



DCBA MEMBER BENEFIT
CLE COMPLIANCE SESSION HANDOUTS

WEDNESDAY, AUGUST 21, 2024

Widener Commonwealth Law School
Room A-180
3737 Vartan Way
Harrisburg, PA

Parking: Please do not park in the small lot directly in front of the administration building.

CAMPUS MAP LEGEND

Numbers on map indicate Building Name & Offices.

- 1 Classroom and Law Library Building, Classrooms, Faculty Offices, I.T.S., Library
- 2 Basketball/Tennis Courts
- 3 Student Activities Offices, Bookstore
- 4 Cafeteria
- 5 **Courtroom Annex/A180**, Classroom, Nursing School, Moot Courtrooms
- 6 Administration Building, Deans, Admissions, Career Development, Business Office, Registrar, Financial Aid, Social Work Program
- 7 Central Pennsylvania Law Clinics



SESSION AGENDA

Widener University Commonwealth Law School
3737 Vartan Way, Harrisburg – Room A-180

- 8:30 – 8:55am – Pick up your registration form at registration table
- 9:00 - 10:00am | Session # 1 | The Future of Administrative Deference After Loper-Bright and Relentless | Professor Guadalupe Luna | Substantive
- 10:15 - 11:15am | Session # 2 | All About the Benjamins - the Financial Aspect of Support | Daniel Bell-Jacobs & Natalie Burston | Substantive
- 11:30am - 12:30pm | Session # 3 | PBA Malpractice Avoidance | Edwin A. Schwartz & Yaël Dadoun | Ethics

LUNCH BREAK

(R&K Subs bagged lunches for those that have registered for the lunch)
Please be sure to take the appropriate sub that you ordered.

- 1:30 - 2:30pm | Session # 4 | Race & Ethnicity Issues & the Law | Assistant Chief Counsels Stacy McNaney & Dana Prince | Ethics
 - 2:45 - 3:45pm | Session # 5 | Understanding DNI and 1041s | Neil W. Yahn | Substantive
 - 4:00 - 5:00pm | Session # 6 | Bankruptcy Basics for the Non-Practitioner | Michael S. Travis & James K. Jones | Substantive
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Important Info:

- Please do NOT arrive before 8:30 a.m.
- Please do NOT park in the lot directly in front of the administration building unless you have been given permission (handicapped accessible)
- The Wi-Fi password and log in information will be at the [TOP](#) of your CLE confirmation form.
- You must be in attendance for the complete HOUR of a program to receive credit.
- Coffee will be provided in the morning only. Some water and canned soda will also be available.
- After completion of your last session, please drop off your SIGNED CLE form at the registration table at the bottom of the steps.
- Please bring a sweater if you think you may get chilly.

PLEASE KEEP ALL CELL PHONE CALLS TO BETWEEN SESSIONS!

Speaker Biographies

Session 1 – Government Law

Whither Chevron: The Future of Administrative Deference After Loper-Bright and Relentless



Professor Guadalupe T. Luna
Widener Univ. Commonwealth Law School

Guadalupe Luna is an internationally recognized scholar whose teaching areas of expertise includes Property, Agricultural Law, Jurisprudence, and Remedies Law. Professor Luna has written numerous law review articles and book chapters, including entries in “The Encyclopedia of Latina/o Politics and Social Movements,” and an extensive bibliography on the Treaty of Guadalupe Hidalgo, both published by Oxford University Press. She is an elected member of the American Law Institute and is an American Bar Association Fellow. Professor Luna received her BA and JD from the University of Minnesota.

Session 2 – Family Law

All About the Benjamins - the Financial Aspect of Support



Daniel Bell-Jacobs, Esquire
Howett, Kissinger, Holst & Bell-Jacobs, P.C.

Mr. Bell-Jacobs is a shareholder with the Pennsylvania family law firm of Howett, Kissinger, Holst & Bell-Jacobs, P.C., where he focuses his practice on matrimonial law. Prior to joining the firm, Mr. Bell-Jacobs served as judicial law clerk for the Honorable Robert G. Bigham of the Court of Common Pleas of Adams County in Gettysburg, Pennsylvania. Mr. Bell-Jacobs obtained a Bachelor of Science in Biological Sciences magna cum laude from the University of Pittsburgh, and a Juris Doctor cum laude from the Harrisburg campus of Widener University School of Law, now Widener University Commonwealth Law School. Daniel is a member of the Family Law Sections of the Pennsylvania Bar Association and the Dauphin County Bar Association (where he serves as chair), and is a member of the Honorable

William W. Lipsitt Chapter American Inn of Court. Daniel can be contacted at dbell-jacobs@hkhlaw.net or 717-234-2616.



Natalie M. Burston, Esquire - Law Office of Natalie Burston

Attorney Burston is lifelong Central Pennsylvania resident. She graduated from Bishop McDevitt High School in 1997 and went on to graduate from Kutztown University in 2001. After graduation, she was employed full-time by the Pennsylvania Department of Revenue while attending the night division student program at Widener University School of Law. After graduating from law school, she remained employed by the Pennsylvania Department of Revenue until accepting a position at the Dauphin County Public Defender’s Office.

The Public Defender's office hired Attorney Burston under a MacArthur Foundation grant which was created in the wake of the Luzerne County "Kids for Cash" scandal and sought to improve juvenile representation in the state of Pennsylvania. As an attorney committed to ensuring that all children receive exemplary representation in the criminal-justice system, I participated in drafting and editing a juvenile defense manual that is used by attorneys throughout the state of Pennsylvania. For over five years, I served as a board member of the Juvenile Defenders Association of Pennsylvania. I have also lectured at numerous presentations on the effective representation of juveniles in the state of Pennsylvania.

While at the Dauphin County Public Defender's Office, she also represented hundreds of adult clients in various stages of the criminal process. Natalie has represented clients at both the magisterial district judge and court of common pleas levels. In this capacity, I gained invaluable trial experience that ranged from representing clients in less complex misdemeanor trials to serious felony trials.

After leaving the Dauphin County Public Defender's Office, she joined the Supreme Court of Pennsylvania's Administrative Office of Pennsylvania Courts (AOPC). While serving in the AOPC's Judicial Education Department, she provided continuing legal education to trial judges across the Commonwealth regarding new and emerging areas of the law. In addition, she was a contributing writer for one benchbook and oversaw the creation of another benchbook, which state trial judges reference to assist in the disposition of cases.

Professional Associations and Memberships: Dauphin County Bar Association | Pennsylvania Bar Association | Pennsylvania Association of Criminal Defense Lawyers

Past Volunteer Experience: Harrisburg YWCA VIP Advisory Board Chair | Vice-President, Kutztown University Alumni Association | Secretary, Juvenile Defender Association of Pennsylvania

Session 3 – PBA Malpractice Avoidance (Ethics)



Edwin A. Schwartz, Esquire - McNees Wallace & Nurick LLC

Ed Schwartz focuses his practice on assisting clients with litigation, professional licensure and attorney ethics matters. An experienced trial litigator, he has been involved in national class action cases and served as first chair in dozens of state and federal trials as well as mediations. Ed has an extensive background in trial and appellate cases and handling complex legal and compliance matters in a variety of fields including healthcare, finance, professional liability, real estate, licensure and IRS and related tax issues. In addition to being in court, he has years of experience litigating matters before various licensure boards in Pennsylvania, including the Pennsylvania Supreme Court Disciplinary Board, among others.

He is a member of the Pennsylvania Bar Association's Legal Ethics and Professional Responsibility Committee and regularly presents on the topic of legal malpractice avoidance across the commonwealth. In his ethics practice, he provides counsel to attorneys and law firms on their ethical responsibilities under Pennsylvania law, conducts compliance reviews of their policies and firm practices and represents clients who may be faced with ethics complaints or disciplinary actions.

Ed is a former member of the U.S. Army Reserve, receiving an honorable discharge after serving as a commissioned officer and trial counsel in the Judge Advocate General's Corps. He is a lifelong learner, continuing to write for legal journals, develop research and offer his insights as a frequent speaker at legal and professional seminars. He is active in the Greater Harrisburg community, supporting the Penn State Four Diamonds campaign and United Way of the Capital Region.



Yaël L. Dadoun, Esquire - Marshall Dennehey

Yaël is a member of the Professional Liability Department where she focuses her practice on the representation and the defense of licensed and certified professionals regarding liability matters. More specifically her work involves the defense of legal malpractice and disciplinary matters for all types of underlying claims. Yaël represents private and public entities in a variety of civil rights litigation, employment law and education matters including defending clients against claims of harassment, bullying, discrimination and retaliation. Her clients include, but are not limited to, municipalities, school districts, recreational centers and superintendents.

Yaël received her juris doctor degree from Widener University Commonwealth Law School, in Harrisburg, Pennsylvania, in 2021. While in law school, Yaël was a certified legal intern at the Central Pennsylvania Law Clinic representing indigent clients in civil matters. Prior to that, she received her undergraduate degree in French and Common Law from the University Paris Nanterre in France which sparked her interest in American law.

Outside of the office, Yael devotes a portion of her time as a volunteer for the Wills for Heroes Program which provides pro-bono estate planning services to first responders, military veterans and their spouses/partners.

AREAS OF PRACTICE: Miscellaneous Professional Liability, Public Entity & Civil Rights Litigation, Employment Law, School Leaders' Liability, Lawyers' Professional Liability, Disciplinary Board Representation

ADMISSIONS: Pennsylvania 2021, U.S. District Court Eastern District of Pennsylvania 2022, U.S. District Court Middle District of Pennsylvania 2022

EDUCATION: Widener University Commonwealth School of Law (J.D., 2021), University Paris X, Nanterre, France (Bachelor of Law in French, American and English Law, 2018)

HONORS & AWARDS: Pennsylvania Super Lawyers Rising Star, 2024

ASSOCIATIONS & MEMBERSHIPS: American Bar Association; Dauphin County Bar Association; French American Bar Association; Pennsylvania Bar Association, Professional Liability Committee Member; The Honorable William W. Lipsitt American Inns of Court

Session 4 - Race & Ethnicity Issues & the Law



Stacy McNaney, Assistant Chief Counsel PA Human Relations Commission

Stacy McNaney is an Assistant Chief Counsel at the Pennsylvania Human Relations Commission, where she prosecutes discrimination complaints related to employment, housing and public accommodations/education. Prior to joining the PHRC, she was a Staff Attorney at the Legal Aid Society of the District of Columbia. Stacy is a public servant at heart. She received her law degree from the George Washington University Law School in Washington, DC, where she participated in clinical programs and internships that solidified her commitment to public interest work. Stacy spends her spare time chasing her two small children and going to her local CrossFit gym - both of which help keep her somewhat fit.



**Dana D. Prince, Assistant Chief Counsel
PA Human Relations Commission**

Attorney Prince is a passionate public servant who currently serves as an Assistant Chief Counsel for the Pennsylvania Human Relations Commission in its Philadelphia Regional Office. She has worked for the PHRC for seven (7) years. As an Assistant Chief Counsel, she litigates cases in all areas covered by the Pennsylvania Human Relations Act – housing, employment, public accommodation, and education.

Attorney Prince was instrumental in the implementation of the PHRC's newest regulations. Attorney Prince enjoys representing the PHRC as a speaker at various events throughout the Commonwealth. Attorney Prince is a Widener Law alumna and prior to her time at the PHRC, she served as a law clerk for the City of Harrisburg's Law Bureau and as a volunteer at the Dauphin County Bar Association.

Session 5 – Estate Planning & Probate
Understanding DNI and 1041s



Neil Warner Yahn, Esquire - JSDC Law

Neil Warner Yahn, Sr., is a partner with the firm of JSDC Law Offices and he also serves on the faculty at Villanova University since 2011 as an adjunct professor where he teaches Individual Taxation and Taxation of Business Entities.

Neil primarily concentrates his law practice on income, partnership, corporate and estate tax matters and related litigation. Neil advises clients with respect to the use of partnerships, S corporations, limited liability companies (LLCs) and other pass-through entities to assist clients in a wide range of tax planning matters. He works with our clients to use pass-through entities to avoid double taxation, to allow business owners to obtain the full benefit of tax losses or tax incentives, and to minimize the tax impact of various asset acquisitions or dispositions. In the controversy area, Neil has represented clients at the audit and appellate levels of the IRS and in litigation before the U.S. Tax Court. He has also represented large estates and beneficiaries in

disputes over testamentary documents and claims of undue influence.

Neil also writes and lectures extensively on tax planning topics and related matters for the Pennsylvania Bar Institute, the Pennsylvania Institute for Certified Public Accountants and the Financial Planning Association. He is a graduate of the Villanova University School of Law. At Villanova, Neil earned his Juris Doctorate and Masters in Taxation (LL.M.). Neil supplemented his Masters in Taxation from the Georgetown University Law Center where he focused on employee benefits, employer plan designs and fiduciary provisions under ERISA.

Neil is AV Rated.

Session 6 – Bankruptcy Law

Bankruptcy Basics for the Non-Practitioner



Michael S. Travis, Esquire

Mike has more than 25 years working many types of legal cases. With associations in over 700 cases, you feel like you're with a large firm, but with small firm attention to detail. He handles injury, bankruptcy, child custody, support and divorce cases. He is also an arbitrator in Cumberland County. Cases heard include auto accident and contract matters. He has practiced in Courts throughout Cumberland, Dauphin, York, and Perry. He frequently appears before Bankruptcy Court in the Middle District of Pennsylvania.

Representation is limited to civil matters and usually does not represent creditors or banks.

B.A. political science, minor economics Penn State University 1990; juris doctorate Cooley Law 1995; book award computer assisted legal research

Admitted Pennsylvania Bar 1996

Membership: United States District Court Middle District, Dauphin County Bar Assoc, Cumberland County Bar Assoc, York County Bar Assoc, Middle District Bankruptcy Bar Assoc



James K. Jones, Esquire - Mette, Evans & Woodside

Since 1995, Jim has concentrated his practice in the area of consumer bankruptcy. This practice primarily entails Bankruptcy Code chapter 7 (liquidations) and chapter 13 (reorganizations). He served as a staff attorney in the Office of the Standing Chapter 13 Trustee for the Middle District of Pennsylvania from 2006 through 2022. During this time, Jim sharpened his skill as a litigator and lectured to practitioners on a variety of cutting-edge topics.

Jim continues to hone these skills in private practice. His experience in a wide variety of areas of the law has allowed him to branch out to represent clients in a number of areas such as landlords with tenants in bankruptcy, clients whose spouse filed for bankruptcy, as well as lending institutions with borrowers in bankruptcy. Careful to avoid any conflicts of interest, Jim also represents consumer clients facing foreclosure, tax delinquencies, vehicle repossessions, as well as credit card, medical, and personal loan debt.

With this background, Jim expended his practice to represent plaintiffs and defendants in collection-related litigation. He likewise has successfully represented property owners who lost their real estate through tax sales.

Jim is also active in his community. He is a founding member and treasurer of PUCHOG, Inc., a §501(c)(3) corporation that puts wounded veterans on the ice to play the adaptive team sport of ice hockey. He is also the proud father of two Eagle Scouts from Boy Scout Troop 189 where he served as treasurer for over ten years. He has also served as treasurer for several political candidates.

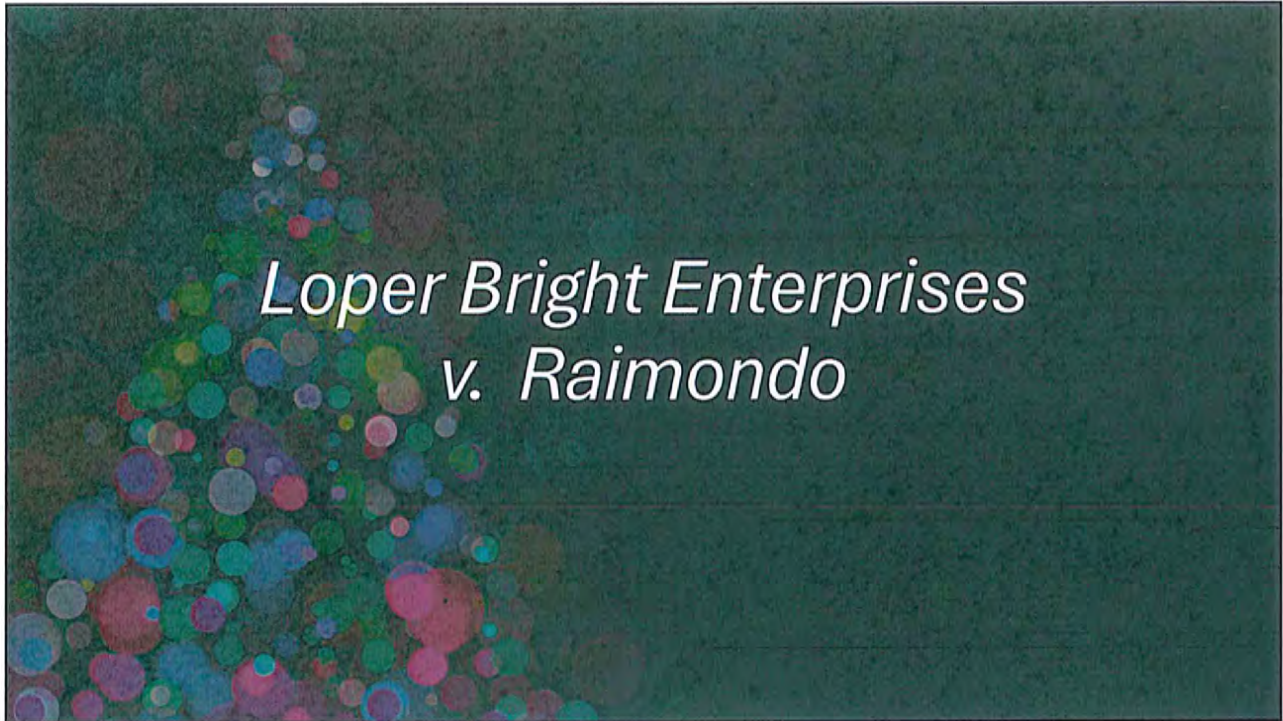
Education: Dickinson School of Law, J.D. | University of Notre Dame, B.A. Economics

Court Admissions: Supreme Court of Pennsylvania | U.S. District Court—Middle District of Pennsylvania | U.S. District Court—Western District of Pennsylvania | U.S. District Court—Eastern District of Pennsylvania

SESSION #1
Government Law

“Whither Chevron: The
Future of Administrative
Deference After Loper-
Bright and Relentless”

Presented by:
Professor Guadalupe Luna

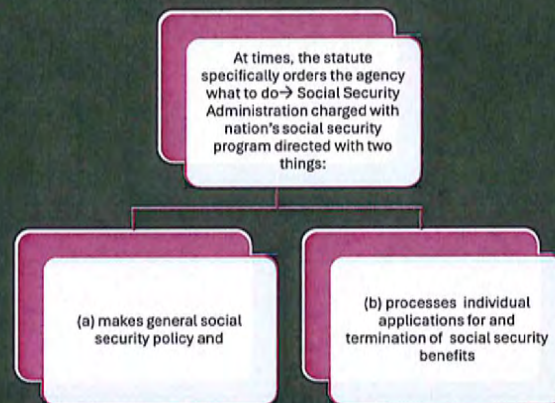


Executive Branch

- Part of the Executive branch with the political process governing statutory creation, purpose and intent.
- Agencies are central to how government runs, the work they do and how to perform
- Provides for court review of agency decisions



Administrative Agencies Part I



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Administrative Agencies Part II

At other times legislation ambiguous stemming from political compromises

- Under the APA, binding deference given to permissible agency interpretations of statutory ambiguities because Congress delegated to the agency the authority to interpret those ambiguities “with the force of law.”
- This means → Legislative regulations “are given controlling weight unless they are arbitrary and capricious, or manifestly contrary to the statute.”

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Chevron USA, Inc., v. Nat'l Resources Defense Council, et al., (1984) Pt. I

- Clean Air Act Amends. of 1977
- Imposed certain requirements on states that had not achieved the EPA national air quality standards.
- Held: The EPA's plant wide definition is a permissible construction of the stationary term "stationary source" -->

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Chevron, USA., Inc., v. Nat. Res. Def. Council, Inc., (1984): Dicta II

- *Chevron* Deference: doctrine of judicial deference given administrative actions.
- "When a court reviews an agency's construction of the statute...it is confronted with two questions:
 1. ...always is the question whether Congress has directly spoken of the precise question at issues;
 - If intent ..is clear, that is the end of the matter.." "both court and agency must give effect to the unambiguously expressed intent of Congress."
 - If however, the court determines Congress has not directly addressed the precise question as issue, the court does not simply impose its own construction on the statute..." →

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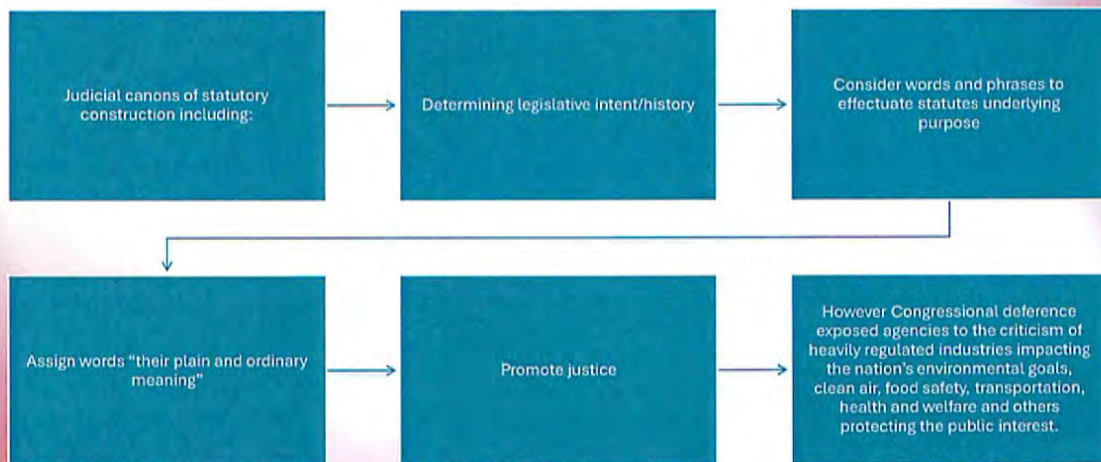
Chevron Pt. III Pre-2024

- “Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is:
 - Whether agency’s answer is based on a permissible construction of the statute.” (meaning rationale or reasonable)
 - A wide realm of experts, scientists, empirical data, experienced professionals and the organic act’s policies support agencies’ missions, intent and purposes.

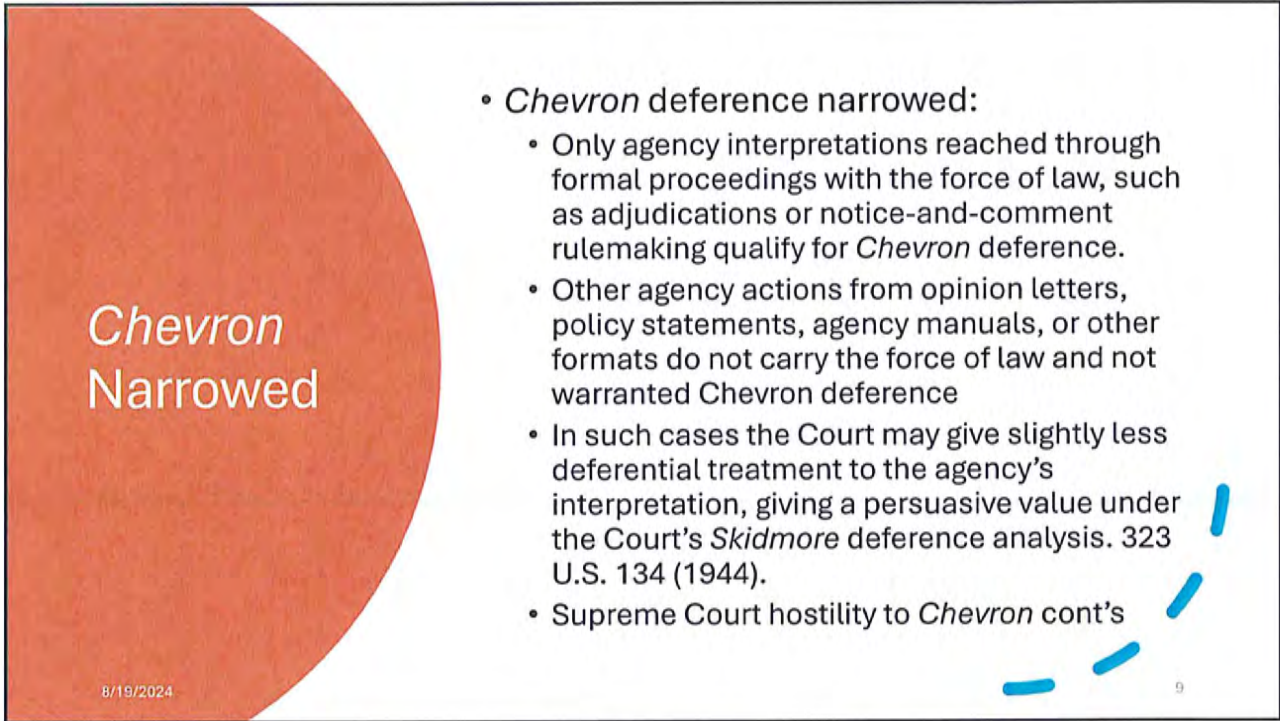
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Ambiguities and Jurist Tools



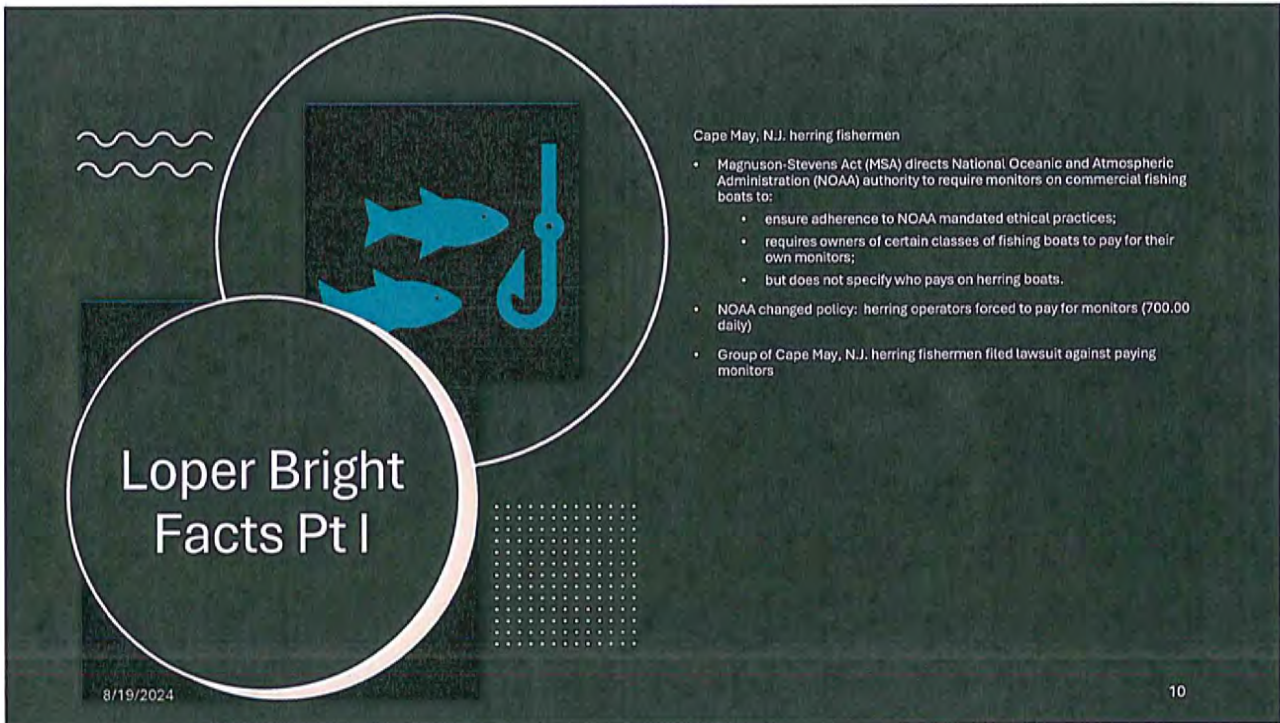
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Chevron
Narrowed

- *Chevron* deference narrowed:
 - Only agency interpretations reached through formal proceedings with the force of law, such as adjudications or notice-and-comment rulemaking qualify for *Chevron* deference.
 - Other agency actions from opinion letters, policy statements, agency manuals, or other formats do not carry the force of law and not warranted *Chevron* deference
 - In such cases the Court may give slightly less deferential treatment to the agency's interpretation, giving a persuasive value under the Court's *Skidmore* deference analysis. 323 U.S. 134 (1944).
 - Supreme Court hostility to *Chevron* cont's

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Loper Bright
Facts Pt I

Cape May, N.J. herring fishermen

- Magnuson-Stevens Act (MSA) directs National Oceanic and Atmospheric Administration (NOAA) authority to require monitors on commercial fishing boats to:
 - ensure adherence to NOAA mandated ethical practices;
 - requires owners of certain classes of fishing boats to pay for their own monitors;
 - but does not specify who pays on herring boats.
- NOAA changed policy: herring operators forced to pay for monitors (700.00 daily)
- Group of Cape May, N.J. herring fishermen filed lawsuit against paying monitors

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Loper Bright Part II

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- Ps challenged agency implementing amendment establishing industry-funding monitoring programs in New England fishery management plans, to promulgate final rule requiring industry to fund at-sea monitoring programs and alleged rulemaking process procedurally irregular
- Supreme Court jumped case (that ruled in agency's favor) out of the shadow docket;
- Supreme Court next vacated lower court challenge to agency ruling; remanded for further proceedings. Then it zeroed in on *Chevron*.

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Loper Bright: Rejected Agency Deference Maj. Part I

- J. Roberts: "...courts must independently determine if an agency acted within its statutory authority."
- Agency decisions whether beneficial or pernicious based on their interpretation of various factors can now be reviewed.





Loper Bright Majority (6) J. Roberts Part II

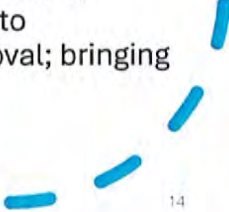
- "A grave error..." Art. III of Constitution (fed. Judiciary; cases and controversies) Province.. duty of judiciary to say what the law is;
- *Skidmore* deference: can aid courts and litigants;
- APA: responsibility of courts; cannot reconcile with *Chevron*
- Cherry picks case law, history and attendant jurisprudence;
- Chevron's "presumption is misguided because agencies have no special competence in resolving statutory ambiguities"
- Dismisses stare decisis;
- "Only way to ensure ..law will not merely change erratically, but will develop in a principled and intelligent fashion."

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Majority (6) Part III Concurrence(s)

- J. Gorsuch: "Today the Court places a tombstone...Court returns judges to interpretive rules that have guided federal courts since the Nation's founding; a constitutional defect; framers, Abraham Lincoln; post civil war caselaw; stare decisis is not an "inexorable command;" APA; King George; federalist papers..."
- J. Thomas: separation of powers and violation of constitution;
- **Bottom Line:** court trying to make heads of agency and judges more responsive to presidential appointments and removal; bringing them closer to the political branch



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Dissent Rationale (3) J. Kagan (Pt. I)

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- *Chevron*...part of the warp and woof of modern government, supporting regulatory efforts of all kinds...keeping air and water clean, food and drugs safe and financial markets honest.
- “rooted in a presumption of legislative intent.”
- “Some interpretive issues ...involve scientific or technical subject matter. Agencies have expertise...courts do not.
- “courts have no ...public accountability and no proper basis for making policy...”
- “Some statutes demand detailed understanding of complex and interdependent regulatory programs.
- Agencies know those programs inside and out...courts do not.”

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Dissent: J. Kagan Pt. II

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- Stare decisis...a way to remind judges that wisdom often lies in what prior judges have done. It is a brake on the urge to convert “every new judge’s opinion” into a new legal rule or regime.”
- Subject matter vs. abstract analysis of majority;
- Statutory phrases have more than one reasonable reading. ..Who decides which of the possible readings should govern?→Agencies!
- congress values agencies→when statute is of a scientific or technical nature; how regulatory regime functions;
- *Chevron*’s presumption resolves statutory ambiguities;
- Congress declined to enact proposed legislation ...abolishing *Chevron*
- APA does not provide for de novo review

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J. Kagan Dissent Pt. III

- Lower courts have to deal with cases where the law and facts are closely intertwined;
- calls them “mixed questions.” This category of cases consist of complex facts, where the purported “legal inquiry” actually relies primarily on facts and subject matter expertise.
- Agencies are far better positioned to understand vague legal standards using subject matter expertise.
- No judicial divergence;
- Gives courts power to make all manner of scientific and technical judgments; and policy calls

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Loper Bright Cherry Picks Precedent

- *NLRB v. Hearst* (1944) whether “newsboys” were newspaper “employees” under the law.
- *NLRB v. Hearst* court ruled: “courts must interpret the law...” Yet L-B *ignores* the next line which sets up the actual outcome and substance of case. Specifically:
- That the “agency was much better positioned to answer the mixed question, because the agency has the deepest understanding of many factors that led Congress to write the statute.
- Court thus deferred to the agency as it would have under *Chevron* “that the agency’s findings had ample basis in law.”

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Changed Landscape Part I

- Gives more power to courts and takes powers reserved for federal agencies away. Thus, if you like litigation, it makes it easier to contest regulations and challenge those agencies' abilities to promulgate new regulations absent a clear grant of statutory authority.
- In heavily regulated industries L-B provides avenues to challenge agency decisions de novo and serve as "mere messengers for Congress."
- **J. Sotomayor dissent:** "likely to produce large-scale disruption." Meaning "additional litigation to minimize agency power and rule-making." and... "more stalling of agency rulemaking and agency authority."

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Main Issue: Chasing Consistency Part II

Target: who decides whether someone violated law? Agency? Courts?
Until now courts deferred to agencies as long as reasonable then agency view prevailed:

- Multiple tiers of authority; Airlines → FAA + Dept. Of Trans. + Nat'l Transportation Safety Board
- Fed. Aviation Admin. Comprised of multiple tiers of responsibilities: aviation safety, comm'l space transportation; security and hazardous materials safety; int'l affairs and environment;
- Before rules published multiple levels of approval and oversight → Office of Information and Regulatory Affairs (OIRA) within Office of Management and Budget in the Executive Office of President;
- With executive orders, agency performs detailed regulatory evaluation; notice-comments;
- Consistency? How agency will determine statute (safe food, safe drugs, clean air etc.,).

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Chasing Consistency Part III

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Challenges depending on the Administration

Cherry picking older stable rulings

Renders irreconcilable older agency interpretations and policies

Conflicts: "...Judges are not experts in the field, and are not part of either political branch of the Government" (*Chevron*)

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Part IV More Costs

- Increased costs from challenging agency decision making before a court vs. a regulatory agency.
- "Hi, Judge. You are much smarter than agencies. Can you help us interpret this law and not take the agency's interpretation for granted."
- Heads up: Each individual jurist throughout the nation could have a different interpretation of a statute that they are now empowered to interpret.
- In federal law this leads to conflicts and inconsistencies in different regions and jurisdictions.

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Some Celebrating

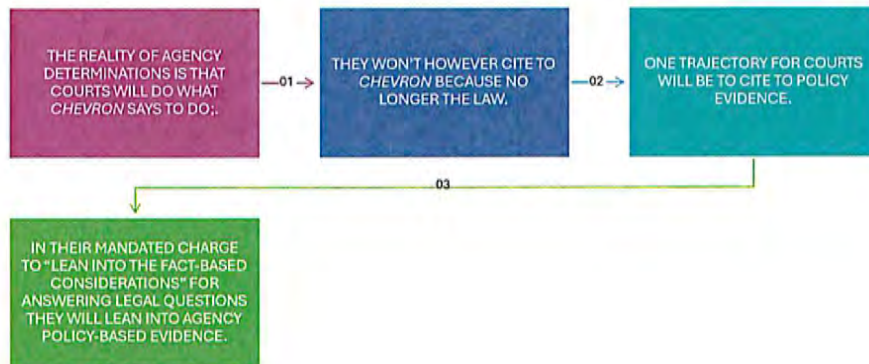
- Pro-zero agency deference advocates:
- Challenges to EPA from Fossil fuel industries accusing agencies of overstepping their legal authority with regulations to curb greenhouse gas emissions taking place now
- Air Force case unlawful dumping refuses to comply with EPA order asserting *Loper-Bright*
- Courts can now review both the beneficial and pernicious decisions made by USCIS and the Department of Homeland Security (DHS) based



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Loper Bright: A Pathway?



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A Few Authorities

- Leonardo Cuello, *Loper Bright Decision Will Collapse on Itself; Policy evidence is more Important than Ever Before in Driving Progress*, <https://ccf.georgetown.edu/2024/07/31>
- THE ECONOMIC TIMES, *A Recent Supreme Court Ruling May Shake Up US Immigration Laws*, at <https://economictimes.com> July 05, 2024
- GELLHORN AND BYSE'S, ADMINISTRATIVE LAW, CASES AND COMMENTS
- K. Dennie Madiba, *Deadly Polluters Think the Supreme Court Just Gave Them a Free Pass*, <https://www.ballsandstrikes.org>, Aug. 14, 2024
- MIKVA LANE, LEGISLATIVE PROCESS (2009)
- Cass R. Sunstein, Essay: *The Administrative State, Inside Out*, HOOVER INSTITUTION, Mar. 29, 2022

SESSION #2
Family Law

“All About the
Benjamins - the
Financial Aspect of
Support”

No Handouts


Presented by:
Daniel Bell-Jacobs, Esquire
Natalie Burston, Esquire

SESSION #3
Ethics

“PBA Malpractice
Avoidance”

Presented by:
Edwin A. Schwartz, Esquire
Yaël Dadoun, Esquire
Susan Etter, Esquire

Avoiding Legal Malpractice
 The 2024 Avoiding Legal Malpractice Program
 A benefit provided by the Pennsylvania Bar Association and USI Affinity



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Presenters

- Edwin A.D. Schwartz, McNeese Wallace & Nurick, LLC
- Yaël L. Dadoun, Marshall Dennehey PC
- Susan E. Etter, Pennsylvania Bar Association

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PBA – Your Other Partner

Some of the work we do to help you avoid, or at least minimize, your risk of legal malpractice and make management of your practice easier, so you can spend more time on your clients and their cases.

- Guidance on Ethical Issues
- Answers to Law Practice Management
- High-quality CLE programs that keep you up-to-date in substantive law, competence (be sure to check-out ProPass!)
- Legislative Department working on your behalf
- Opportunities to engage with statewide network of attorneys and judges – more than 50 committees/18 sections
- Excellent Lawyers Professional Liability insurance coverage and discounts through USI Affinity
- Avoiding Legal Malpractice CLE programs
- ...many other benefits

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PBA member benefits that can help you manage your risks

- Law Practice Management, Ellen Freedman, CLM
 - 800-932-0311, x. 2228 or Ellen.Freedman@pabar.org
- Ethics Hotline/Ethics Counsel, Victoria White
 - 800-932-0311, x. 2214 or Victoria.White@pabar.org
- PBA Legislative Department, Fred Cabell
 - 800-932-0311, Ext. 2232 or Fredrick.Cabell@pabar.org
- “Avoiding Liability” column in the Bar News



4

Growing Areas of Concern for Lawyers in 2023

- Succession Planning
- Disciplinary Matters
- Technology & Social Media
- Counterclaims for Legal Malpractice

5

PBA member benefits that can help you manage your risks



Pennsylvania IOLTA noncompliance is “the No. 1 issue for which we suspend and disbar attorneys.” Tom Farrell, chief disciplinary counsel, the Pennsylvania Supreme Court Disciplinary Board.

Pa. IOLTA, Disciplinary Board Provide Ways to Stay Compliant

The Pennsylvania Supreme Court Disciplinary Board (PBD) and the Pennsylvania IOLTA Board have announced several new measures to help attorneys stay compliant with the rules governing IOLTA accounts and disciplinary matters.



“IOLTA account mismanagement or violations are the No. 1 reason in the country that lawyers are publicly disciplined. I’m not talking about lawyers who steal, because that’s a whole different world. We’re talking about mismanagement.”

“It’s depressing how often ... we find out that the attorney has not been handling the account correctly, has been commingling money, and has inaccurate records. There are gradations of violations, but we take all IOLTA mismanagement seriously.”

“We discipline people after the money is lost. We’d rather educate attorneys before they lose clients’ money, instead of disciplining them afterward.”

Read the Rules of Professional Conduct (1.15) and read this article as an important refresher.



PBA offers a live 1-hour webcast on IOLTA accounts October 26

6

PBA member benefit ... updates that you need to know

A few "hot off the press" updates from our recent meetings with USI Affinity and CNA

- An increase in concerns about cognitively impaired lawyers
- Tail coverage - what you can do as a retired attorney and what activities are not covered with the free tail?
- Wire transfers – still a big issue with new more sophisticated tactics to trick you ... and your staff
- Cyber threats to your business and your clients – there are strategies and steps everyone one can take immediately.



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A few "hot off the press" updates from our recent meetings with USI affinity and CNA

• An increase in concerns about **cognitively impaired lawyers** – we are a self-policing profession and we have to look out for each other and for clients. **Lawyers Concerned for Lawyers** is a resource. The bar association is a resource. Please find a respectful and dignified way to help a lawyer that is struggling and impaired. It's not easy, but it is important.

Rules of disciplinary enforcement related to cognitive impairment and competence

- Rule 301 – proceedings where an attorney is declared to be incapacitated or severely mentally disabled
- Rule 321 – appointment of conservator to protect interest of clients of absent attorney

8

Symptoms of Cognitive Related Risks

- Confusion, forgetfulness, indecisiveness
- Anxiety, worry, fretting
- Memory lapses
- Failure to return calls or correspondence
- Over-reaction to events
- Under-reaction to events
- Unsteady gait, poor balance, tremors
- Unpreparedness

9

Stepping Down with Dignity

- Older lawyers may fear losing their independence
- Mandatory retirement ?
- Lawyers are working longer; putting off retirement
- Enlist the assistance of family members
- Physicians
- Psychologists
- Partners and colleagues
- Judiciary
- Seek assistance from the Bar Association
- Disciplinary Board

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A few “hot off the press” updates from our recent meetings with USI Affinity and CNA

- Tail coverage - We all know that more and more baby boomers are starting to retire –free tail that is available if you are insured by CNA. USI is noticing an increase in questions about **what you can do as a retired attorney and what activities are not covered with the free tail** – so our best advice if you are thinking of retiring or you recently retired – call your agent if you have any questions – **you do not want your first malpractice suit after a very successful career to occur in your retirement and – even worse - to possibly be left without coverage!**

11

Extended Reporting Period

Also called a Tail.
Tail coverage addresses the continuing possibility of claims after:

- Law firm dissolves
- Attorney retires or leaves private practice, death, disability (Non-Practicing ERP)
- Generally, provides coverage for claims arising from conduct within the policy period, which would otherwise be covered by the policy, but the claim is first made during the extended reporting period.

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Extended Reporting Period

If an insured ceases, permanently, and totally, the private practice of law during the policy period due to:

- Death or disability; or any other reason

Some carriers provide an Unlimited ERP at no additional charge if insured for 3 consecutive years

Deductible is sometimes waived

11

13

A few “hot off the press” updates from our recent meetings with USI Affinity and CNA

- Wire transfers – still a big issue – because they often involve large dollar transfers – and as always the **criminals keep getting smarter** – they have now upgraded their spoofed fake transfer message so that not only does it look like it is coming from a legitimate known-familiar person – now for your convenience – they provide you with a number to call to verify that the wire transfer request and instructions are legitimate – but guess where they number goes??? The lessons – **the takeaway – if you do nothing else after this program today – remind or train all of your staff – DO NOT call the number in the email to verify the transfer request – use a number that is known to you. You cannot be too cautious or suspicious.**

14

A few “hot off the press” updates from our recent meetings with USI Affinity and CNA

- If you do not already have a stand-alone cyber policy – we are urging you to at least **consider and explore getting one – start doing your research** – each step you take in the direction of getting cyber coverage is a benefit to you and your practice – make sure you understand what coverage is included – Mark Lefever is an excellent resource. **And PBA is here to help with a free cyber webinar for members.**

15

Cyber Exposure: How to Prepare and Protect Your Firm Against Cyber Liability Claims

This webinar is provided at no cost as a valuable PBA member benefit. After attending this program, you will have important information to help make informed business decisions to prepare and protect your firm, your clients and your reputation.

You will leave with takeaways that can be immediately put into action to reduce cyber risks and help you operate as a more educated and technology-aware lawyer.

Even if you already have cyber liability insurance, you will benefit from this program and learn why staying informed about ever-evolving cyber threats and cyber insurance market trends are a critical component to the successful management of today's law practice.

Perhaps one of the best reasons to make time in your day to attend this program is that you will hear valuable and relevant information from someone who is very knowledgeable on cyber threats to lawyers, without pressure or obligation to buy insurance. You listen, learn and then you decide what to do with the information and what makes the most sense for your business. The PBA and USI Affinity are providing the information and resources you need to make the best decision for your practice. We are your other partners.

16

Cyber Exposure: How to Prepare and Protect Your Firm Against Cyber Liability Claims

Why are we focusing on this?

- Roughly 26% of all law firms already victim of a data breach
- Roughly 51% of law firms have taken no measures to prevent data breach
- Roughly 50% of law firms have no data breach response plan
- Ransomware attacks occur every 10 seconds
- Based on one study, 60 percent of all targeted cyberattacks last year struck small to mid-sized businesses.
- It has been estimated that half of the small businesses that suffer a cyberattack go out of business within six months as a result.

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Cyber Exposure: How to Prepare and Protect Your Firm Against Cyber Liability Claims

You will learn:

1. Why law firms are a target for cyber theft and hacking
2. The types of cyber claims received by insurers
3. What "social engineering" is and why you need to know about it. Did you know that roughly 60% of all targeted cyberattacks last year struck small and mid-sized businesses?
4. The average cost of a cyber breach
5. Understanding cyber insurance coverages and what you need to do to apply for coverage

Watch the 1-hour program at your convenience
Email susan.etter@pabar.org for a sample incident response plan



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Another heads-up related to avoiding malpractice and disciplinary action from the September Disciplinary Board monthly newsletter ...

From Tom Farrell, chief disciplinary counsel, the Pennsylvania Supreme Court Disciplinary Board
Recently, I reviewed a self-report by two attorneys. Someone had hacked into their firm trust account at the bank, stealing nearly \$900,000. They reported the matter to law enforcement, and the bank admitted fault and reimbursed the account, eventually. No case, I figured. They were good lawyers, responsible lawyers. Months later, however, we imposed an informal admonition because we found they had not been reconciling their trust account. Had the bank not discovered the fraud after seven months, the loss could have been more; had the attorneys followed RPC 1.15(c)(4), they would have stopped the damage in the first month. For that seven-month period, the firm or its accountant hadn't done any reconciliations. They didn't find out about the theft until the bank found out. The amount of theft in the first month was \$30,000. The loss would have been limited to the \$30,000 if they did the reconciliations and shut it down promptly.
Read this article in the September D-Board newsletter. It contains a self-assessment and questions that Tom Farrell suggests every attorney review.
The IOLTA Board's website, provides attorneys with an excellent handbook on all of RPC 1.15's requirements.

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Horizontal lines for notes on page 19.

Another heads-up related to avoiding malpractice and disciplinary action from the September Disciplinary Board monthly newsletter ...

Disciplinary Board Proposes Extension of Sex with Clients to Nonphysical Communications
'Recently, Pennsylvania's disciplinary system has experienced an increase in 'sex with clients' investigations where the matters involve sexual communications by way of 'sexting' or similar communications, as opposed to actual physical relationships.'
In a proposed rulemaking published at 63 Pa.B. 4275 (8/26/23), the Disciplinary Board has proposed an amendment to the comments to Rule 1.8(j) of the Pennsylvania Rules of Professional Conduct. It seeks to clarify that the prohibition on sex between lawyers and clients extends to communications that are sexual in nature. Written comments were invited and were due September 26, 2023.
Rule 1.8(j) states, 'A lawyer shall not have sexual relations with a client unless a consensual relationship existed between them when the client-lawyer relationship commenced.' Comment [17] to Rule 1.8 explains the intentions behind the rule:
[A] sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment...
The Board proposes to add a line to Comment (17) stating, 'For purposes of this Rule, 'sexual relations' includes, but is not limited to, sexual communications with a client.'

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Horizontal lines for notes on page 20.

A message from the D-Board...

- Commencing with the 2019-2020 annual attorney registration, an additional section regarding succession planning will be on the registration form. The section will require you to indicate whether you have or have not designated a successor. Although you are required to provide a response in this section, failure to have a designated successor is NOT a violation of the Rules of Professional Conduct or the Pennsylvania Rules of Disciplinary Enforcement.
Succession planning is essential to every attorney's practice. Recognizing that the future is unpredictable, attorneys should strive to lessen the impact of unexpected interruption in their relationships with clients by taking protective measures. We believe by asking the question and sparking dialogue in the profession, perhaps we can address the concern that exists nationwide.

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Horizontal lines for notes on page 21.

A message from the D-Board...

Emergency Succession Planning

A succession plan requirement in the annual attorney registration "is going to become a reality in Pennsylvania very soon..." "It's coming, for sure."

"... you should know that a lot of the states that you are cross-admitted in are going to be doing this as well."

"trying to balance everything and come up with a rule that's going to be able to cover everybody without making it too hard on some people and too easy on others." "Really, just protecting the clients is kind of where the balancing act is going to be."

"We are considering requiring that lawyers designate a successor," Farrell said. "We're considering making that a mandatory question on the annual registration form."

Potential rollout date, he said, is sometime in 2023.

See handbook - Plan Now: Don't Wait for Disaster to Cause Succession Catastrophe, PBA Bar News article, February 7, 2022

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Succession Planning Data

• released on October 30, 2023 and available on the D-Board website

Succession Planning Responses from Active Pennsylvania Attorneys

Response	Total	Percent
I have a successor attorney. My successor is an individual.	3,838	6.04%
I have a successor attorney. My successor is a law firm.	14,898	23.45%
I do not have a successor because I do not have PA clients.	32,145	50.60%
I do not have a successor and I do have PA clients.	12,645	19.91%
Total	63,526	100%

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Succession Planning - PBA member benefits

- There are numerous resources to help you develop succession plans available through our Law Practice Management page and the Solo and Small Firm Section.
- At least 10 documents are provided in the ALM materials web page which you received as part of your materials today - pabar.org/site/ALM
- Exclusive to PBA members, the Solo and Small Firm Section has developed a "Succession Planning Toolkit." It is available on the PBA website.
- The "Pennsylvania Handbook for Conservators for Interests of Clients" is an instructional guide for conservators and covers the practicalities of conservatorships in the format of Frequently Asked Questions. This resource is available on the D-Board website and includes a checklist of recommended and required tasks within a timetable, downloadable forms, and the governing rules for conservators.

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Avoiding Legal Malpractice Website

- All of the materials covered today and many more valuable resources related to the featured professional liability and responsibility topics are available online.

pabar.org/site/ALM



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Most requested resource after the ALM program

- CNA Lawyers' Toolkit is by far the most requested resource in follow-up to the program
- About 80 pages of sample engagement letters, disengagement letters, termination or withdrawal, conflict of interest, and more
- All of this is provided for you to reference, to edit, copy and use to strengthen your letters and help protect you from misunderstandings with clients and clarify your relationship with them.

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Please note that this table of contents has been automatically generated by the ALM team. It is not intended to be a substitute for a professional review of the documents.

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CNA has developed the Lawyers' Toolkit to assist attorneys in creating documents that will enable them to better manage their interactions with potential and actual clients. These sample documents are provided as a convenience for use in the practice of law and include language that attorneys may wish to consider using in their own agreements, letters, and waivers. Certainly, each sample document should be customized for every engagement and prepared in accordance with applicable professional and regulatory requirements in your particular area of law.

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PBA member benefit ... Professional Liability Insurance

- Lawyers Professional Liability insurance program administered by USI Affinity
- As a PBA member you can qualify for a 5% discount on your premium and for attending today's program you may qualify for an additional 7.5% discount.
- The PBA and USI work hard on your behalf to find the most comprehensive and stable LPL coverage available.
- Please complete your USI Insurance discount form to verify your attendance.



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The New Graduate Lawyers Professional Liability Program from the PBA, USI Affinity and CNA provides up to two years of complimentary professional liability insurance to PBA member attorneys who have been admitted to practice in Pennsylvania within the past three years!

There are two ways to save through this program (restrictions and qualifications do apply)

1. If a new attorney, who is a PBA member, decides to open their own firm or join a small firm with up to four attorneys, the new attorney can receive up to two years of complimentary professional liability insurance.

2. Larger firms, who are existing CNA policyholders, that hire new Pennsylvania attorneys who are PBA members, can receive a discount on their per-attorney rate.

The new attorney is required to participate in a special risk management webinar.



To learn more, call 800.265.2876



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Know your policy, what coverage do you have?

CNA Policy Highlights

- Coverage for disciplinary proceedings up to \$50,000
- Assistance in responding to a subpoena
- Coverage for discrimination complaints up to \$25,000
- Optional extended reporting period - tail
- 50% reduction of deductible for quick (364 days) claim settlement
- Broad settlement clause – no “hammer” clause

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Know your policy, what coverage do you have?

Extended Reporting Period - also called a Tail.

- Tail coverage addresses the continuing possibility of claims after:
 - Law firm dissolves
 - Attorney retires or leaves private practice, death, disability
- Generally provides coverage for claims arising from conduct within the policy period, which would otherwise be covered by the policy but the claim is first made during the extended reporting period.
- If an insured ceases, permanently and totally, the private practice of law during the policy period due to:
 - Death or disability; or any other reason
 - Some carriers provide an Unlimited ERP at no additional charge if insured for 3 consecutive years
 - Deductible is sometimes waived

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Engagement Letters – an invaluable best practice in managing your risk

- Engagement letters are designed to establish client expectations, reduce client misunderstandings, improve client communications, and provide opportunities for additional services.
- An engagement letter may not prevent legal malpractice claims, but if you ask any defense attorney in a lawyer malpractice claim, they will tell you how helpful the documentation can be if a claim arises and that a good letter/agreement can support a stronger defense.

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Engagement Letters – an invaluable best practice in managing your risk

- 50% reduction of deductible up to \$25,000, if insured used an engagement letter (as defined by the CNA policy) in connection with the legal services that are the subject of the claim
- What is required for the CNA discount?
- And, even if you are not insured through CNA, these are best practices for you to consider in avoiding legal malpractice and in establishing clear communication with your client and setting the tone for the future attorney-client relationship.

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Engagement Letters – an invaluable best practice in managing your risk

CNA requires, at a minimum, inclusion of the following information:

- Scope of representation
 - Documentation of the scope of the representation and the mutual responsibilities of the attorneys and their clients can often be a deciding factor in determining the responsibilities of both parties.
- Identity of client
- Fee arrangement
- File retention and destruction procedure
- Signed by the client.

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What is “File Retention and Destruction Language” ???

You can find sample language on the bottom of page 7 in the CNA Lawyers' Toolkit

- File Retention and Destruction: At the conclusion of your matter, this matter will be closed, and we will retain a client file of your matter for a period of ____ years. We may store some or all client file materials in a digital format. In the process of digitizing such documents, any original paper documents provided by you will be returned to you. Any copies of paper documents provided by you will not be returned to you unless you request such copies in writing. After any or all paper documents are digitized, we will destroy all paper documents in the client file, subject to the exceptions noted above. At the expiration of the ____-year period, we will destroy all client file materials unless you notify us in writing that you wish to take possession of them. This clause applies to any client file materials being held or stored by a third-party vendor. [Before including the following language, law firms should research whether their jurisdiction permits the following types of expenses to be charged to clients.] We reserve the right to charge administrative fees and costs associated with researching, retrieving, copying and delivering such files, as delineated in the Expenses section of the Engagement Agreement.

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Call ... sooner rather than later

- PBA-Endorsed (CNA) Claims Assistance Hotline is the only state-run hotline in the nation
- Tremendous benefit if you have concerns or questions about a potential claim
- It is **Confidential** – the carrier does not know
- With an **Attorney** who practices in LPL
- Conversation may help head off or mitigate a potential malpractice claim.
- Your early call to the **Claims Assistance Hotline** may make all the difference!

888-200-5212

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Professional Liability Issues Attorneys, How to Avoid Malpractice and Disciplinary Board Issues

Presented By:

Edwin A.D. Schwartz, Esquire **Yael Dadoun, Esquire**
McNeesWallace & Nurick, LLC Marshall Dennehey PC

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LEGAL MALPRACTICE

- In order to prevail in a claim for legal malpractice sounding in negligence, a plaintiff must plead and prove the following:
 - (a) employment of the attorney or other basis for duty;
 - (b) the failure of the attorney to exercise ordinary skill and knowledge; and
 - (c) that such negligence was the proximate cause of the actual damages.
- Kituskie v. Corbman, 522 Pa. 275, 714 A.2d 1027 (Pa. 1998).
- Difficult to prove all elements
- It is the "practice" of law not the "perfection" of law
- Self-governing profession – the Rules of Professional Conduct cannot form the basis for a claim of legal malpractice (Preamble ¶ 19)

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"Case within a Case"

- The "case within a case" doctrine requires a plaintiff to demonstrate, by a preponderance of the evidence, that they would have prevailed in the underlying action had it not been for the defendant attorney's negligence. Kituskie, 714 A.2d at 1030. **It is insufficient for a plaintiff to speculate as to whether he or she would have prevailed in the underlying matter.** A plaintiff bears the burden of establishing, by a **preponderance of the evidence**, that he or she has sustained "**actual loss**" as a proximate result of the defendant attorney's negligence.
- See Rizzo v. Haines, 555 A.2d 58 (Pa. 1989);
- See also, Myers v. Robert Lewis Siegle, P.C., 751 A.2d 1182 (Pa. Super. 2000).

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Damages

- Difficult to prove damages (real, tangible and quantifiable)
- The law establishes that a claimant, as a matter of law, may **not** base his/her claim upon speculation and conjecture. Kituskie v. Corbman, 552 Pa. 275, 741 A.2d 1027 (1998); Rizzo v. Haines, 520 Pa. 484, 555 A.2d 58 (1989); Mariscotti v. Tinari, 335 Pa. Super., 485 A.2d 56 (1984); Pashak v. Barish, 303 Pa. Super. 559, 450 A.2d 67 (1982).
- This issue of "predicting" the outcome of an action "but" for the actions/omissions of an attorney has been ruled as pure speculation and most likely will not survive a dispositive motion.

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EXAMPLES OF SPECULATION

- Another expert
- Another exhibit
- An additional deposition
- Sued another and/or different party
- Filed a different claim (breach of contract vs. defamation)
- "Could of, Should of, Would of"
- "Monday-morning quarterback"
 - It is impossible to state whether a jury would have awarded more damages if a suit had been filed against another potential party or under another theory of liability. It is indeed possible that a smaller verdict would have been reached or a defense verdict ultimately would have been rendered. Thus, sanctioning these "Monday-morning quarterback" suits would be to permit lawsuits based on speculative harm; something with which we cannot agree. Muhammad v. Strassburger, McKenna, Messer, Shilobod and Gutnick, 526 Pa. 541, 587 A.2d 1346 (1991)

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PROFESSIONAL JUDGMENT

- An informed judgment, even if subsequently proven to be erroneous, is not negligence. Mazer v. Security Ins. Group, 368 F. Supp. 418 (E.D. Pa. 1973)
- In this Commonwealth the litigant is the complete master of his own cause of action in matters of substance; he may press it to the very end regardless of the facts and law arrayed against him. Archbishop v. Karlak, 299 A.2d 294 (Pa. 1973).

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Element Unique to Claims against
Criminal Defense Attorneys

ACTUAL INNOCENCE
MUST BE ESTABLISHED !!!

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Bailey v. Tucker, 533 Pa. 237 (1993)

- Combined appeals by Bailey (First Degree Murder) and Trice (Various Drug Related Federal Offenses)
 - Pa. Supreme recognized difference between civil and criminal practice
 - Policy considerations applicable in criminal practice analysis
 - the threat of a malpractice action for representation of a criminal defendant will have a "chilling effect" on counsel's ability to defend
 - difficulty attracting and maintaining attorneys to represent persons charged with crime, and the retention of an attorney will become prohibitively expensive
 - aggrieved defendants already have sufficient systemic remedies for attorney ineffectiveness such as appeals and post-conviction proceedings
 - permitting such a cause of action will result in a flood of litigation
 - the possibility of a guilty "in fact" party actually profiting from his crime where the attorney's negligence was directed to a non-factual aspect of the criminal defense

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Bailey v. Tucker, 533 Pa. 237 (1993)

- Criminal Defense Malpractice Elements:
 - employment of the attorney
 - reckless or wanton disregard of the defendant's interest on the part of the attorney
 - the attorney's culpable conduct was the proximate cause of an injury suffered by the defendant/plaintiff, i.e., "but for" the attorney's conduct, the defendant/plaintiff would have obtained an acquittal or a complete dismissal of the charges.
 - the criminal defendant/plaintiff suffered damages
 - Subsequent finding of innocence or dismissal of all charges

**** Plaintiff will not prevail in an action for criminal malpractice unless and until he/she has pursued post-trial remedies and obtained relief which was dependent upon attorney error (although such finding may be introduced into evidence in the malpractice action - it shall not be dispositive of the establishment of culpable conduct)

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Claims by Firm Size

Small firms have disproportionate amount of claims

- Solo – 37%
- Firms with 2-5 attorneys – 33%
- Firms with 6-10 attorneys – 9%
- Firms with 11-39 attorneys – 10%
- Firms with 40+ attorneys 11%

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Claims by Experience

New lawyers with less than two years practice reported the least amount of claims

Lawyers in practice 11 to 20 years reported the most

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2021 Data re: Claims by Practice Area

- Personal Injury (Plaintiff) – 20%
- Real Estate – 19%
- Business – 17%
- Estate Probate – 14%
- Family – 10%
- Criminal – 9%
- IP, Labor, Tax, International, other – 8%
- Insurance Defense – 3%

*** Caveat – Statistics are only as good as the data input for consideration. Different carriers identify a “claim” using different metrics.

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Claims by Practice Areas

Personal injury:

- Dabbling
- Docket Control
- Late filings
- Out of state practice
- Medical liens and tax consequences

Real estate:

- Drafting mistakes
- Reliance on third party searches
- Volume
- Lien, zoning and inspection issues
- Severance of estate rights (gas, oil, etc.)

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Claims by Practice Areas

Family law:

- Identification and evaluation of assets
- Promising Results
- Reliance on prior counsel evaluations
- Lack of communication
- Representing Husband and Wife

General business:

- Failure to identify "real" client
- Deal going bad
- Ownership interest in entity

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Claims by Practice Areas

Estates:

- Drafting errors
- Competency of client issues
- Tax implications
- Possible dissatisfied third party beneficiaries
 - Pennsylvania law permits intended third-party beneficiaries to pursue breach of contract claims against attorneys under very limited circumstances – frustrated by inheritance Guy v. Liederbach, 459 A.2d 744 (Pa. 1983)
- Anticipated family fights over \$\$\$\$\$

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Alleged Error Types

- Administrative Error – 17%
 - You are responsible for your support staff
- Substantive Error – 69%
- Intentional Wrong – 14%
 - Coverage issues lurk for intentional acts

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WATCH OUT !

Most disturbing increase involves claims of intentional wrongs (fraud, theft, abuse of process, libel, etc.)

increased from previous high of 9.8% to 14.8% (COVID ANTICIPATED IMPACT!!!)

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Common Allegations against Attorneys

Bad result = professional negligence

- Clients often view an attorney's performance by the outcome
 - Attorney should have done a better job
- Unrealistic goals or expectations
- Attorney did not follow the client's direction
 - **Listen** to your client and **document** the file
- **Engagement Letters and Disengagement letters**

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Common Allegations against Attorneys

Unfair Trade Practice Consumer Protection Law (UTCPL)

- Not applicable to conduct of attorneys in scope of legal work
- Applicable to attorneys if doing other work (title work, investment advice, ownership interest, etc.)
- Be careful about wearing too many hats
 - **And make sure the client knows the limits of your involvement**

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Common Allegations against Attorneys

Rules of Professional Conduct

- Not basis for civil liability
- However, if there are DB findings, may be used as evidence (if discipline imposed was public) – Court's discretion
- Private reprimands will remain private

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Who/What is the Disciplinary Board?

The Disciplinary Board consists of twelve attorneys appointed by the Supreme Court of Pennsylvania for six-year terms to hear disciplinary matters and make recommendations to the Supreme Court: <https://www.padisciplinaryboard.org/>

- The members of Board often have little or no direct experience in issues of attorney Professional Conduct/Ethics.
- Supreme Court ultimately makes most disciplinary decisions

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The Other Players

- Hearing Board Members
 - Volunteer attorneys
 - Do not necessarily/usually have any experience in disciplinary matters or ethics
 - Approximately 150 at any one time
 - 3 Year terms
- Special Masters
 - Appointed in particularly complex cases
- Disciplinary Counsel
 - Career government employees
 - Currently 30- A mix of different backgrounds with a number of former prosecutors (8 auditors) – can use outside experts

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Grounds for Discipline

- R.D.E. 203 and DB Rules and Procedures 85.7
 - Violation of the Rules of Professional Conduct
 - Conviction of a Crime
 - Failure to appear for discipline
 - Willful violation of R.D.E. or failure (without good cause) to comply with an order in the disciplinary process
 - Making a material misrepresentation or failing to disclose material fact in Bar admission process
 - Failure to respond to request for statement of position by Disciplinary Counsel (DB-7)

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Types of Discipline

- R.D.E. 204
 - Disbarment by the Supreme Court
 - Suspension by the Supreme Court for a period not exceeding five years
 - Less than a year- does not require Petition for Reinstatement
 - One Year and One Day- or more- requires Petition for Reinstatement
 - Public Censure by the Supreme Court with or without probation
 - Probation by the Supreme Court under supervision provided by the Board
 - Public reprimand by the Board with or without probation
 - Private reprimand by the Board with or without probation
 - Private informal admonition by Disciplinary Counsel

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The Process- Step One

- Complaint to Board
 - Who makes?
 - Client
 - Opposing party
 - Judge
 - IOLTA Board
 - Annual Check for compliance with Rule 1.15
 - Refers to DB any non-exempt lawyer who fails or refuses to comply with IOLTA provisions of Rule 1.15 and IOLTA regulations
 - Lawyers Fund for Client Security
 - Disciplinary Board/ODC
 - Confidential unless the matter results in formal charges
- Attorneys are required to self report criminal convictions within 20 days- Clerks of Court are also required to report

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The Process- Step Two

- Intake- The majority of complaints do not survive the intake process and are dismissed without any notice to the counsel involved
- Investigation-
 - An investigator may be assigned
 - Investigator may contact the attorney
 - May request documents
- Dismiss or issue DB-7
- Emergency Temporary Suspension
 - Continued practice causing immediate and substantial harm

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The Process- Step Three



- The DB-7
 - Not that DB-7
- Form DB-7 is a Request for Statement of Respondent's Position
 - Usually the first time the attorney becomes aware of complaint made to DB
- Can include request for production of documents

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The Process- Step Three (Continued)

- What is in the DB-7
- Identification of source of complaint (sometimes)
- Short statement of what the DB-7 is with request for response in 30 days (extensions are fairly liberally granted with cause)
- Statement that the complaint has survived the intake and "based upon the information currently available to us, it appears that your alleged conduct may have violated the Rules of Professional Conduct"
- Suggestion to retain counsel
- Numbered paragraphs setting forth factual basis for complaint
- "If the above allegations are true, we are concerned that you may have violated the following Rules of Professional Conduct."
- A hodge-podge of disciplinary rules

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The Process- Step Four

- Response to the DB-7
- Requires a response to individual paragraphs
 - Does not require admission/denial ("acknowledged" or "correct")
 - Denials should include a factual statement of basis for denial
 - Make certain there is an evidentiary basis for denial
- Statement of Respondent's Position
 - Opportunity to provide a narrative of the Respondent's position
 - Important to address all of the facts giving rise to the complaint
 - Do not assume Disciplinary Counsel knows anything more than is in the DB-7 or that the statements made in the DB-7 are correct

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The Process- Step Four (Continued)

- Responding to the asserted potential violations of RPCs
 - Difficult because alleged rule violations do not correlate to numbered paragraphs
 - Recent DB-7: 94 numbered paragraphs followed by:

If the above allegations are true, we are concerned that you may have violated the following Rules of Professional Conduct: 1.1; 1.3; 3.1, 3.3(a)(1); 8.4(a); 8.4(c); and 8.4(d).

- Do best to correlate allegations with alleged violations, but also add a statement that if not appropriately responded – request clarification

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The Process- Step Five

- After reviewing response to DB-7, Disciplinary Counsel can:
 - Make a supplemental request for information or documents
 - Additional investigation
- Dismissal of the complaint
 - With or without letter of concern
- Referral to Reviewing Hearing Committee Member
 - Preparation of a DB-3
 - Provides recommended resolution (Informal Admonition, Private Reprimand, Public Reprimand, or the initiation of formal charges)
 - Reviewing member review along with DB-7 and response and indicates if they agree with recommended resolution
 - The Member may approve or modify recommended disposition, or direct dismissal of the complaint
- Respondent can demand formal proceedings

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The Process- Step Six

- Petition for discipline
 - Generally identical to DB-7 in content
 - 20 days to respond
- All proceedings are open to public after filing of answer (or Board order for public reprimand)
- Prehearing (at least 30 days before hearing)
 - Senior member of hearing committee/special master
 - Set timing, identify witnesses, set discovery, discuss admissions, exchange of exhibits
- Subpoenas/Depositions

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The Process- Step Seven

- Hearing (within 90 days of referral to committee)
 - Three members of hearing committee
 - Looks a little like a non-jury trial
 - Rules of evidence are followed under the Rules, but loosely enforced in practice
 - Senior hearing committee member rules on evidentiary questions
 - Disciplinary Counsel has the burden of proof
 - Not defined by the Rules- Case law states: "preponderance of evidence" but also "proof of such conduct must be Clear and Satisfactory."
- Briefs
- Report of Hearing Committee
 - Findings of fact; conclusions of law; and recommended disposition
 - Consent discipline may occur at any point prior to the issuance of the Hearing Committee's Report and Recommendation

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The Process- Step Eight

- Disciplinary Board
 - Briefs
 - ODC and Respondent can both file exceptions to report and recommendations of the Hearing Committee
- Oral Argument
 - Can be requested by either side
 - If granted- presented before a panel of 3 Board Members
- Adjudication
 - Issues an Order of Dismissal, Informal Admonition, Private Reprimand, or Public Reprimand; or,
 - Files Report and Recommendation with Supreme Court recommending Probation, Public Censure, Suspension, or Disbarment

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The Process- Step Nine

- Respondent can appeal, or either party can file a petition for review by Supreme Court
- Either party can ask for oral argument before Supreme Court
- Supreme Court Issues Order or remands to Disciplinary Board

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The Process- Defense Considerations

- Stale Matters
 - DB Rules and Procedures 85.10
 - The Office of Disciplinary Counsel or the Board shall not entertain any complaint arising out of acts or omissions occurring more than four years prior to the date of the complaint.
- Exceptions
 - Theft/misappropriation
 - Conviction of Crime
 - Knowing act of concealment
 - If litigation results in finding of fraud, **ineffective assistance**, or prosecutorial misconduct, then timely if brought two years after the litigation in which the finding was made becomes final (amended earlier this year to clarify "tolling")

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Defense Considerations – What do they want?

- Honesty
- Responsiveness
- Facts
 - With supporting evidence
- Acceptance of Responsibility
 - Restitution/Efforts to Correct
- Remorse
- A plan of action moving forward

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Mitigation

- Mental Health
 - Mental Health issues are a potential mitigating factor in determining discipline (Watch for possible fitness implications)
 - Not a defense to a Petition for Discipline
 - Respondent must prove, by clear and convincing evidence, that alcohol or drug abuse was a factor in causing misconduct May present expert testimony to satisfy that burden of proof.
- Substance Abuse
 - Alcohol or drug abuse treated like other mental health issues
 - Can seek "Substance Abuse probation"
 - Appointment of sobriety monitor
- Other causes such as staffing issues, personal problems (sick relative, divorce, family problems, etc.), physical health, etc. can also serve to mitigate

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Technology

- Friend or Foe
 - Social media? (Facebook, LinkedIn, Blogs, Twitter)
- Client's expect instant responses
 - Always in contact
- Stay up-to-date on changes in technology
 - Held to most current standard
- Always make sure your communications are secure when communicating via email or text

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The Malpractice "Top 10"

10. **Make promises to the client**
 - "this case is a slam-dunk"
 - If you can't deliver on a promise, you will pay the price.
9. **Allow client to have (and keep) unrealistic expectations**
 - "Your case is worth One Million Dollars"
8. **Miss a filing deadline**
 - "Oops – sorry but I was counting on my paralegal to get that filed"
 - Blaming support staff never works as a viable defense.
7. **Inappropriate relations with clients and/or their family members**
 - These relationships always end badly for the licensed professional
 - **RPC 3.8(j)**
A lawyer shall not have sexual relations with a client unless a consensual relationship existed between them when the client-lawyer relationship commenced.
6. **Puff regarding relationship with other counsel and/or court**
 - "We go way back"
 - If the Court sees that you use your relationship with the court as a marketing tool, the relationship will be severed by the court.

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The Malpractice "Top 10"

5. **Don't return calls, letters or e-mails**
 - The client who won't stop calling.
 - If the client feels you don't care, then they won't care about you when they decide to file suit.
4. **Dabble in area of law not familiar with as a favor to friend/family**
 - "Sure I can help with that, it's easy"
3. **Cookie-cutter approach**
 - If it worked once, it has to work again.
 - Not all cases are the same. While you don't have to reinvent the wheel, you must recognize each case as unique.
2. **Abandon your client**
 - If you withdraw, the client will hold you responsible for everything that happens afterward.
 - **Also** – Be on the lookout for pre-existing problems if you are successor counsel. You may be held liable for missteps that occurred prior to your involvement if you fail to mitigate the impact of prior counsel.
1. **Sue your client for fees**
 - Analyze the possible recovery of the outstanding fees against the loss of your deductible and the costs associated with defending a suit.

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Conclusion

REMEMBER...

- Your entire file (and everything in it and not in it) may be used as an exhibit against you at some later date.
- Practice defensively - document everything and watch what you say.

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Questions?

Edwin A.D. Schwartz, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
Harrisburg, PA 17108-1166
717.237.5201
eschwartz@mcneeslaw.com

Yaël L. Dadoun, Esquire
Marshall Dennehey PC
200 Corporate Center Drive
Suite 300
Camp Hill, PA 17011
(717) 651-3512
YLDadoun@mdwgc.com

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SESSION #4
Ethics

“Race & Ethnicity
Issues & the Law”

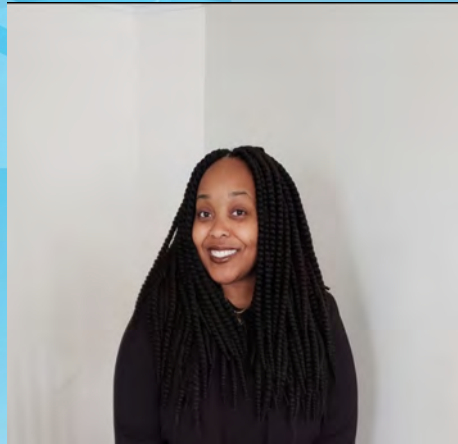
Presented by:
Assistant Chief Counsels:
Stacy McNaney, Esquire
Dana Prince, Esquire

Race and Ethnicity Issues & the Law

Dana D. Prince, Assistant Chief Counsel
Stacy McNaney, Assistant Chief Counsel



Dana D. Prince is a passionate public servant who currently serves as an Assistant Chief Counsel for the Pennsylvania Human Relations Commission in its Philadelphia Regional Office. She has worked for the PHRC for seven (7) years. As an Assistant Chief Counsel, she litigates cases in all areas covered by the Pennsylvania Human Relations Act – housing, employment, public accommodation, and education. Attorney Prince was instrumental in the implementation of the PHRC's newest regulations. Attorney Prince enjoys representing the PHRC as a speaker at various events throughout the Commonwealth. Attorney Prince is a Widener Law alumna and prior to her time at the PHRC, she served as a law clerk for the City of Harrisburg's Law Bureau and as a volunteer at the Dauphin County Bar Association.



Stacy McNaney is an Assistant Chief Counsel at the Pennsylvania Human Relations Commission, where she prosecutes discrimination complaints related to employment, housing and public accommodations/education. Prior to joining the PHRC, she was a Staff Attorney at the Legal Aid Society of the District of Columbia. Stacy is a public servant at heart. She received her law degree from the George Washington University Law School in Washington, DC, where she participated in clinical programs and internships that solidified her commitment to public interest work. Stacy spends her spare time chasing her two small children and going to her local CrossFit gym - both of which help keep her somewhat fit.



Pennsylvania Human Relations Commission

- The PHRC is the Commonwealth's civil rights enforcement agency. It promotes equal opportunity for all and enforces laws that protect people from unlawful discrimination.
- The PHRC enforces state laws that prohibit discrimination:
 - Pennsylvania Human Relations Act (PHRA)
 - Pennsylvania Fair Educational Opportunities Act (PFEOA)



Protected Classes

1. Age (40 & over)
2. Race
3. Color
4. National Origin
5. Ancestry
6. Disability
7. Familial Status (only in Housing)
8. Religious Creed
9. Retaliation
10. Sex



Systemic & Structural Racism

- Systems and structures with procedures or processes that disadvantages people of color.
- Creates disparities in many "success indicators".



Systemic & Structural Racism

- Prevents or makes it more challenging for people of color to participate in society and in the economy.
- Structural Racism operates at the societal level and is the power used by the dominant group to provide members of the group advantages, while disadvantaging the non-dominant group(s).



Systemic & Structural Racism

Effects on People of Color:

- Housing
- Employment
- Wealth
- Education
- Criminal Justice
- Surveillance
- Healthcare

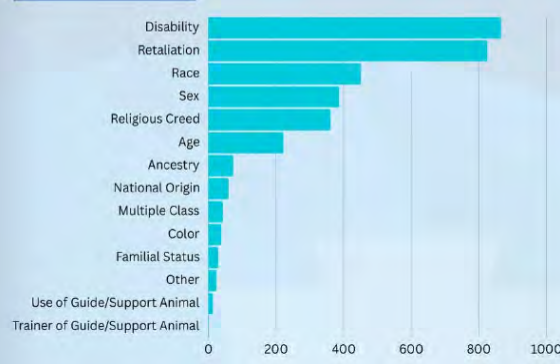


PHRC Annual Report

STATISTICS- FY 2022-2023

Basis of Complaints

Docketed from 7/1/2022 through 6/30/2023




PHRC Annual Report

- Disability: 866 complaints
 - Retaliation: 825 complaints
 - Race: 451 complaints
 - Sex: 387 complaints
 - Religious Creed: 361 complaints
 - Age: 222 complaints
 - Ancestry: 73 complaints
 - National Origin: 60 complaints
 - Color: 38 complaints
 - Familial Status: 29 complaints
 - Other: 24 complaints
 - Use of Guide/Support Animal: 13 complaints
 - Trainer of Guide/Support Animal: 2 complaints
- Total number: 3394 complaints. (There can be multiple bases within a single complaint)**

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STATISTICS- FY 2022-2023
Top Three Complaint Bases of the Four Categories





HOUSING

1. DISABILITY
2. RETALIATION
3. RACE

EMPLOYMENT

1. RETALIATION
2. DISABILITY
3. SEX







PUBLIC ACCOMMODATION

1. DISABILITY
2. RACE
3. RETALIATION

EDUCATION

1. RACE
2. RETALIATION
3. DISABILITY






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PHRA

1. Police Power – 43 P.S. 952

2. Liberal Construction – 43 P.S. 962



New PHRC Regulations

1. Published in the PA Bulletin and became effective in August 2023
2. The definition of "race" includes traits associated with race, including hair texture and protective hairstyles



PHRC: 2-part mission

1. Enforce PA anti-discrimination laws (PHRA and PFEOA)
2. Promote equal opportunity for ALL in PA



Promoting Equal Opportunity

1. Monthly Commission Meetings
2. Advisory Councils
3. Ambassador Program
4. Social Justice Committees
5. Lunch & Learn / Lecture Series
6. Building a Beloved Community Tour
7. PHRC Speaks
8. Training Programs
9. Sending Staff to Training
10. Conferences & Symposiums



THANK YOU!

Questions? Comments?



- Dana D. Prince – dprince@pa.gov
- Stacy McNaney – smcnaney@pa.gov
- General PHRC Inquiries:
 - (P): 717.787.4410
 - (W): www.pa.gov/en/agencies/phrc



SESSION #5
Estate Planning &
Probate Law

“Understanding DNI
and 1041s”

Presented by:
Neil W. Yahn, Esquire

Dauphin County Bar Association - Summer 2024 CLE Understanding DNI and 1041s - Neil Warner Yahn

- ▶ Qualitative
 - ▶ Concepts that control subchapter J
 - ▶ Because a trust and an estate are a separate tax entities, the gross income and deductions must be calculated and an annual tax return must be filed – the IRS Form 1041.
- ▶ Quantitative
 - ▶ Problems testing the concepts that control subchapter J
 - ▶ Let's tie it into the 1041

0

Subchapter J

The income taxation of trusts and estates is governed by Subchapter J of Chapter 1 of the Internal Revenue Code Sections 641 through 692... but how is a trust defined by the Code????

Similarities are present between Subchapter J and...

- ▶ the income taxation of individuals (e.g., the definitions of gross income and deductible expenditures)(1040),
- ▶ partnerships and limited liability entities (e.g., the pass-through principle), and S corporations (e.g., the pass-through principle and the trust or estate as a separate taxable entity)(1065 and 1120S).
- ▶ Estates and Trusts also involve several important new concepts, however, including the determination of distributable net income and the tier system of distributions to beneficiaries (stay tuned) (1041).

1

Subchapter J

The Code does not contain a definition of a trust; instead, trusts are defined and governed by state law (See Del and PA), provided however, the term usually refers to an arrangement created by a will or by an inter vivos (lifetime) declaration through which trustees take title to property for the purpose of protecting or conserving it for the beneficiaries.

Usually, trust operations are controlled by the trust document and by the fiduciary laws of the state in which the trust documents are executed. Typically, the creation of a trust involves at least three parties:

1. The grantor (sometimes referred to as the settlor or donor) transfers selected assets to the trust entity.
2. The trustee, who usually is either an individual or a corporation, is charged with the fiduciary duties associated with the trust.
3. The beneficiary is designated to receive income or property from the trust. In some situations, fewer than three persons may be involved, as specified by the trust agreement. For instance, an elderly individual who no longer can manage their own property (e.g., because of ill health) may create a trust under which the individual is both the grantor and the income beneficiary.

2

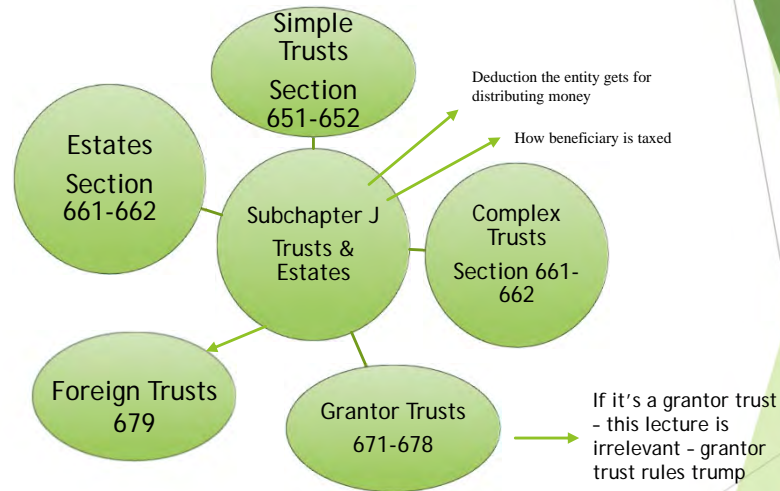
Not Estate Tax - Income Tax!

Basic exclusion amount (Unified Estate and Gift):

- ▶ 1997 \$ 600,000
- ▶ 2002 \$ 1,000,000
- ▶ 2017 \$ 5,490,000
- ▶ 2018 \$11,180,000
- ▶ 2019 \$11,400,000
- ▶ 2020 \$11,580,000
- ▶ 2021 \$11,700,000
- ▶ 2022 \$12,060,000
- ▶ 2023 \$12,920,000
- ▶ 2024 \$13,610,000
- ▶ 2025 \$ _____
- ▶ 2026 \$ 5,000,000
- ▶ The current estate and gift tax exemption is scheduled to end on the last day of 2025 and thus in 2026 \$ 5,000,000 (** as adjusted for inflation)(speculate about \$7,000,000)

3

What type of entities does Subchapter J cover?



And also Charitable Remainder Trusts (CRT): Section 664 - CRAT/CRUT - NOT 1041

4

Analysis - Look at the 1041

1. Is it a Grantor or Non-Grantor trust?
2. Is this a simple trust or a complex trust?
3. Is the trust taxed at the entity level or grantor level?
4. Are the beneficiaries taxed? If so, how?
5. What is the character of the income being taxed? (Look to the K1 for clues)
6. How do distributions affect the trust?
7. Are there additional taxes that might be triggered?

5

Section 641

- ▶ (a): tax rates of 1(e) apply to all income of estates and trusts
- ▶ (b): taxable income of a trust is calculated in the same manner as an individual, unless otherwise provided by this section of the tax code; and
- ▶ (c): trustee or executor is responsible for paying the tax.

6

Section 642

- ▶ Deduction for Personal Exemption of trust or estate
 - ▶ Trusts:
 - ▶ \$100 - Complex
 - ▶ \$300 - Simple
 - ▶ Trust which, under its governing instrument, is required to distribute all of its income currently
 - ▶ Estates:
 - ▶ \$600

7

Standard Deduction & Personal Exemption

- ▶ Like an individual does the trust get a standard deduction?
 - ▶ Section 643(c)(6): \$0

- ▶ What about a personal exemption?
 - ▶ Section 642(b): dependant upon the type of entity
 - ▶ Estates \$600
 - ▶ Simple Trsust \$300
 - ▶ Complex Trusts \$100

8

Taxable Income - Tax Rates “Trapped inside the Trust”

In 2023, the federal government will tax trust ordinary income at four levels.

- ▶ \$0 - \$2,900: 10%
- ▶ \$2,901 - \$10,550: 24%
- ▶ \$10,551 - \$14,450: 35%
- ▶ **\$14,451+: 37%**

The standard rules apply to these four tax brackets. So, for example, if a trust earns \$10,000 in income during 2023, it would pay the following taxes:

- ▶ 10% of \$2,900 (all earnings between \$0 - \$2,900) = \$290
- ▶ 24% of \$7,099 (all earnings between \$2,901 - \$10,000) = \$1,703.76
- ▶ Total Taxes = \$1,993.76

9

Taxable Income - Tax Rates “Trapped inside the Trust”

In 2024, tax trust ordinary income at four levels as well, with slightly different rate ranges.

\$0 - \$3,100: 10%

\$3,100 - \$11,150: 24%

\$11,150 - \$15,200 35%

\$15,200+: 37%

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Qualified Dividends and LTCG - “Trapped inside the Trust”

2023 Short-term capital gains (from assets held 12 months or less) and non-qualified dividends are taxed according to ordinary income tax rates.

However, **Qualified dividends and capital gains** on assets held for more than 12 months are taxed at a lower rate called the long-term capital gains rate.

For estates and trusts, there are three long-term capital gains brackets:

\$0 - \$3,000: 0%

\$3,000 - \$14,649: 15%

\$14,650+: 20%

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Taxable Income - Tax Rates "Married Filing Jointly on 1040"

2023 Tax Brackets: Married Filing Jointly -

Tax rate	If taxable income is:	The tax due is:
10%	Not over \$22,000	10% of taxable income
12%	Over \$22,000 but not over \$89,450	\$2,200 plus 12% of the excess over \$22,000
22%	Over \$89,450 but not over \$190,750	\$10,294 plus 22% of the excess over \$89,450
24%	Over \$190,750 but not over \$364,200	\$32,580 plus 24% of the excess over \$190,750
32%	Over \$364,200 but not over \$462,500	\$74,208 plus 32% of the excess over \$364,200
35%	Over \$462,500 but not over \$693,750	\$105,664 plus 35% of the excess over \$462,500
37%	Over \$693,750	\$186,601.50 plus 37% of the excess over \$693,750

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Taxable Income - Tax Rates "Single Filing on 1040"

2023 Tax Brackets: Single Filer

Tax rate	If taxable income is:	The tax due is:
10%	Not over \$11,000	10% of taxable income
12%	Over \$11,000 but not over \$44,725	\$1,100 plus 12% of the excess over \$11,000
22%	Over \$44,725 but not over \$95,375	\$5,147 plus 22% of the excess over \$44,725
24%	Over \$95,375 but not over \$182,100	\$16,290 plus 24% of the excess over \$95,375
32%	Over \$182,100 but not over \$231,250	\$37,104 plus 32% of the excess over \$182,100
35%	Over \$231,250 but not over \$578,125	\$52,832 plus 35% of the excess over \$231,250
37%	Over \$578,125	\$174,238.25 plus 37% of the excess over \$578,125

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Taxable Income - Tax Rates "Single Filing on 1040"

2023 Tax Brackets: Single Filer

Tax rate	If taxable income is:	The tax due is:
10%	Not over \$11,000	10% of taxable income
12%	Over \$11,000 but not over \$44,725	\$1,100 plus 12% of the excess over \$11,000
22%	Over \$44,725 but not over \$95,375	\$5,147 plus 22% of the excess over \$44,725
24%	Over \$95,375 but not over \$182,100	\$16,290 plus 24% of the excess over \$95,375
32%	Over \$182,100 but not over \$231,250	\$37,104 plus 32% of the excess over \$182,100
35%	Over \$231,250 but not over \$578,125	\$52,832 plus 35% of the excess over \$231,250
37%	Over \$578,125	\$174,238.25 plus 37% of the excess over \$578,125

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Additional Tax on Net Investment Income - NiiT

- ▶ Trusts and estates that are subject to the highest Federal income tax rate for the tax year must pay an additional tax to support the Medicare system, using Form 8960
- ▶ This tax is 3.8 percent of the lesser of:
 - ▶ The undistributed net investment income (N I I)
 - ▶ The excess of adjusted gross income (A G I) over \$14,450 for 2023
- ▶ NII includes gross income (less deductions) from interest, dividends, royalties, rents, passive activities, and net recognized gains from the disposition of assets producing such income

Section 643 Deduction

- ▶ Distributable Net Income
 - ▶ DNI
 - ▶ Caps the deduction to the trust
 - ▶ It creates an accounting measurement
 - ▶ Primary purpose is to limit the deduction to the beneficiary distribution
 - ▶ It only gives us the amount we need
 - ▶ It serves the purpose to carry over to section 662 and controls how much the beneficiary is also taxed on
 - ▶ Section 662 states the beneficiary is taxed on all the beneficiary receives BUT **limits gross income to beneficiary by DNI**
 - ▶ For now think of it as nothing more than taxable income

16

Section 643(a)

- ▶ Tax Definitions
 - ▶ DNI: for purposes of this part DNI means taxable income for the trust
- ▶ 643(a) Distributable Net Income: the term “distributable net income” means, for any taxable year, the taxable income of the estate or trust with the following modifications.
- ▶ (1) Deduction for distribution (2) deduction for personal exemption (3) Capital Gains and losses (4) extraordinary dividends and taxable stock dividends (5) tax exempt interest

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DNI In Review

- ▶ Major concepts learned up to now about DNI:
 1. Limits the entities deduction
 2. Limits the beneficiaries gross income
 3. It will control the character of the income
 4. Primary thing used to assemble K1's

18

What does income mean for tax purposes vs. FAI?

- ▶ When the trust or the beneficiary receive "income" what does that mean?
- ▶ What is the tax definition?
 - ▶ Section 643(b) for our purpose defines income
 - ▶ If not preceded by "taxable" "distributable net" "undistributed" or "gross" it is the amount of income for the taxable year.

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Fiduciary Accounting Income - where does it go?

Allocable to Income

Ordinary and operating net
income from trust assets
Interest, dividend, rent, and
royalty income
Stock dividends
Tax Exempt Income

Allocable to Corpus

Depreciation on business assets
Casualty gain/loss on
income-producing assets
Insurance recoveries on
income-producing assets
Capital gain/loss on investment assets
Stock splits

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20 PA C.S. §8103

- ▶ § 8103. Fiduciary duties; general principles.

Allocation.--In allocating receipts and disbursements to or between principal and income and with respect to any matter within the scope of this chapter, the following shall apply:

(1) A fiduciary shall administer a trust or estate in accordance with the governing instrument, even if there is a different provision in this chapter.

(2) A fiduciary may administer a trust or estate by the exercise of a discretionary power of administration regarding a matter within the scope of this chapter given to the fiduciary by the governing instrument, even if the exercise of the power produces a result different from a result required or permitted by this chapter. No inference that the fiduciary has improperly exercised the discretionary power shall arise from the fact that the fiduciary has made an allocation contrary to a provision of this chapter.

(3) A fiduciary shall administer a trust or estate in accordance with this chapter if the governing instrument does not contain a different provision or does not give the fiduciary a discretionary power of administration regarding a matter within the scope of this chapter.

(4) A fiduciary shall add a receipt or charge a disbursement to principal to the extent that the governing instrument and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

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Complex Trusts & Estates

- ▶ Amount of Deduction: Section 661(a)(1)-(2)
 - ▶ Section 661(a)(1)-(2): "... there shall be allowed a deduction in computing TI of an estate or trust [other than a simple trust], the sum of
 - ▶ (1) any amount of income ... required to be distributed currently (TIER 1); and
 - ▶ (2) any other amounts properly paid or credited or required to be distributed ... (TIER 2);
 - ▶ but such deduction shall not exceed the DNI of the estate or trust.

Complex Trusts: Limitation

- ▶ Section 661(c): Limitation on Deduction: No deduction shall be allowed ... in respect of any portion of the amount allowed as a deduction ... consisting of any item of DNI which is not included in gross income of the trust or estate.
- ▶ What is the difference between simple and complex trusts/estates?

Review

- ▶ Follow the Rule of Law
- ▶ Remember the Steps and Apply Them In Order
- ▶ Calculate FAI based on the Principal and Income Act
- ▶ Calculate TI based on the Code
- ▶ Calculate DNI based on the Code

Section 652: Beneficiary Taxation

- ▶ Section 652(a): income distribution deduction under 651(a) shall be included in GI of beneficiaries to whom the income is required to be distributed, whether distributed or not.
- ▶ Section 652(b): the amounts in 652(a) shall have the same character in the hands of the beneficiary as in the hands of the trust.

What if DNI Exceeds FAI?

- ▶ In most simple trusts, DNI is less than FAI. Therefore, in calculating the income distribution deduction under 651(a), DNI less net tax-exempt income will be less than FAI less net tax-exempt income.
- ▶ If, however, DNI exceeds FAI and there is tax-exempt income, we must reduce FAI by net tax-exempt income? How?

FAI is Made Up of DNI

- ▶ The Code assumes that FAI will be the same character to the beneficiary as it is to the trust under 652(b). Thus, FAI consists of pro rata portions of DNI.
- ▶ To determine the pro rata amount of net tax-exempt income in FAI, a formula based on DNI can calculate the components of DNI in FAI, including net tax-exempt income.

Character of Income

▶ 662(a): Inclusion

- ▶ (1) Tier 1: The amount of income required to be distributed, whether distributed or not.
- ▶ (2) Tier 2: All other amounts properly paid, credited or required to be distributed.
 - ▶ Treas. Reg. Section 1.662(a)(3).
 - ▶ If the sum of amount required to be distributed plus all other amounts properly paid, credited or required to be distributed exceeds the DNI, then include in gross income a pro rata portion.

Character of Income (continued)

▶ 662(b): Character of Amounts

- ▶ Character to the beneficiary is the same as the character to the estate or trust.
- ▶ Unless the will or trust specifically allocates classes of income to specific beneficiaries, then amounts from 661(a) shall consist of the same proportion of each class of item entering into DNI as the total bears to total DNI.
- ▶ Each Beneficiary receives the same proportion of each class. Treas. Reg. Section 1.662(b)(1).

Steps in the Process

- ▶ Steps 1,2: Calculate TTI & FAI
- ▶ Step 3: Calculate DNI
 - ▶ Calculate Adjusted DNI (DNI - Net Tax-Exempt)
- ▶ Step 4: Calculate Total Distributions
 - ▶ Calculate Taxable Portion (less Net Tax-Exempt)

Character: Tier 1 \geq DNI

- ▶ If Tier 1 \geq DNI, then Tier 1 distributions are taxable to the extent of DNI and Tier 2 distributions are not taxable.
 - ▶ Essentially taxed as a simple trust.
 - ▶ Formula:
 - ▶ Tier 1 Distribution * $\frac{\text{[Class of Income]}}{\text{DNI}}$
 - ▶ Tier 2: Not Taxable

Character: Tier 1 < DNI & Tier 1 + Tier 2 < DNI

- ▶ Tiers are irrelevant – think about Pier Trust. Each dollar distributed, whether Tier 1 or 2, will carry out a dollar of DNI.
 - ▶ Formula:
 - ▶ $\frac{\$39,000 \text{ Distribution} * [\text{Class of Income}]}{\text{DNI } \$51,000}$
 - ▶ Balance of DNI is taxed to the trust or estate.

THE END

- ▶ Tiers are irrelevant. Each dollar distributed, whether Tier 1 or 2, will carry out a dollar of DNI.
 - ▶ Formula:
 - ▶ $\frac{\text{Distribution} * [\text{Class of Income}]}{\text{DNI}}$
 - ▶ All DNI is taxed to the beneficiaries.

Neil Yahn JSDC Law www.jsdc.com												
2023 QD/LTCG Tax Rates				Hershey Estate								
Brackets				Step 2 - LTCG/Qualified Dividends				\$ 44,000.00				
\$0-\$3,000	\$ 3,000.00	x	0	\$ -								
\$3,000-\$14649	\$ 11,649.00	x	0.15	\$ 1,747.35					15% \$ -			
\$14,650 and over	\$ 14,650.00	x	0.2	\$ 2,930.00					\$ 44,000.00 20% \$ 8,800.00			
								\$ 4,677.35				
2023 OI Tax Rates				Step 1 - Calculate the Ordinary Income items				\$29,400				
Brackets				\$30,000 - \$600								
\$0-\$2,900	\$ 2,900.00	x	0.1	\$ 290.00					\$ 2,900.00 10% \$ 290.00			
\$2,901-\$10,550	\$ 7,649.00	x	0.24	\$ 1,835.76					\$ 7,649.00 24% \$ 1,835.76			
\$10551-\$14450	\$ 3,899.00	x	0.35	\$ 1,364.65					\$ 3,899.00 35% \$ 1,364.65			
\$14451 and over			0.37		\$ 29,400.00				\$ 14,949.00 37% \$ 5,531.13			
								\$ 14,451.00				
								Taxes \$ 9,021.54				
								Total \$ 17,821.54				
K-1s												
K-1				K-1								
Bob				Dave				Total				
What was the taxable income comprised of?				Ordinary income after IDD				LTCG				
Dividend Income	\$ 8,000.00	\$ 8,000.00	\$ 16,000.00					\$ 40,000.00 \$ 24,000.00				
Taxable Interest	\$ 2,000.00	\$ 2,000.00	\$ 4,000.00					\$ 10,000.00 \$ 6,000.00				
Rental Income	\$ 8,000.00	\$ 8,000.00	\$ 16,000.00					\$ 40,000.00 \$ 24,000.00				
Tax Exempt	\$ 2,000.00	\$ 2,000.00	\$ 4,000.00									
LTCG								\$ 20,000.00 \$ 20,000.00				
\$40,000 Distributed				20000/100,000				20000/100,000				
Distribution/FAI												
								\$ 30,000.00 \$ 20,000.00 \$ 24,000.00				

Yahn – Fiduciary Tax - 1041
Summer 2024 – DCBA
DNI and the 1041 - Discussion Document Sample

Chuck Hershey died on March 10, 2022, and the estate elected a fiscal year ending February 29, 2023. Chuck left his estate to his two children, Bob Cupp and Dave Kat, in equal shares.

The Chuck Hershey Estate reports the following items for the current fiscal year:

Hershey Estate’s two income beneficiaries Bob Cupp and Dave Kat receive cash distributions of \$20,000 each during the first year.

How much of each class of income is deemed to have been distributed to Bob and Dave?

What is FAI?

		FAI
Dividend Income:	\$40,000	\$40,000
Taxable Interest Income:	\$10,000	\$10,000
Rental Income	\$40,000	\$40,000
Tax Exempt	\$10,000	\$10,000
Long Term Capital Gain	\$20,000	
		<hr/>
		\$100,000

LTCG are not allocated to FAI.

What’s our DNI?	See Schedule B line 7
Schedule B – Line 12:	\$4,000
Line 13	\$36,000
Line 15 Income Distribution Deduction	\$36,000

A Check all that apply: Decedent's estate, Simple trust, Complex trust, Qualified disability trust, ESBT (S portion only), Grantor type trust, Bankruptcy estate—Ch. 7, Bankruptcy estate—Ch. 11, Pooled income fund.
B Number of Schedules K-1 attached (see instructions) 2
C Employer identification number xxx-xxx-xx
D Date entity created March 10, 2022
E Nonexempt charitable and split-interest trusts, check applicable box(es).
F Check applicable boxes: Initial return, Final return, Amended return, Net operating loss carryback, Change in trust's name, Change in fiduciary, Change in fiduciary's name, Change in fiduciary's address.
G Check here if the estate or filing trust made a section 645 election. Trust TIN

Table with 30 rows and 3 columns. Rows include Income (1-9), Deductions (10-22), and Tax and Payments (23-30). Total income is 110,000. Total tax is 19,934. Taxable income is 73,400.

Sign Here: Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.
Signature of fiduciary or officer representing fiduciary, Date, EIN of fiduciary if a financial institution.
May the IRS discuss this return with the preparer shown below? See instructions. Yes No

Paid Preparer Use Only: Print/Type preparer's name, Preparer's signature, Date, Check if self-employed, PTIN, Firm's name, Firm's EIN, Firm's address, Phone no.

Schedule A Charitable Deduction. Don't complete for a simple trust or a pooled income fund.			
1	Amounts paid or permanently set aside for charitable purposes from gross income. See instructions	1	
2	Tax-exempt income allocable to charitable contributions. See instructions	2	
3	Subtract line 2 from line 1	3	
4	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes	4	
5	Add lines 3 and 4	5	
6	Section 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes. See instructions	6	
7	Charitable deduction. Subtract line 6 from line 5. Enter here and on page 1, line 13	7	

Schedule B Income Distribution Deduction			
1	Adjusted total income. See instructions	1	110,000
2	Adjusted tax-exempt interest	2	10,000
3	Total net gain from Schedule D (Form 1041), line 19, column (1). See instructions	3	
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion)	4	
5	Capital gains for the tax year included on Schedule A, line 1. See instructions	5	
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number	6	(20,000)
7	Distributable net income. Combine lines 1 through 6. If zero or less, enter -0-	7	100,000
8	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law	8	
9	Income required to be distributed currently	9	0
10	Other amounts paid, credited, or otherwise required to be distributed	10	40,000
11	Total distributions. Add lines 9 and 10. If greater than line 8, see instructions	11	40,000
12	Enter the amount of tax-exempt income included on line 11	12	4,000
13	Tentative income distribution deduction. Subtract line 12 from line 11	13	36,000
14	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-	14	90,000
15	Income distribution deduction. Enter the smaller of line 13 or line 14 here and on page 1, line 18	15	36,000

Schedule G Tax Computation and Payments (see instructions)

Part I – Tax Computation			
1 Tax:			
a	Tax on taxable income. See instructions	1a	17,821.54
b	Tax on lump-sum distributions. Attach Form 4972	1b	
c	Alternative minimum tax (from Schedule I (Form 1041), line 54)	1c	
d	Total. Add lines 1a through 1c	1d	17821.54
2a	Foreign tax credit. Attach Form 1116	2a	
b	General business credit. Attach Form 3800	2b	0
c	Credit for prior year minimum tax. Attach Form 8801	2c	0
d	Bond credits. Attach Form 8912	2d	0
e	Total credits. Add lines 2a through 2d	2e	0
3	Subtract line 2e from line 1d. If zero or less, enter -0-	3	0
4	Tax on the ESBT portion of the trust (from ESBT Tax Worksheet, line 17). See instructions	4	0
5	Net investment income tax from Form 8960, line 21	5	2112
6a	Recapture tax from Form 4255	6a	0
b	Recapture tax from Form 8611	6b	0
c	Other recapture taxes:	6c	0
7	Household employment taxes. Attach Schedule H (Form 1040)	7	0
8	Other taxes and amounts due	8	0
9	Total tax. Add lines 3 through 8. Enter here and on page 1, line 24	9	19934

Schedule G Tax Computation and Payments (see instructions) *(continued)*

Part II – Payments

10	Current year's estimated tax payments and amount applied from preceding year's return	10	
11	Estimated tax payments allocated to beneficiaries (from Form 1041-T)	11	
12	Subtract line 11 from line 10	12	
13	Tax paid with Form 7004. See instructions	13	
14	Federal income tax withheld. If any is from Form(s) 1099, check here <input type="checkbox"/>	14	
15	Current year net 965 tax liability from Form 965-A, Part I, column (f) (see instructions)	15	
16	Payments from Form 2439	16	
17	Payments from Form 4136	17	
18a	Elective payment election amount from Form 3800	18a	
b	Other credits or payments (see instructions)	18b	
19	Total payments. Add lines 12 through 18b. Enter here and on page 1, line 26	19	

Other Information

		Yes	No
1	Did the estate or trust receive tax-exempt income? If "Yes," attach a computation of the allocation of expenses. Enter the amount of tax-exempt interest income and exempt-interest dividends \$ _____	✓	
2	Did the estate or trust receive all or any part of the earnings (salary, wages, and other compensation) of any individual by reason of a contract assignment or similar arrangement?		
3	At any time during calendar year 2023, did the estate or trust have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country? See the instructions for exceptions and filing requirements for FinCEN Form 114. If "Yes," enter the name of the foreign country _____		✓
4	During the tax year, did the estate or trust receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the estate or trust may have to file Form 3520. See instructions		✓
5	Did the estate or trust receive, or pay, any qualified residence interest on seller-provided financing? If "Yes," see the instructions for the required attachment		✓
6	If this is an estate or a complex trust making the section 663(b) election, check here. See instructions <input type="checkbox"/>		
7	To make a section 643(e)(3) election, attach Schedule D (Form 1041), and check here. See instructions <input type="checkbox"/>		
8	If the decedent's estate has been open for more than 2 years, attach an explanation for the delay in closing the estate, and check here <input type="checkbox"/>		
9	Are any present or future trust beneficiaries skip persons? See instructions		✓
10	Was the trust a specified domestic entity required to file Form 8938 for the tax year? See the Instructions for Form 8938		✓
11a	Did the estate or trust distribute S corporation stock for which it made a section 965(i) election?		✓
b	If "Yes," did each beneficiary enter into an agreement to be liable for the net tax liability? See instructions		✓
12	Did the estate or trust either make a section 965(i) election or enter into a transfer agreement as an eligible 965(i) transferee for S corporation stock held on the last day of the tax year? See instructions		✓
13	At any time during the tax year, did the estate or trust (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? See instructions		✓
14	ESBTs only. Does the ESBT have a nonresident alien grantor? If "Yes," see instructions		✓
15	ESBTs only. Did the S portion of the trust claim a qualified business income deduction? If "Yes," see instructions		✓

SESSION #6
Bankruptcy Law

“Bankruptcy Basics for
the Non-Practitioner”

Presented by:
Michael S. Travis, Esquire
James K. Jones, Esquire

Consumer Bankruptcy

For the non-practitioner
(mostly chapter 7 and 13)

Trivia

Answer:



Who can be a Debtor?

- Individuals with property in the United States, but they must have received credit counseling within the previous 180 days

- o Do not need to be insolvent
- o Case can be dismissed if there is a presumption of abuse

Under the Means Test

- Not a chapter 7 Debtor in the last 8 years
- Chapter 13 Debtors who have less than 2.75 million unsecured debts
- A debtor who has not been barred from refiling

Mostly talking about chapter 7 and chapter 13 today

What does a typical debtor look like?

- 5,700 cases filed in Pennsylvania last year
- Below the national average
- Bankruptcy cases overall down about 35% since the pandemic
- Vast majority of cases filed are personal and not business
- 41% of cases list medical debts as a contributing factor/together with job loss
- About equal number men and woman
- 64% are married
- 20% have a BA or higher, 36% are HS

Student loan

- Student loans may be discharged in bankruptcy; the Brunner test makes it difficult to prove hardship
Brunner factors: minimal standard of living if required to repay student loans, unlikely to repay creditors/conditions will persist for the loan period/demonstrate good faith effort to repay
- Biden Admin has made the process easier to establish and obtain a discharge without a trial

Why is it a good idea to file?

- Out of options(last resort)
- Creditor lawsuit
- Can save a car or house
- Gives breathing space
- Fresh start
- Economical way of dealing with multiple creditors

Who should avoid bankruptcy?

- In chapter 7 the Trustee will take control of property and sell it

Chapter 7 vs 13

- Reasons to be in Chapter 13
- -keep a car
- -catch up on mortgage
- -earn too much for chapter 7
- -have too much property
- -want to pay a tax debt Federal/State/Local

Example

- Zillow says house is “worth \$333,000”, title to widow
- Mortgage payoff = \$197,000
- Debts unsecured- lawsuit credit card 14,000
 - Cc 2 \$17,000
 - Cc 3 \$10,000
 - Window loan \$6,500
- options

Example

- House fmv = \$240,000
- Home equity loc = \$99,000
- Roof loan / solar = \$99,000
- Credit cards = 6,000

- Just wants out underneath

Basic forms

Case number _____

Check if this is an amended filing

Official Form 101 06/24

Voluntary Petition for Individuals Filing for Bankruptcy

The bankruptcy forms use you and Debtor 1 to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a joint case—and in joint cases, these forms use you to ask for information from both debtors. For example, if a form asks, "Do you own a car," the answer would be yes if either debtor owns a car. When information is needed about the spouses separately, the form uses Debtor 1 and Debtor 2 to distinguish between them. In joint cases, one of the spouses must report information as Debtor 1 and the other as Debtor 2. The same person must be Debtor 1 in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1 Identify Yourself

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
1. Your full name		
Write the name that is on your government-issued picture identification (for example, your driver's license or passport). Bring your picture identification to your meeting with the trustee.	First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III) _____	First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III) _____
2. All other names you have used in the last 8 years		
Include your married or maiden names and any assumed, trade names and doing business as names. Do NOT list the name of any separate legal entity such as a corporation, partnership, or LLC that is not filing this petition.	First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name _____ Business name (if applicable) _____	First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name _____ Business name (if applicable) _____

- ## ASAP form
- Need list of creditors
 - ID/Proof of Soc Sec
 - Credit counseling
 - Check for prior bankruptcies (example)

Official Form 106A/B
Schedule A/B: Property 12/15

In each category, separately list and describe items. List an asset only once. If an asset fits in more than one category, list the asset in the category where you think it fits best. Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Each Residence, Building, Land, or Other Real Estate You Own or Have an Interest In

1. Do you own or have any legal or equitable interest in any residence, building, land, or similar property?
 No. Go to Part 2.
 Yes. Where is the property?

1.1. Street address, if available, or other description: _____

 City: _____ State: _____ ZIP Code: _____
 County: _____

What is the property? Check all that apply.
 Single-family home
 Duplex or multi-unit building
 Condominium or cooperative
 Manufactured or mobile home
 Land
 Investment property
 Timeshare
 Other _____

Do not deduct secured claims or exemptions. Put the amount of any secured claims on Schedule D: Creditors Who Have Claims Secured by Property.
 Current value of the entire property? \$ _____
 Current value of the portion you own? \$ _____

Describe the nature of your ownership interest (such as fee simple, tenancy by the entirety, or a life estate), if known.

Who has an interest in the property? Check one.
 Debtor 1 only
 Debtor 2 only
 Debtor 1 and Debtor 2 only
 At least one of the debtors and another
 Check if this is community property (see instructions)

Other information you wish to add about this item, such as local property identification number: _____

If you own or have more than one, list here:
 1.2. Street address, if available, or other description: _____

What is the property? Check all that apply.
 Single-family home
 Duplex or multi-unit building
 Condominium or cooperative
 Manufactured or mobile home
 Land
 Investment property

Do not deduct secured claims or exemptions. Put the amount of any secured claims on Schedule D: Creditors Who Have Claims Secured by Property.
 Current value of the entire property? \$ _____
 Current value of the portion you own? \$ _____

Official Form 106C
Schedule C: The Property You Claim as Exempt 04/22

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. Using the property you listed on Schedule A/B: Property (Official Form 106A/B) as your source, list the property that you claim as exempt. If more space is needed, fill out and attach to this page as many copies of Part 2: Additional Page as necessary. On the top of any additional pages, write your name and case number (if known).

For each item of property you claim as exempt, you must specify the amount of the exemption you claim. One way of doing so is to state a specific dollar amount as exempt. Alternatively, you may claim the full fair market value of the property being exempted up to the amount of any applicable statutory limit. Some exemptions—such as those for health aids, rights to receive certain benefits, and tax-exempt retirement funds—may be unlimited in dollar amount. However, if you claim an exemption of 100% of fair market value under a law that limits the exemption to a particular dollar amount and the value of the property is determined to exceed that amount, your exemption would be limited to the applicable statutory amount.

Part 1: Identify the Property You Claim as Exempt

1. Which set of exemptions are you claiming? Check one only, even if your spouse is filing with you.
 You are claiming state and federal nonbankruptcy exemptions. 11 U.S.C. § 522(b)(3)
 You are claiming federal exemptions. 11 U.S.C. § 522(b)(2)

2. For any property you list on Schedule A/B that you claim as exempt, fill in the information below.

Brief description of the property and line on Schedule A/B that lists this property	Current value of the portion you own Copy the value from Schedule A/B	Amount of the exemption you claim Check only one box for each exemption.	Specific laws that allow exemption
Brief description: _____ Line from Schedule A/B: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____
Brief description: _____ Line from Schedule A/B: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____
Brief description: _____ Line from Schedule A/B: _____	\$ _____	<input type="checkbox"/> \$ _____ <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____

Exemptions are important

- Exempt home
- Exempt car
- Jewelry
- Wild card
- Don't forget State Exemptions.
- -if PA exemptions are used, joint debts are a problem!
- -maybe a big problem credit reports both spouses needed

Part 1060

Official Form 1060
Schedule D: Creditors Who Have Claims Secured by Property 1215

1. Do any creditors have claims secured by your property?
 No. Check this box and submit this form to the court with your other schedules. You have nothing else to report on this form.
 Yes. Fill in all of the information below.

Part 1061 List All Secured Claims

2. List all secured claims. If a creditor has more than one secured claim, list the creditor once only. For each claim, if more than one creditor has a particular claim, list the other creditors in Part 2. As much as possible, list the claims in alphabetical order according to the creditor's name.

Part 1061	Column 4 Amount of claim owed to creditor	Column 5 Total of collateral that supports that claim	Column 6 Priority
<p>1061-1 Describe the property that secures the claim</p> <p>1061-2 As of the date you file this claim list, the claim list: <input type="checkbox"/> Complete <input type="checkbox"/> Incomplete <input type="checkbox"/> Deleted</p> <p>1061-3 Who owns the asset? <input type="checkbox"/> Debtor <input type="checkbox"/> Spouse <input type="checkbox"/> Jointly owned <input type="checkbox"/> Other (specify): _____</p> <p>1061-4 Nature of lien: <input type="checkbox"/> Mortgage <input type="checkbox"/> Other (specify): _____</p> <p>1061-5 Check if this claim relates to a community asset <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>1061-6 Date claim was received _____</p>			
<p>1061-1 Describe the property that secures the claim</p> <p>1061-2 As of the date you file this claim list, the claim list: <input type="checkbox"/> Complete <input type="checkbox"/> Incomplete <input type="checkbox"/> Deleted</p> <p>1061-3 Who owns the asset? <input type="checkbox"/> Debtor <input type="checkbox"/> Spouse <input type="checkbox"/> Jointly owned <input type="checkbox"/> Other (specify): _____</p> <p>1061-4 Nature of lien: <input type="checkbox"/> Mortgage <input type="checkbox"/> Other (specify): _____</p> <p>1061-5 Check if this claim relates to a community asset <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>1061-6 Date claim was received _____</p>			

Official Form 1060 Schedule D: Creditors Who Have Claims Secured by Property Page 1 of ____

- All secured creditors go here
- Even if Debtors want to keep the collateral
- Beware of reaffirmation agreements (also goes on Statement of Intentions)

TOP of this page

Case No. _____

Case Title _____

Case Number _____

Check if this is an amended filing

Official Form 106E/F

Schedule E/F: Creditors Who Have Unsecured Claims 12/15

Part 1 List All of Your PRIORITY Unsecured Claims

1. Do any creditors have priority unsecured claims against you?
 No. Go to Part 2.
 Yes.

2. List all of your priority unsecured claims. If a creditor has more than one priority unsecured claim, list the creditor separately for each claim. For each claim, identify what type of claim it is. If a claim has both priority and nonpriority amounts, list the claim as a priority claim. If you have more than one priority unsecured claim, list the Claimant Page of Part 1. If more than one creditor holds a particular claim, list the other creditor in Part 2. If it is a variation of each type of claim, list the instructions for this form in the instruction booklet.

Total claim	Priority amount	Nonpriority amount
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____
9. _____	_____	_____
10. _____	_____	_____
11. _____	_____	_____
12. _____	_____	_____
13. _____	_____	_____
14. _____	_____	_____
15. _____	_____	_____
16. _____	_____	_____
17. _____	_____	_____
18. _____	_____	_____
19. _____	_____	_____
20. _____	_____	_____
21. _____	_____	_____
22. _____	_____	_____
23. _____	_____	_____
24. _____	_____	_____
25. _____	_____	_____
26. _____	_____	_____
27. _____	_____	_____
28. _____	_____	_____
29. _____	_____	_____
30. _____	_____	_____
31. _____	_____	_____
32. _____	_____	_____
33. _____	_____	_____
34. _____	_____	_____
35. _____	_____	_____
36. _____	_____	_____
37. _____	_____	_____
38. _____	_____	_____
39. _____	_____	_____
40. _____	_____	_____
41. _____	_____	_____
42. _____	_____	_____
43. _____	_____	_____
44. _____	_____	_____
45. _____	_____	_____
46. _____	_____	_____
47. _____	_____	_____
48. _____	_____	_____
49. _____	_____	_____
50. _____	_____	_____
51. _____	_____	_____
52. _____	_____	_____
53. _____	_____	_____
54. _____	_____	_____
55. _____	_____	_____
56. _____	_____	_____
57. _____	_____	_____
58. _____	_____	_____
59. _____	_____	_____
60. _____	_____	_____
61. _____	_____	_____
62. _____	_____	_____
63. _____	_____	_____
64. _____	_____	_____
65. _____	_____	_____
66. _____	_____	_____
67. _____	_____	_____
68. _____	_____	_____
69. _____	_____	_____
70. _____	_____	_____
71. _____	_____	_____
72. _____	_____	_____
73. _____	_____	_____
74. _____	_____	_____
75. _____	_____	_____
76. _____	_____	_____
77. _____	_____	_____
78. _____	_____	_____
79. _____	_____	_____
80. _____	_____	_____
81. _____	_____	_____
82. _____	_____	_____
83. _____	_____	_____
84. _____	_____	_____
85. _____	_____	_____
86. _____	_____	_____
87. _____	_____	_____
88. _____	_____	_____
89. _____	_____	_____
90. _____	_____	_____
91. _____	_____	_____
92. _____	_____	_____
93. _____	_____	_____
94. _____	_____	_____
95. _____	_____	_____
96. _____	_____	_____
97. _____	_____	_____
98. _____	_____	_____
99. _____	_____	_____
100. _____	_____	_____

Official Form 106E/F Schedule E/F: Creditors Who Have Unsecured Claims Page 1 of 4

- All creditors must be listed
- Trustee will ask the Debtors
- Costs extra to add later
- Sometimes Debtors want to keep an account and don't tell you

Fill in this part

Case No. _____ Date Filed _____

Debtor Name _____

Debtor Address _____

Debtor City/State/Zip _____

Debtor Telephone _____

Debtor E-mail _____

Check if this is an amended filing

Official Form 105G
Schedule G: Executory Contracts and Unexpired Leases 1215

Be as complete and accurate as possible. If two numbered pages are being together, both are equally responsible for supplying correct information. If there is space to provide, copy the additional page, fill it out, number the entries, and attach it to this page. On the top of any additional page, write your name and case number (if known).

1. Do you have any executory contracts or unexpired leases?
 No. Check this box and file this form with the court with your other schedules. You have nothing else to report on this form.
 Yes. Fill in all of the information below even if the contracts or leases are listed on Schedule A/B: Property Official Form 10A/B.

2. List separately each person or company with whom you have the contract or lease. Then state what each contract or lease is for (e.g., example, rent, contract lease, cell phone). See the instructions for this form in the instruction booklet for more examples of executory contracts and unexpired leases.

Person or company with whom you have the contract or lease	State what the contract or lease is for
21. _____ Name _____ Address _____ City/State/Zip _____ Telephone _____	_____
22. _____ Name _____ Address _____ City/State/Zip _____ Telephone _____	_____
23. _____ Name _____ Address _____ City/State/Zip _____ Telephone _____	_____
24. _____ Name _____ Address _____ City/State/Zip _____ Telephone _____	_____
25. _____ Name _____ Address _____ City/State/Zip _____ Telephone _____	_____

Official Form 105G Schedule G: Executory Contracts and Unexpired Leases page 1 of 2

- This is where you list landlords
- Car lease goes here
- Cell phone contracts
- Storage locker
- Able to get out of a bad contract or keep it

Official Form 106H
Schedule H: Your Creditors 1315

Check if this person:
 Debtor
 Creditor
 Joint Debtor and Creditor
 Check if this is an amended filing

Do you have any creditors? If you are filing a joint case, do not list either spouse as a creditor.
 No
 Yes

Within the last 8 years, have you lived in a community property state or territory? (Community property states and territories include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.)
 No, do not list it.
 Yes. Did your spouse, former spouse, or legal equivalent live with you at the time?
 No
 Yes. In which community state or territory did you live? _____ F.B. in the name and current address of that person.

Check if your spouse, former spouse, or legal equivalent:
 Debtor
 Creditor
 Joint Debtor and Creditor

In Column 1, list all of your creditors. Do not include your spouse as a creditor if your spouse is filing with you. List the person shown in line 1 again as a creditor only if that person is a guarantor or co-signer. Make sure you have listed the creditor on Schedule D (Official Form 1065), Schedule E (Official Form 1067), or Schedule G (Official Form 1065), the Schedule D, Schedule E, or Schedule G to file with Column 1.

Column 1: Your creditor	Column 2: The creditor to whom you owe the debt
1 Name of creditor Address City State ZIP Code	<input type="checkbox"/> Schedule D, line _____ <input type="checkbox"/> Schedule E, line _____ <input type="checkbox"/> Schedule G, line _____
2 Name of creditor Address City State ZIP Code	<input type="checkbox"/> Schedule D, line _____ <input type="checkbox"/> Schedule E, line _____ <input type="checkbox"/> Schedule G, line _____
3 Name of creditor Address City State ZIP Code	<input type="checkbox"/> Schedule D, line _____ <input type="checkbox"/> Schedule E, line _____ <input type="checkbox"/> Schedule G, line _____
4 Name of creditor Address City State ZIP Code	<input type="checkbox"/> Schedule D, line _____ <input type="checkbox"/> Schedule E, line _____ <input type="checkbox"/> Schedule G, line _____

Official Form 106H Schedule H: Your Creditors page 1 of ____

- Co Debtor stay applies in chapter 13 not c7
- May still need to make payments for Student Loans
- Secured car loans may need payments (list on SOI)

Trivia: 2



Part 1 Describe Employment

1. Did you have employment information? Yes No

2. If you have more than one job, attach a separate page with information about additional employment.

3. Provide address, seasonal or self-employed work.

4. Occupation may include self-employment or seasonal, if applicable.

Employer's name: _____
 Employer's address: _____
 City: _____ State: _____ Zip: _____

How long employed (month)? _____

Part 2 Other Details About Monthly Income

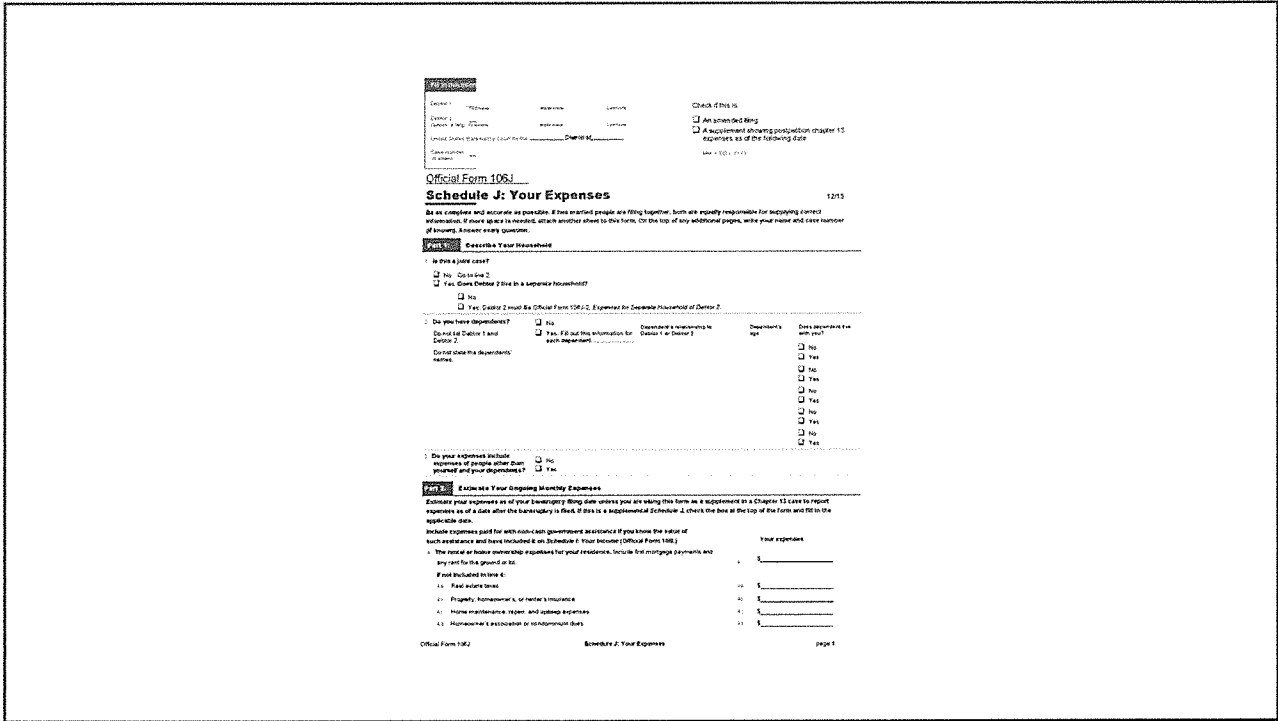
Exclude monthly income as of the date you file this form. If you have nothing to report for any line write \$0 in the space. Include your non-filing spouse unless you are head of household.

If you are a non-filing spouse, have more than one employer, combine the information for all employers for that person on this line. If you need more space, attach a separate sheet to this form.

	For Spouse 1	For Spouse 2 or non-filing spouse
1. List monthly gross wages, salary, and commissions before all social deductions. If not paid monthly, calculate what the monthly wage would be.	2. \$ _____	\$ _____
3. Estimate and list monthly overtime pay.	3. \$ _____	\$ _____
4. Calculate gross income. Add line 2 + line 3.	4. \$ _____	\$ _____

Official Form 1041 Schedule I: Your Income Page 1

- Schedules I and J are the heart of the forms
- All income must be listed
- This is the going forward amount of income
- List anticipated changes to account for job loss



- Its all about the budget
- Debtors are usually bad historians
- Trustees now asking for 90 days bank statements
- If you have \$166.67 in di = abuse (unsecured amt irrelevant)
- If \$100 pays 25% of unsecureds = abuse 707(b)(2)(A)(i)

Official Form 107
Statement of Financial Affairs for Individuals Filing for Bankruptcy 6422

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number if known. Answer every question.

Part 1 Give Details About Your Marital Status and Where You Live Before

1. What is your current marital status?
 Married
 Not married

2. During the last 12 months, did you live at the present address for at least 90 days?
 No
 Yes. List all of the places you lived in the last 12 years. Do not include where you live now.

Debtor 1:	Dates Debtor 1 lived there	Debtor 2:	Dates Debtor 2 lived there
From: To:	From: To:	From: To:	From: To:
City: State: ZIP Code:	City: State: ZIP Code:	City: State: ZIP Code:	City: State: ZIP Code:
From: To:	From: To:	From: To:	From: To:
City: State: ZIP Code:	City: State: ZIP Code:	City: State: ZIP Code:	City: State: ZIP Code:

3. Within the last 8 years, did you ever live with a spouse or legal equivalent in a community property state or territory? Community property states and territories are listed in the instructions.
 No
 Yes. Mark sure you filed Schedule H (Your Creditors) (Official Form 108).

Part 2 Explain the Sources of Your Income
Official Form 107
Statement of Financial Affairs for Individuals Filing for Bankruptcy
page 1

Official Form 108
Statement of Intention for Individuals Filing Under Chapter 7 6422

Be as complete and accurate as possible. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number if known.

Part 1 List Your Intention With Items Reported on Form 107

For all items reported on Form 107, Part 1 of Schedule B, Chapter 7, Mark the items you intend to keep or sell. If you are unsure, mark "N/A".

Category of property	Mark all you intend to keep or sell	Mark all you intend to sell	Mark all you intend to keep or sell	Mark all you intend to sell
Debtor's home	<input type="checkbox"/> Keep the property	<input type="checkbox"/> Sell the property	<input type="checkbox"/> Keep the property	<input type="checkbox"/> Sell the property
Debtor's motor vehicle	<input type="checkbox"/> Keep the property	<input type="checkbox"/> Sell the property	<input type="checkbox"/> Keep the property	<input type="checkbox"/> Sell the property
Debtor's other personal property	<input type="checkbox"/> Keep the property	<input type="checkbox"/> Sell the property	<input type="checkbox"/> Keep the property	<input type="checkbox"/> Sell the property
Debtor's business assets	<input type="checkbox"/> Keep the property	<input type="checkbox"/> Sell the property	<input type="checkbox"/> Keep the property	<input type="checkbox"/> Sell the property
Debtor's other assets	<input type="checkbox"/> Keep the property	<input type="checkbox"/> Sell the property	<input type="checkbox"/> Keep the property	<input type="checkbox"/> Sell the property

Official Form 108
Statement of Intention for Individuals Filing Under Chapter 7
page 1

- You can save your client a lot of money here
- Get rid of unnecessary secured property
- Redeem valued or nearly valueless property
- Watch out of property creditor will not repo - cars

Trivia: 3



Check if this is an amended filing

Official Form 122A-1
Chapter 7 Statement of Your Current Monthly Income

Part 6: Estimate Your Current Monthly Income

1. **What is your marital and filing status?** Check one only.
 Not married. File as Single. (See 2-11)
 Married and your spouse is filing with you. Fill out part Columns A and B. (See 2-11)
 Married and your spouse is NOT filing with you. You and your spouse file separately.
 Living in the same household and are not legally separated. File with Column A and B. (See 2-11)
 Living separately and are legally separated. File with Column A. (See 2-11) (If not filed with Column B. By checking this box, you declare under penalty of perjury that you and your spouse are legally separated under non-marriage law that applies to you and your spouse as being legal for reasons that do not include meeting the Marital Trust requirements. 11 U.S.C. § 1213(a)(2))

File the average monthly income that you received from all sources, reported during the 6 full months before you file this bankruptcy case. (11 U.S.C. § 1013(a). For example, if you are filing on September 15, the reporting period would be March 1 through August 15. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. If the total does not include any income amount over \$100,000, File separate Month 1 through 6 on the same income property, and the amount from that property in one column only. If you have nothing to report for any line, write \$0 in that space.

	Column A	Column B
	Debtor 1	Debtor 2 or Marital Spouse
2. Your gross wages, salary, tips, bonuses, overtime, and commissions (Include all payroll deductions)	\$ _____	\$ _____
3. Allowance and maintenance payments. Do not include payments from a spouse if Column B is filed in	\$ _____	\$ _____
4. All amounts from any source which are regularly paid for household expenses at your or your dependent's, including child support, victim reparations, contributions from an unsecured creditor, members of household, and insurance, annuities, and pensions (Include regular contributions from a spouse only if Column B is not filed in. Do not include payments you receive on line 3)	\$ _____	\$ _____
5. All income from operating a business, profession, or farm (Gross receipts (before all deductions) - Expenses and including operating expenses)	Debtor 1: \$ _____ Debtor 2: \$ _____	Debtor 1: \$ _____ Debtor 2: \$ _____
6. All income from rental and other real property (Gross receipts (before all deductions) - Operating and including operating expenses)	Debtor 1: \$ _____ Debtor 2: \$ _____	Debtor 1: \$ _____ Debtor 2: \$ _____
7. Interest, dividends, and royalties	\$ _____	\$ _____

Official Form 122A-1 Chapter 7 Statement of Your Current Monthly Income page 1

- If Client earns more than “mean” income testing is invoked
- Social security is not counted for the mean
- Veteran’s disability benefits
- Could still be problematic for the income/expense side

Official Form 1220-2
Chapter 13 Calculation of Your Disposable Income 04/21

To fill out this form, you will need your completed copy of Chapter 13 Statement of Your Current Monthly Income and Calculation of Disposable Income (Official Form 1220-1).

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

Part 6: Calculate Your Deductions From Your Income

The Internal Revenue Service (IRS) sets the National and Local Standards for certain expense amounts. Use these amounts to answer the questions in lines 6-11. To find the IRS standards, go online using the link specified in the separate Instructions for this form. This information may also be available at the bankruptcy court's office.

Do not file expense amounts for any month unless you are required to do so. In your part of the form, you will use some of your actual expenses if they are higher than the standards. Do not include any planning expenses that are subtracted from income in lines 5 and 6 of Form 1220-1, and do not deduct any amounts that you subtracted from your gross income in line 13 of Form 1220-1.

If your expenses differ from month to month, enter the average expense.

Risk: Link numbers 1-4 are not used on this form. These numbers apply to information required by a similar form used in Chapter 7 cases.

1. The number of people used in determining your deductions from income
 Fill in the number of people who could be covered as dependents on your federal income tax return, plus the number of any additional dependents whom you support. This number may be different from the number of people in your household.

National Standards You must use the IRS National Standards to enter the amounts in lines 6-7.

6. Food, clothing, and other items: Using the number of people you entered in line 1 and the IRS National Standards, fill in the dollar amount for food, clothing, and other items. \$ _____

7. Out-of-pocket health care allowance: Using the number of people you entered in line 1 and the IRS National Standards, fill in the dollar amount for out-of-pocket health care. The number of people in your household category depends on whether you are under 65 and dependents who are 65 or older (see the Instructions for Health Care Costs). If your actual expenses are higher than the IRS amount, you may deduct the additional amount on line 12.

Official Form 1220-2 Chapter 13 Calculation of Your Disposable Income page 1

- Special circumstances can reduce payments
- We are either paying all unsecureds in full with interest or pay the disposable income for the term
- 36 mos if below mean
- 60 mos if above mean

Rev. 12/01/19

LOCAL BANKRUPTCY FORMS/FILE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: _____ CHAPTER 13
 CASE NO. _____
 _____ ORIGINAL PLAN
 _____ AMENDED PLAN (Indicate 1st, 2nd, 3rd, etc.)
 _____ Number of Months to Avoid Liens
 _____ Number of Months to Value Collateral

CHAPTER 13 PLAN

NOTICES

Debtors must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as "Not Included" or if both boxes are checked or if neither box is checked, the provision will be ineffective if set out later in the plan.

1	The plan contains nonstandard provisions, set out in § 9, which are not included in the standard plan as approved by the U.S. Bankruptcy Court for the Middle District of Pennsylvania.	Included	Not Included
2	The plan contains a limit on the amount of a secured claim, set out in § 2 E, which may result in a partial payment or no payment at all to the secured creditor.	Included	Not Included
3	The plan avoids a judicial lien or nonpurchase-money security interest, set out in § 2 G.	Included	Not Included

YOUR RIGHTS WILL BE AFFECTED

READ THIS PLAN CAREFULLY. If you oppose any provision of this plan, you must file a timely written objection. This plan may be confirmed and become binding on you without further notice or hearing unless a written objection is filed before the deadline stated in the Notice issued in connection with the filing of the plan.

1

- This is where you tell secured creditors how they will be treated

82009 (Form 2020) (12/15)

United States Bankruptcy Court
 _____ District Of _____

In re _____ Case No. _____
Debtor _____ Chapter _____

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR

1. Pursuant to 11 U.S.C. § 329(a) and Fed. Bankr. P. 2016(b), I certify that I am the attorney for the above named debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept _____ \$ _____
 Prior to the filing of this statement I have received _____ \$ _____
 Balance Due _____ \$ _____

2. The source of the compensation paid to me was
 Debtor Other (specify) _____

3. The source of compensation to be paid to me is:
 Debtor Other (specify) _____

4. I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.
 I have agreed to share the above-disclosed compensation with a other person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation, is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

- a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy.
- b. Preparation and filing of any petitions, schedules, statements of affairs and plan which may be required.
- c. Representations of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof.

- All fees disclosed here
- Chapter 13 fees also require a request for compensation if paid through the plan

Misc and hot trends

- Sale of real estate in chapter 13
- Proof of claim what to watch for
- Maintaining the mailing matrix