

Ethics Hour



Roberts Room

10.23.15

Lunch at noon

Program 12:30



Jeremy Mishkin
John Myers
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Temple tops East Carolina to reach 7-0 for the first time ever

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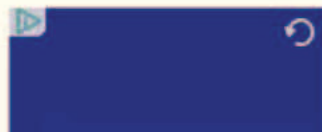
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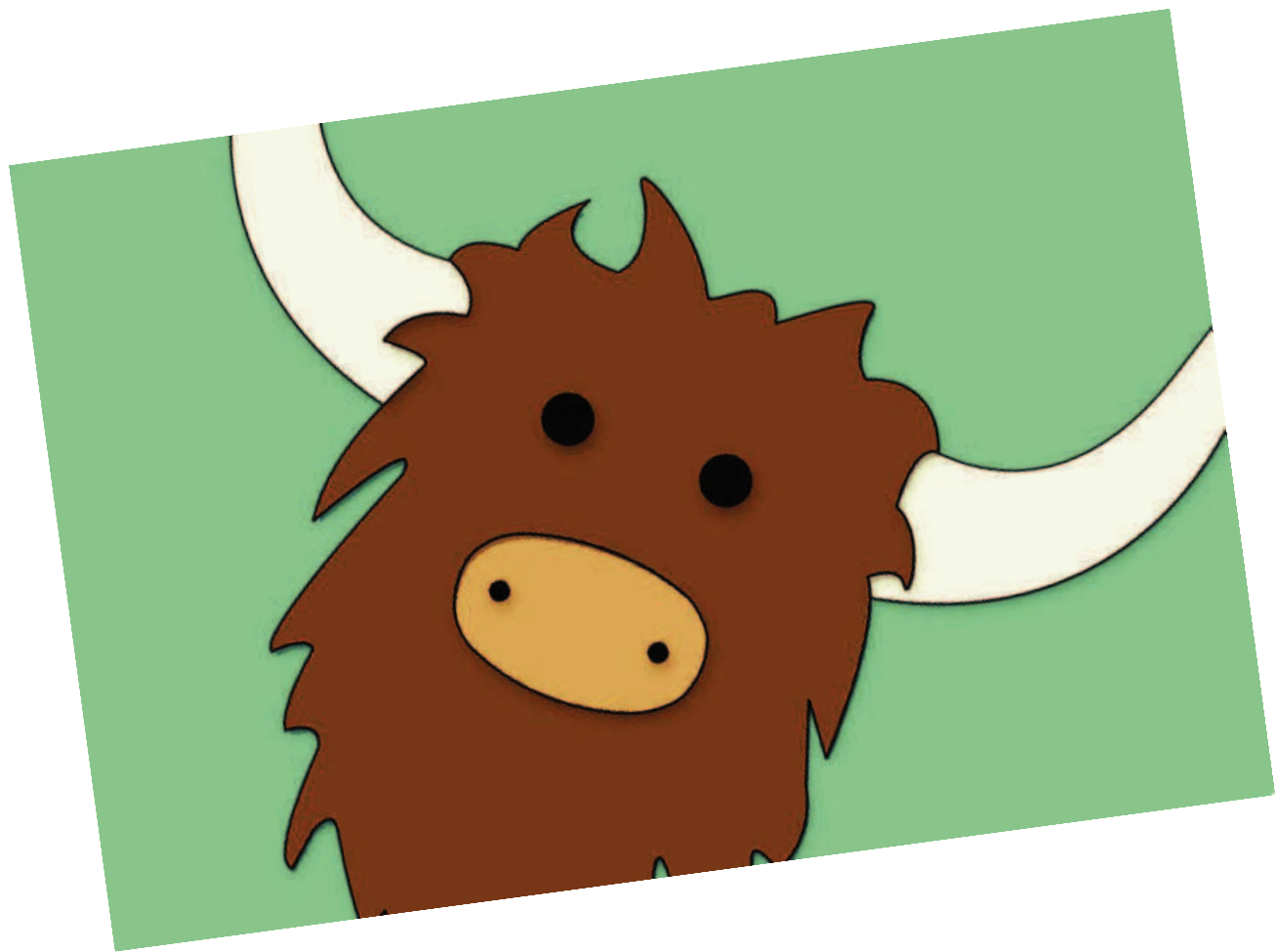


Temple Owls tight end Kip Patton (80) runs with the ball during the first quarter against the East Carolina Pirates at Dowdy-Ficklen Stadium. (James Guillory-USA TODAY Sports)



Mike Kern, *Daily News Sports Writer*

POSTED: Friday, October 23, 2015, 3:01 AM



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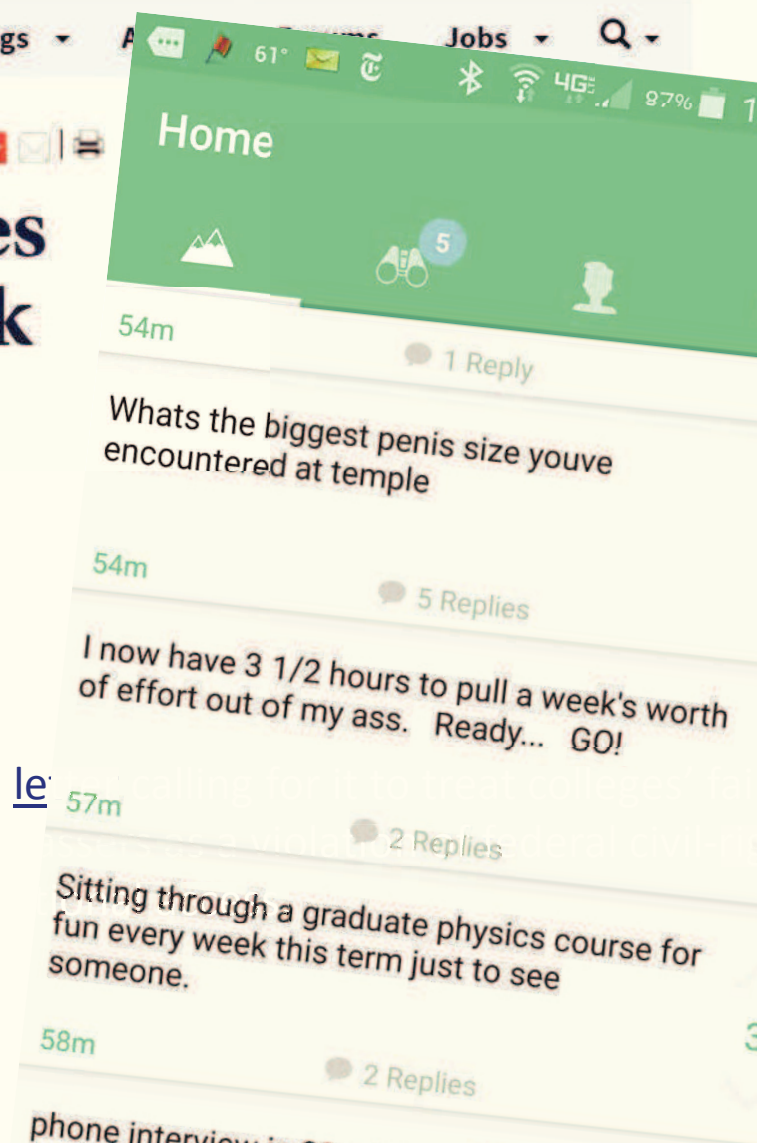
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Women's Groups Urge Colleges and Government to Rein In Yik Yak

...failure to monitor anonymous social media and to pursue online harassers as a violation Title VI & IX



I Pretrial

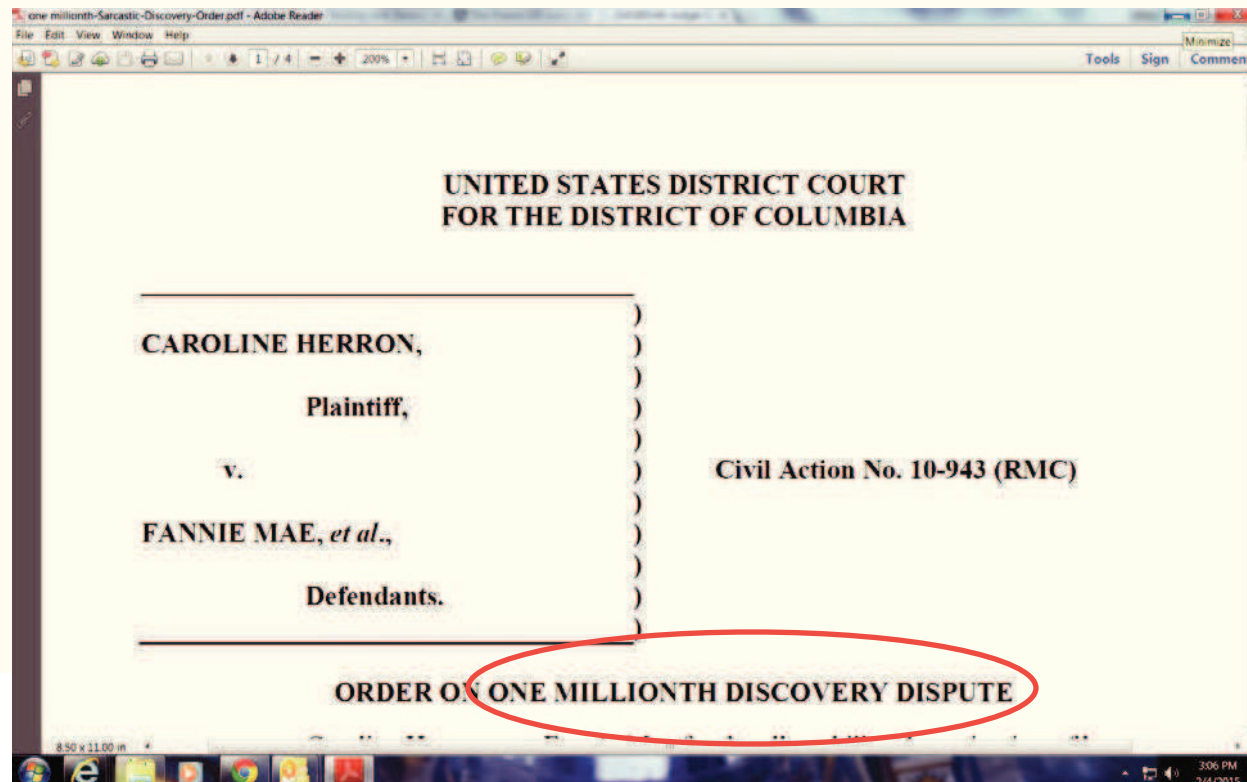
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[How is ATL doing? Share your opinion. Take our reader survey here.](#)

FEDERAL JUDGES, RUDENESS

This Pissed-Off Judge Is Really Sick Of Discovery Disputes

By STAFF WRITER



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CORPORATE LAW

In-house counsel 'woefully unprepared' to deal with cybersecurity issues

Posted Feb 13, 2013 8:29 AM CST

By [Martha Neil](#)



MONTGOMERY McCracken

Challenge drives us

Ethics Rules Require Tech Competency

Srsly?

SRSLY?





Not Just Us

MARCH 16, 2015

15 States Have Adopted Ethical Duty of Technology Competence

by Robert Ambrogi



Rule 1.1. Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment: ...

Maintaining Competence

(8) To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Attorneys already in trouble

- California
 - Without checking with client/IT
 - Agrees to search terms
 - Agrees to “claw-back”
 - Agrees to give direct access to network
- Opponent is primary competitor

Salt In The Wound

- Oh, one other thing: no ESI Litigation Hold, since attorney relies on client's statement "we printed out everything."
- Thus never opens zip file containing results of search until spoliation motion arrives

Many Bad Things Happen

- Search terms hit trade secret information
- Claw back only applies to privilege, and only if 'reasonable measures' taken to protect it
- Network search reveals massive destruction of ESI

No need to panic

- Technology is fine.
- We just have to understand how to use it, and understand how to be compliant with our ethical obligations



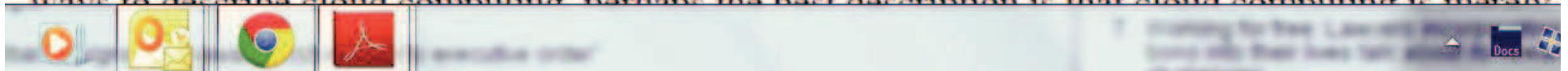
**PENNSYLVANIA BAR ASSOCIATION COMMITTEE ON LEGAL ETHICS AND
PROFESSIONAL RESPONSIBILITY**

**ETHICAL OBLIGATIONS FOR ATTORNEYS USING CLOUD COMPUTING/
SOFTWARE AS A SERVICE WHILE FULFILLING THE DUTIES OF
CONFIDENTIALITY AND PRESERVATION OF CLIENT PROPERTY**

FORMAL OPINION 2011-200

I. Introduction and Summary

If an attorney uses a Smartphone or an iPhone, or uses web-based electronic mail (e-mail) such as Gmail, Yahoo!, Hotmail or AOL Mail, or uses products such as Google Docs, Microsoft Office 365 or Dropbox, the attorney is using “cloud computing.” While there are many technical ways to describe cloud computing, perhaps the best description is that cloud computing is merely





...an attorney may store confidential material in "the cloud."

[BUT]

...attorneys using "cloud" software or services must take appropriate measures to protect confidential electronic communications and information.

...attorneys may use email but must, under appropriate circumstances, take additional precautions to assure client confidentiality.

Thus, the standard of reasonable care for “cloud computing” may include:



Backup

Firewall

Limited use and users

Encryption

Electronic audit trail

II

Baldwin Update

**IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

IN RE:	: SUPREME COURT OF PENNSYLVANIA
	: 217 M.D. MISC. DKT. 2010
	:
THE THIRTY-THIRD	: DAUPHIN COUNTY COMMON PLEAS
STATEWIDE INVESTIGATING	: NO. CP-22-CR-5164-2011
GRAND JURY	: NO. CP-22-CR-5165-2011
	:
	: NOTICE NO. 1

OPINION

BEFORE: BARRY F. FEUDALE, SUPERVISING JUDGE



42 Pa.C.S.A. 4549

...

(c) Counsel for witnesses.--

(1) A witness ...shall be entitled to the assistance of counsel...

...

(3) Such counsel shall be allowed to be present in the grand jury room during the questioning ...

(4) An attorney...shall not continue multiple representation ...if the exercise of the independent professional judgment...on behalf of one ...will or is likely to be adversely affected by his representation of another

....

190 (March 23, 2011)(3d Cir. Pa.).

B. Application of Law and Conclusions: Scope of the Attorney-Client Relationship

Applying these standards in the instant matter, the evidence fails to establish that Ms. Baldwin represented Defendants in their individual capacities, but instead, demonstrates that Ms. Baldwin represented each Defendant in his role as an official of the University conducting University business. In reaching this conclusion, we rely in part upon evidence presented at the November 20 and 21, 2014 hearings, but for the reason set forth above, we do not cite to that testimony in this Opinion.

First, Defendants each approached Ms. Baldwin for legal advice related to

AG: We have some witnesses to be sworn, Mr. Curley and Mr. Schultz.

J: Represented by?

Baldwin: My name is Cynthia Baldwin, general counsel for PSU.

J: Will you be providing representation for both those identified witnesses:

Baldwin: Gary is retired but was employed by the university and Tim is still an employee

Slip op, 12

J: Who are you representing?

CB: the university.

J: You may listen if you wish.

CB: Thank you.

http://www.pennlive.com/midstate/index.ssf/2012/02/penn_state_legal_counsel_cynth.html



Curley

"You have counsel with you?"

"Yes, I do,"

"Would you introduce her, please."

"My counsel is Cynthia Baldwin."

Schultz

"You are accompanied today by counsel,
Cynthia Baldwin, is that correct?"

"That is correct,"

: <http://www.post-gazette.com/stories/local/state/penn-states-general-counsel-cited-for-missteps-644744/#ixzz2Kd4cuaNB>



Individual Privilege if:

Individual, not representative,
advice sought

About a matter
Outside one's official role

Corp. Counsel must agree

Advice must be confidential

**In the Matter of Bevill et. al.,
805 F.2d 120 (3rd Cir. 1988)**

III

Kane Update



Kane releases offensive emails

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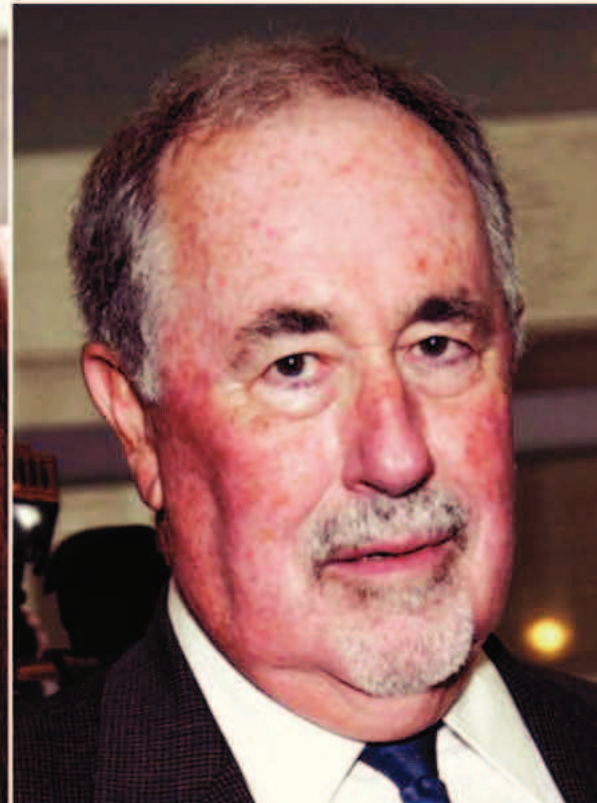
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6



Attorney General Kathleen Kane and state Supreme Court Justice J. Michael Eakin. Staff photos

What's in the 'Porngate' emails released by AG Kathleen Kane?



"Why I failed 4th grade": In 2011, Eakin sent this image as an attachment to a single recipient with the subject line, "Why I failed 4th grade."

http://www.pennlive.com/midstate/index.ssf/2015/10/whats_in_the_porngate_emails_r_1.html

Impending Suspension Clouds Kane's Authority

Max Mitchell and Lizzy McLellan, The Legal Intelligencer

October 19, 2015 | 0 Comments

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REPRINTS



Pennsylvania Attorney General Kathleen Kane speaks during a news conference Aug. 12 at the State Capitol in Harrisburg.

AP photo by Matt Rourke

..detectives ...found a "secrecy oath" signed
by ...[pertaining to grand juries]

[in] 2014, during grand jury testimony Kane
"repeatedly claimed that she had never
signed a secrecy oath [as to the Mondesire
grand jury investigation]...

The Allegations

conflict of interest: prosecuting while
being prosecuted.

Risk of blurred subjective judgment

The “K” card

Preserving public confidence in the
integrity of the profession

<http://www.pacourts.us/assets/files/setting-4359/file-4699.pdf?cb=5263db>

Pa. R. of Disciplinary Enforcement
208(f) *Emergency temporary suspension
orders and related relief.*

(1) ..., whenever it appears ... that the
continued practice of law by a person subject
to these rules is **causing immediate and
substantial public or private harm
...because of other egregious conduct, in
manifest violation** of the ...Rules

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2202 Disciplinary Docket No. 3
Petitioner	:	
	:	Board File No. C3-15-558
v.	:	
	:	Attorney Registration No. 69680
KATHLEEN GRANAHAN KANE,	:	
Respondent	:	(Dauphin County)

ORDER

PER CURIAM:

AND NOW, this 21st day of September, 2015, upon consideration of the responses to a Rule to Show Cause why Kathleen Granahan Kane should not be placed on temporary suspension, the Rule is made absolute; Respondent Kathleen Granahan Kane is placed on temporary suspension; and, to the extent applicable, she shall comply with all the provisions of Pa.R.D.E. 217.

Respondent's rights to petition for dissolution or amendment of this order pursuant to Pa.R.D.E. 208(f)(4), and to request accelerated disposition of charges underlying this order pursuant to Pa.R.D.E. 208(f)(6), are specifically preserved.

This order should not be construed as removing Respondent from elected office and is limited to the temporary suspension of her license to practice law.

AG Kane: Suspended law license will not affect her work

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6 COMMENTS

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Attorney General Kathleen Kane leaves district court in Collegeville on Thursday, Oct. 1, 2015 (STEVEN M. FALK / Staff Photographer)



...[despite]Thursday's suspension of Kane's law license ...She will be able to carry out **"98 percent" of her duties because most of her work is "administrative and [ministerial]"**

http://www.philly.com/philly/news/20151022_Kane_vows_to_publicly_release_porn_emails.html#FsU7YDff8LoA4to8.99



...[despite]Thursday's suspension of Kane's law license ...She will be able to carry out "98 percent" of her duties because most of her work is "administrative and [ministerial]"

http://www.philly.com/philly/news/20151022_Kane_vows_to_return_emails.html#FsU7YDff8LoA4to8.99

some of the office's senior lawyers disagree with Kane's assessment of the impact of her suspension and believe that she has downplayed its effect.



...[despite]Thursday's suspension of Kane's law license ...She will be able to carry out **"98 percent"** of her duties because most of her work is **"administrative and [ministerial]"**

<http://www...>
Including supervision of RPC?
3.5 - Impartiality and Decorum of the Tribunal
3.6 - Trial Publicity
3.8 - Special Responsibilities of a Prosecutor

R.D.E. 217(j)(4)(i)

a formerly admitted attorney is specifically prohibited from...

(i) performing any **law-related activity** for a law firm, **organization** or lawyer if the formerly admitted attorney was associated with [it]... on or after the date on which the acts which resulted in the disbarment or suspension occurred, through and including the effective date of disbarment or suspension.

<http://www.thelegalintelligencer.com/id=1202740477199/Pa-Code-May-Block-Kane-From-Continuing-as-AG#ixzz3pOCOrD1O>

IV

Noisy Withdrawal

Pa.RPC 1.16. Declining or Terminating Representation.

(a) ... a lawyer **shall** ... **withdraw** from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(b) Except as stated in paragraph (c), a lawyer **may** **withdraw** from representing a client if:

...

(2) the client persists in a course of action involving the lawyer's services that the **lawyer reasonably believes is criminal or fraudulent**;

(3) the client has **used the lawyer's services to perpetrate a crime or fraud**;