

Attorney News - August 2017



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This newsletter is intended to inform and educate members of the legal profession regarding activities and initiatives of the Disciplinary Board of the Supreme Court of Pennsylvania. To ensure you receive each newsletter and announcement from the Disciplinary Board of the Supreme Court of PA, please add us to your "safe recipients" list in your email system. Please do not reply to this email. Send any comments or questions to comments@padisciplinaryboard.org.

Pennsylvania Supreme Court Issues New Public Access Policy for Appellate and Trial Court Case Records

Andrea Tuominen, Assistant Court Administrator of Pennsylvania, and David Price, Senior Counsel - IT, Administrative Office of Pennsylvania Courts.

The Supreme Court has approved a new public access policy for case records filed in and maintained by the appellate and trial courts. The policy's adoption marks the Court's continued commitment to making case records open and accessible to the public while safeguarding sensitive, private information contained in those records. The policy becomes **effective January 6, 2018**, allowing a one-year implementation period for the courts, lawyers and court users to prepare for the transition.

The Court's policy, explanatory report, and a chart entitled *Limits on Public Access to the Unified Judicial System of Case Records of the Appellate and Trial Courts* (listing restrictions imposed by existing legal authority) are available on the [UJS website](#).

The policy addresses general standards for access, protocols for making and responding to public access requests, fees, and a procedure for a party, or party's attorney, to seek correction of a clerical error in a case record.

In Sections 7.0 - 10.0, the policy limits the public accessibility of certain information and/or documents found in case files, as well as a few case types. The limitations range from across-the-board restrictions to permitting access only at the courthouse (i.e. no remote access).

Section 7.0 provides that certain information is confidential and not publicly accessible (e.g. social security numbers; for the complete list, please review the policy). To achieve this result, the policy provides that this information must be filed with the court on a separate *Confidential Information Form* attached to the court filing. The *Confidential Information Form* will not be publicly accessible. The Administrative Office of Pennsylvania Courts (AOPC) will be developing this form and publishing it for use by parties and attorneys.

Alternatively, Section 7.0 provides a court may require a party to file two versions of every document with the court -- a *redacted version* and an *unredacted version*. The *redacted version* would not include any of the confidential information specified in Section 7.0, while the *unredacted version* would include the information. Only the *redacted version* of the document would be publicly available.

Section 8.0 establishes that certain documents are confidential and not publicly accessible (e.g. financial source documents; for the complete list, please review the policy). The specified documents were deemed to contain significant amounts of sensitive information such that the only practical solution for safeguarding that information is to make the entire document not publicly accessible. The policy requires that these documents be filed with a cover sheet designated the *Confidential Document Form*; this form will also be developed and published by the AOPC. Any document filed with this form would not be publicly available. However, the form or a copy of it would be publicly accessible.

Exempt from the provisions of Sections 7.0 and 8.0 are filings in cases that are sealed or exempted from public access pursuant to applicable authority. Moreover, these policy sections apply prospectively -- to all documents filed with a court or custodian on or after the effective date of the policy.

Section 9.0 provides *inter alia* that case records concerning certain matters are not publicly accessible in their entirety because there is no method to ensure that all of the sensitive information contained in the case records can be redacted before permitting public access. This policy restricts public access for two types of case records that are currently not protected under existing legal authority: (1) case records in proceedings under 20 Pa.C.S. § 711(9) (pertaining to birth records), *except for the docket and any court order or opinion*; and (2) case

records filed pursuant to 20 Pa.C.S. §§ 5501 - 5555 (concerning incapacity proceedings), *except for the docket and any final decree adjudicating a person incapacitated.*

Section 10.0 provides that certain information, while available at the courthouse for public view, should not be remotely accessible (i.e. posted online). An example of information that falls under this section is case records in family law cases, *except for limited docket information, court orders and opinions.* Also exempted are case records that were remotely accessible by the public prior to the effective date of the policy.

The policy places the responsibility upon parties to a case and attorneys to safeguard confidential information in the documents they file with the courts. With each filing, parties and attorneys will need to certify their compliance with Sections 7.0 and 8.0 of the policy. It is important to note that courts and custodians (e.g. filing offices) are not required to review any filed document for compliance, and any failure to comply with the protocols will not restrict the public's access. However, upon motion or *sua sponte*, a court may impose appropriate sanctions upon a party or attorney for failing to comply with these procedures.

The policy is a result of a multi-year review by a group led by co-chairs Commonwealth Court Judge Renée Cohn Jubelirer and Montgomery County Court of Common Pleas Judge Lois E. Murphy. The work group included judges, court administrators, appellate court prothonotaries, county filing office personnel, representatives from the Pennsylvania Bar Association, the Supreme Court's rules committees and staff of the Administrative Office of Pennsylvania Courts.

The policy was initially published in draft form for public comment in 2015; those responses were considered and changes were made.

The AOPC has established a committee to monitor implementation issues, develop guidance for judges and court personnel, create educational programs and tools to inform the public, litigants and attorneys of the policy's standards. The AOPC is holding education and training sessions on the policy's requirements throughout 2017. While a number of programs have already been held and more will be scheduled, please see the table below for upcoming programs.

For a list of upcoming CLEs addressing this topic, click [here](#).

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Recent Supreme Court Opinion in Discipline Case

The Supreme Court of Pennsylvania published an opinion (and dissent) in an attorney discipline case, [Office of Disciplinary Counsel v. Quigley](#) (June 20, 2017).

Over a period of three years, Quigley engaged in a course of conduct wherein he failed to maintain five clients' funds in his IOLTA account, resulting in significant shortfalls. Among other things, in mitigation, Quigley offered the testimony of a psychologist who described a diagnosis of depression due to personal circumstances. The Hearing Committee rejected the psychologist's opinion, found no mitigation, and recommended disbarment. The Disciplinary Board concurred, recommending disbarment to the Court.

In an opinion written by Justice Sallie Updyke Mundy, joined by Chief Justice Thomas G. Saylor and Justices Max Baer, Debra McCloskey Todd and Kevin M. Dougherty, the Supreme Court accepted the recommendation of the Disciplinary Board and disbarred Quigley. The opinion focused on the question of whether the evidence offered in mitigation by Quigley warranted a lesser sanction. The majority noted that under the standard set in [ODC v. Braun, 553 A.2d 894 \(Pa. 1989\)](#), a respondent seeking mitigation must demonstrate by clear and convincing

evidence that the condition was a causal factor of the misconduct. Citing evidence that incidents of Quigley's misconduct preceded some of the events identified as the sources of his depression, the Court found that the psychologist's testimony fell short of doing so.

Justice Christine Donohue authored a dissenting opinion, joined by Justice David N. Wecht. She noted several additional mitigating factors, including remorse, cooperation, lack of prior discipline, and efforts to make clients whole. Dissenting in favor of a five-year suspension, Justice Donohue wrote that the mitigating evidence offered was more substantial than that in prior cases where the Court had imposed disbarment.

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Disciplinary Board Cautions Public to Avoid Suspended Lawyer

The Disciplinary Board issued a warning to the public to beware of a Philadelphia-based attorney, Harris Roy Rosen, who continued to practice law in violation of a temporary suspension order issued earlier this year.

Rosen, formerly at a South Broad Street address, was placed on indefinite suspension by the Supreme Court effective April 15. Rosen is prohibited from engaging in all law-related activity. The Board's full press release is available [here](#).

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Supreme Court Amends Rules on IOLTA Procedures

By [order dated August 7, 2017](#), the Supreme Court of Pennsylvania amended the Regulations for the Pennsylvania Interest on Lawyers Trust Account Board for [lawyers](#) and the [minor judiciary](#). The changes were published on August 19, 2017, at [47 Pa.B. 4802](#). [1]

Among other things, the amendments provide for new exemptions from the requirement to hold funds in an IOLTA account. To read the amended rules, click [here](#).

[1] "But," you might say, "isn't 'IOLTA account' redundant? Because you're really saying 'interest on Lawyer Trust Accounts account.'"[2] No, it isn't, because the word "accounts" in the acronym "IOLTA" is part of a prepositional phrase modifying the word "interest". "IOLTA" as a whole is an adjectival phrase modifying "account," which is the subject or object of the sentence. The repeated word "account" performs two different functions within the sentence.[3]

[2] As in "the La Brea Tar Pits," which literally means "The the tar pit tar pits."

[3] But, you say, isn't that a confusing structure? Yes, it is, but we do that, because we're lawyers and that's what we do, like quibbling with a perfectly understandable phrase like "IOLTA Account."

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List of Approved Fiduciary Institutions Published

Opening a new account for funds in which a client has an interest? Don't forget that you can't use just any financial institution. Funds must be deposited with an institution approved by the Supreme Court as a trust account depository. You can find the current list [here](#).

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Tip of the Month: Check Your Spam Folder

[A Wisconsin lawyer](#) is seeking to avoid dismissal of his client's case for failure to attend a deposition, as a result of the notice being diverted to his Spam folder.

Comment 8 to [Rule 1.1](#) of the Rules of Professional Conduct, regarding competence, states "to maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology ...**" Lawyers today need to adapt their software and review practices to assure that essential communications, such as notices, are not overlooked.

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New Hearing Committee Members Appointed

Congratulations to the following newly appointed Hearing Committee members:

Kristi Arlene Buchholz*	Philadelphia	Carolyn Rose Mirabile	Montgomery
Robert Martin Cavalier	Philadelphia	Edward H. Rubenstone	Montgomery
Katherine Cole Douglas	Philadelphia	Scott B. Cooper	Dauphin
Gary Robert Gremminger	Philadelphia	Matthew M. Haar	Dauphin
John Joseph McAleese, III	Philadelphia	Scott Thomas Wyland	Dauphin
Arthur Stephen Novello*	Philadelphia	Frank J. Bolock, Jr.	Lackawanna
Riley Henderson Ross, III	Philadelphia	Kathryn Ann Karam	Lackawanna
Robert L. Sachs, Jr.	Philadelphia	Richard M. Goldberg	Luzerne
Louis W. Schack*	Philadelphia	Walter T. Grabowski*	Luzerne
Gregory Michael Stokes	Philadelphia	Neil Taney O'Donnell	Luzerne
Laura A. Cullen	Bucks	Lindsay Sherwood Fouse	Allegheny
Robert B. Mulhern, Jr.	Bucks	J. Christian Hart	Allegheny
Joseph Howard Meltzer	Delaware	Erica Megan Kelly	Allegheny
Nancy Conrad	Lehigh	Lauren Renee Nichols	Allegheny
Anita Sada Alexander	Montgomery	Jay N. Silberblatt	Allegheny
Christina Maria Finello	Bucks	Traci Lyn Naugle	Blair
Kelley Brisbon Hodge	Montgomery	Todd Michael Pappasergi	Washington

*Senior Member

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Kelley Hodge Appointed Acting Philadelphia District Attorney

On July 20, 2017, the Philadelphia Common Pleas Court Board of Judges [elected Kelley Hodge as interim District Attorney](#). Ms. Hodge, a former city prosecutor and current Disciplinary Board appointed Hearing Committee member, will serve the balance of the term of Seth Williams, who resigned. [Hodge was sworn in](#) on July 24, 2017. She becomes the first African-American woman to serve as District Attorney for Philadelphia.

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Attorney Registration Late Fees - Don't Wait!

- August 1- \$200 Late Fee Assessed- NOW DUE
- September 1- Second \$200 Late Fee Assessed

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Lawyers Tell Their Most Unreasonable Client Stories

Would you represent a client who was injured tripping over her cat, and wanted to sue her landlord for not enforcing its no-pets policy? Lawyers [discuss the most absurd cases](#) clients asked them to bring.

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Upcoming Supreme Court Committee and Board Openings

The Supreme Court 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 for The Orphans Court Procedural Rules Committee and The Disciplinary Board of the Supreme Court of Pennsylvania.** For more information and instructions on how to apply [click here](#).

**Note: Positions will be posted on September 1, 2017.

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Got a tip, a link, a correction, a question, a comment, an observation, a clarification, a wisecrack, an idea you'd like to see addressed? We are always glad to hear from you. Please do not reply to this email. Write us at comments@padisciplinaryboard.org.

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