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## Attorney News - April 2017



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### Things to Remember

- **Follow the Disciplinary Board on Twitter**

*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*

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## **Schwager and Leonard Appointed to Lead Disciplinary Board**

The Supreme Court of Pennsylvania has appointed David E. Schwager, Esquire of Luzerne County, as chair and Douglas W. Leonard of Butler County, as vice-chair of the Disciplinary Board of the Supreme Court of Pennsylvania. Both appointments were effective April 1, 2017.

Schwager, who has practiced law for 28 years and is a partner at the law firm of Chariton, Schwager & Malak in Wilkes-Barre, has served on the Board since 2012, most recently as vice-chair.

Leonard is currently the director of consulting services for iMapSolutions and was initially appointed to the Disciplinary Board in 2008 to fill one of its two non-attorney member positions.

The Disciplinary Board was created by the Supreme Court of Pennsylvania to review conduct and assure compliance by all attorneys with the Pennsylvania Rules of Professional Conduct. The Board's mission is to protect the public, maintain a high standard of integrity in the legal profession and safeguard the reputation of the courts of Pennsylvania.

Disciplinary Board members, which include 11 attorneys and two non-lawyers from across the Commonwealth, meet regularly to decide cases, policies and board administrative matters. All members of the Disciplinary Board serve as unpaid volunteers.

"It is humbling to receive the Supreme Court's appointment to serve as chair of the Disciplinary Board," said Schwager. "You realize what a tremendous responsibility the Board, as an arm of our Supreme Court, has in protecting the public from unscrupulous attorneys and in preserving the integrity of the bar and of our legal system. It is gratifying to serve on the Board and work with some of the finest professionals in Pennsylvania."

Schwager's law practice focuses on real estate, title insurance, real estate taxation, business law, commercial litigation, municipal law and creditors' rights. He holds numerous volunteer positions, including treasurer of the Middle District (PA) Bankruptcy Bar Association, member of the board of directors of the Pennsylvania Bar Institute, and life fellow and member of the board of directors of the Pennsylvania Bar Foundation. Schwager serves as treasurer of the Pennsylvania Bar Association (PBA).

A past assistant district attorney for Luzerne County, Schwager is chair of the Kingston Borough Zoning Hearing Board and an assistant Luzerne County solicitor and has represented various municipal authorities and municipalities. He is treasurer of Ecumenical Enterprises, Inc.; president of the B'nai B'rith Apartments Housing Foundation; and a member of the boards of the Greater Wilkes-Barre Chamber of Business and Industry and the Greater Wilkes-Barre Growth Partnership.

Schwager is a graduate of Lafayette College and The Dickinson School of Law. He is admitted to

practice law in all of the state courts of Pennsylvania, as well as the United States District Courts for the Middle and Eastern Districts of Pennsylvania, the United States Court of Appeals for the Third Circuit, and the United States Supreme Court.

Leonard has more than 20 years of experience working with the executives of well-recognized domestic and global companies such as Boeing, Schlumberger, Cobham, NASA, United Launch Alliance, State Farm, Aramark and the Centers for Disease Control as well as many mid-size and smaller organizations.

Leonard has served as an executive in various organizations, including a hospital laboratory software development company, an industrial engineering firm and a Pittsburgh law firm. He was also the executive administrator of the Court of Common Pleas of Allegheny County for six years, serving five terms on the board of directors and one year as president of the Pennsylvania Association of Court Management.

"I am honored by the Court's appointment and am committed to continuing to use my unique background to provide a vastly different perspective to case evaluation and disposition," said Leonard. "In light of my extensive experience in organizational management, I am committed to continuing to work with the Board and the staff to transform the way in which the Board and its offices operate."

Leonard holds a Bachelor's Degree in Management and Economics from the University of Dayton in Ohio and a Master's Degree in Business Administration from Robert Morris University in Pittsburgh.

## Annual Registration: Get Ready for May 8

- Online registration opens on **May 8**. Prior to that date, an email notice will alert attorneys to the start date of registration. Failure to receive a notice does not relieve the obligation to register by July 1. Once an attorney completes the registration process, s/he will no longer receive email reminders.
- Attorneys should not attempt to complete the annual registration process prior to May 8. However, we recommend that attorneys test the log in process on the **UJS Portal** prior to May 8 to ensure that login information is known or, if not known, can timely be recovered.
- The UJS Portal will now enable users to reset both password AND username in the event that the information is lost/forgotten. This function can be found on the log in screen and is accessible any time of the year.
- To ensure a smooth registration process, gather all financial information that is required to be reported. For assistance, please view the **Financial Data Reference Guide**.
- An office/firm that will be using the UJS Portal's proxy method to register multiple attorneys at one time should prepare for that now. Proxies can log into their own UJS Portal account to ensure that all attorneys have designated them as proxy. If you have questions about using this method, please contact the Attorney Registration Office at [atty.registration@pacourts.us](mailto:atty.registration@pacourts.us).
- If you believe that extenuating circumstances prohibit you from being able to comply with the mandatory online registration requirement, please submit such request, in writing, along with

supporting documentation [via mail](#). Requests will be reviewed by the Attorney Registration Office.

- Please be aware that the annual attorney registration fee for active and inactive attorneys has increased for the 2017-2018 registration year. By Order dated February 15, 2017, the Supreme Court of Pennsylvania adopted amendments to Rule 219(a), 219(j) and 502(b) of the Pennsylvania Rules of Disciplinary Enforcement, setting the active annual fee at \$225 and the inactive annual fee at \$100.

### **Important Registration Dates**

**May 8 – Online Registration Portal Opens**

**July 1 – Registration Due Date**

**August 1 – First Late Fee Assessed**

**September 1 – Second Late Fee Assessed**

## **Judicial Conduct Board Issues Statement of Policy on Judicial Disqualification**

In advance of the 2017 judicial elections, the Judicial Conduct Board has issued a policy statement describing circumstances in which judges must recuse themselves or may be subject to disqualification based on the acceptance of campaign contributions. The statement was published March 25, 2017, at [47 Pa.B. 1742](#).

The statement is grounded on [Rule 2.11\(A\)\(4\)](#) of the Code of Judicial Conduct and the Rules Governing Standards of Conduct of Magisterial District Judges. It does not set any specific amount which will require the judge's disqualification, but states, "If the amount of a contribution to a judicial candidate's campaign raises a reasonable concern about the fairness or impartiality of the judge's consideration of a case involving the contributor, disqualification is required." The statement adds that disqualification is not required simply because the amount of a contribution exceeds the amount that must be reported as a gift on the judge's statement of financial interests, but that "a contribution of several thousand dollars will almost always require an analysis of whether disqualification is warranted."

The statement further notes that the provisions of Rule 2.11(A)(4) are subject to informed waiver by the parties, and that disqualification may be avoided if the contribution is disclosed and the parties and their attorneys waive disqualification.

## Allegheny County Bar Offers Ethics Opinions

Last month we mentioned that lawyers seeking ethics advice may be able to obtain ethics opinions from their county bar association. The Allegheny County Bar Association is one which offers an advisory service through its Ethics Hotline. Members of the ACBA may find information on obtaining an ethics opinion [here](#).

## The Self-Defense Privilege: Can You Use Public Information to Respond to Client Criticism?

Suppose your client, dissatisfied with the way her case turned out, posts criticism on the Internet blaming you for the result. You know that anyone who read her deposition or the decision in the case would realize the outcome was her own fault. Can you discuss this contrasting information in a response to her post? An [ethics tip in the ABA Journal](#), relying heavily on a [Pennsylvania Bar Association ethics opinion](#), says no.

**Rule 1.6 of the Rules of Professional Conduct** imposes a duty of confidentiality subject to certain exceptions. It is important to realize that Rule 1.6 is not limited to attorney-client communications; it applies to all “information relating to representation of a client,” including information that is on the public record or otherwise available to the public. The fact that the client’s testimony or a decision based on the client’s actions may be on the public record does not remove that information from the privilege created by Rule 1.6. The information might be available to someone who knows where to look for it, but that does not allow a lawyer to highlight that information in a public setting for his or her own purposes, to the client’s detriment.

Rule 1.6 does contain a “self-defense” exception. Rule 1.6(c)(4) allows a lawyer to reveal information “to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client.” Is this privilege broad enough to allow the lawyer to post a factually specific rebuttal to the client’s allegations of incompetence?

In its [Formal Opinion 2014-200](#), the PBA Legal Ethics and Professional Responsibility Committee addressed this question in detail. The Committee examined the definition of “controversy” and concluded that the expression of contrary views in an Internet forum is not the kind of confrontation that triggers an exception to the lawyer’s duty to maintain client confidences. The Committee points to Comment 14 of Rule 1.6, which notes that a controversy between client and lawyer may “arise in a civil, criminal, disciplinary or other proceeding.” The Committee concluded that an argument on the Internet does not meet the definition of a “proceeding.” The self-defense privilege is not a license for the lawyer to cast aside the duty of confidentiality in response to any kind of criticism.

The Committee notes that a dignified response which does not draw on the lawyer’s knowledge of the facts of the client’s case may be allowed. The Committee suggests as an appropriate response, “A lawyer’s duty to keep client confidences has few exceptions and in an abundance of caution I do not feel at liberty to respond in a point-by-point fashion in this forum. Suffice it to say that I do not believe that the post presents a fair and accurate picture of the events.”

Neither ABA nor PBA ethics opinions are binding on the Supreme Court of Pennsylvania or the

Disciplinary Board, and the discussion of this opinion in this newsletter is not an endorsement or acceptance of the conclusions or reasoning of the opinion. This discussion is intended to help direct practitioners to the rules and concepts that may assist them in resolving ethical issues encountered in their practices.

## Judicial Ethics Opinion: Jurist May Serve as Judge in Beauty Contest

Can a sitting judge serve on the panel judging the Miss America contest? The **Judicial Ethics Advisory Committee of the Supreme Court of Florida** considered that question, and gave the inquiring judge the green light.

The Committee examined several issues, including whether the judge's participation in a beauty contest would "demean the judicial office" or lend the prestige of judicial office to advance private interests. The Committee noted that "A judge is permitted to participate in civic and charitable activities that neither reflect adversely upon the judge's impartiality nor interfere with the performance of judicial duties." It concluded that the Miss America pageant is such an activity. It seemed to be important to the committee that the pageant is a non-profit scholarship program. The panel did caution the inquiring judge to be "mindful in the selection of songs not to denigrate any person or group on the basis of race, sex, religion, national origin, or otherwise ... or give the appearance of impropriety ... or to diminish public confidence in the integrity and impartiality of the judiciary."

One member of the panel dissented, but provided no statement why. We would have loved to see that dissent.

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### Let Us Know

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