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Osborne & Rettig Join Johnson Duffie

The Harrisburg law firm of Osborne & Rettig has joined Johnson Duffie. Kevin Osborne and Jeffrey Rettig, principals of the firm, have become shareholders in Johnson Duffie. Both Osborne and Rettig are veteran trial attorneys concentrating in complex litigation involving personal injury, property damage and professional negligence.

Osborne is a graduate of Hamilton College and the University of Bridgeport Law School where he was managing editor of the Law Review. He is a member of Good Shepherd Catholic Church where he has served as President of the School Board and a member of the Building Committee. He and his wife, Mary Beth, reside in Camp Hill and have four children.

Kevin spends most of his time in state and federal courts defending physicians and other professionals, hospitals and nursing homes. He also devotes much of his practice defending professionals before state licensing agencies.

Jeff Rettig is a graduate of Bucknell University and Dickinson School of Law. After serving as an officer in the U.S. Army, he clerked for United States District Court Judge R. Dixon Herman. His extensive courtroom achievements have earned him a spot in "Best Lawyers of America." Jeff and his wife, Suzanne, live in an 1857 farmhouse in East Hanover Township where Jeff is a member of the Zoning Hearing Board and Suzanne served on the Board of Supervisors. They are the parents of four grown children. Jeff is a member of the Hummelstown Optimist Club and attends St. John's Methodist Church in Grantville. He has always been active in the Lower Dauphin Soccer Association as a coach and proudly notes that two of his daughters played soccer at the Division 1 college level.

John Statler, chair of the firm's Civil Litigation and Insurance Defense Group said, "we are thrilled that these two highly skilled trial attorneys and their

support staff have joined our team. The clients of both firms will benefit greatly from the synergy of our combined forces."

Kevin Osborne and Jeff Rettig can be reached in Johnson Duffie's Lemoyne offices at 717-761-4540.



Pennsylvania has Updated Law on Living Wills and Health Care Planning

The law on living wills and health care planning has been completely revised. The comprehensive new legislation, Act 169, recently took effect. It regulates health care directives like living wills and health care powers of attorney. It authorizes family members to make health care decisions for their loved ones. The new law gives competent adults a broader statutory means to control their health care. We are ready to advise you with your advance health care planning.

Instant Messaging Admissible in Court

"Instant messaging" is an increasingly popular and convenient means of communicating over the Internet. An instant message is a written communication that is instantly exchanged between participants. A Pennsylvania court recently decided that printouts of instant messaging are admissible in court. A juvenile accused of assault was convicted based on trial evidence that included "instant messages" that he sent to the victim over the Internet.

The juvenile denied that he was the aggressor in a serious fight that occurred at a school bus stop. To prove motive, the prosecutor offered into evidence printed copies of the juvenile's instant messages in which the juvenile accused the victim of stealing from him and threatened that he would beat the victim physically. The juvenile's lawyer objected to the admission of the messages because no proof existed that the juvenile actually wrote or sent them himself.

The court declined to create a "whole new body of law just to deal with e-mails or instant messages." The court acknowledged that e-mails and instant messages are cloaked in anonymity—while they can be traced to a particular computer they usually cannot be connected to a specific author with certainty. Unless the purported author is actually witnessed sending the e-mail, there is always the possibility it is not from the individual identified as the sender. The court agreed that anyone with the right password can gain access to another's e-mail account and send a message ostensibly from that person.

However, the court also noted that the same uncertainties exist with traditional written documents—a signature may be forged, a letter may be typed on another person's typewriter, distinct letterhead stationery may be copied or stolen. The court

concluded that e-mail messages and similar forms of electronic communication can properly be authenticated within the existing framework of Pennsylvania law. There is a history in the courts of admitting writings into evidence if the circumstances surrounding the creation or delivery of the writing tend to prove the identity of the author. It is then up to the judge or jury to decide if the proof of authorship is clear.

Increasingly, Pennsylvania courts are recognizing faxed and e-mailed documents and signatures as binding. While it remains advisable to sign important legal documents by hand and to keep the original document, your use of electronic communications can be legally binding and will be admissible in court if all of the circumstances support the attribution of the document to you. Any time your e-mail or instant message account appears to be compromised by unauthorized use, you should review the account and preserve any available evidence of the unauthorized use. Otherwise, unauthorized communications could be attributed to you.



Don't Bug Me

Pennsylvania's Wiretap Act forbids the interception or recording of telephone and other communications without the permission of all participants to the conversation. Because federal law and most states permit "one party consent"—the consent of the recorder only—some Pennsylvanians assume that they can use their answering machines or other devices surreptitiously to record telephone conversations. Most of the states surrounding Pennsylvania are "one party consent" states. In Delaware, New Jersey, New York, and Ohio, you can record a telephone conversation without telling the other party. And since many Pennsylvania electronics stores openly sell fairly sophisticated recording, transmitting, and intercepting devices, it is easy to assume that their use is legal. But the Pennsylvania Wiretap Act clearly forbids any such recording or interception without the permission of all parties to the conversation and subjects you to criminal penalties for violations.

When people leave a message on your answering machine, they are consenting to that recording, knowing that they are leaving a recorded message. Such is not the case when you use an interception device on a telephone or simply activate your answering machine to record a conversation without telling the caller. Setting up a voice-activated cassette recorder or wearing a hidden recorder also violates the Act. If all parties consent to a recording, no crime occurs. But without the consent of everyone to the conversation, recording a conversation is always a crime in Pennsylvania.

Duffie Gets First Hand Experience at Heart Center

Shareholder Jerry Duffie spent many years assisting Holy Spirit Hospital in planning for the Ortenzio Heart Center. He recently had first hand experience with the fruits of his labor when he underwent heart surgery at the Center. "I am grateful to the dedicated physicians and staff that provided me with such wonderful care. We are extremely fortunate to have experienced, qualified physicians and caregivers and such a state-of-the-art facility in our community. The prayers of the Sisters of Christian Charity meant so much to me and my family." Jerry has no plans to make a practice of obtaining first hand experience at the hospital a regular occurrence.



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Resolution of legal issues depends upon many factors, including variations of facts and interpretations of Pennsylvania law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

Disputes Over Private Roads

Particularly in rural counties, Pennsylvania's landscape is peppered with private roads, private driveways, and shared-use arrangements of private parcels of land. It is not surprising that sometimes people cannot agree on the rights and responsibilities of users of shared private roads.

Recently, the Pennsylvania Superior Court found that a couple who purchased a landlocked parcel on the assumption that they could use a private road had assumed too much. The couple bought the small, landlocked parcel because it was on the Monongahela River. They planned to use it to truck coal to the river and ship it on barges for delivery down river.

All of the former owners of the landlocked parcel had enjoyed a right, or "easement," to access the property by crossing a larger commercial tract owned by a realty company. The previous owners had used the private road across the realty company's land for both residential and commercial activities. The previous owners had also engaged in commercial activity that involved the use of trucks and other heavy equipment. But all of the previous owners who had used trucks and heavy equipment had reached various agreements with the realty company regarding their entitlement to use the private road. Shared maintenance, paving, and repair were resolved by the history of agreements.

The couple who bought the property for coal shipping were not able to reach an agreement with



the realty company. When their negotiations failed, the couple sued to gain a "prescriptive" easement—one that the courts may permit even over the objection of the owner of the easement land. Prescriptive easements are permitted when owners of one parcel of land have crossed another parcel of land for over 21 years. In the case involving the coal-shipping couple, the court found that the long history of the use of the private road did create a prescriptive easement, but the court

limited the use of the prescriptive rights to the earliest historic uses—cars and pickup trucks only. The court ruled that, as to the commercial use of the private road, all of the previous owners had negotiated agreements with the realty company. Because the commercial use was much more burdensome on the realty company and created many more issues of road maintenance, the court found that the couple could use the road only for car and pickup truck traffic, unless they had an agreement otherwise with the realty company.

Many purchasers of land assume that they can continue to use rights of way and private roads simply because the former owners had the privilege. Because the rights associated with private easements are tailored to the history of the prior uses, wise buyers should always thoroughly research the actual previous uses of an easement before purchasing property.

Forgery Can Be a Serious Crime

A Pennsylvania building contractor recently learned a hard lesson about the penalties for forgery. The contractor completed work on a contract to make repairs to a motel property. Upon completion of the work, the motel owner requested a certification of the work by the township zoning officer before he would make final payment to the contractor.

Apparently unknown by both the motel owner and the contractor, such a certification of completion was not required by the township. However, in order to obtain final payment, the contractor created a certificate and forged the signature of the township zoning enforcement officer on it. The motel owner paid the contractor for the work completed.

When the zoning enforcement officer learned of the issuance of a forged certificate in his name, he reported the event to law enforcement authorities, and the contractor was charged with the felony crime of forgery. He was found guilty and was sentenced to a short term of imprisonment. He appealed the case, claiming that his forgery was not so serious that he should have been sent to jail.

Forgery is a serious felony if the writing is or purports to be "money, securities, postage or revenue stamps, or other instruments issued by the government." Forgery is a less serious felony if the writing is or purports to be "a will, deed, contract, release, commercial instrument, or other document evidencing, creating, transferring, altering, terminating or otherwise affecting legal relations." Otherwise, forgery is a misdemeanor.

The contractor was charged with the most serious felony, on the notion that the forged zoning certificate was in the category of "other instruments issued by the government." The Pennsylvania appellate court agreed with the contractor that his forgery was better categorized as a less serious felony, one "otherwise affecting legal relations." The case was sent back to the trial court for resentencing.

Signing the name of another person to any document without clear permission is forgery. Even if the forgery does not cause another person harm or economic loss, forgery is a crime.

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Lawyers Realty LLC is Growing

Lori Zimmerman has joined Lawyers Realty LLC as Operations Manager. Zimmerman is responsible for the office administration of Lawyers Realty. She has more than a decade of experience in the real estate industry including having served as office administrator for real estate branch offices, new home builders and developer/real estate brokers.

"I am truly excited to join a company that has developed a totally new concept in real estate that puts the consumer first with protection and choices," said Lori.



Zimmerman

Lori is a member of the Greater Harrisburg, Pennsylvania, and National Realtor Associations. She resides in Fairview Township with her husband, Joe, and son, Zachary. Their daughter, Ami, recently graduated from West Chester University.

Thank You!

Thank you for choosing Johnson Duffie for your legal needs. We hope that you will continue to count on us when you need legal help. We are just a phone call away.

We also appreciate the trust that you have placed in our firm by referring your friends, family, and associates to us for legal services. Thanks!