Association Receives Recognition for #TakeActionPhilly at CCBL

Joining Forces With CourtCall

The Philadelphia Bar Association has formed a partnership with CourtCall, the national leader in remote court appearance technology for more than 20 years. It features remote appearance solutions for all courts, including civil, criminal, traffic, probate, family and juvenile dockets, saving lawyers and clients time and money in transportation and costs. CourtCall is a service-based company, offering the highest level of customer satisfaction and a unique understanding of how courts operate, serving thousands of courts.

continued on page 7

LawPay
AN AFFINIPAY SOLUTION

Philadelphia Bar Association Gold Sponsor

In This Issue
6 SSDI Backlog
8 Cross-Examination
12 SEC Enforcement
13 360 Review
16 Opinion Summaries
18 Quick Bites

Chancellor Mary F. Platt (center, right) accepts a County Bar Recognition Award for #TakeActionPhilly (TAP) during the Conference of County Bar Leaders in Lancaster on Feb. 24. Pictured with Platt are Wesley R. Payne IV, Pennsylvania Bar Association Zone 1 Governor (left to right); Anne N. John, vice president, Pennsylvania Bar Association; Michael P. Pierce, president, Conference of County Bar Leaders; Kathleen D. Wilkinson, former Chancellor; Sharon Lopez, president, Pennsylvania Bar Association; Mark Tarasiewicz, executive director, Philadelphia Bar Association; and Charles Eppolito III, president-elect, Pennsylvania Bar Association.

TAP is an initiative of the Philadelphia Bar Association, with the support of the City of Philadelphia and several non-profit legal aid organizations.
Welcome to Holman Premier Partners Program!

As a Philadelphia Bar member you are eligible for exclusive no-haggle pricing on new and pre-owned vehicles. In addition to exceptional pricing you will also have access to a personal vehicle concierge that can answer questions and arrange appointments on your behalf. Log into [www.HolmanPremierPartners.com](http://www.HolmanPremierPartners.com) to get started.

WE'RE HERE TO HELP!
FOR QUESTIONS OR TO SET UP AN APPOINTMENT CONTACT THE HOLMAN PREMIER PARTNERS TEAM AT:

**844-MYHOLMAN (844-694-6562)** Mon-Fri 8:30am - 5:00pm
MyHolman@holmanauto.com

- First Class Customer Experience
- Personal Vehicle Concierge
- Time Savings
- No Haggle Pricing
- Referral Program Rewards

The Holman Premier Partner program is available to you and your immediate family members. Acceptable forms of documentation as proof of employment with your company may be required upon purchase of a vehicle (business card, company ID badge, pay stub, etc.). It is not necessary that the eligible person be on the application or title of the vehicle, but a clear connection to the eligible person is required.
**Adding Value to Membership by Championing Legal Education**

By Mary F. Platt

**Tell Us What You Think!**

The Philadelphia Bar Reporter welcomes letters to the editors for publication. Letters should be typed. There is no word limit, but editors reserve the right to condense for clarity, style and space considerations. Letters must be signed to verify authorship, but names will be withheld upon request. Letters may be mailed, faxed or e-mailed to: Thomas E. Rogers, Senior Managing Editor, Philadelphia Bar Reporter, Philadelphia Bar Association, 1101 Market St., 11th floor, Philadelphia, PA 19107-2955. Phone: (215) 238-6345. Fax: (215) 238-1159. E-mail address: reporter@philabar.org. The editorial and other views expressed in the Philadelphia Bar Reporter are not necessarily those of the Association, its officers or its members. Advertising rates and information are available from Shawn D. Phillips at American Lawyer Media, 1617 JFK Boulevard, Philadelphia, PA 19103. Phone: (215) 357-2341 or e-mail sphilips@alm.com.

**Frontline**

**Did you know that the Philadelphia Bar Association has been a CLE provider in Pennsylvania, New Jersey and Delaware for more than two years?** Are you aware that as part of your Association membership, you are entitled to attend programs that offer six free CLE credits, and may attend our CLEs for no credit free of charge or for the cost of lunch? These are great member benefits and are two of the many reasons why lawyers in the region should join our Association.

Since February 2016, the Philadelphia Bar Association CLE program has provided low-cost courses featuring timely, relevant and innovative content in a diverse array of practice areas. Our CLE program has energized our Sections, Division and Committees and given them another raison d’être.

In addition, we have proudly partnered as the CLE provider with a number of organizations, law firms and almost all of the affinity bar associations. Some of these partnerships have resulted in conferences, like the “Liberty and Justice: Moving from Some to ALL”—a daylong symposium on social justice co-sponsored by the Philadelphia Bar Association and area law schools, which was one of the first programs to be held at the new Thomas R. Kline Institute of Trial Advocacy at 12th & Chestnut streets.

Three upcoming CLE courses that have presented great opportunities to partner with other organizations are the following:

- **On April 17**, there will be a CLE in partnership with The Barristers’ Association of Philadelphia, Inc. and the Senior Law Center titled, “Life Planning for Philadelphia Seniors.” This CLE program serves as training for all volunteer attorneys willing to accept and represent a client in the Barristers’ Annual Life Planning Clinic on April 21.
- **On April 24**, our Solo & Small Firm Management Committee and State Civil Litigation Section are partnering with the Be認hon Law Society on a course titled, “Paperless Chase: iPad Best Practices for Lawyers,” which will be immediately followed by a happy hour at Finn McCool’s.
- **On April 30**, we will be the CLE provider for the Cannabis Learn Conference & Expo, which will be held at the Pennsylvania Convention Center. The course offering is titled, “Tax Law Update & Business Impact on the Cannabis Industry.”

Lawyers and paralegals are not the only members who benefit from our CLE program. Now that judges are required to obtain continuing education credits, we quickly rose to the occasion and became a CJE provider in order to offer CJE courses for members of the judiciary.

Have you satisfied your 12-credit CLE requirement for the year? If so, another member benefit is the opportunity to attend CLE courses for free if you do not want or need CLE credits. You may choose to pay just for the food, or you can bring your own food. This is a great way for members who do not need additional CLE credits to learn about new developments in their practice areas and/or areas of the law where they would like to begin practicing.

We are looking to add distance learning to our CLE program soon, which will make some courses available via a live webcast. This will enable you to attend these courses online and include opportunities to ask questions via a live chat feature. Distance learning will be particularly helpful during inclement weather or when you simply do not have the time to leave the office to earn your credits.

Serving as a course planner or speaker for a CLE program provides members with a wonderful opportunity to raise their profile within the legal community. If you are interested in submitting a topic or idea, and/or presenting on a CLE panel, you should send a brief program description and a short bio to our Philadelphia Bar Association Director of CLE Tara Phoenix at tphoenix@philabar.org. If you belong to a section, division or committee, please send your idea for a program to the respective chair(s) for their consideration.

Thank you to the thousands of people who have attended, presented and contributed to the Philadelphia Bar Association CLE program. Thanks also to Tara for her tremendous work to launch this entire program, build it and run it like a well-oiled machine. To learn more about our CLE course offerings, please visit the CLE calendar on PhiladelphiaBar.org. We look forward to your planning, presenting at and attending our CLE programs this year and beyond!

Mary F. Platt (mplatt@finemanlawfirm.com), attorney at Fineman Krebuszewski & Harris P.C., is Chancellor of the Philadelphia Bar Association.
On March 11, I had the honor of representing the Philadelphia Bar Association Young Lawyers Division as a judge in the final round of the annual John S. Bradway High School Mock Trial Competition. The winning team will represent Philadelphia at the state championship in Harrisburg, where it will also have a shot at making it to the national tournament. The stakes were high, and I was very excited to be there.

As I settled into my seat in the jury box of the ceremonial courtroom at Temple University Beasley School of Law, I had an idea about what to expect: the participating students would be good, but I was wrong. They were incredible! Their intense preparation was evident from the very beginning. From strong openings to creative and punchy cross-examinations, each competitor did a tremendous job. The witnesses, also played by students, held their own – one even managing to work in a shout-out to the Super Bowl Champion Philadelphia Eagles. The only downside of the afternoon was having to pick a winner. Congratulations to this year’s championship team from Roman Catholic High School, and to the runner-up team from St. Joseph’s Preparatory School. We are expecting big things at the next level.

Mock trial holds a special place in my heart. It was, hands down, my favorite part of law school. When our team won a tournament in San Antonio, Texas, we carried the trophy around town that evening like it was the Stanley Cup. You could feel the same sense of pride among the student participants, coaches and parents at the Bradway finals. I am so proud that the Association and YLD pay it forward by supporting this important competition each year and give the next generation of budding lawyers the opportunity to experience the same thrill. This year, participants included approximately 250 students hailing from 19 schools from all around the city, including neighborhood public schools, magnet, charter, private and parochial institutions. This competition is a staple of civic education in Philadelphia.

It should go without saying that our annual competition does not come together overnight. The YLD owes a huge debt of gratitude to Paul Kaufman, Theresa Langschultz, Eric Pasternack, Jennifer Santiago and Joshu Harris; to our Temple-LEAP partners, Sarah Kaufman and Caroline Cinquanto; and to Jonathan Grode, Jonathan Koltash and Talia Charme-Zane, all of whom devoted countless hours to drafting the case materials and/or organizing and presenting the competition. I would like to also thank those members of the Association, too many to individually name, who volunteered to judge one of the earlier rounds of the competition. We lean on all of you each year to make sure this event is a success, and every year you come through in a big way. For those who have never judged a round before, I highly recommend that you put a note on your calendar now and plan to do so next year. Do not worry…we will remind you!

If you missed out on your chance to help with the Bradway Competition this year, we have you covered. Law Week is just around the corner (April 30 – May 4), and we could use everyone’s support to staff our many community-outreach-focused programs. These include Lawyer in the Classroom, Lawyer for a Day, Legal Advice Live! and the Fairy-Tale (Goldilocks) Mock Trials. Check the YLD E-Zine or contact me or YLD Chair-Elect Michaela Tassinari (michaella.tassinari.kfyk@statefarm.com) for details. We hope to see you there!

Vincent N. Barbera (barberav@whiteandwilliams.com), associate at White and Williams LLP, is chair of the Young Lawyers Division.
On June 11, the Philadelphia Bar Foundation will hold its 30th Annual Golf and Tennis Classic, commemorating three decades of significant golf event fundraising (tennis was introduced to the Classic in 2012). This year we will convene at The Union League Golf Club at Torresdale, a beautiful venue which was extensively renovated in 2015. We encourage you to join us whether you are an experienced or novice golfer (we have an afternoon clinic!), tennis or pickleball player or a guest who joins us for cocktails and dinner. To register, please visit philabarfoundation.org.

I recently had the chance to page through some of the past souvenir program books distributed after each Foundation Golf and Tennis Classic. These materials include a brief recap of the day, a listing of the committee members, contest winners and auction item winners. They also include many photos of smiling, cheerful participants from the day, including one that is captioned “…it all comes down to the putt.”

As our Golf and Tennis Committee reaches out to our reliable and generous sponsors who have been dedicated to supporting us for many years, we will also be doing outreach to firms, businesses and individuals who have not participated recently to build new relationships and secure much needed funding in support of the Foundation for 2018.

In the same way, after our broad outreach in the months of February and March, and the more intense outreach in April to follow up, we will be making many phone calls and requests in May. This is when we “putt.” We will have commitments, but not checks, we will have gaps in our budgeted revenue, and we will all be taking many small swings at our goal through frequent phone calls and emails. It will all come down to the putt.

In the first few years of the Classic, there were a handful of sponsors and the event’s revenue hovered around $25,000. We now have nearly 50 sponsors and revenue is typically around $100,000. Much work is involved as a Foundation and community to raise these funds and we are so grateful to those who serve, sponsor, play and attend.

If you have participated in recent years, we thank you and encourage your participation in our 30th annual event. If you have not joined us in a while, or have never attended the Golf and Tennis Classic, we hope you will consider this event as an introduction to the wonderful community that the Foundation brings together.

This year’s afternoon golf clinic, a fun casual experience with opportunities for networking and cocktails on the course, was designed especially for new golfers as an introduction to the game. We are so excited to offer this as an attraction for all skill levels and look forward to having them share their experiences at the cocktail reception and dinner.

Many of the best times I have had golfing occur off the course. Reflecting on the past 30 years of the Golf and Tennis Classic, I see that this has been true for other golfers, for the tennis players and for the event attendees as well. For three decades, Philadelphia lawyers and professionals have gathered in the spirit of community and competition. I look forward to it and to seeing you there on June 11.

Thomas A. Brophy (tabrophy@mdwcg.com), shareholder at Marshall Dennehey Warner Coleman & Goggin, P.C., is president of the Philadelphia Bar Foundation.

By Thomas A. Brophy

PHILADELPHIA BAR FOUNDATION

30th Annual
Golf & Tennis Classic
June 11, 2018
The Union League Golf Club at Torresdale

For tickets, sponsorships, and more information, visit www.PhilaBarFoundation.org
Backlog of SSDI Claims, Is There a Solution?

By Thomas J. Giordano Jr.


The discussion was held at Pond Lehocky Stern Giordano and panelists included Vargas; Jennifer Burdick, supervising attorney and Duffy Fellow, and Claire Grandison, Independence Foundation Fellow, both of Community Legal Services of Philadelphia; and special guest, Rep. Brendan Boyle of Pennsylvania’s 13th Congressional District. Clients of Burdick and Grandison were the subjects of the article.

Burdick led off the discussion with a brief history of the backlog. Specifically, she said that the Social Security Administration expects cases to wait 270 days for a hearing from the time a disability claimant requests a hearing before an administrative law judge. Unfortunately, Americans with disabilities all over the country, including in Philadelphia, are waiting more than double that time.

The Inquirer article said that the Social Security Administration acknowledged cases waiting for more than two years –for an appeal hearing to determine whether they qualify for Social Security Disability Insurance and/or Supplemental Security Income benefits. While the administration does not often use the word “crisis” in describing its deficiencies, the word is quite apt considering a reported 8,699 people died nationwide in 2016 awaiting a decision on benefits. Compounding this issue is the fact that once an applicant does receive a hearing, he or she can expect to wait months for a decision to be made. If awarded, an applicant can expect a further delay for the processing of their monetary benefits. The backlog alone does not tell the whole story as these disabled individuals waited an average of six months for a decision to be made on their initial application for disability benefits before they were even permitted to request a hearing.

Rep. Boyle has been lauded for his quick action on this subject. Inspired by Vargas’s article, and just days after its publication, he issued a statement on the floor of the U.S. House of Representatives calling attention to this “dangerous” backlog. He demanded answers from the Social Security Administration leadership, and he met with the administration’s acting commissioner on March 7.

The panel took questions from the audience as well as proposed ideas to assist the Social Security Administration with this crisis. While budget constraints and hiring freezes at the administration were partly to blame, reestablishing the ability for attorneys to request “on-the-record” decisions was one of many ideas that could make an...
For details on placing a Lawyer to Lawyer referral ad, contact Lana Ehrlich at 215-557-2392 or lehrlich@alm.com.

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

For more information on placing a Lawyer to Lawyer referral ad, please contact

LANA EHRLICH

at

215-557-2392 or lehrlich@alm.com

LAWYER TO LAWYER REFERRALS

For details on placing a Lawyer to Lawyer referral ad, contact Lana Ehrlich at 215-557-2392 or lehrlich@alm.com.

Register at philadelphiabar.org

CourtCall

continued from page 1

across the U.S. and Canada.

The Association and CourtCall are expanding their partnership to include upgrades to the conferencing capabilities of the Association’s 11th Floor Conference Center. These upgrades will allow the Association to use CourtCall technology for video and audio conferencing – making it possible for more members to attend meetings and CLEs remotely. The technology will also give presenters the ability to appear in the room via video, and even on a desktop or laptop computer. Ease of use and portability are key to each of CourtCall’s product offerings.

CourtCall provides services to the civil courts in Philadelphia with audio remote appearance technology. It is working with several other Philadelphia courts to use video conferencing to relieve congestion, maximize courtroom safety and continue to save lawyers transportation time and costs.

CourtCall

Inquiries@lundylaw.com or call Carmen Diaz at 215-246-9203

Offices located in Wilmington, DE & Cherry Hill, NJ

Full Referral Fees Paid

Workers’ Compensation Section

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ

Workers’ Compensation Section

Philadelphia Bar Association

Awards Luncheon

April 20, 2018

Philadelphia Bar Reporter

DE & NJ

DE & NJ
Combining Legal Acumen, Entrepreneurial Spirit

By Khalil Bullock

Implementing both creative and non-traditional skills can be necessary to launching one’s own practice or business. The Women in Profession and the Solo and Small Firm Management committees hosted a panel led by three women attorneys on Feb. 27. While each panelist believed securing their role in the legal industry was imperative, implementing entrepreneurial tactics to develop a well-rounded professional image was equally important. Featured panelists included Maureen M. Farrell, chair of the Solo and Small Firm Management Committee; Heather A. Herrington, partner at Ritgstein Law, LLC; and Jennifer Gomez Hardy, attorney at Messa & Associates, P.C.

Each panelist weighed in on topics such as developing legal skills, tactics and the mindset to manipulate your own unique path and be your own boss. As a result of leveraging legal and entrepreneurial skills, combined with their law degrees, each panelist successfully manages their own businesses.

Farrell led the panel discussion as the founder and owner of the Law Offices of Maureen M. Farrell. She began her legal career later than many of her peers, entering law school in her late 30s. While not possessing the traditional legal experience, contacts and strategy of a seasoned attorney, she implemented her entrepreneurial and consulting skillset to excel. As a result of analyzing her clients and understanding what makes them happy, she is able to create a strong connection.

Beginning her career as a clerk to Judge Annette M. Rizzo (Ret.), Herrington said she learned how to “navigate the legal profession.” Judge Rizzo encouraged her “to do what she loved, work with the people she liked and treat them well.” Herrington’s career progressed as she transitioned on to working at Jacobs Law Group, a litigation firm. However, she decided she wanted to enjoy her life under her terms and created a 9-page analysis summarizing her legal career. This analysis would condense and solidify what she loved and disliked about the legal industry. Gomez Hardy embarked on her journey as an attorney by attending law school on a full scholarship. She said she was raised to understand the value of developing a vaulting work ethic. Once establishing her professional image as an attorney, Gomez Hardy believed she did not receive the credit she deserved for the work she was completing. “Now that I’m at the table, men are telling me what my worth is,” she said. In the midst of trying...

continued on page 14

Addressing an Expert Witness With Finesse

By Regina M. Parker

Cross-examination of a witness can prove to be an invaluable tool during trial. Effective cross-examination can highlight key information favorable to your case and undermine the credibility of a witness, panelists told attendees during a Philadelphia Bar Association CLE hosted by the State Civil Litigation Section titled “Advanced Cross-Examination - Pulling It All Together” on Jan. 10. This program was the culmination of a three-part CLE series. Presenters for all three programs were Hon. Mark I. Bernstein (Ret.) and Lawrence Bendesky, shareholder at Saltz Mongeluzzi Barrett & Bendesky, P.C.

The panel explained that the ability to execute a successful cross-examination requires intense preparation and skill. It also revolves around asking the right questions. The panel provided useful tips that can be utilized to effectively cross-examine a witness and strengthen your case.

First, be far more prepared than the witness. Preparation can guide you in identifying the questions that should be asked. Generally, you should not ask a question if you do not know the answer. However, there is an exception to this general rule. The panel said that the best cross-examination questions are those where the answer does not matter. In that instance, you should be prepared and ready to go no matter what the answer is.

Next, listen to the answers. You will be astonished at what you can get from a witness.

Do not let a witness get away with not answering the question. The panel agreed that when a witness refuses to answer a question, you want to bring it to the attention of the jury by maintaining professionalism. This can be accomplished simply by repeating the question.

The panelists said that a professional witness will slide out of any crack in order to explain inconsistencies. Your goal on cross-examination should be to close any cracks by confirming and narrowing the position of the witness.

Finally, keep your questions short and simple. In addition to providing tips, the panel focused on the ability of discrediting an expert witness by exposing the witness as biased in favor of the offering party. The panel agreed that if you can show that the expert is a paid professional, paid by one side with a lot of money all the time, and that it effects the expert’s credibility and opinions on substantive issues, it is golden. They said that the Pennsylvania Supreme Court in Cooper v. Scheff. created the category of “professional expert witness.” If an expert can be categorized as a “professional expert witness,” that expert could... continued on page 16
Basics of Long Term Disability to Guide Your Client

By Mary LeMieux-Fillery

For many clients who participate in employer-sponsored long term disability plans, LTD coverage serves as an important component of financial planning and a supplement to the Social Security Disability Income program. Jamie R. Hall, Law Office of Jamie R. Hall, provided useful tips for SSDI practitioners at the Philadelphia Bar Association CLE, hosted by the Social Security Disability Committee, titled, “Long Term Disability Claims: An Introduction for the SSDI Attorney” on Feb. 16. If you are assisting a client with an SSDI matter who also has a corresponding LTD claim, Hall outlined the basics to help point your client in the right direction.

LTD coverage is entirely contract-based. Hall talked about the importance of understanding the LTD contract before agreeing to accept a case, “These insurance contracts control nearly all aspects of the claim and must be understood by counsel prior to retention.”

Concerning pitfalls with clients filing their own appeals, Hall said that with very few exceptions, no new evidence may be submitted after an insurer renders a final decision. Also, it is key to advise clients not to file their own appeal. Appeals need to include not only a recitation of the facts with supporting legal argument, but they should include any additional evidentiary development you wish the insurer to consider such as functional capacity evaluations, vocational reviews and neuropsychiatric evaluations. Hall said that the potentially higher claim value justifies greater investment in record development.

Hall discussed the pitfalls of the Employee Retirement Income Security Act of 1974, or ERISA, and said that a key question for practitioners to ask when reviewing a claim is whether ERISA applies, as it drastically limits recoverable damages and it provides an “insurer-friendly” discretionary judicial standard of review. Hall said that ERISA governs the vast majority of group LTD policies with the exception of policies provided through a government or church employer, or individually purchased policies.

Per ERISA, judicial review is limited to not whether the claimant should have qualified under the policy, but whether the LTD plan administrator’s decision was sufficiently supported by the record. Hall said that ERISA does not permit jury trial.

continued on page 14
#MeToo for Legal Practitioners: A Chancellor’s Forum on Sexual Harassment

Wed., 4/4/18 - 12:00 - 2:15 p.m. (1 SUB/1 ETH)
Co-hosted by the Women’s Rights and Women in the Profession committees

The current #MeToo movement has sparked renewed interest in the perennial problem of sexual harassment and gender-based violence in the workplace. The law requires employers to prevent, and to address allegations of, harassment and retaliation, including sexual harassment, but many workplaces do not understand their legal obligations. Join our experienced panelists for a discussion about creating equitable work environments in which employees are able to report and employers are able to respond appropriately to violations of workplace policies and the law. This Forum, the first program in a series of programs addressing the #MeToo movement, will focus on sexual harassment prevention policies in the legal workplace, anti-harassment training and the obligation to and process of promptly addressing allegations of sexual harassment at work.

Tales from the Financial Services Trenches: An Expert Witness - Your Best Friend or Worst Nightmare?

Tue., 4/10/18 - 12:00 - 2:15 p.m. (1 SUB/1 ETH) – LIVE - REGISTRATION CLOSED
Wed., 4/18/18 - 12:00 - 2:15 p.m. (1 SUB/1 ETH) – VIDEO ENCORE
Wed., 4/25/18 - 12:00 - 2:15 p.m. (1 SUB/1 ETH) – VIDEO ENCORE

FREE CLE for Philadelphia Bar Association members in good standing!

This CLE program will provide guidance and important tips for selecting, qualifying and preparing an expert witness. Our featured speaker, Paul Brahim, chairman and chief executive officer of BPU Financial Services, will explore the following important questions: what do these experts cost; should they be part of your team early in the process or, is there peril to bringing them in late in the game. The program will address Daubert v. Frye and the importance of an expert’s report and its critical components.

VIDEO ENCORE - How to Represent Clients in an Insecure, Post-Equifax World

Thu., 4/12/18 - 12 - 2 p.m. (1 SUB/1 ETH)

This VIDEO ENCORE CLE will address how and why the landscape of cybersecurity has changed and why it needed to change post-Equifax. Panelists discuss how security and technology can and should play a role in almost every client representation. From intellectual property to mergers and acquisitions, this program will examine how security can play an important role in the everyday practice of law. Panelists explore a number of breaches, including Equifax, and the lessons law firms and all businesses should learn. Panelists also deconstruct a cyber incident and what factors contribute to it being designated as a breach.

No Reasonable Doubt About It: Medical Marijuana in PA is Here to Stay

Fri., 4/13/18 - 12:30 - 2:45 p.m. (2 SUB)
Co-Hosted by the Medical Marijuana and Hemp Committee and the Criminal Justice Section

This 2-hour lunchtime CLE program will examine Pennsylvania’s Medical Marijuana Program and its intersection with criminal law. Panelists will offer an overview of the medical marijuana program in Pennsylvania and provide guidance on how to identify and analyze criminal law issues that are impacted by the use of medical marijuana. If you are an attorney practicing in Pennsylvania, medical marijuana is sure to impact your practice at some point in the near future. Don’t miss this program!

For questions regarding Philadelphia Bar Association CLE, contact Director of Continuing Legal Education Tara D. Phoenix at 215-238-6349 or tphoenix@philabar.org.
VIDEO ENCORE - Be the Judge, Be the Jury... Become an Arbitrator!

Mon., 4/16/18 - 12 - 3 p.m. (2 SUB/1 ETH)

Attend this entertaining video encore and learn how to conduct your first or next arbitration.

Compulsory arbitration was created as a means of efficiently disposing of smaller civil cases and conserving judicial resources by requiring as a first step that such cases be tried before a panel of three local court-appointed attorneys, with the understanding that any party can later appeal the decision and obtain a new trial. Experienced practitioners offer guidance and practical strategies to successfully conduct an arbitration and serve as an arbitrator. Attend this video encore CLE program and obtain certification to become an arbitrator!

Life Planning for Philadelphia Seniors: A Training for Pro Bono Volunteer Attorneys Assisting to Serve Elders in Need

Tue., 4/17/18 - 12:00 - 1:30 p.m. (1 SUB/0.5 ETH)

Co-hosted by The Barristers’ Association of Philadelphia, Inc., SeniorLaw Center and the Philadelphia Bar Association

At this CLE program, volunteer attorneys will receive training on how to prepare and execute basic life planning documents, including simple wills, living wills and financial and health care powers of attorney. For each document, attorneys will learn the relevant Pennsylvania law, pertinent definitions, drafting tips and common misconceptions their clients may have about this area of law. Particular focus will be given to meeting with and preparing and executing documents for SeniorLaw Center’s client base: low-income older Philadelphians. This CLE program provides training for all volunteer attorneys willing to accept and represent a client in The Barristers’ Association Annual Life Planning Clinic on April 21, 2018. Registration is FREE ONLY to those who VOLUNTEER for THIS 4/21 clinic.

The False Claims Act in 2018: A Brave New World?

Wed., 4/18/18 - 12:30 - 1:30 p.m. (1 SUB)

Hosted by the Federal Courts Committee

Panelists will address recent developments in the dynamic landscape of the False Claims Act (FCA). This program will survey recent FCA developments from the judicial, government, relator and defense perspectives. Panelists will provide a brief overview of the FCA and most common types of FCA cases. They will examine the recent Department of Justice Memo on Dismissal of Meritless Qui Tams, notable recent FCA decisions and post Escobar decisions, as well as, explore what is on the horizon.


Thu., 4/19/18 - 12:00 - 3:15 p.m. (2 SUB/1 ETH)

Zoning and land use in Philadelphia are ever-changing. Whether you are a seasoned professional or a newly minted lawyer, the complexities of navigating the Philadelphia development process remain consistent throughout your career. In this comprehensive seminar, hear about the current state of the inner-workings of the Philadelphia zoning process from those who interpret and enforce the rules and regulations. Panelists will guide you through a tour of zoning including process, strategy, appeals and other critical considerations that influence the success of a proposal.

VIDEO ENCORE - Disaster Response and Relief - What You Can Do To Assist the Victims of the Hurricane in Puerto Rico and Similar Disasters

Mon., 4/23/18 - 12 - 2 p.m. (1 SUB/1 ETH)

If you missed the live program, please join us for the video encore to enable you to take action!

In this video encore CLE program, experienced legal practitioners will describe how disaster legal services programs work, how to assist clients navigating FEMA regulatory rules and insurance disputes and how lawyers can generally assist disaster victims with other recurring legal issues. Additionally, panelists discuss the myriad of ethical issues that can potentially arise in disaster representation and how to address them.

VIDEO ENCORE: Professionalism, Courtesy and Mutual Respect: The ‘Soft Skills’ in a Performance Review

Tue., 4/24/18 - 12:30 - 1:30 p.m. (1 ETH)

Lawyers spend a lot of time ensuring that their research is accurate, their written work product is polished and their advocacy skills are first-rate. This course focuses on the skills lawyers frequently forget about or just are not sure how to develop. The video encore CLE program will address the importance of developing a professional identity, the value of engaging in genuine interpersonal relationships in the workplace, and the necessity of maintaining a stellar reputation.

Paperless Chase: iPad Best Practices for Lawyers

Tue., 4/24/18 - 4:30 - 6:00 p.m. (1.5 SUB)

Enjoy a networking Happy Hour at Finn McCools following the CLE program! Hosted by the Solo and Small Firm Management Committee, the State Civil Litigation Section and Breken Law Society

Attorneys always look for ways to set themselves apart from their colleagues, in the 21st century that includes the use of technology. This CLE will help introduce innovation to your litigation practice, and demonstrate efficiencies that attorneys can use on a daily basis using your iPad. From preparing cases, to mediation, arbitration and trial, keep everything at your fingertips without carrying stacks of paper documents and case notes. Learn how to create simple presentations, present evidence in the courtroom, display pictures and documents at a deposition, or present evidence at an arbitration, mediation or trial. Learn from an experienced litigator and “iPad guy” how to master the basics and effectively incorporate and maximize the use of an iPad into your practice. Bring your iPad and learn basic tips and techniques to effectively and innovatively use technology in your practice.

Effective Nonprofits and Board Promising Practices

Fri., 4/27/18 – 12:30 - 1:30 p.m. (1 SUB)

Hosted by the Young Lawyers Division as part of the Philadelphia Bar Foundation Board Observer Program

Are you serving on a nonprofit board or considering it? Learn what an attorney acting as a board member needs to understand about his or her legal and fiduciary duties and how to effectively advance the organization’s goals and mission. This CLE addresses the special issues facing lawyers who serve as board members, as well as provide best practices to improve board performance and productivity.

Tax Law Update & Business Impact on Cannabis Industry

Mon., 4/30/18 - 12 - 2 p.m. (2 SUB)

Greenhouse Ventures presents the Cannabis Learn Conference & Expo at the Pennsylvania Convention Center in Philadelphia, April 30 – May 2. The Philadelphia Bar Association is proud to be the CLE provider for this event. IRC 280E is far and away the most important tax provision for the cannabis industry. This course offering will take the practitioner through the basics of what a Section 280E audit looks like and both the civil and criminal implications of the audit. Join your colleagues to learn what IRS Code Section 280E means for “cannabisbusinesses” at this conference highlighting best practices shaping both the Northeast Corridor of the United States. Philadelphia Bar Association members can save 20% off Early Bird ticket price when registering for Cannabis Learn Conference & Expo using promo code GHVPHLBar. Registration can be completed through CannabisLearn Conference registration link at https://cliqueticket.com/events/86.

*Additional courses may be added within the month.

TO REGISTER

Visit the CLE page at PhiladelphiaBar.org
**SEC Enforcement Measures to Change for 2018**

By Ernest D. Holtzheimer

With the significant 2017 Securities and Exchange Commission enforcement results, practitioners should understand SEC enforcement trends what to expect from the SEC in the coming year. The Business Law Section’s Securities Regulation Committee kicked off their 2018 programming by hosting a Philadelphia Bar Association CLE titled “SEC Enforcement Developments” on Feb. 28. Panelists included Kelly L. Gibson, associate regional director for the SEC Division of Enforcement; Jay A. Dubow, partner at Pepper Hamilton LLP; and Richard A. Levan of Levan Legal, LLC.

The discussion began with an overview of the SEC’s annual enforcement report for the fiscal year closed Sept. 30, 2017. Panelists said that though there was a drop of roughly one hundred enforcement actions between fiscal years 2016 and 2017, the decrease was a result of the SEC’s Municipalities Continuing Disclosure Cooperation Initiative. The MCDCI reduced the number of enforcement cases by offering standard settlement terms to municipal issuers and underwriters who had conducted offerings which included false statements relating to compliance with disclosure obligations – a widespread issue recognized by the SEC in 2014. Even with adjusting for the municipality initiative, however, there was a downward trend in enforcement cases, adhering to expectations of the new administration.

In addition to reviewing such statistical trends, the discussion also included an overview of some significant cases brought by the SEC over the past year. One of these decisions was the unanimous 2017 opinion of U.S. Supreme Court in Kokesh v. SEC. Kokesh resolved the question of whether disgorgements sought in SEC proceedings qualify as a “penalty.” Holding that such disgorgements are, in fact, penalties, in that they are imposed by the courts as a consequence for violating public laws and are punitive, any disgorgement claims in an SEC enforcement action must be sought within the five-year statute of limitations of the accrual date of that claim. The practical implication of this holding is that the statute of limitations will require faster investigations by the SEC and will likely result in more tolling agreements within these investigations.

Not only will this decision profoundly change how the SEC approaches enforcement cases, the Supreme Court left open the door to further truncating the SEC’s disgorgement power by including a footnote that calls into question whether the judicially established remedy of disgorgement is an appropriate remedy at all.

In addition to Kokesh, panelists also discussed the Supreme Court’s recent grant of certiorari in Lucia v. SEC. Lucia will decide whether the SEC’s bureaucratic hiring process for its administrative law judges violates the U.S. Constitution’s Appointments Clause. The case is rather

**Choice of Entity After Tax Reform**

By James Vandermark

The Tax Cuts and Jobs Act changed federal tax laws, including a reduction of the corporate income tax to 21 percent, and revised the way attorneys need to think about structuring businesses. To address the impact of the recent changes, on the Tax Section and the Business Law Section LLCs and Other Unincorporated Entities Committee presented a CLE titled “After Tax Reform, How Should I Structure My Business?” on March 1. The program was presented by David Shapiro, chair of the Tax Section, and Saba Ashraf, partner at Ballard Spahr LLP.

Historically, the choice as to which form of entity to choose for tax purposes was a relatively easy decision. Pass-through entities, such as partnerships, were almost always the more favorable choice. Before the tax act, a corporation’s profits were first taxed at the corporation level at a rate as high as 39 percent. When those profits were distributed to shareholders, they were taxed again at the rate applicable to the shareholder. Pass-through entities provided a more favorable tax outcome because they avoided this double taxation as the tax obligations were only at the partner level.

The significant drop in the corporate tax rate has caused many to rethink the once-safe assumption that favored pass-through entities. Under certain circumstances, the new rates and rules will make C corporations a more attractive option. However, Ashraf said that the changes are “probably not a game-changer.” In most situations, pass-through entities will still provide the more favorable tax outcome. However, the changes require a much closer look at the details of the business.

Practitioners need to ask several threshold questions to decide which entity choice is most appropriate. This includes determining whether the entity is expected to have significant taxable income and whether that income will be distributed regularly. If there is limited income, Ashraf said it would usually be best to establish a pass-through entity because of the advantages when it comes time to sell the business. However, for those situations where the business will have income but does not intend to make distributions, Ashraf said that a C-corporation is the best choice.

continued on page 14

continued on page 14
Create a Holistic Plan to Optimize Your Career

By India McGhee

Law school teaches certain skills necessary to succeed – how to write well, research a line of precedential cases, or argue convincingly in front of a judge. During a performance review, any young attorney will be ready to address these points but may overlook the “soft skills” not taught in school. The development of these soft skills was the subject of a Philadelphia Bar Association CLE hosted by the Young Lawyers Division titled “Professionalism, Courtesy, and Mutual Respect: The Soft Skills in a Performance Review” on March 6. Patricia Daly, principal at WorkBest Legal, presented.

While performance reviews generally touch explicitly on work-product, hours billed, or business developed, they can also touch implicitly on soft skills. To self-evaluate the strength of their soft skills, young lawyers can benefit from doing a self-analysis of their strengths, weaknesses and overall performance, called a “360 Review.” However, it can be challenging to define, and therefore evaluate, soft skills. Daly said that lawyers are held to a high standard of professional conduct that requires them to practice diligently, proceed diligently, communicate honestly and behave with dignity. While these are written into the Rules of Professional Conduct, they are also the basis of soft skills that young lawyers can develop to build better working relationships, better outcomes, better performance reviews and ultimately, better lives.

Daly broke the realm of soft skills down into three basic categories: courtesy, integrity and mutual respect. The first of these soft skills, courtesy is self-explanatory. Coworkers and clients, alike, appreciate the basics of courteous behavior, which demonstrates a respect for their time and feelings. Courtesy should be extended to everyone from the mail clerk to the managing partner. The second soft skill, integrity, is necessary for building trusting work relationships. The key to exhibiting integrity at work is following the golden rule – treat people as you would like to be treated. When your coworkers find you to be a reliable confidant, it not only helps your overall performance, but also makes you a better attorney.

The third and most challenging soft skill to define is mutual respect. Mutual respect develops with specific intention and can be most helped by conducting a 360 review. Ask yourself if you are committed to your practice. This question drives itself at your work ethic and helps a young lawyer understand how they can develop mutual respect with supervisors and coworkers. Young lawyers must learn to be self-aware, so that they know how they are perceived in meetings and personal interactions. They also must exhibit humility and know their strengths and weaknesses. Mutual respect relies also on interpersonal communication – lawyers who are polite, who communicate meaningfully with their supervisors and their support staff and who listen actively and carefully, will be treated with the respect that they have shown to others.

When a young lawyer can engage in an authentic self-review and master these soft skills, as well as the objective craft of lawyering, they will be well on their way to great performance reviews and great careers.

India McGhee (India.McGhee@Phila.gov) is an assistant city solicitor in the City of Philadelphia Law Department.

FEDERAL COURTS COMMITTEE


Right: Phinorice J. Boldin (left) and Kathleen D. Wilkinson (right), cochairs, Federal Courts Committee, with Judge Heffley and Judge Kearney at the Committee’s meeting on Feb. 21.
SSDI Backlog

continued from page 6

immediate impact. On-the-record decisions are decisions issued without administrative law judges first holding hearings. Instead, based on the disabled applicant’s medical records, he or she indisputably has serious disabilities that qualify them for benefits. This saves everyone time, and saves the federal government money, if a decision can be made without a hearing or judge involvement, Burdick said.

Attendees were encouraged to urge their clients to reach out to their elected officials in the federal government to highlight these delays. It takes only a few inquiries from constituents to urge our officials to address the problem.

Thomas J. Giordano Jr. (giordano@disabilityjustice.com), partner at Pond Lehocky Stern Giordano, LLP is a cochair of the Social Security Disability Committee.

Thomas J. Giordano Jr. (right) and Marjorie Portnoy (second from right), cochairs, Social Security Disability Committee, with Jennifer Burdick (left to right) Claudia Vargas, Claire Grandison and Rep. Brendan Boyle, at Pond Lehocky Stern Giordano, LLP on Feb. 21.

Entrepreneurs

continued from page 8

to convince her colleagues she was being grossly underpaid, she made the decision to look for opportunities elsewhere.

Gomez Hardy entered into the real estate and restaurant business industry with hopes of creating multiple avenues of income for herself. She now owns multiple properties in the Philadelphia area and is the owner of Lou & Choo Lounge, a staple in the Hunting Park neighborhood of Philadelphia.

The legal industry is a competitive market. It forces attorneys to think creatively and use non-traditional models to develop businesses and set themselves apart.

Khalid Bullock (kbullock@philabar.org) is the communications intern at the Philadelphia Bar Association.

Cross-Exam Series

continued from page 8

be compelled to respond to supplemental discovery to explore potential bias. The scope of supplemental discovery can include written interrogatories and a request for production on such topics as the percentage of work an expert devoted to litigation, the number of examinations or investigations performed in a year, the number of times an expert has testified and the side (plaintiff or defendant) for whom the expert has testified. This form of discovery is permitted to demonstrate potential favoritism toward one side.

The panelists said that the primary purpose of cross-examination is to impeach or undermine the witness’s credibility to prevent the jury or judge from believing in or relying on that testimony or evidence.

Regina M. Parker (RBParker@ablaw.com), partner at Thomas, Thomas & Hafer LLP, is an associate editor of the Philadelphia Bar Reporter.

LTD Claims

continued from page 9

trials, or compensatory or punitive damages, and relief is generally limited to the amount of benefits in question. These implications often mean that insurers defending claims in federal court are overwhelmingly successful.

Due to the nature of ERISA, Hall encouraged attendees to inform clients at the outset about the limitations presented by ERISA, especially in terms of recoverable damages. LTD policies call for an offset of Social Security Disability benefits and workers’ compensation benefits. Calculations for future benefits also include a discount for “present-day” value. Most LTD claims are resolved via a one-time lump sum settlement and all others are decided on motions for summary judgment.

Mary LeMieux-Fillery (mlemuir-fillery@paworkinjury.com) is an associate at Martin Law LLC.

Prosecutions

continued from page 12

unorthodox because the DOJ’s response to the Lucia petition acknowledged that SEC ALJs exercise enough authority to qualify as officers of the U.S., rather than employees. With Lucia and the DOJ in agreement, the SEC has hired outside counsel to argue its position. The decision will be important, because it could mitigate the SEC’s current “advantage” in administrative proceedings over suits in federal court.

In terms of what to look for in the future, panelists said that the SEC is pursuing a “back to the basics” initiative focused on “doing more with less” while still protecting retail investors. This includes the establishment of a new Cyber Unit focusing on digital assets, initial coin offerings and blockchain technology, as well as an increased use of data analysis gathered from earlier investigations to provide examiners with additional knowledge of insider trading and market manipulation. As the SEC continues to deal with budgetary issues and the challenge of the increase in international insider-trading cases, the Business Law Section will continue to monitor ongoing securities actions and will provide members with updated content accordingly.

Ernest D. Holzheimer (eholzheimer@mmwr.com) is an associate at Montgomery McCracken Walker & Rhoads LLP.

Tax

continued from page 12

poration may be the more favorable entity choice.

During their presentation, the panelists covered other changes in the tax law that may affect entity choice. These included changes in calculating depreciation and carried interest, which should be considered as they can provide some significant benefits. Shapiro also addressed the international aspects of the tax act and specifically the new repatriation rules.

The panelists emphasized the tax act required a choice of entity analysis that is now much more dependent on specific facts and circumstances. Ashraf said that practitioners would need to run the numbers and compute the tax based on the new rates that are now in place. Shapiro said this more complicated analysis has led many to refer to the tax act as “the spreadsheet tax reform bill.” To determine the right entity choice, he reiterated that “there is no shortcut.”

James C. Vandermark (vandermarkj@whiteandwilliams.com) is an associate at White and Williams LLP.
Ending Solitary Confinement of Death-Row Prisoners

By Mark D. Taticchi, Mira E. Baylson and Elizabeth L. Coyne

As Justice Kennedy observed to Congress in 2015, “Solitary confinement literally drives men mad.” Pennsylvania, it may surprise you, has for decades ignored this truth and placed all individuals sentenced to death in the Commonwealth in automatic and unwarranted, solitary confinement. This is not a punishment unthinkingly described by the Third Circuit last year. It is, instead, the exception—less mandate of the Pennsylvania Department of Corrections, which assigns all death-sentenced prisoners to permanent isolation until their death sentence is vacated, they are executed by the state or they die of other causes while awaiting execution. For those on Pennsylvania’s death row, solitary confinement is not a limited, individually calibrated security measure; it is unceasing torture by administrative fiat.

The 156 prisoners sentenced to death in Pennsylvania are held in isolation for 22 to 24 hours a day in cells (some of them windowless) that are little larger than your average parking spot. The conditions of solitary confinement for death-sentenced prisoners in Pennsylvania were unthinkingly described by the Third Circuit last year. In Williams v. The Secretary of the Pennsylvania Department of Corrections, the Court of Appeals detailed the psychological debilitation of this isolation, with sporadic and infrequent human contact that is accompanied by indignities including a mandatory invasive strip search whenever leaving one’s cell. There is extensive medical research establishing that prolonged solitary confinement is physically unhealthy, emotionally destabilizing and psychologically debilitating. It causes severe mental health problems, including depression, post-traumatic stress disorder, psychosis, hallucinations, paranoia and thoughts of suicide.

On Jan. 25, 2018, a coalition of attorneys from the ACLU of Pennsylvania; the ACLU National Prison Project; the Abolitionist Law Center; Kairys, Rudovsky, Messing, Feinberg & Lin LLP; and Drinker Biddle & Reath LLP sued the Commonwealth of Pennsylvania to end these practices. We seek certification of a class comprised of all existing and future prisoners sentenced to death in Pennsylvania, and two forms of substantive relief. One form is an end to the Commonwealth’s policy of placing death-sentenced prisoners in permanent, near-total isolation. The other form is the implementation of policies that allow death-sentenced prisoners the opportunity to qualify for the same housing opportunities as non-death-sentenced prisoners; alleviate conditions of isolation, sensory deprivation and lack of social and physical human contact; and allow death-sentenced prisoners to challenge the conditions of their confinement like other prisoners.

Each of the plaintiffs in this lawsuit has been sentenced to death. In Pennsylvania, however, they are subjected not simply to incarceration pending execution, but—at the hands of the Department of Corrections—a lifetime of physical, emotional and psychological abuse. It is long past time for this practice to end.

Working on this case has been, and continues to be, deeply impactful for us. As associates in a large law firm, our opportunities to participate in litigation for the public good are limited, and we feel fortunate to have the support of our firm to work on this matter. We are reminded of the words of Justice Sonia Sotomayor, “We educated, privileged lawyers have a professional and moral duty to represent the underrepresented in our society, to ensure that justice exists for all.” It is both our responsibility and our privilege to represent the plaintiffs in this case and ensure that the protections of the U.S. Constitution apply to all its citizens.

Mark D. Taticchi (mark.taticchi@drb.com), Mira E. Baylson (mira.baylson@drb.com) and Elizabeth L. Coyne (elizabeth.coyne@dbr.com) are associates at Drinker Biddle & Reath LLP.

THE DISPUTE RESOLUTION INSTITUTE is pleased to announce that Samuel D. Hodge, Jr., Esq. has now joined forces with DRI and its distinguished panelists as arbitrator and mediator.

Samuel D. Hodge, Jr. brings to the Dispute Resolution Institute more than four decades of unique knowledge and practical experience in both law and anatomy for which he enjoys a national profile. Sam is best known for his highly entertaining and informative lectures on anatomy and trauma. In fact, he has been named one of the most popular continuing legal education instructors in the country and frequently teaches attorneys, judges, physicians, insurance personnel and representatives of governmental agencies both nationally and internationally.

His Anatomy for Lawyers course was the recipient of the ACLEA Award for Outstanding Achievement in Continuing Legal Education and he teaches a variety of medical courses for lawyers at the Lewis Katz School of Medicine at Temple University and for the Pennsylvania Bar Institute.

Academically, Mr. Hodge is a professor at Temple University where he teaches law, anatomy and forensics. He has been named a Temple University Great Teacher, a Master Teacher by the Academy of Legal Studies and is the recipient of the John Topoleski Memorial Award for Outstanding Instruction. Professor Hodge’s interactive teaching style is so unique that it has received national media attention including stories in the New York Times.

We proudly announce

Professor Samuel D. Hodge, Jr. has joined

The Dispute Resolution Institute as a Distinguished Neutral

March 2018

Harris T. Bock, Esq. Director
Michael L. Gallagher, Esq. Deputy Director

Professor Samuel D. Hodge, Jr.


Sam is also an experienced litigator who enjoys an AV Preeminent rating and has been named a top lawyer in Pennsylvania on multiple occasions. He represents both injured claimants and defendants in complex medical matters or trucking accidents. For instance, he obtained a million dollar settlement for a woman who injured her back when she attempted to pull her husband out of an open grate on the sidewalk, to defending sixty lawsuits as the result of an accident between a truck and a bus.

Sam is a prolific author whose research is cited in court opinions, legislation, law reviews and legal or medical journals. He has authored more than 160 articles and books including Head Trauma and Brain Injuries for Lawyers, ABA; The Spine, ABA; The Forensic Autopsy, ABA; Clinical Anatomy for Attorneys, ABA; the award winning book, Anatomy for Litigants; Mr. Hodge is a graduate of Temple University School of Law and the Graduate Division of the Law School. He has received mediation training at the Strass Institute for Dispute Resolution and has been selected by attorneys from around the country to mediate cases in other jurisdictions. For instance, he recently mediated a complex case in Pittsburgh involving multiple deaths. He is a member of the American Association of Anatomists and the American College of Legal Medicine.
The Philadelphia Bar Association, founded in 1802, is the oldest association of lawyers in the United States.

CONNECT WITH US
PHILADELPHIABAR.ORG

David I. Grunfeld (dgrunfeld@astorweiss.com) is of counsel to Astor Weiss Kaplan & Mandel, LLP.
Planning for a Longer Life

Life expectancy has been steadily increasing for decades. The real possibility of living to an advanced age, and the financial impact that would have, has become a key consideration in financial decision-making. For this month’s interview, I sat down with David Foster, ChFC®, CAP® and FLMI, senior resident, PNC Center for Financial InsightSM, to discuss some of the specific implications that a longer life might have on wealth planning.

Mary Ashenbrenner (MA): What effect might a longer life have on retirement planning?

David Foster (DF): A longer lifespan can have a substantial impact on the funds a person may need to achieve his or her desired retirement lifestyle. A good first step toward determining what you will need to do is conduct a financial accounting of where you are now, what you would like to spend during retirement, and what you would need to get there. In conducting your analysis, consider post-retirement expenses, income from investments and/or continued employment, Social Security benefits, any defined benefit plan income, taxes, your desired income in retirement, and how many years you will need that income to last.

MA: With longer life expectancies, should families change their wealth transfer strategies?

DF: Living to an advanced age may lead to complicated family and financial dynamics, which you need to weigh when thinking about your wealth transfer goals. For example, if you are planning for children and grandchildren, you may want to consider changing how you gift your assets to them. If possible, you may want to consider the timing and nature of a planned charitable gift.

MA: Could living to an advanced age affect the timing and nature of a planned charitable gift?

DF: Some philanthropic strategies might not be in the best interest of the charity. For example, if you have a charitable gift annuity, the donor makes a lump sum contribution to the charity in return for a lifetime income stream. However, if the donor lives well past the age of the person receiving the gift, the non-profit may end up paying out more than it received. Instead, you may consider a charitable remainder trust, which provides lifetime income streams to the donor without placing the longevity risk on the charity. Another example involves the use of charitable bequests. Receipt of the gift may be delayed for many years should you live to an advanced age. An alternative would be to consider a donor-advised fund, which provides the option of making charitable gifts and offers a tax benefit.

MA: If the financial burden of caring for aging parents falls upon the children, what can the siblings do to prevent potential conflict among themselves?

DF: One solution may be to combine family resources to acquire long-term care insurance for their parents. If the children have valuable life insurance and no longer need the same amount of death benefit, they may want to consider using the cash value to supplement their income. Another option would be to repurpose the cash value through what is known as a tax-free 1035 exchange to acquire long-term care protection. Or, family members may exchange the cash value tax-free for an immediate annuity to provide a lifetime income stream.

MA: Do life insurance policies last until the policy holder passes away, no matter what the person’s age is at the time of death?

DF: Mary Ashenbrenner (MA): What is known as “permanent” life insurance policies cease providing death benefit protection at a certain age. A review of the policy will uncover potential unintended risks such as coverage only through a certain age.

MA: Could living to an advanced age increase substantially over the years. That’s why we recommend that individuals build their wealth plans with a longer-than-expected life in mind.

Mary E. Ashenbrenner (mary.ashenbrenner@pnc.com or 215-585-1041) is a senior vice president with PNC Wealth Management.

The PNC Center for Financial Insight is PNC’s dedicated center of thought leadership that serves as a knowledge resource for clients in conjunction with their PNC advisors. Its purpose is to deliver relevant, actionable strategies that support clients’ wealth management objectives.

*Cautions to the federal estate and gift tax exclusion amount are set to expire in 2026. Prior to making a gift, you should consult your professional tax advisor. Under the new law, the Treasury is called upon to prescribe regulations as may be necessary or appropriate to clarify the implications as a result of differences between the basic exclusion amount in effect at the time of the decedent’s death and at the time of any gifts made by the decedent.

*Cautions to the federal estate and gift tax exclusion amount are set to expire in 2026. Prior to making a gift, you should consult your professional tax advisor. Under the new law, the Treasury is called upon to prescribe regulations as may be necessary or appropriate to clarify the implications as a result of differences between the basic exclusion amount in effect at the time of the decedent’s death and at the time of any gifts made by the decedent.

*Changes to the federal estate and gift tax exclusion amount are set to expire in 2026. Prior to making a gift, you should consult your professional tax advisor. Under the new law, the Treasury is called upon to prescribe regulations as may be necessary or appropriate to clarify the implications as a result of differences between the basic exclusion amount in effect at the time of the decedent’s death and at the time of any gifts made by the decedent.

Parents. If the children have valuable life insurance and no longer need the same amount of death benefit, they may want to consider using the cash value to supplement their income. Another option would be to repurpose the cash value through what is known as a tax-free 1035 exchange to acquire long-term care protection. Or, family members may exchange the cash value tax-free for an immediate annuity to provide a lifetime income stream.

Changing to the federal estate and gift tax exclusion amount are set to expire in 2026. Prior to making a gift, you should consult your professional tax advisor. Under the new law, the Treasury is called upon to prescribe regulations as may be necessary or appropriate to clarify the implications as a result of differences between the basic exclusion amount in effect at the time of the decedent’s death and at the time of any gifts made by the decedent.

*Cautions to the federal estate and gift tax exclusion amount are set to expire in 2026. Prior to making a gift, you should consult your professional tax advisor. Under the new law, the Treasury is called upon to prescribe regulations as may be necessary or appropriate to clarify the implications as a result of differences between the basic exclusion amount in effect at the time of the decedent’s death and at the time of any gifts made by the decedent.

*Changes to the federal estate and gift tax exclusion amount are set to expire in 2026. Prior to making a gift, you should consult your professional tax advisor. Under the new law, the Treasury is called upon to prescribe regulations as may be necessary or appropriate to clarify the implications as a result of differences between the basic exclusion amount in effect at the time of the decedent’s death and at the time of any gifts made by the decedent.

*Changes to the federal estate and gift tax exclusion amount are set to expire in 2026. Prior to making a gift, you should consult your professional tax advisor. Under the new law, the Treasury is called upon to prescribe regulations as may be necessary or appropriate to clarify the implications as a result of differences between the basic exclusion amount in effect at the time of the decedent’s death and at the time of any gifts made by the decedent.
Lawyers are often asked by family members and friends to handle matters that are outside their area of practice, or AOP.

It is often difficult to say no to such requests, but there are some compelling arguments against dabbling in unfamiliar areas, one being the increased risk of an ethical violation, malpractice claim, and substantially higher insurance rates. Some experts estimate that over 50 percent of malpractice losses occur outside an attorney’s primary area of practice.

The Dangers of Practicing Outside Your AOP

Many LPL underwriters consider the perfect law firm to be one that focuses on smaller, less complex risks, preferably all within the same AOP. If something goes wrong, the resulting damages may not be as severe and because of specialization, the firm will have developed a history of expertise and systems designed specifically to handle the demands of that particular AOP.

Generally, the more complex the matters being handled, the higher the payouts by LPL insurers when something goes wrong. Worse yet, lawyers who routinely take cases out of their typical practice area are treading on an even more slippery slope—after all, you don’t know what you don’t know.

For more information about defending malpractice allegations, contact Rich Balasa, senior professional liability consultant at USI Affinity, today at (800) 265-2876 x 11444.
PhiladelphiaBar.org April 2018    Philadelphia Bar Reporter

People

The City Policy Committee hosted members of Philadelphia City Counsel staff on March 12.

Right: Charles M. Gibbs (left) and David L. Hyman (right), cochairs, City Policy Committee; with Eric Bodzin, legislative aide to Councilwoman Maria Quiñones-Sanchez (left to right); Joshu Harris, director of legislation for Councilman Kenyatta Johnson; Samantha Williams, legislative counsel to Councilman Curtis J. Jones Jr.; and John Christmas, senior legislative advisor to Council President Darrell L. Clarke; on March 12.

The City Policy Committee hosted members of Philadelphia City Counsel staff on March 12.

Right: Charles M. Gibbs (left) and David L. Hyman (right), cochairs, City Policy Committee; with Eric Bodzin, legislative aide to Councilwoman Maria Quiñones-Sanchez (left to right); Joshu Harris, director of legislation for Councilman Kenyatta Johnson; Samantha Williams, legislative counsel to Councilman Curtis J. Jones Jr.; and John Christmas, senior legislative advisor to Council President Darrell L. Clarke; on March 12.

Teresa M. Rodriguez, hearing officer with the Philadelphia Municipal Court, was featured as the keynote speaker during the U.S. Environmental Protection Agency’s Region III Women History Month Celebration.

Kimberly Rice, president/chief strategist of KLA Marketing Associates, recently presented an educational program titled “Build and Grow a Prosperous Practice: Top Business Development Imperatives for the Smaller Firm” sponsored by Women Owned Law, a national network of women-owned law and legal services firms across the country.

John Gullace, partner at Manko, Gold, Katcher & Fox, LLP, moderated the American Bar Association’s Section of Environment, Energy, and Resources program titled “Superfund Year-In-Review” on Feb. 23.

Priscilla J. (“Sally”) Mattison, of counsel to Bernard M. Resnick, Esq., P.C., was appointed to the Philadelphia Film Advisory Task Force.

Mark F. Seltzer, founder of Seltzer & Associates PC, was named an honorary member of the American Society of Addiction Medicine.

Neil T. O’Donnell, attorney at O’Donnell Law Offices, was recently a faculty member at the American Association for Justice (American Trial Lawyers) Deposition College.

Sheryl L. Axelrod, president/CEO of The Axelrod Firm, PC, was featured in Thomson Reuters’ “Fearless Persona Campaign,” a national campaign featuring fearless attorneys – from general counsels at the largest companies in the country to owners of small law firms who are changing the landscape of the legal industry.

Michael A. Cognetti, partner at Swartz Campbell LLC, recently participated in a “Career Day” event at the Wissahickon Boys & Girls Club of Philadelphia.

Wendy Castor Hess, partner at Landau, Hess, Simon & Choi, received the Matthew Baxter Mentorship Award, presented annually to one immigration attorney who has stood out for their mentoring and excellent lawyering, from the Philadelphia Chapter of the American Immigration Lawyers Association.

Karl Prior, partner at Mannion Prior, LLP, has been elected as a fellow of the American College of Trust and Estate Counsel, a nonprofit association of lawyers and law professors.

Meredith Z. Avakian, director of communications and marketing at the Philadelphia Bar Association, presented two opening plenary sessions on leadership communications and media relations at the American Bar Association’s Bar Leaders Institute in Chicago.

Richard R. Goldberg, retired partner at Ballard Spahr LLP, was presented the Frederick S. Lane Award from the American College of Real Estate Lawyers at the group’s conference in Orlando, Fla.

“People” highlights news of members’ awards, honors or appointments of a community or civic nature. Send news to Thomas E. Rogers, senior managing editor, Philadelphia Bar Reporter, at trogers@PhilaBar.org.

CITY POLICY COMMITTEE

The City Policy Committee hosted members of Philadelphia City Counsel staff on March 12.

Right: Charles M. Gibbs (left) and David L. Hyman (right), cochairs, City Policy Committee; with Eric Bodzin, legislative aide to Councilwoman Maria Quiñones-Sanchez (left to right); Joshu Harris, director of legislation for Councilman Kenyatta Johnson; Samantha Williams, legislative counsel to Councilman Curtis J. Jones Jr.; and John Christmas, senior legislative advisor to Council President Darrell L. Clarke; on March 12.
FOR MORE THAN 30 YEARS, Sidney L. Gold & Associates, P.C. has dedicated its practice to the field of employment law and civil rights litigation. The firm’s attorneys take great pride in serving as both aggressive and compassionate advocates for victims of unlawful discrimination and harassment. As a result, the Martindale-Hubbell® Bar Register has certified Sidney L. Gold & Associates as a pre-eminent law firm in the field of labor and employment law. More than 4,500 lawyers throughout Pennsylvania and New Jersey look to Sidney L. Gold & Associates to refer their clients.

With a team approach, the firm’s attorneys represent clients in all aspects of employment law litigation, including all forms of workplace discrimination, sexual harassment, wrongful termination, retaliation, whistleblower, employment contract, wage and hour, and Family and Medical Leave Act claims. A boutique practice with a small-firm atmosphere, Sidney L. Gold & Associates provides personal attention to its clients, who, at the same time, benefit from the experience and expertise of the entire team.

Sidney L. Gold & Associates is proud of its skilled attorneys and is honored by the recognition Super Lawyers® has bestowed upon this year’s recipients.