</u>.

While the Office of Disciplinary Counsel (ODC) can open some investigations on its own initiative, most originate with a complaint submitted in writing or online by a member of the public. They aren't "filed"; they are not a pleading that starts a formal action; they do not require a response. They are merely a request that ODC investigate.

Complaints are confidential both from the public and from the accused attorney until formal proceedings commence - which is after the filing of a petition for discipline that seeks some form of public discipline, i.e., a public reprimand, public censure, suspension, or disbarment. See <u>Pa.R.D.E. 209(a)</u>. A proposed change would extend the complaint's confidentiality, from both the public and the respondent, "Unless and until formal charges are filed and the complainant is designated as a witness at the pre-hearing conference, or Disciplinary Counsel determines that the complaint contains exculpatory material..." Even then, the Hearing Committee may issue a protective order against disclosure to the public. See <u>51 Pa. Bulletin 1128</u>. Another change authorizes the Disciplinary Board to provide public

access to the complaint at any stage in the interests of justice. Id. (proposed Pa.R.D.E. 402(d)(4)).

Complainants have a First Amendment right to publicize and discuss their complaints (*Stilp v. Contino*, 613 F.3d 405, 413-14 (3d Cir. 2010); *First Amendment Coalition v. Judicial Inquiry and Review Board*, 784 F.2d 467, 478-79 (3d Cir. 1986)(en banc)), and the rules do not attempt to impose any sanction on a complainant who does so (*Collura v. Maguire*, 569 Fed. Appx. 114, 118 (3d Cir. 2014)). The rules do incentivize confidentiality, however: statements to ODC and the disciplinary system enjoy absolute immunity from suit but public statements do not. *See Pa.R.D.E. 209(a)*.

After ODC receives a complaint, we investigate: we interview witnesses, check court records, request documents informally, and subpoena others. Our investigative work product is confidential from the complainant, the respondent, and the public, except to the extent that it is revealed to the respondent in a document requesting his position, <u>D.Bd. Rule 87.7(b)</u>, or in records and statements introduced into evidence at a hearing on formal charges. See <u>Pa.R.D.E. 402(e)(1)</u>. The respondent does not control and cannot waive the confidentiality of our work-product.

The imposition and the fact of the admonition or private reprimand on the respondent is confidential from the rest of the world, with the exception of limited disclosure to the complainant. The respondent can publicize it if he chooses; otherwise, the only way it could become a public record is if it becomes relevant and admissible at a subsequent formal disciplinary proceeding against the respondent on other charges - and then, only if the subsequent misconduct occurred within certain time limits.

<u>Disciplinary Board Rule 87.51</u> entitles the complainant to be informed of the disposition of their complaint. When it is dismissed, ODC sends the complainant a letter which explains the reason for the dismissal so that the complainant can exercise their right to request a reconsideration under <u>D. Bd.</u> <u>Rule 87.9(a)</u>. (We generally do <u>not</u> notify respondents of the dismissal of complaints against them if they are dismissed before we ever notified them that one had been made. <u>Id</u>.) It had been unclear how much ODC or the Board could tell the complainant about the private discipline proposed. A new provision, R.D.E. 402(d)(5), has been proposed to specify that the complainant can be notified as to the particular type of discipline imposed and any conditions attached. See <u>51 Pa. Bulletin 1128</u>.

Thomas J. Farrell Chief Disciplinary Counsel

# Articles of Interest

### Attorney Charged with Political Threats Disbarred on Consent

An attorney who formerly practiced law in Ephrata, Lancaster County, has consented to disbarment four months after he was arrested on suspicion of traveling to Washington, DC to assassinate United States Senators.

Kenelm L. Shirk, III was <u>arrested in Shippensburg</u> on January 21, after his ex-wife reported to police that he threatened to kill her and several United States Senators in a rage over the results of the 2020 presidential election. Investigators say Shirk had an AR-15 rifle, two handguns, "a large quantity of ammunition," rope, gloves, and about \$5,000 in several rolls of \$50 bills when he was arrested at a convenience store near Shippensburg on Jan. 21. He was <u>committed to Chambersburg Hospital for a mental evaluation</u> after the arrest. He has been charged with influencing, impeding, or retaliating against a federal official, and remains in federal custody facing trial in August.

Shirk was disbarred on consent by the Supreme Court of Pennsylvania on May 12, 2021. The contents

of his resignation statement are not public record.

### Judge Swears in Lawyer He Once Sentenced as a Drug Dealer

In 2005, <u>Edward Martell stood before Judge Bruce Morrow</u> of Wayne County, Michigan, to be sentenced on his conviction of selling and manufacturing crack cocaine. He faced a sentence of up to 20 years.

Instead, Judge Morrow sentenced Martell to three years of probation and challenged him to become a CEO of a Fortune 500 company, rather than a drug dealer.

Martell took up the challenge. Despite some stumbles along the way, he <u>enrolled in community college</u> in 2008 and then attended the University of Detroit Mercy on scholarships for undergraduate and law <u>school degrees</u>.

Over the years, Martell and Morrow kept in touch. When Martell underwent the character and fitness review for the bar, Morrow was among his advisers. Martell submitted an application that was more than 1,200 pages long. The character and fitness board <u>needed only fifteen minutes to review and approve</u> <u>Martell's application</u>. On May 14, Judge Morrow swore in Martell as a Michigan lawyer in Morrow's Wayne County courtroom. He will practice with a Detroit law firm where he worked as a legal researcher.

Judge Morrow said that many people who come before the court on criminal charges have untapped potential. "If you believe like I believe, that there but for the grace of God go you and me... It took some intelligence to get in and out of the kind of trouble he got into. I told him, 'You could be my son. Let's see how far you can go.' And man, he hasn't finished yet."

Zoom Hearing Folly of the Month: Defendant Gets Bounced for Obscene Screen Name

Warning: By its nature, this article contains language some will find indelicate and offensive.

<u>Michigan resident Nathan Saxton</u> was summoned to a Zoom hearing on some charges he was facing. When he logged into the virtual court of Judge Jeffrey Middleton, he did so with a screen name that could charitably be described as indelicate. Judge Middleton asked his name, then asked him "What kind of idiot logs into court like that?"

Judge Middleton exiled Saxton to the waiting room, telling him "You can sit in limbo for a while and think about what you call yourself online." Saxton returned with his screen name changed to his name (misspelled). He explained that his sister set up his Zoom account and as an "inside joke" applied a name he uses for a Bluetooth speaker. Saxton added "I'm embarrassed. I'm sorry," to which the judge answered, "You should be."

## Attorney Well-Being

### Dementia Takes Toll on Aging Legal Profession

Nationally, about 14% of the legal profession is over the age of 65. The rate of diagnosis with dementia in that age group is approximately one in nine. As the ranks of older lawyers grow, the onset of

dementia had become a serious issue, especially among solo practitioners and those without an organizational structure to notice and address their declining abilities.

Bloomberg Law reports the story of Illinois lawyer Bethany McLean, who was thrilled to be hired as an associate by Robert Fritzshall, a solo practitioner who appeared to be in his eighties. McLean quickly noticed that Fritzshall's cases were in disarray. He was missing deadlines, failing to inform clients, and forgetting what he had done on cases. She found that on many occasions he didn't even realize the deadlines had passed. She learned that a sequence of lawyers had served in the same position she had, and quickly resigned. Discussing her concerns with Fritzshall, the Illinois Lawyers' Assistance Program, and the Illinois Attorney Registration & Disciplinary Commission's ethics hotline failed to alleviate her concerns. Finally, she resigned and reported Fritzshall's condition to the disciplinary commission, which brough a complaint that resulted in Fritzshall's transfer to disability inactive status. He died in hospice care two years later at age 86.

Alex Yufik, a forensic psychologist who has worked on disability cases, told Bloomberg Law that lawyers in early stages of dementia are often in denial about the need to stop practicing. They become adept at hiding their conditions, tapping their intellectual reservoirs to redirect conversations when they're confused or unable to answer questions.

Kendra Basner, a lawyer who counsels clients on legal ethics, noted that lawyers often develop "routines, practices, conversational and social skills over many years, which are reinforced and rehearsed over a career to the point where they can function almost automatically."

#### Rule 8.3(a) of the Pennsylvania Rules of Professional Conduct states.

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.

A lawyer who becomes aware that another lawyer is suffering from a decline in cognitive capability such that the lawyer is failing to comply with the Rules of Professional Conduct would be expected to report that information to the Office of Disciplinary Counsel for the protection of the public.

The Board has authority under <u>Rule 301(d) of the Pennsylvania Rules of Disciplinary Enforcement</u> to petition the Supreme Court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness. Lawyers who raise disability in disciplinary proceedings can be transferred to disability inactive status under the authority of <u>Rule 301(e)</u>.



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

### Resource Guide for the Legal Profession During COVID-19

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

Lawyers-only support meetings Peer and staff support & resource coordination LCL resources are free, voluntary, & confidential Free CLE, resources, and information at <u>www.lclpa.org</u> Assessment by a healthcare professional to determine a customized treatment plan, if indicated

# Around the Court



### PA Supreme Court Chief Justice Reflects on the Passing of Former Chief Justice Zappala

Justice Stephen Zappala served as a Justice on the Supreme Court from Jan. 1983 to 2002 and as Chief Justice from Jan. 2002 through Jan. 2003.

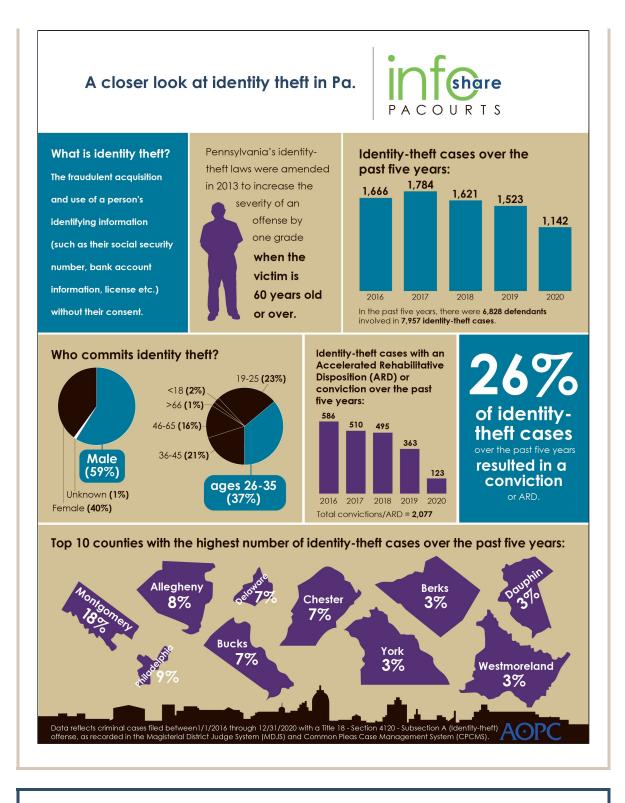
Chief Justice Max Baer recently released the following statement on the passing of former Chief Justice Zappala.

"The Court has lost a great member and leader in former Chief Justice Zappala. He will be sorely missed by those who worked with him and those who followed him on the Court."

### Identity Theft Case Trends in Pennsylvania

Over the last five years, Pennsylvania has seen a mostly gradual decrease in identity theft cases. Identity theft is defined as the fraudulent use of another person's identifying information (social security number, bank account information, license etc.).

The infographic below highlights key data including defendant demographics, identity theft case counts and outcomes as well as county-level data where identity theft is most prevalent.



# From the Pennsylvania Bar Association



The Pennsylvania Bar Association (PBA) can be your go-to partner for help with law practice management, legal ethics, and educational resources. PBA membership benefits include guidance from experts in practice management and ethics.

Ellen Freedman, a certified legal manager with over forty years of practice management experience, provides educational seminars and resources to help attorneys address office management issues, allowing practices to streamline procedures and to provide dedicated service to their clients. Visit the <u>PBA website</u> or <u>contact Ms. Freedman</u> directly to learn more. Ms. Freedman's article on boosting client confidence and loyalty can be found <u>here</u>.

Ethics Counsel, Victoria White, and the PBA Ethics Hotline offer consultation concerning the impact of the provisions of the Pennsylvania Rules of Professional Conduct. It is, however, important to note that the Legal Ethics and Professional Responsibility Committee does not address questions about a lawyer's *past* conduct, disciplinary matters, matters in litigation, or questions of law. To view available formal and informal ethics opinions, visit the PBA <u>website</u>.

Please note that the Disciplinary Board of the Supreme Court of Pennsylvania and the Pennsylvania Bar Association (PBA) are separate organizations. For more information about PBA, visit their <u>website</u>.

# We Want To Hear From You...

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



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Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, PO Box 62625, Harrisburg, PA 17106