

# The Pennsylvania Appellate Case Review

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REPORTING DECISIONS THROUGH MARCH 31, 2018

## PENNSYLVANIA APPELLATE COURT DECISIONS

### I. Procedural Law

#### A. *Interlocutory Orders*

- [\*Haviland v. Kline & Specter, P.C.\*, 2018 PA Super 67 \(Pa. Super. March 22, 2018\)](#)

- **Holding:** An Order denying a motion to disqualify an arbitrator, which is analogous to an Order on a Motion to Recuse, is not an appealable final Order.

All decisions are "[hyperlinked](#)" to the slip opinion. All you have to do is "[click](#)" or "[ctrl + click](#)" on the title of the case, and if connected to the Internet, your browser will open decision for you to read in its entirety. Try it!

### II. Substantive Law

#### A. *Charging Liens*

- [\*Smith v. Hemphill\*, 2018 PA Super 45 \(Pa. Super. March 1, 2018\)](#)

- **Holding:** Under equitable principles, for a charging lien to be enforceable, (1) there must be an applicable fund available, (2) an attorney's services secured the fund from which he seeks payment, (3) there must be an agreement to look to the fund rather than the client, (4) the lien claimed is limited to costs, fees or other disbursement incurred in the litigation, and (5) equitable considerations necessitate recognizing and applying the charging lien.

#### B. *Quantum Meruit Damages*

- [\*Meyer, Darragh v. Law Firm of Malone Middleman\*, 6 & 7 WAP 2017 \(Pa. March 6, 2018\)](#)

- **Holding:** In a claim for quantum meruit damages, which is an equitable claim for unjust enrichment, the issue is whether the plaintiff has conferred a benefit on the defendant, which the defendant has realized and retained. Therefore, consistent with *Shafer Elec & Const. v. Mantia*, 96 A.3d 989 (Pa. 2014), a predecessor law firm/attorney dismissed as counsel may maintain a *quantum meruit* claim against a successor law firm that ultimately settles the case.

#### C. *Medical Malpractice Actions - Peer Review Protection Act*

- [\*Reginelli v. Boggs\*, 20 WAP 2016 \(Pa. March 27, 2018\)](#)

- **Holding:** The Peer Review Protection Act (PRPA), 63 P.S. §§ 425.1-425.4, provides a narrow evidentiary privilege for peer review conducted by "professional health care providers," *i.e.*, "individuals or organizations who are approved, licensed or otherwise regulated to practice or operate in the health care field under the laws of the Commonwealth." Therefore, an entity that is not a "professional health care provider," and which did not generate or maintain the peer reviewer/performance file, is not entitled to claim the evidentiary privilege provided by the PRPA. Justice Wecht filed a [dissenting opinion](#).

D. Social Media -Authentication of Evidence

□ [Commonwealth v. Mangel, 2018 PA Super 57 \(Pa. Super. March 15, 2018\)](#)

➤ **Holding:** To authenticate social media evidence so that it is admissible, the proponent must (1) establish an adequate foundation showing its relevance and authenticity; and (2) introduce direct or circumstantial evidence that tends to corroborate the identity of the author, such as testimony, or contextual clues in the communication tending to reveal the identity of the sender. Rejecting the standard adopted in *U.S. v. Browne*, 834 F.3d 403 (3d Cir. 2016), the Court noted that "social media records and communications can be properly authenticated within the existing framework of Pa.R.E. 901 and Pennsylvania case law[.]"

E. Whistleblower Law - Non-Economic Damages

□ [Bailets v. Pennsylvania Turnpike Commission, 126 MAP 2016 \(Pa. March 27, 2018\)](#)

➤ **Holding:** Non-economic damages for items such as embarrassment, humiliation, loss of reputation and mental anguish are available to plaintiffs in actions filed under the Whistleblower Law, 42 P.S. 1421, *et seq.*

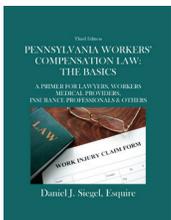
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