

Friday, June 14, 2024

8:45 a.m.

BREAKFAST WITH THE JUDGES PROGRAM

1 Ethics credit

Grand Ballroom

Presented by the Bench-Bar Conference Program Committee

“Hot Topics”

There are many hot topics percolating in the ethics arena – some new, some old, but all worth discussion.

This program will address numerous ethical issues, including new Code of Conduct Rule 8.4, advice for less experienced lawyers appearing in court for the first time and *ex parte* and unsolicited contact with judges’ chambers and law clerks. This program is designed to give you an opportunity to meet and interact with the judges of the state, county and federal courts.

The format is this: Each table has been given the same four questions. Participants will be given 15 minutes to discuss the first question with your table. You should first appoint one person to act as spokesperson for the table. After 15 minutes, participants will be asked to report out on your discussion.

After the report out, the judge at each table will be asked to get up and move to another table so that more attorneys can interact with you. At the second table, the discussion will commence for the second question with a similar report out.

The following questions will be discussed:

- New lawyers, regardless of age, academic achievement, or prior life experience, are often understandably nervous when presenting to a court for the first time. What are some words of encouragement or advice that you would offer to calm the nerves of an inexperienced attorney who is presenting in your court for the first time? If there is not a judge present at the table, the more experienced lawyers should provide their responses instead.
- Pa. Rule of Professional Conduct Rule 8.4(g) states: It is professional misconduct for a lawyer to, in the practice of law, knowingly engage in conduct constituting harassment or discrimination based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude advice or advocacy consistent with these Rules.

Have you ever been in a circumstance where you thought another lawyer did something that would be considered a violation of this rule? What did you do or what would you do if a lawyer violated this rule? Discuss from both the perspective of a judge and a lawyer.

- A lawyer cannot pick up the phone and call a judge to find out when an opinion will be filed. Rule 3.5 of the Rules of Professional conduct clearly states that “A lawyer shall not . . . communicate with a [judge, juror, prospective juror or other official] unless authorized to do so by law.” Moreover, judges are restrained in similar manner. Rule 2.9 of the Code of Judicial Conduct provides that “a judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter.” Further, Rule 2.5(d) requires judges to “make reasonable efforts,

including providing adequate supervision, to ensure that this rule is not violated by court staff, court officials, and others subject to the judge's discretion and control.”

Is it ever permissible, and if so, under what circumstances, for a lawyer to reach out to a judge's staff and not the judge, ex parte, to inquire with regard to pending litigation?

What about ex parte contact with the judge's staff concerning more prosaic matters, such as an interpretation of chambers policy, or tips for better brief writing?

- Do you think that Chat Gbt is a good resource/tool for lawyers to use when writing briefs or motions to the court? Have you used it as a lawyer or have any of the judges seen it used? Are there ethical pitfalls?

Speakers:

Hon. Michael H. Wojcik, Commonwealth Court of Pennsylvania

Hon. Lisa Pupo Lenihan, Judge Lenihan ADR