



The
DISCIPLINARY BOARD
of the Supreme Court of Pennsylvania

October 2022
Newsletter



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From the Chair

On behalf of the Disciplinary Board of the Supreme Court of Pennsylvania, I offer our deepest condolences to the family, friends, and colleagues of Chief Justice Max Baer. He will be remembered as a champion for equal access to justice in Pennsylvania's communities, and his legacy is one of extraordinary integrity and compassion.

Before his time on the Supreme Court, Chief Justice Baer was appointed Administrative Judge in the Allegheny County Court Family Division where he advocated for the protection and needs of children within the judicial system, a path on which he remained steadfast throughout the rest of his career. His abundant and much-deserved accolades dull in comparison to his significant impact throughout the Commonwealth and on its most vulnerable residents.

Chief Justice Baer's singular warmth, humility, and fortitude are an example to all in the legal profession and those dedicated to public service. It has been a true privilege to serve under his esteemed leadership, and I will be forever grateful for his guidance and support.

Justice Debra Todd now becomes Chief Justice of Pennsylvania. The first woman to hold this position, the significance of this occasion cannot be overstated. I greatly look forward to continued progress and success under her leadership. Chief Justice Todd shares Chief Justice Baer's devotion to justice for the most vulnerable citizens of this Commonwealth.

As we near this year's National Celebration of Pro Bono, to be observed October 23rd-29th, let us emulate Chief Justice Baer's commitment to the advancement of *pro bono* efforts throughout Pennsylvania. The availability of free, high-quality legal services has the power to improve our communities, and much remains to be done. In his second open letter to Pennsylvania attorneys encouraging support of *pro bono* legal work, Chief Justice Baer noted, "Pennsylvania is a diverse state, and the range of legal aid and *pro bono* programs highlights that diversity. Recent studies still show that far too many low-income Pennsylvanians receive little or no civil legal aid or *pro bono* support, despite all our efforts, and that society suffers without full access to justice."

Stay well,



Remembering Chief Justice Max Baer



Pennsylvania Chief Justice Max Baer Dies at 74

The Supreme Court of Pennsylvania has [announced](#) that Chief Justice Max Baer died in his sleep on October 1, 2022.

Chief Justice Baer had served on the Supreme Court since 2003, capping a 33-year judicial career. He was due to retire at the end of 2022.

David Max Baer was originally from Dormont, Pennsylvania, son of the owner of a well-known Pittsburgh-area Volkswagen dealer. He wore his Pittsburgh roots proudly, maintaining season tickets to University of Pittsburgh and Steelers games throughout his life.

He received his B.A. from the University of Pittsburgh, his J.D. from the Duquesne University School of Law, and a Masters of Tax degree from Robert Morris College. After stints as a Deputy Attorney General and in private practice, he ran for and won a seat as a judge of the Court of Common Pleas of Allegheny County in 1989. He spent much of his time in that court in the family division and developed a reputation for juvenile court reforms. He proudly wore the nickname "the Fighting Bear", reminiscent of the famous boxer who also bore his name.

Judge Baer earned a reputation as a pragmatic, collegial judge who treated colleagues, court officials, and the bar with respect and cordiality. He had a particular passion for protecting children and families. He was active in philanthropic matters, championing a charity that raised funds to benefit children. He received numerous awards for these efforts, including Adoption Advocate of the Year from the Pennsylvania Department of Public Welfare, Adoption Excellence Award for Judicial Innovation from the Federal Department of Health and Human Services, the Robert S. Steward Award for Distinguished Service to Pennsylvania Families, the Child Advocacy Award for

Legal Contributions Advancing the Welfare of Our Nation's Children, the Judicial Achievement Award for Advancing Pro Bono Activities, the Pennsylvania Bar Association Child Advocate of the Year, the Homeless Children's Education Fund's Champion of Children's Award, the J.N.L. Club, Humanitarian Award for Community Involvement, the Pennsylvania's Council of Mediators' Most Valuable Peacemaker Award, and the Three Rivers Youth Nellie Award for Civic Leadership.

Focusing on retirement, he took particular care to prepare the way for his slated successor, Justice Debra Todd, who now becomes the first woman to hold the position of Chief Justice. Chief Justice Todd issued a statement saying, "This is a tremendous loss for the court and all of Pennsylvania. Chief Justice Baer was an influential and intellectual jurist whose unwavering focus was on administering fair and balanced justice. He was a tireless champion for children, devoted to protecting and providing for our youngest and most vulnerable citizens." He named his predecessor Thomas Saylor as Chief Justice Emeritus, maintained his friendship, and spoke to him on the last day of his life.

Mr. Baer is survived by his wife, Beth; sons Benjamin, an attorney in Philadelphia, and Andrew, a lieutenant colonel in the Air Force; and five grandchildren.

Chief Justice Max Baer Honored in a Public Memorial Service at Duquesne University

Pennsylvania Chief Justice Max Baer was honored in a public memorial service at Duquesne University on October 4, 2022. A native of Pittsburgh, Chief Justice Baer earned his Juris Doctor from Duquesne in 1975.

Among those in attendance were Chief Justice Baer's family and personal friends, all Justices of the Supreme Court of Pennsylvania, judges from courts across the Commonwealth, Governor Tom Wolf and First Lady Frances Wolf, legislators, court staff, and Disciplinary Board Members.

Rabbi Mark Mahler of Temple Emanuel of South Hills offered a prayer to open the service, noting that, in the Jewish tradition, "when a person dies between these holy days of Rosh Hashanah and Yom Kippur . . . it is symbolic of the person's exceptional virtues." He affirmed, "Surely, how true this is [in] the case of Max Baer."

Other speakers included Chief Justice Debra Todd; Duquesne University President Ken Gormley; Justice Kevin Dougherty; President Judge Kim Berkeley Clark of the Allegheny County Court of Common Pleas; Dr. Peter J. Davis, pediatrician and Chief Anesthesiologist at the Children's Hospital of Pittsburgh; and Chief Justice Baer's sons, Benjamin and Andrew Baer.

Chief Justice Todd remarked, "Max's passing is a tremendous loss to our judiciary and to our Commonwealth. His absence creates a terrible void which cannot easily be filled." She spoke of his collegiality, mentorship, and passion for the legal profession. Reflecting on Chief Justice Baer's love for family, Justice Dougherty noted his colleague's unwavering devotion to his own family and the value he placed on family in our communities.

After reading Linda Ellis' poem "The Dash", President Judge Clark articulated Chief Justice Baer's myriad accomplishments in the Allegheny County Court Family Division and his innovative practices in juvenile and family justice. She referenced his many reforms including Pennsylvania's [Children's Roundtable Initiative](#) and its biennial [Summit](#), the [Children's Fast Track](#) rule, and several family engagement initiatives.

A longtime friend of Chief Justice Baer, President Gormley remarked, "[Chief Justice Baer] reveled in lifting others up." Gormley expressed Baer's immense pride in Justice Debra Todd's historic

appointment as Pennsylvania's first woman Chief Justice, sharing that Baer was "certain that she would set a new bar of excellence."

Dr. Davis asserted that Chief Justice Baer lived life to the fullest while Chief Justice Baer's sons, Benjamin and Andrew, closed the service, recalling loving memories of the many lessons, jokes, and values that their father imparted on them, a testament to his dedication to family.

The memorial service was livestreamed by Pennsylvania Cable Network (PCN). A [replay](#) of the livestream is available for viewing.

Administrative Office of Pennsylvania Courts

Pennsylvania Supreme Court Announces Passing of Chief Justice Max Baer

1 October 2022

The Pennsylvania Supreme Court is confirming the sudden passing of Chief Justice Max Baer. Baer died at his home near Pittsburgh. He was 74 years old.

As the justice of longest and continuous service on the Court, Justice Debra Todd now becomes Chief Justice of Pennsylvania.

On behalf of the Court, Justice Todd offered the following statement:

"This is a tremendous loss for the Court and all of Pennsylvania."

"Pennsylvania has lost a jurist who served the Court and the citizens of the Commonwealth with distinction. Chief Justice Baer was an influential and intellectual jurist whose unwavering focus was on administering fair and balanced justice. He was a tireless champion for children, devoted to protecting and providing for our youngest and most vulnerable citizens.

"His distinguished service and commitment to justice and fairness spanned his decades on the bench – first as a family court judge in Allegheny County and eventually as administrative judge in family court before being elected to serve on the Supreme Court.

"On behalf of the Court, we offer our deepest condolences to family, friends, and colleagues of Chief Justice Baer."

Commonwealth Court of Pennsylvania

Pennsylvania Commonwealth Court Reacts to Passing of Pa Supreme Court Chief Justice

1 October 2022

Following the news of the sudden passing of Pennsylvania Chief Justice Max Baer, Commonwealth Court President Judge Renee Cohn Jubelirer released the following statement expressing thoughts and condolences on behalf of the Commonwealth Court.

According to an announcement by the Supreme Court of Pennsylvania, Chief Justice Max Baer passed away unexpectedly at his home near Pittsburgh overnight. He was 74 years old.

"The judges of the Commonwealth Court share in the grief of our colleagues on the Supreme Court at the tragic loss of Chief Justice Max Baer.

"His impact on the judiciary is immeasurable and marked by his moral courage and untarnished reputation for fairness, honesty, and integrity. The Chief personified all that is good about the work and the role of the courts, focusing his life's work on meeting the needs of children and their families.

"Chief Justice Baer was a mentor to so many, who will now go forward and work to carry on his legacy. Our thoughts for peace and healing go out to his family, friends, and colleagues as they mourn his passing."

Pennsylvania Bar Association

PBA President Issues Statement on Passing of Chief Justice Baer

1 October 2022

PBA President Jay N. Silberblatt has issued the following statement on the passing of Chief Justice Max Baer:

"The passing of Chief Justice Baer brings a wave of tremendous sadness to those who had the privilege of working with him and to those who knew him for a well-earned reputation of fairness, kindness and caring.

"Chief Justice Baer led by example. He focused on improving the operations of Pennsylvania's appellate courts, listening intently to members of the bar and acting with purpose to improve the public's and legal professional's interactions with the court.

"Chief Justice Baer was selfless, investing his efforts in making Pennsylvania courts better for all of us. He often shied away from the spotlight, instead focusing on the successes of his colleagues.

"On behalf of the PBA, condolences to Chief Justice Baer's family, his judicial colleagues and to all who had the privilege of knowing him."

Office of Pennsylvania Governor Tom Wolf

Gov. Wolf Issues Statement on Death of Chief Justice Max Baer, Orders Commonwealth Flags to Half-Staff in Honor

1 October 2022

Governor Tom Wolf today issued the following statement on the death of Pennsylvania Supreme Court Chief Justice Max Baer.

"I'm extremely saddened to learn that Chief Justice Baer passed away. He was a respected and esteemed jurist with decades of service to our courts and our commonwealth. I am grateful for his contributions and leadership in the Supreme Court.

"Frances and I send our heartfelt condolences to his loved ones and his fellow justices and colleagues at the Supreme Court of Pennsylvania."

Governor Wolf ordered the commonwealth flag on all commonwealth facilities, public buildings, and grounds fly at half-staff immediately.

Chief Justice Baer served on the Pennsylvania Supreme Court from 2003 to 2022 and was sworn in as Chief Justice in 2021.

The commonwealth flag will be flown at half-staff until sunset on the day of Chief Justice Baer's interment, which has not yet been announced.

All Pennsylvanians are invited to participate in this tribute.

Pennsylvania Legal Aid Network

On the Passing of Chief Justice Max Baer

3 October 2022

Our condolences are with Justice Max Baer's family on his passing. Justice Baer has served our courts and our commonwealth for more than four decades. He leaves behind a legacy of advocating on behalf of Pennsylvania's children and protecting and providing for our youngest and most vulnerable citizens. The Pennsylvania Legal Aid Network is grateful for his contributions and leadership.

Duquesne University President Ken Gormley

An Appreciation: Max Baer, a Judge's Judge, a Lawyer's Lawyer

printed in the Pittsburgh Post-Gazette

1 October 2022

It is with profound sadness that the entire Duquesne University community mourns the loss of Chief Justice Max Baer, our prominent law school alumnus from the Class of 1975.

Chief Justice Baer was a true giant in the legal profession, distinguishing himself first as a judge on Allegheny County Common Pleas Court who revolutionized and modernized its Family Division. He had a special passion for Juvenile Law and dedicated himself, particularly, to protecting young people who were at risk within the legal system.

He was a leading figure on the Pennsylvania Supreme Court, dating back to his election to the high court in 2003, and emphasized collegiality and respect for his fellow justices above all else. As chief justice, he shied away from the limelight but took great pleasure in celebrating the accomplishments of others.

He always led by example as a caring, collaborative colleague who brought the court together to achieve consensus whenever possible. And he presided, with pride, over the 300th anniversary of the Pennsylvania Supreme Court – the nation's oldest court – this past May at an event held at the Constitution Center in Philadelphia.

Chief Justice Baer was a lifelong student of history and treated with reverence the role of the court in our system of government, and his own role in ensuring justice for all citizens. In recent years, he took great joy in naming his predecessor—Thomas G. Saylor—as chief justice emeritus upon

Mr. Saylor's retirement.

And he was extraordinarily proud to be passing over the reins of leadership to Justice Debra Todd, recognizing the historic importance of her becoming the first female chief justice in the history of the court, upon his own planned retirement in December. Indeed, in recent months, Chief Justice Baer was busy laying the groundwork for Justice Todd's installation as chief, expressing repeatedly a strong desire to ensure her success in every way.

On a personal note, Chief Justice Baer has been a good friend for most of my own career, ever since I did work with Chief Justice Ralph Cappy and other members of the court as a young legal scholar writing about Pennsylvania Constitutional Law and the unique contributions of the Pennsylvania Supreme Court.

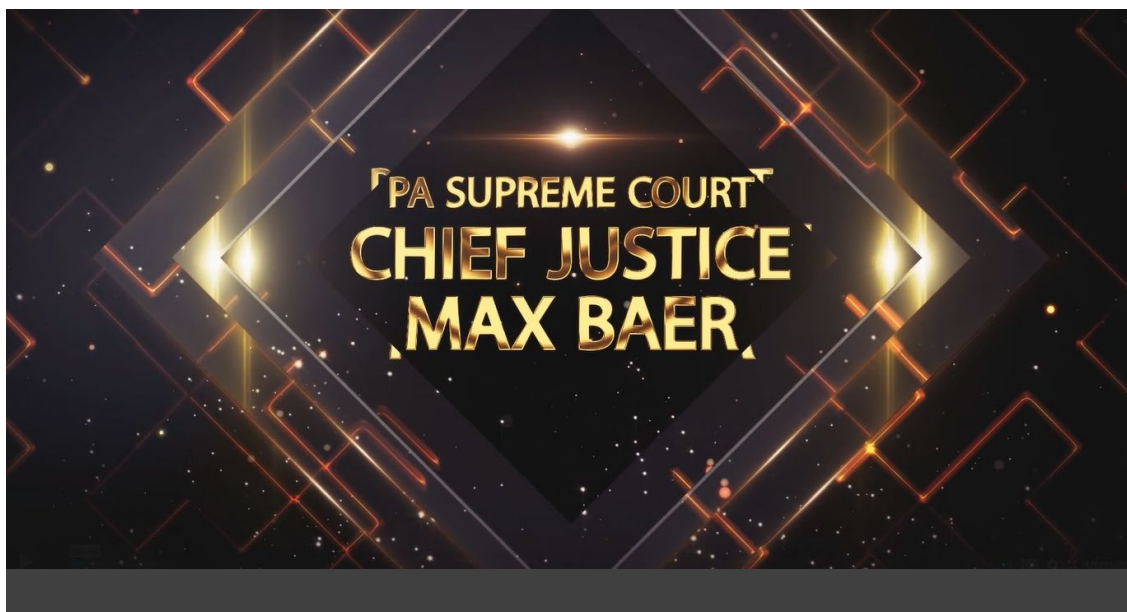
Max was kind, positive, humble, dedicated to the law school where he had gotten his start, and a faithful friend to me and many others whose lives he greatly enriched.

I spent a lot of time talking to Max over the past months. He seemed happier and more content than ever. He was talking about writing a book about juvenile law or family law once he retired, and spending time with his family and grandchildren in California.

Max had no desire to have a fuss made over him. He was happiest when there was no focus on him, even as Chief Justice. But he took particular joy in elevating the accomplishments of others, particularly his colleagues on the court and those who made contributions to the profession.

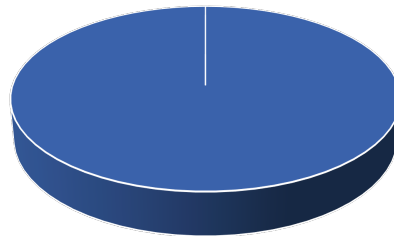
He was sitting in the front row, several weeks ago, as we announced the historic naming of the Thomas R. Kline School of Law of Duquesne University in honor of fellow alumnus and friend Tom Kline. And he wrote me a beautiful handwritten note, earlier this week, saying that participating in this historic occasion that marked an exciting new era for the law school was one of the high-points of his own professional career.

Max Baer was a judge's judge, a lawyer's lawyer, an extremely proud husband, father and grandfather, and a warm, caring human being who believed in the sacred nature of public service and in the solemn responsibility of all lawyers to use the legal profession to do good for others. His loss leaves a massive void in the Pittsburgh legal community, in the national community of jurists, and in the Duquesne family that admired him so much. May he rest in peace.



Discipline Imposed

September 2022



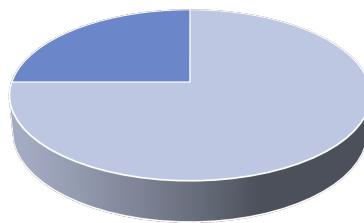
- Informal Admonition - 0
- Private Reprimand - 0
- Public Reprimand - 0
- Public Censure - 0
- Disability Inactive - 0
- Temporary Suspension - 1
- Suspension - 0
- Disbarment - 0

Temporary Suspension

[Jesse M. Cohen](#)

Reinstatements

September 2022



- From Inactive - 3
- From Retired - 0
- From Administrative Suspension - 1
- From Disability Inactive - 0
- From Suspension - 0
- From Disbarment - 0
- Reinstatement Denied - 0

From Inactive

[Christopher Carl Eck](#)

[Jeanette Anne Hahn](#)

[Sarah Seula Kang](#)

From Administrative Suspension

[Christopher Tyler Shannon](#)

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

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:

- [Orphans' Court Procedural Rules Committee](#) – Applicants should be knowledgeable about the Pennsylvania Orphans' Court Rules and experienced in Orphans' court practice in Pennsylvania.
- [Continuing Legal Education Board](#) – Applicants must be active members of the Pennsylvania bar with their primary residency in Pennsylvania. In addition, applicants should be knowledgeable about legal practice and procedures in Pennsylvania state or federal courts.
- [Interbranch Commission for Gender, Racial and Ethnic Fairness](#) – Applicants should have a strong interest in promoting nondiscrimination.

Application Instructions

If you would like to be considered to serve on a board, committee, advisory group, or related independent entity, email the application, cover letter, resume, and other pertinent information expressing your reasons of interest to SCApplications@pacourts.us.

More information may be found on the Unified Judicial System of Pennsylvania [website](#).

Applications are due by Monday, October 31, 2022.

Disciplinary Board News

Honoring a Second Disciplinary Board Milestone in 2022

On March 21, 2022, the Disciplinary Board celebrated its fiftieth anniversary. By Order of the Supreme Court of Pennsylvania dated March 21, 1972, the Board was [established](#) to regulate attorney conduct. Attorney discipline in Pennsylvania, as in most states, has not always been administered by a statewide disciplinary body. [Prior to 1972](#), attorney discipline was largely under the jurisdiction of county courts and bar associations.

During this Golden Anniversary year, the Board honors a second milestone. On November 1, 1972, the sources of disciplinary authority on which Pennsylvania's current attorney disciplinary

system is based became effective. In the five decades since the Board [first enforced](#) its Code of Professional Responsibility, it has prudently developed and evolved its [sources of disciplinary authority](#) to better serve its mission to protect the public, maintain the integrity of the legal profession, and safeguard the reputation of the courts.

To mark this occasion, the Board will issue a special mini-edition of its newsletter on November 1st.

CDC Corner

Ethical Limits on Cross-Examination

Trial lawyers often view cross-examination as an opportunity for creativity and flair, charm, and sarcasm in an effort to undermine witness' credibility and persuade the jury. But there are limits, including ethical ones.

Delilah Evans was a seventeen-year-old girl with a history of mental illness who killed her mother by stabbing her 124 times. She turned herself in to the police and made bizarre statements about witches, dragons, gnats flying from her mother's stomach, and dark angels. Delilah claimed to be one thousand years old. The defense at trial was insanity, a claim supported by two defense psychiatrists, including Dr. Megan Rowland, an employee of the state's Center for Forensic Psychiatry. See *Michigan v. Evans*, 966 N.W.2d 402 (Mich. Ct. App. 2020).

At trial the prosecutor did not introduce any contrary psychiatric testimony, but instead relied on cross examination. Some of it was appropriate and persuasive: he highlighted evidence that Evans acted rationally and with awareness of the wrongfulness of her actions by cleaning up and hiding the knife afterwards and other evidence that Evans falsely and deliberately exaggerated her symptoms in a written psychological test.

But other cross examination was "irrelevant, demeaning, and unfairly prejudicial" according to the unanimous Michigan Court of Appeals. *Id.* at 410. The prosecutor made lengthy speeches that offered his own opinions on the merits, even on Judeo-Christian values, and dared the witness to disagree. The speeches also disparaged Dr. Rowland's qualifications and intelligence in sarcastic terms. He mischaracterized her opinions and accused her of withholding evidence from the jury and even of being unable to distinguish right from wrong. He called her "Lucy" as a reference to the *Peanuts* comic strip character who gave psychiatric advice from her lemonade booth.

Despite the lack of defense objections (which seems more reflective of defense counsel's performance than the merits; the trial court found him ineffective at sentencing in a post-sentencing), the Court reversed the conviction on plain error grounds because of the misconduct in cross-examination.

While some of the Court's opinion dwells on a prosecutor's special obligations to justice, most of the court's rulings and its disciplinary lesson apply to all lawyers, prosecution or defense, civil or criminal, in court or in depositions. One line from the opinion sums it up: "Invective and name calling have no place in a cross-examination." *Id.* at 417. The statement "But it's cross-examination" is no justification for abusing a witness. Insults and abuse violate RPC 4.4(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 . . ."). See *id.* at 416 (citing Michigan's equivalent). When the insult

plays on gender or racial stereotypes or evinces disrespect on those bases, it may violate 4.4, but also the Constitution's Equal Protection Clause. See *Hamilton v. Alabama*, 376 U.S. 650 (1964) (reversing conviction of contempt for a witness who refused to answer prosecutor who addressed her, a Black woman, by her first name); *Evans*, 966 N.W.2d at 414 & n.8 (citing Michigan's equivalent of RPC 8.4(g)).

The prosecutor is now before the Michigan Disciplinary Board on ethics charges.

Thomas J. Farrell
Chief Disciplinary Counsel

Rules

Rule Amendments Address Use of Electronic Technology in Disciplinary Proceedings

By an [Order](#) dated August 19, 2022, published at [52 Pa.B. 5634](#) (9/3/22), the Supreme Court of Pennsylvania adopted [amendments](#) to Rules 205 and 402 of the Pennsylvania Rules of Disciplinary Enforcement, addressing circumstances under which disciplinary proceedings may use electronic technology in lieu of in-person appearances.

A new section 17 is added to [Rule 205](#), which authorizes the Board's use of electronic means to conduct prehearing conferences and post-hearing proceedings before a Hearing Committee, special master, or the Board. All adjudicatory proceedings must still be conducted in-person unless extraordinary circumstances warrant. The testimony of witnesses may be presented by electronic means upon motion for cause shown.

[Rule 402](#), regarding confidentiality of proceedings, is amended to add two subsections under paragraph (j), which prohibits broadcasting, televising, recording, or taking photographs during a proceeding, with certain exceptions.

A new subparagraph (2) provides that public access to a public proceeding before a Hearing Committee, special master or the Board shall consist of or be supplemented by livestream technology which access shall cease upon the conclusion of the proceeding. The transcript produced by the court reporter is still the official record of the proceeding.

A new subparagraph (3) requires that a request for in-person access to a public proceeding other than by the parties, their attorneys and staff must be submitted to the Board at least thirty days in advance of the scheduled proceeding.

These amendments took effect September 18, 2022.

Upcoming Public Proceedings

We encourage you to observe our public disciplinary and reinstatement hearings, oral arguments, and public reprimands on the [Board's YouTube channel](#). You can also view "Upcoming Public Proceedings" at the bottom of the Board's [home page](#).

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

October		
October 25 October 26	James P. Miller	Disciplinary Hearing
October 27	Glenn Paul Cummings	Disciplinary Hearing
November		
November 2 November 3	Louis Alfred Piccone	Reinstatement Hearing
November 16	Brian Frederick Levine	Disciplinary Hearing
November 29	Matthew J. Reusing, Jr.	Reinstatement Hearing
November 30	Michael Eric Adler	Disciplinary Hearing
December		
December 1	Michael Eric Adler	Disciplinary Hearing
December 13 December 14	Craig B. Sokolow	Reinstatement Hearing
January		
January 5 January 10	Gary Scott Silver	Disciplinary Hearing
January 11 January 12	Anthony C. Cappuccio	Reinstatement Hearing
January 23 January 24 January 25	Joseph D. Lento	Disciplinary Hearing
January 31	Lawrence E. Bolind, Jr.	Disciplinary Hearing
February		
February 3 February 15	George Paul Chada	Disciplinary Hearing
February 21	Ashley Drue Martin	Disciplinary Hearing
March		
March 6 March 7 March 8	Patrick C. Carey	Disciplinary Hearing
To Be Scheduled		
George W. Bills, Jr. - Public Reprimand		
Richard E. Bower - Public Reprimand		
John T. Lynch, Jr. - Reinstatement Hearing		
Laurence Anthony Narcisi, III - Public Reprimand		
Anthony Hugh Rodriques - Public Reprimand		
James J. Ruggiero, Jr. - Public Reprimand		
Steven Ronald Savoia - Public Reprimand		
Timothy Nicholas Tomasic - Public Reprimand		
Gina Yvonne Toppin - Disciplinary Hearing		

Articles of Interest

PBA Opinion: Real Estate Settlement Proceeds Must Be Held in IOLTAs

The Pennsylvania Bar Association's Committee on Legal Ethics and Professional Responsibility has issued [Formal Opinion 2022-200](#) in which it addresses the handling of real estate settlement proceeds. The Committee concluded that under [Rule 1.15 of the Pennsylvania Rules of Professional Conduct](#), attorneys must deposit any funds received while conducting real estate settlements into their IOLTA accounts, and may not deposit those funds into non-IOLTA accounts unless the funds are Nonqualified Funds which must be deposited in non-IOLTA accounts.

The Committee concluded that real estate settlement funds, which are normally distributed at or immediately following the settlement, are "Qualified Funds" within the definition of Rule 1.15(a)(9), which defines "Qualified Funds" as "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." Rule 1.15(m) states that "All Qualified Funds which are not Fiduciary Funds shall be placed in an IOLTA Account." The Committee read these two provisions together, and concluded that "Lawyers must normally deposit real estate settlement-related funds received by the lawyers into an IOLTA Account." The Committee further noted that Rule 104(h)(ii) of the Rules of the Interest on Lawyers Trust Accounts Board, [204 Pa. Code § 81.104](#), reaches the same conclusion, stating, "Conveying accounts/real estate closings: Funds generated from real estate closings are Rule 1.15 Funds. Generally, these funds will be Qualified Funds, as they are held for a short period of time and are not expected to provide income for the Third Party Owner."

The Committee concluded that these provisions apply whenever a lawyer receives real estate settlement funds in the course of a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or fiduciary. If a lawyer is an authorized signatory on a bank account into which settlement proceeds are deposited, then the lawyer must designate the account as an IOLTA account.

The Opinion notes that [Pa.R.P.C. 5.7](#) provides that a lawyer who provides nonlegal services to a recipient that are not distinct from legal services is subject to the Rules of Professional Conduct as to both legal and nonlegal services. The lawyer must deposit real estate settlement-related funds received in a non-legal capacity into an IOLTA Account unless the lawyer communicates to the recipient that the protection of a client-lawyer relationship does not exist or has a reasonable basis to believe that the recipient knows that they are not so protected.

ABA Formal Opinion: Lawyers Litigating Pro Se Must Follow No-Contact Rule

The ABA's Standing Committee on Ethics and Professional Responsibility has issued a significant opinion, [Formal Opinion 502](#), on the actions of lawyers representing themselves in pro se litigation. The Committee, or rather a majority of the Committee, [concluded](#) that the prohibition of ABA Model Rule 4.2 on lawyers contacting represented parties, also applies to the *pro se* lawyer.

Most lawyers are (and should be) well familiar with the requirement of ABA Model Rule 4.2, Transactions With Persons Other Than Clients, which states that "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.” This rule is incorporated into the Pennsylvania Rules of Professional Conduct as [Pa.R.P.C. 4.2](#).

The purpose of the rule, as stated in Comment 1, is to “[contribute] 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.”

The problem is that parties themselves are permitted to communicate with the opposing party without the interposition of that party’s lawyer. Comment 4 states, “Parties to a matter may communicate directly with each other.” The question faced by the Committee was which of these policies prevails when one party is a lawyer representing themselves.

The Committee’s majority concluded that the prohibition on a lawyer bypassing opposing counsel applies even when the lawyer is a party themselves. Although acknowledging that the application of the rule to lawyers acting *pro se* is “less clear,” the Committee stated, “Direct *pro se* lawyer-to-represented person communication in such circumstances can result in a substantial risk of overreaching, disruption of the represented person’s client-lawyer relationship, and acquisition of uncounselled disclosures” and found that the risk outweighed the benefits of party-to-party communication. After reviewing cases holding that a lawyer acting *pro se* is still bound by the requirements of the Rules of Professional Conduct, the majority observed, “Viewed in this light, it is not possible for a *pro se* lawyer to ‘take off the lawyer hat’ and navigate around Rule 4.2 by communicating solely as a client.” The opinion noted that obtaining opposing counsel’s consent for communications is still an option that may be beneficial in some situations.

In an unusual development, two members of the Committee dissented from the majority’s conclusion. The dissenting members pointed to the first words in the rule, stating that it applies “in representing a client”. The majority noted this language as a complicated factor but looked to caselaw to conclude that for purposes of this language, the lawyer still is a client being represented. The dissenting members acknowledged that the majority addressed this issue, but observed it is “unusual for a committee to nullify plain language through interpretation, especially when the committee has jurisdiction to propose rule amendments.” The dissenting members argued, “It is also simply wrong to perpetuate language that was clear but has been made misleading by opinions effectively reading that language out of the rule.” They urged that, since the Committee has the power to propose amendments, it should address the issue by that avenue rather than through interpretation that negates the clear language of the rule.

Attorney Well-Being

Free Online Replay: Lawyers Concerned for Lawyers CLE Event

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

LAWYERS CONCERNED FOR LAWYERS
PENNSYLVANIA

If you or someone you care about is in distress because of alcohol, drugs, depression, anxiety, stress, gambling, or other mental health issues, LCL can help.

1-888-999-1941

www.lclpa.org

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

Resource Guide for the Legal Profession During COVID-19

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

Lawyers-only support meetings

Peer and staff support & resource coordination

LCL resources are free, voluntary, & confidential

Free CLE, resources, and information at www.lclpa.org

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

Around the Court



Advisory Council on Elder Justice in the Courts Issues Its Second Progress Report

Last month, the Supreme Court of Pennsylvania published the [Second Progress Report on the](#)

[Work of the Advisory Council on Elder Justice in the Courts](#). In a [press release](#) from the Administrative Office of Pennsylvania Courts, now-Chief Justice Debra Todd, who serves as the advisory council's Supreme Court Liaison, notes, "As Pennsylvania's population ages, the court system faces an unprecedented challenge to monitor guardianships and protect our vulnerable adults from financial exploitation and abuse. The collective work of this council and our agency partners will become even more critical in changing and saving the lives and protecting the dignity of our elders."

Highlights of the report include the implementation of a Guardianship Tracking System and the progress made toward the Elder Law Task Force's [recommendations](#) to the state and federal governments, victim services providers, bar associations, and the general public. The report also details elder justice issues exacerbated by the pandemic as well as new projects and initiatives administered or supported by the advisory council.

The advisory council and the Office of Elder Justice in the Courts were established by the Court in 2015 to examine needs and difficulties experienced by elder Pennsylvanians and to strengthen the ability of the courts to meet their needs.

From the Pennsylvania Bar Association



Celebrating Pro Bono Work in Pennsylvania

The fourteenth annual National Celebration of Pro Bono will be observed October 23-29, 2022. During the 2022 celebration, the Pennsylvania Bar Association, local Bars, and legal aid programs are holding events across the state honoring the theme of "Law in Everyday Life". The events highlight the ways in which access to legal assistance affects historically excluded and low-income individuals across the country in all aspects of life. As part of this year's celebration, the PBA is educating judges, attorneys, law students, and legal support staff on the need for pro bono assistance, informing the public about the availability of legal services, and assisting individuals with their legal needs.

Pennsylvania has always been a leader in recognizing the work of pro bono providers as it was a PA lawyer, longtime public interest champion Sharon Browning of Justice Talking, who established the program under American Bar Association auspices nearly a decade and a half ago. The PBA holds programs celebrating the pro bono ethic of the Pennsylvania legal community throughout the year, believing that every day is Pro Bono Day!

A major focus of the 2022 Pro Bono Week is [Pennsylvania Free Legal Answers](#), a project of the PBA in collaboration with ABA Free Legal Answers. PA Free Legal Answers allows qualified users to submit questions about civil legal issues and receive answers from volunteer lawyers. When a response is filed by a participating attorney, the user receives a notification by email and can log in to the website to view the answer to their question. To learn more, visit pa.freelegalanswers.org.

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

We Want To Hear From You...

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

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