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## NEWS

# **Pa. Superior Court: Sorority's Interview Notes Not Shielded From Discovery in Lawsuit Over Student's Death**

“The Superior Court’s decision provides an excellent review of Pennsylvania privilege law while ordering the production of interview notes containing factual summaries that the defendant had refused to produce,” the plaintiff’s attorneys said in a joint statement.

January 15, 2025 at 07:11 PM

🕒 3 minute read



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## What You Need to Know

- The Superior Court ruled that a sorority must produce notes from interviews it conducted in connection to a student's death.
- The court rejected the defendant's argument that the notes were subject to the attorney work-product doctrine and attorney-client privilege.

The Pennsylvania Superior Court ruled Monday that a sorority being sued over a college student’s death must turn over notes from interviews it conducted regarding the incident.

The three-judge panel held in a precedential opinion that neither the attorney work-product doctrine nor attorney-client privilege shielded the notes from discovery, and that the sorority must disclose the documents to the plaintiff.

Attorneys for the plaintiff praised the ruling in a joint statement. “The Superior Court’s decision provides an excellent review of Pennsylvania privilege law while ordering the production of interview notes containing

factual summaries that the defendant had refused to produce,” said Kline & Specter’s Benjamin Present, Helen Lawless and Charles Becker. According to the opinion, the notes the plaintiffs sought were taken by representatives of Alpha Sigma Tau Sorority during interviews with sorority members about a party that allegedly resulted in the death of Bloomsburg University freshman Justin King. The interviews were held shortly after King’s death but before the lawsuit, filed by King’s mother, began.

The plaintiff claimed that members of Alpha Sigma Tau threw a party where they urged King to drink a large amount of alcohol. The plaintiff alleged that later that night King got lost on the school's campus and sustained fatal injuries in a fall.

During discovery, the plaintiff asked for documentation of the interviews Alpha Sigma Tau conducted. But the sorority objected, asserting that the notes were protected by the work-product doctrine and attorney-client privilege.

The interview notes had not been taken by an attorney, but rather by Alpha Sigma Tau’s chief executive and chief operating officers. However, Alpha Sigma Tau contended that the CEO and COO compiled the notes at the direction of the sorority’s lead counsel in the matter, Marshall Dennehey shareholder John Delany III, and so the documents should be considered a work product of the defendant’s attorney.

However, neither the trial court nor the Superior Court found that argument convincing.

“AST’s contention rests on a critical and unsubstantiated point of fact—that Mr. Delaney was ultimately responsible for generating the content of the notes taken by AST’s non-attorney representatives,” the Superior Court held in an opinion written by Judge Victor Stabile. “The problem with that argument,” the court continued, “is that counsel’s role in the

creation of the notes is not evident from the notes themselves, or from any other record evidence.”

The panel held that the portions of the notes that had not already been redacted by the trial court contained only factual content, not any mental impressions that would be subject to protection under the work product doctrine.

The Superior Court went on to rule that attorney-client privilege did not apply either, as Alpha Sigma Tau had not established that it used the notes to convey confidential information to counsel.

The panel’s ruling upholds an order from the trial court compelling the defendant to disclose the redacted version of the interview notes to the plaintiff.

Delany said the defense is still reviewing the opinion and considering their next steps in the case, which is captioned *King v. Alpha Sigma Tau Sorority*.

The plaintiff’s attorneys said in their joint statement that their client “looks forward to receiving these notes as she continues to seek accountability for the wrongdoing that led to her son’s death.”

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