

JOSH J.T. BYRNE

CHAIR, DISCIPLINARY BOARD REPRESENTATION
SHAREHOLDER



AREAS OF PRACTICE

Disciplinary Board Representation
Miscellaneous Professional Liability
Lawyers' Professional Liability
Commercial Litigation

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ADMISSIONS

New Jersey
1998

Pennsylvania
2000

U.S. District Court of New Jersey

U.S. District Court Eastern District
of Pennsylvania

U.S. District Court Middle District
of Pennsylvania

U.S. Court of Appeals 3rd Circuit

OVERVIEW

Josh J.T. Byrne is a member of the Professional Liability Department where he concentrates his practice on representing and defending professionals in a variety of professional liability matters. Josh regularly represents attorneys in legal malpractice, wrongful use of civil proceedings and disciplinary matters. He also represents many other types of professionals, including those in the health care field, in the federal and state courts in Pennsylvania and New Jersey and before disciplinary boards.

Josh has devoted his legal career to the protection of professionals and is highly regarded in this arena throughout the state. He is the former Chair of the Pennsylvania Bar Association's Professional Liability Committee; Co-Chair of the Amicus Curiae Brief Committee; and an active member of the Ethics Committee. He is also Co-Chair of the Philadelphia Bar Association's Professional Responsibility Committee, the former Co-Chair of the Philadelphia Bar Association's Professional Guidance Committee and is a former Hearing Committee Member serving the Disciplinary Board of the Supreme Court of Pennsylvania. He serves as a Zone One delegate to the Pennsylvania Bar Association's House of Delegates and as a Judge Pro Temp for the Philadelphia Court of Common Pleas.

A prolific writer, Josh publishes extensively on malpractice avoidance and authors a recurring column in *The Legal Intelligencer* on professional liability topics. Josh frequently presents to legal and business organizations throughout Pennsylvania on professional liability themes.

Josh graduated with a dual major in Political Science and Japanese Studies From Earlham College in Richmond, Indiana. After college, he worked for two years as a coordinator for international relations in Chiba, Japan. He then obtained his *juris doctor* from Rutgers University School of Law. He is rated AV-Preeminent by Martindale-Hubbell, the highest rating for professional competence.

EDUCATION

Rutgers University, Camden, NJ
(J.D., 1997)

Earlham College (B.A., 1992)

HONORS & AWARDS

AV® Preeminent™ by Martindale-Hubbell®

Best Lawyers in America®,
Professional Malpractice Law -
Defendants
2024

Pennsylvania Super Lawyers
Rising Star
2008

ASSOCIATIONS & MEMBERSHIPS

Pennsylvania Bar Association,
former Chair, Professional Liability
Committee; Co-Chair, Amicus
Curiae Brief Committee; Ethics
Committee; Zone One Delegate,
House of Delegates

Philadelphia Bar Association,
Board of Governors, 2023 -
present; Co-Chair, Professional
Responsibility Committee, 2022 -
present; former Co-Chair of the
Philadelphia Bar Association's
Professional Guidance Committee

YEAR JOINED

2021

THOUGHT LEADERSHIP

Law Firm Breakups

Philadelphia - Headquarters
Disciplinary Board Representation
Lawyers' Professional Liability
May 1, 2024

Law firm breakups are fraught with the potential for attorney misconduct. Attorneys who determine they can no longer work together will often take the additional step of accusing one another of inappropriate conduct. Legal Update for Lawyers' Professional Liability – May 2024 is prepared by Marshall Dennehey to provide information on recent legal developments of in

Restricting Restrictions: When Attorney Employment Agreements Run Afoul of the Rules of Professional Conduct

Philadelphia - Headquarters
Lawyers' Professional Liability
March 21, 2024

Risk Management in the Practice of Law

Philadelphia - Headquarters
Lawyers' Professional Liability
February 27, 2024

Probable Cause as a Matter of Law in Dragonetti Cases

Philadelphia - Headquarters
Lawyers' Professional Liability
Miscellaneous Professional Liability
November 17, 2023

Third Circuit Confirms Disciplinary Board's Ability to Prohibit Harassment and Discrimination in the Practice of Law

Philadelphia - Headquarters
Lawyers' Professional Liability
Disciplinary Board Representation
October 1, 2023

The recent amendment to Pennsylvania Rule of Professional Conduct 8.4, prohibiting harassment and discrimination in the practice of law, remains in effect in Pennsylvania after the Third Circuit held that an attorney plaintiff lacked standing to c Case Law Alerts, 4th Quarter, October 2023 is prepared by Marshall Dennehey to provide information on recent developments of interest to our readers.

SPEAKING ENGAGEMENTS

Avoiding Legal Malpractice, Pennsylvania Bar Institute, November 29, 2023

Legal Malpractice Avoidance, Monroe County Bar Association, June 15, 2023

Cyber Exposures: Best Practices for Protecting Against, Preparing for & Responding to Cyber-Attacks, Lackawanna Bench Bar Conference, October 22, 2021

Attorney Wellness & Well-Being, Pennsylvania Bar Association Large Law Firm Committee and Pennsylvania Bar Institute, October 6, 2021

Legal Malpractice Avoidance, Monroe County Bar Association, June 16, 2021

Avoiding Legal Malpractice, Pennsylvania Bar Institute, June 9, 2021

Legal Malpractice Avoidance in the Pandemic, Dauphin County Bar Association, April 7, 2021

Pennsylvania Bar Association Conference of County Bar Leaders 2021, February 25, 2021

Midyear Meeting 2021, Pennsylvania Bar Association, January 27, 2021

Ethics and Malpractice Avoidance, November 23, 2020

Avoiding Legal Malpractice Training 2020, Pennsylvania Bar Association, June 9, 2020

Avoiding Malpractice, May 12, 2020

Avoiding Legal Malpractice, Conference of County Bar Leaders, February 26, 2020

Essential Ethics 2019, Conference of County Bar Leaders, December 19, 2019

Ethics and Malpractice Avoidance, November 19, 2019

Avoiding Legal Malpractice, October 21, 2019

Malpractice Seminar: It's 5 O'clock Somewhere, September 12, 2019

Ethics You Can Use - Lessons From Immigration Malpractice and Discipline Cases, September 11, 2019

Ethics and Malpractice Avoidance, July 23, 2019

Avoiding Legal Malpractice, May 22, 2019

Civil Litigation Section Retreat, Pennsylvania Bar Association, May 3, 2019

Malpractice Avoidance Seminars 2019, Pennsylvania Bar Association, April 9, 2019

Ethics and Malpractice Avoidance, March 28, 2019

Valuing Antiques and Collectibles 2019, March 19, 2019

Avoiding Legal Malpractice, March 12, 2019

Avoiding Legal Malpractice, Conference of County Bar Leaders, February 25, 2019

The Use of Technology in Your Law Practice: Know Your Ethical Obligations, February 13, 2019

PUBLISHED WORKS

"Your Well-Being Matters: Attorney Mental Health and Professional Competence," *The Legal Intelligencer*, May 15, 2024

"Restricting Restrictions: When Attorney Employment Agreements Run Afoul of the Rules of Professional Conduct," *The Legal Intelligencer*, March 21, 2024

"Risk Management in the Practice of Law," *AttPro Ally*, Attorney Protective newsletter, February 27, 2024

"You Diligently Protect Your Clients; What About You? Part 2 (The Middle and the End)," *The Legal Intelligencer*, September 15, 2023

"You Diligently Protect Your Clients; What About You? Part 1 (The Beginning)," *The Legal*

Intelligencer, July 14, 2023

"Why Your Mental Health Matters to the Disciplinary Board," *The Legal Intelligencer*, May 16, 2023

"When Disciplinary Counsel Knocks on Your Door, How Do You Respond?" *The Legal Intelligencer*, March 20, 2023

"Settle and Sue Your Lawyer: The *Muhammad* Doctrine Under Fire," *Pennsylvania Bar Association Quarterly*, January 2023

"What to Think About When Deciding on Legal Malpractice Insurance," *PLUS Blog*, September 12, 2022

"Legal Malpractice: Taking a Mistake and Making It a Fiasco," *The Legal Intelligencer*, May 17, 2022

"Sometimes You Have to Fire Your Client to Avoid Issues," *The Legal Intelligencer*, March 18, 2022

"Remorse and Acceptance, Lessons From the Disbarments and Suspensions of 2021," *The Legal Intelligencer*, November 19, 2021

"Employing a Formerly Admitted Attorney," *PLUS Blog*, November 1, 2021

"Considerations in Purchasing Legal Malpractice Insurance, Part II: Coverages," *The Legal Intelligencer*, September 20, 2021

"Preparing for the Worst: Considerations in Purchasing Legal Malpractice Insurance—Part I," *The Legal Intelligencer*, July 19, 2021

"How Are You Incorrectly Using Your IOLTA Account (Part II)?" *The Legal Intelligencer*, May 18, 2021

["Pa. Supreme Court Issues Two Major Professional Liability Opinions"](#) *The Legal Intelligencer*, March 22, 2021

["How Are You Incorrectly Using Your IOLTA Account \(Part I\)?"](#) *The Legal Intelligencer*, November 20, 2020

["Honesty and Mental Health in Disciplinary Actions"](#) *The Legal Intelligencer*, September 18, 2020

["Settlement Bar to Legal Malpractice Claims Affirmed"](#) *The Legal Intelligencer*, July 17, 2020

["The Dragonetti Act Is Not a Loser Pays Rule"](#) *The Legal Intelligencer*, June 25, 2020

["Legal Malpractice and COVID-19: The Devil Is in the Details and Follow the Money"](#) *The Legal Intelligencer*, March 27, 2020

["Judicial, Judicious, Judgmental—Misconduct Makes Headlines"](#) *The Legal Intelligencer*, November 22, 2019

["Statute of Limitations in Legal Malpractice Actions"](#) *The Legal Intelligencer*, September 20, 2019

["Employment of a Formerly Admitted Attorney: Potential Pitfalls"](#) *The Legal Intelligencer*, July 19, 2019

["A String of Big Names on Disciplinary Dockets This Spring"](#) *The Legal Intelligencer*, May 21, 2019

["A Big Year \(Already!\) for the Dragonetti Act"](#) *The Legal Intelligencer*, March 26, 2019

["The Gist of the Gist Doctrine in Legal Malpractice Actions"](#) *The Legal Intelligencer*, November 23, 2018

["A Look at Recent Pennsylvania Legal Malpractice Cases"](#) *The Legal Intelligencer*, July 20, 2018

["Free Resources for Attorneys Looking for Ethical Guidance"](#) *The Legal Intelligencer*, May 24, 2018

["Getting In and Out of Trouble With the Disciplinary Board"](#) *The Legal Intelligencer*,

March 23, 2018

"Probable Cause as a Matter of Law in Dragonetti Cases," *The Legal Intelligencer*, November 17, 2023

MEDIA COMMENTARY

"Not Just Mere Money': Pa. Justices Suggest Higher Standard for Proving Lawyer Misconduct," *The Legal Intelligencer*, April 11, 2024

"Judicial Conduct Complaints Spiked Across the Country in 2022," *The Legal Intelligencer*, May 22, 2023

"They'll Get Theirs': Attorneys Strategize When Depositions Get Heated," *The Legal Intelligencer*, January 13, 2023

"You Have to Battle When it Should be a Walk in the Park: Ethics Lawyers Say Attorney Discipline has Gotten Tougher," *The Legal Intelligencer*, September 1, 2022

"Three Takeaways From Pa. High Court Decision on Dragonetti Act," *Law360*, February 1, 2021

RESULTS

Successful representation of attorney in Disciplinary Board matter.

Disciplinary Board Representation

April 11, 2023

We achieved an informal admonition, the lowest form of discipline which is non-public, for a lawyer client in a matter that involved alleged failures to appropriately represent clients and timely file appeals in six different criminal matters.

Dismissal of disciplinary complaint involving IOLTA funds.

Disciplinary Board Representation

January 30, 2023

We achieved dismissal of a disciplinary complaint brought against our attorney client who was the victim of a sophisticated scam and sent IOLTA (Interest on Lawyers' Trust Accounts) funds belonging to another client out of the country.

Client privacy maintained in Disciplinary Board matter

Disciplinary Board Representation

November 10, 2022

In a highly unusual move in a case with potential national implications, the Office of Disciplinary Counsel filed a petition for allowance of appeal seeking to have the decision of the Disciplinary Board changed from a private reprimand to a public reprimand. The defense successfully defeated this petition, thus maintaining the client's privacy.

Private reprimand for client in a Disciplinary Board matter.

Disciplinary Board Representation

February 16, 2022

This case had potential national implications where the allegations by Disciplinary Counsel included 93 paragraphs and alleged violations of multiple Rules of Professional Conduct.

Declaratory Judgment Lawsuit Against Licensed Property Location Service Dismissed.

Lawyers' Professional Liability

September 28, 2021

We obtained a dismissal of a declaratory judgment action against our clients, a national firm and its principal, who specialize in identifying and reclaiming lost property for consumers, who do not realize such lost property exists. Plaintiff brought this declaratory judgment action on the heels of plaintiff's having suffered a smarting defeat in an attempted class action lawsuit against our clients. In that underlying litigation, the lower court dismissed plaintiff's lawsuit twice and the Third Circuit affirmed the lower court's dismissal.

RESULTS

Obtained a verdict for the defense following trial on a wrongful use of civil proceedings (Dragonetti Act) claim in the Court of Common Pleas, Philadelphia County. The action arose out of an underlying FDCPA claim.

Assisted an attorney and his zoning board clients in having sanctions imposed by a trial court judge vacated. I helped the attorney in obtaining pre-claim assistance coverage from his insurance carrier and then worked with him to author an appellate brief challenging the sanctions. In an unpublished opinion, the judge writing for the Commonwealth Court agreed with the arguments presented by myself and the client. The Commonwealth Court found that the trial court had no jurisdiction to issue sanctions under Section 2503 of the Judicial Code. The Commonwealth Court also found there was no basis to sanction the attorney or his clients under Rule of Civil Procedure 1701, and that the trial court did not provide appropriate due process before making a finding of contempt. The trial court's order for sanctions was vacated.

Obtained a judgment for defense on a legal malpractice claim in Dauphin County after a bench trial. Plaintiff asserted the defendant did not properly represent him in an estate matter against his sister which caused him to be evicted from his mother's house after she passed away. Successfully argued plaintiff could not establish the client ever agreed to represent plaintiff in the estate litigation and performed all of the duties she was retained for.

Obtained summary judgment in a wrongful use of civil proceedings case in the Eastern District Court of Pennsylvania. Successfully argued that client's defense of probate action was not a "proceeding" as defined by the Dragonetti Act.

Obtained summary judgment in a legal malpractice action in the Eastern District Court of Pennsylvania. Successfully argued that plaintiff could not prove that he would have succeeded in the underlying action without respect for the alleged negligence of clients. Plaintiff's claim that, had the clients conducted additional discovery, they would have succeeded on the underlying case was belied by plaintiff's inability to present additional evidence to support the underlying claims during the legal malpractice action. The court reiterated the position that an increased risk of harm does not apply to legal malpractice actions.