

Ethics / Washington

Dear Editor:

I write to correct several inaccuracies in a recent article concerning conservatorships. Please note that the Pennsylvania Supreme Court recently adopted the rule changes and they were published last summer after a lengthy period of review drew only a few comments.

The article describes seven distinct changes in the rules. Five of them are not changes; compensation of the conservator, approval by the Disciplinary Board, staying all procedures and reimbursement of expenses have always been an integral part of the process. The remaining changes are misunderstood by the authors.

The primary obligation of the conservator is to contact clients and return files whether they are active or inactive. The change authorizing notice by publication for files more than five years old will reduce the cost of conservatorships since all clients are presently notified by certified mail.

Finally, the changes do NOT authorize the Office of Disciplinary Counsel to review files for evidence of disciplinary violations, nor is it necessary for the conservator to "understand all kinds of cases being handled by a general practitioner... there are different deadlines re: statutes of limitations, filings..."

The conservator's review of the file is solely to get the name and address of the client, to return the file and to advise the client to secure other counsel as soon as possible. The task is one for a clerk rather than an experienced attorney or Disciplinary Counsel.

We have been fortunate to have many attorneys volunteer their time to assist their fellow attorneys

and their clients when the unexpected occurs. We laud the senior lawyers for their willingness to assist in these endeavors. By focusing our attention on a real problem that may become worse, the article performs a needed service. After many years of experience with conservatorships, however, we believe that the rules that have been approved are the best method of addressing all of the issues. ■

– Paul J. Killion

Chief Disciplinary Counsel, Disciplinary Board of the Supreme Court of Pennsylvania

Dear Editor:

The finest moments for lawyers are sometimes the most difficult ones. What is most clear legally can be most controversial and unpopular in the realm of popular opinion. So it seems with the case of the Philadelphia Municipal Court. Doing the right thing may not be easy, but it nonetheless remains right.

For anyone who missed the controversy, it began in February when Judge Craig M. Washington, while sitting in a makeshift courtroom at the 35th Police District, attempted to run his courtroom like a courtroom, consistent with the Pennsylvania Code of Judicial Conduct. That code requires a judge to conduct court in a manner that promotes public confidence in the tribunal's impartiality, and which avoids the appearance of impropriety. A memorial had been erected at the station to a recently slain officer from that district, John Pawlowski, whose brutal slaying left behind a widow, pregnant with their first child. The memorial was in the room being used as a courtroom and included a prominently displayed photograph of the slain

continued on page 7

The Philadelphia Lawyer

EDITOR-IN-CHIEF

Peter F. Vaira

Editorial Board

Deborah Weinstein
Niki T. Ingram
Kim R. Jessum
Lewis Rosman
Daniel J. Siegel
Jennifer J. Snyder
Justine Gudenas
Arlene Rivera Finkelstein
Steven R. Sher
May Mon Post
David I. Grunfeld
Stephen Robert LaCheen
Harold K. Cohen
John C. Gregory
Richard G. Freeman
April M. Byrd
Emmanuel O. Iheukwumere
Audrey C. Talley
Michael J. Carroll
James Backstrom

Editor Emeritus

Herman C. Fala

Managing Editor

Jeff Lyons

Design

Wesley Terry

Philadelphia Bar Association

CHANCELLOR

Sayde J. Ladov

Chancellor-Elect

Scott F. Cooper

Vice Chancellor

Rudolph Garcia

Secretary

Kathleen D. Wilkinson

Assistant Secretary

Sophia Lee

Treasurer

Joseph A. Prim Jr.

Assistant Treasurer

Wesley R. Payne IV

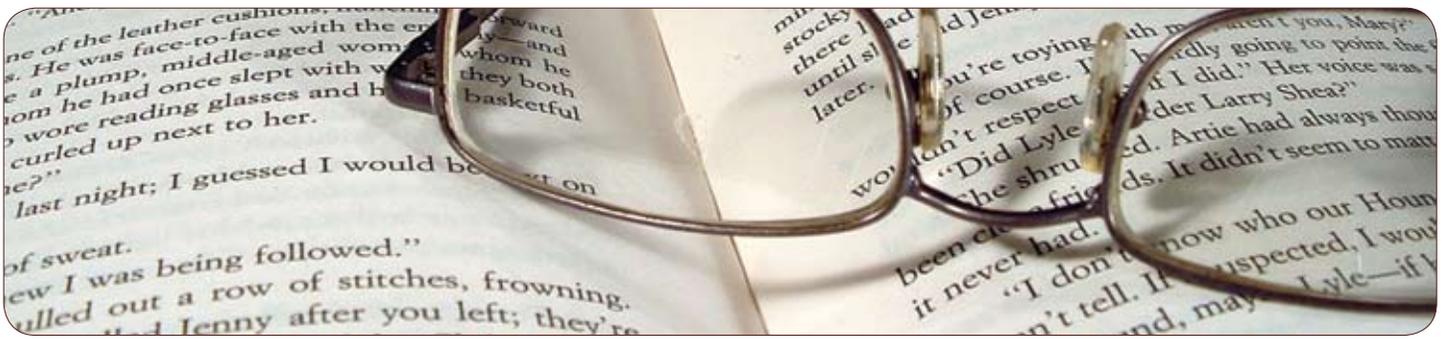
Executive Director

Kenneth Shear

Director of Communications and Marketing

Martha Phan

The Philadelphia Lawyer, printed with soy inks on recycled paper, is published quarterly in March, June, September and December by the Philadelphia Bar Association, 1101 Market St., 11th floor, Philadelphia, Pa. 19107-2955. Telephone: (215) 238-6300. E-mail: tplmag@phila-bar.org. ³Subscription cost for members is \$5 which is included in annual dues, and for nonmembers is \$45 yearly.² The opinions stated herein are not necessarily those of the Philadelphia Bar Association. All manuscripts submitted will be carefully reviewed for possible publication. The editors reserve the right to edit all material for style and length. Advertising rates and information are available from Howard Hyatt, Senior Account Manager, MediaTwo, 1014 W. 36th St., Baltimore, MD, 21211, (410) 828-0120, ext. 834. Periodicals pending postage at Philadelphia and additional locations. POSTMASTER: please send changes to The Philadelphia Lawyer, c/o Philadelphia Bar Association, 1101 Market St., 11th floor, Philadelphia, Pa. 19107-2955



officer. In the judge's opinion, the code required him to remove from display in the courtroom the photograph of the officer. This opinion seems entirely reasonable, if not popular, and should be obviously correct to attorneys. There is certainly reasonable fear that the display, heartfelt though the sentiments behind it undoubtedly are, could undercut the perception of impartiality, with the defense, the prosecution and the public. No one questions the honoring of the fallen officer in the proper setting, which would be almost any other setting than a courtroom.

Since that time, Judge Washington has been vilified in some of the media and in cyberspace. The extremely harsh criticism runs the gamut from wrong, to ugly, to racist. At least part of the problem, as identified by *The Philadelphia Inquirer*, in its editorial on the subject, and by many others, is holding court in makeshift courtrooms in district police stations. The potential for problems of this sort and for the appearance, if not the reality, of something less than complete impartiality may mandate a discontinuation of this practice. While it is obviously more convenient for police and other witnesses to appear in a location in the community rather than having to come to the Criminal Justice Center, perhaps other community space can be leased for this purpose.

Clearing the Record

In the Reader's Forum section of the Spring 2009 edition of *The Philadelphia Lawyer* magazine, trial attorney Garland Cherry, Jr. of Cape May Court House, N.J., was misidentified. In the same article, Joseph Traub was incorrectly listed as a contract attorney. He is an attorney with Raynes McCarty. *The Philadelphia Lawyer* regrets the production errors.

Whatever the systemic changes that are needed to forestall such an incident in the future, the fallout in this instance is being borne by Judge Washington. Through bad luck and bad timing, the judge must stand for a retention election this year. A serious, substantial, well-organized, and apparently well-funded attempt to deny him retention and remove him from the bench is under way.

It is incumbent on individual lawyers and the organized bar to support Judge Washington and by so doing support the concept of an independent judiciary that has the necessary autonomy to decide cases

fairly, and conveys to litigants and the public a strong message that it favors neither one side or the other. The Bar Association cannot be neutral. It has repeatedly taken the position in the past against attacks on the judiciary and in support of judicial independence. It must take the high road in this case, which may be the hard road, but it is most certainly the right road. One of the toughest parts of being a judge – and at times the toughest part of being a lawyer – is rising above the emotion and prevailing opinion of the moment. ■

– Karen Detamore

ATTORNEY DISCIPLINARY / ETHICS MATTERS



Pennsylvania and New Jersey matters • No charge for initial consultation

Representation, consultation and expert testimony in matters involving ethical issues and the Rules of Professional Conduct

James C. Schwartzman, Esq.

Former Chairman, Disciplinary Board of the Supreme Court of Pennsylvania • Former Federal Prosecutor
Former Chairman, Continuing Legal Education Board of the Supreme Court of Pennsylvania
Pennsylvania Interest on Lawyers Trust Account Board

Dana Pirone Carosella, Esq.

Representing attorneys in disciplinary/ethics matters for 13 years • Author/Speaker on ethics matters

1818 Market Street, 29th Floor, Philadelphia, PA 19103
(215) 751-2863