Take Action Philly: Medicaid

Approximately 55 percent of Pennsylvania’s traditional Medicaid enrollees are children, while 72 percent of traditional Medicaid funding supports seniors and persons with disabilities. For many years, Pennsylvania’s traditional Medicaid program has been key to covering children, people with disabilities, seniors, long-term care and pregnant women.

The second Take Action Philly convening, held at the Central Branch of the Free Library of Philadelphia on June 13, focused on the threats facing Medicaid. Panels discussed proposals aimed at capping federal funding for the Medicaid program and ending Medicaid expansion. Speakers represented several organizations, including Access Matters, City of Philadelphia Department of Public Health, Community Legal Services, First Hospital Foundation, the Hospital and Health System Association of Pennsylvania, Pennsylvania Health Action Network, Pennsylvania Health Law Project, Public Citizens for Children + Youth and Public Interest Law Center.

To help attendees better understand the imminent threat to the Medicaid program, the speakers highlighted the benefits offered by Medicaid and the impact on the lives of the approximately 2.2 million Pennsylvanians who Medicaid covers. Under the Affordable Care Act, Medicaid has been transformed and expanded to cover low-income adults, many of whom are working, and many with chronic illnesses. The Medicaid expansion ensures that children can access preventive care, including vaccinations and services for the treatment of autism or serious disabilities. It helps older adults and individuals with disabilities live independently in their homes and pays for quality nursing-home care. The expansion also provides services to those who need substance-abuse treatment. The speakers said that the expansion of Medicaid is the biggest success of the ACA because it has driven down the number of uninsured people throughout Pennsylvania and the U.S.

However, despite the benefits, traditional Medicaid and the Medicaid expansion face continued on page 9
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Throughout the summer, many members of our community typically travel and spend time outdoors and vacationing with their families, as well they should if they have the means to do so. The past few months have not been down time for the younger members of our legal community, though.

From the very visible work that you see to the countless hours that are spent behind-the-scenes, I am truly astonished and impressed by what the young members of our community and this Association accomplish and continue to achieve. From the young lawyers to law clerks to summer associates and law school students, all have been active this season with networking, educational and public service events and initiatives.

Given my role as Chancellor, I have had the privilege of spending a lot of time this year with younger members of the profession — both members and hopefully soon-to-be members of the Association. I sincerely appreciate the enthusiasm, dedication and intellectual curiosity that these young professionals bring to our profession and our community-at-large.

Last month, our Large Firm Management Committee took its annual summer associates reception out of Center City to Front & Palmer in trendy Fitstown, where millennials dominate the restaurant and entertainment scene. Not only was it a packed house with pointed and thoughtful remarks by City Solicitor Sozi Tulante and committee co-chairs Ben Barnett and Vince McGuinness, but it was clear that the summer associates and law clerks in attendance felt more comfortable in that environment. The committee also recognized three young lawyers for their outstanding pro bono and public service. Congratulations again to Geneva Brown, Amanda Reed and Harper Seldin!

Also in July, Billy Penn hosted its annual “Who’s Next in Law” event, honoring 16 young lawyers — the majority of whom are members of the Association, including several of our Young Lawyers Division Executive Committee members. The Philadelphia Bar Association proudly supported and had a strong presence at the event. Congratulations again to all of the young lawyers who were recognized!

Speaking of our Young Lawyers Division, after hosting its annual fundraiser benefitting the Philadelphia Bar Foundation, immediately followed by another successful Law Week in the spring, which in itself is an enormous undertaking, the year-round efforts haven’t slowed in the summer months. Chaired this year by Matt Olesh, who was one of the Billy Penn honorees, YLD has been at the forefront of some of the Association’s most important work.

For example, Matt took the lead on coordinating the staffing of as many polling places in the city as possible on Primary Day with volunteers who handed out copies of our Commission on Judicial Selection and Retention's ratings of judicial candidates. He also worked hand-in-hand with Econsult on a data-driven approach to see if distributing the ratings at polling places made an impact. The research showed that informing the electorate on Primary Day did help move the needle, but there remains a lot of work to be done. Nonetheless, getting younger members of our community involved made a difference. Thanks also to organizations like Young Involved Philly who also helped with the volunteerism efforts.

Earlier this summer, YLD hosted its annual Diversity Reception and Affinity Bar Quizzo in June and July, respectively. Congratulations to all of the scholarship recipients and thank you to the affinity bars for their continuous support! Let’s also congratulate the Brehons on a second consecutive year of Quizzo Championship bragging rights (which also includes a pretty amazing trophy).

Furthermore, there are year-round initiatives you might not hear about that YLD continues to sustain. For example, there has been a tremendous amount of work and perseverance regarding the Expungement Clinics, as our young lawyers are working their way through barriers and obstacles that they did not foresee. Our young lawyers also serve as volunteers every third Wednesday evening of the month to staff our LegalLine hotline offering free legal advice to members of the community.

Additionally, it is encouraging to see the engagement with our law students. YLD hosted a Law Student Outreach Networking Happy Hour last month at U-Bahn. The Public Interest Section’s Law School Outreach Committee has been hosting its weekly Summer Brown Bag Lunch Series. I also had the opportunity to speak to more than 100 law students at an event Philadelphia VIP recently hosted at PECO.

While it has been a busy summer, it has been a rewarding one. Please join me in thanking and congratulating all of the young and talented members of our legal community. They are the pipeline of our profession and I cannot imagine where our community would be without their countless contributions. Hopefully you too can participate in an upcoming event or activity led by our young leaders.

With that being said, on Sept. 16, YLD will be hosting a “Family Fun Day at the Park” at Smith Memorial Playground & Playhouse. All are welcome. For more information about this event and other events for young lawyers and beyond, please visit PhiladelphiaBar.org.

Deborah R. Gross (dgross@kcr-law.com), of counsel to Kaufman, Coren & Reid, P.C., is Chancellor of the Philadelphia Bar Association.
Bridge the Gap
Wed., 8/2/17 - 9:00 a.m. - 1:15 p.m. (4 ETH) - Registration CLOSED for this date.
Sat., 8/19/17 - 9:00 a.m. - 1:15 p.m. (4 ETH) - Seats remain available
The Bridge the Gap program is intended to give all newly admitted Pa. attorneys the “know-how” which is otherwise learned through trial and error. The Supreme Court of Pennsylvania approved a rule change requiring newly admitted lawyers to complete the Bridge the Gap program by their first CLE compliance deadline. This program focuses on key issues of ethics and professionalism that are essential for all attorneys admitted to practice law.

Disability Discrimination in Housing
Tue., 8/8/17 - 9:00 - 11:15 a.m. (2 SUB)
Hosted by the Legal Rights of Persons With Disabilities Committee
This CLE program, hosted by the Legal Rights of Persons With Disabilities Committee, examines the rights of persons with disabilities under the Fair Housing Act and Section 504 of the Rehabilitation Act, and the duties of housing providers under the Federal law. The program will highlight defenses to discrimination claims and explore the area of reasonable accommodations.

Medical Marijuana: Business and Tax Issues for Growers, Processors, and Dispensaries
Wed., 8/9/17 - 12:30 - 2:30 p.m. (1 SUB/1 ETH)
Co-hosted by the Tax Section and the Medical Marijuana and Hemp Committee
This lunchtime CLE program will address the ethical obligations associated with counseling clients whose business is legal under Pennsylvania law but whose activities may violate federal law. Rule 1.2(e) of the Pennsylvania Rules of Professional Conduct provides that “[a] lawyer may counsel or assist a client regarding conduct expressly permitted by Pennsylvania law,” but it requires that the lawyer advise “the client about the legal consequences, under other applicable law, of the client’s proposed course of conduct.” Panelists will also examine some of the unique tax issues growers, processors and dispensaries face.

Examining “Ugly Prey:” Constructed and Communicated Stereotypes and the Impact of Bias on Juries
Wed., 8/9/17 - 4:30 - 6:30 p.m. (2 SUB)
Co-hosted and presented with the Justinian Society of Philadelphia
The objective of the CLE is to examine how clients can be wrongfully subjected to discrimination. In this program, featured speaker Emilie L. Lucchesi, Ph.D., introduces how stereotypes are constructed and communicated, and uses two case studies to demonstrate the profound impact such bias has on juries. Dr. Lucchesi’s work on the communication of stigma has also appeared in The New York Times. Her book titled “Ugly Prey: An Innocent Woman and the Death Sentence that Scandalized Jazz Age Chicago” recounts the wrongful conviction of Sabella Nitti, a Barese immigrant.

American Health Care Act Update: Staying Current
Thu., 8/10/17 - 9:00 - 11:15 a.m. (2 SUB) - Registration CLOSED for this date.
Fri., 8/18/17 - 9:00 - 11:15 a.m. (2 SUB) - VIDEO ENCORE; seats remain available.
Mon., 8/28/17 - 4:00 - 6:00 p.m. (2 SUB) - VIDEO ENCORE; seats remain available.
Third FREE CLE of 2017 for Philadelphia Bar Association Members in good standing!
Presented with USI Affinity
This CLE presentation will include an initial overview of the proposed Affordable Care Act (ACA) repeal legislation and what’s at stake for Pennsylvania in the advent of an ACA repeal and Medicaid reform. Hear about additional proposed reforms that are not part of the current AHCA, as well as how it may affect employer-sponsored medical coverage and new group plan benefits.

For questions regarding Philadelphia Bar Association CLE, contact Director of Continuing Legal Education Tara D. Phoenix at 215-238-6349 or tphoenix@philabar.org.
Opioids and Overuse in the Workers’ Compensation System
Thu., 8/10/17 - 4:00 - 5:00 p.m. (1 SUB)

Hosted by the Workers’ Compensation Section

The national “epidemic” of opioid usage has garnered a great deal of public attention, but amid those concerns is a less publicized prevalence of the use of potent pain-relieving narcotics by injured workers throughout the United States. This CLE program will examine the growing use of opioids in the treatment of workers’ compensation injuries and its potential for overuse. Warning signs and treatment suggestions will be addressed by the claimant’s bar, as well as tips for reducing exposure addressed from a defense perspective. In keeping with the charitable initiative of the Workers’ Compensation Section, immediately following the CLE, attend the School Supply Drive Happy Hour to benefit Turning Points for Children at Smokin’ Betty’s, 116 S. 11th St. School supply donations can be made at the CLE program or happy hour.

Addressing the Unique Challenges Facing Girls in the Adult Criminal Justice System
Wed., 8/16/17 - 12:00 - 1:30 p.m. (1.5 SUB)

Hosted by the Legal Rights of Children Committee

In this CLE program, experienced criminal trial attorneys will review the process for charging and prosecuting youth in the adult criminal justice system in Philadelphia (Direct File), with a special focus on the needs presented by girls charged as adults. The panel will further explore corresponding advocacy efforts on behalf of young women in the justice system, including the development of a resource toolkit for attorneys.

Cybersecurity: The Top 10 Things Attorneys Need to Consider
Tue., 8/22/17 - 12:00 - 2:00 p.m. (1 SUB/1 ETH)

With the recent “Petya” attack that infected and affected DLA Piper’s operations for nearly a week, it is clear that cybersecurity for law firms cannot, will not and should not be ignored. Unlike other threats to our clients that are more sporadic, cybersecurity is a daily threat and the law firm is the front line of the assault on our client’s data. This CLE will address the top 10 tips law firms should consider when assessing whether their systems are “secure” enough to satisfy their ethical obligations and how to approach cybersecurity. The presentation will also examine how to approach cybersecurity which should be of paramount importance to every law firm, no matter the size.

Damages Issues in Medical Malpractice Cases
Wed., 8/23/17 - 12:00 - 1:00 p.m. (1 SUB)

Hosted by the Construction Law Committee

In this luncheon CLE program, panelists will address a variety of issues regarding medical malpractice cases to include: calculation and presentation of evidence on damages under MCARE, different theories of damages under the Pennsylvania Wrongful Death Act and Survival Act and other theories to maximize or minimize damages in medical malpractice cases in a courtroom.

LIEN ON ME
Thu., 8/24/17 - 4:30 - 6:30 p.m. (2 SUB)

Hosted by the Construction Law Committee

This CLE program will identify the new lien amendments, explain their significance and demonstrate how they fit within the context of the existing Lien Law. An online demonstration of the new Pennsylvania State Construction Notices Directory will be provided to reveal how the registry is structured and how it can be used by owners, contractors, subcontractors and suppliers to protect their respective lien rights and remedies. Focus will also be placed on various unamended provisions of Lien Law to show how the new provisions dovetail into and complement the existing Lien Law framework. Continue the discussion and network with your colleagues at a happy hour reception immediately following the program.

The Million-Dollar Sentence and Other Recent Trends in Employment Background Check Litigation
Fri., 8/25/17 - 12:00 - 1:00 p.m. (1 SUB)

Hosted by the Labor & Employment Law Committee

In this practical CLE, panelists will explore, from the plaintiff and defense perspectives, the federal, state and municipal consumer laws governing employment background checks, recovery of damages in class action and individual contexts, and an overview of the registration and reporting requirements imposed by the Philadelphia Lobbying Ordinance and Regulations, including updates on clarifying advisory opinions and guidance issued by the Board of Ethics. Panelists focus on what real estate lawyers and their developer clients need to know about lobbying in Philadelphia, including what contacts with the city are covered and what are exempt.

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Visit the CLE page at PhiladelphiaBar.org

PhiladelphiaBar.org
August 2017 Philadelphia Bar Reporter 5
As I have written about in this space before, the Philadelphia Bar Association’s Commission on Judicial Selection and Retention undertook an important effort this year to try and gain insight into arguably the most important question we face: do our ratings matter? Specifically, do our ratings have an impact when they are literally put in the hands of voters just before they enter the voting booth to finalize their choices for judge.

As you hopefully know by now, we examined this by staffing volunteers at a sampling of polling places across the city, instructing them to hand out the commission’s judicial ratings to all voters who would accept them. Through our partner and strategic consultant, Econsult Solutions, we then analyzed what impact, if any, this made on the election results at those locations as compared to locations where nobody was present to hand out the ratings.

The results were both encouraging and gratifying, particularly if you are one of the many attorneys who was either involved with the commission’s work in some way or with this Primary Day project. I will not delve deep into the statistical analysis of the results themselves, as Econsult has already done an excellent job of this in its “Present Value” blog post at econsultsolutions.com. However, the upshot is that our work matters. Recommended judicial candidates for the Philadelphia Court of Common Pleas received more votes than non-recommended candidates at locations where volunteers handed out the ratings to a statistically significant degree. In fact, if we had been at every polling place in the city, instead of only at 41, eight of the nine judicial candidates who won election to the court would have been recommended, instead of six.

Practically speaking, these results were consistent with what Primary Day volunteers reported back to me after completing their shifts. Overwhelmingly, voters were receptive to receiving the ratings and were appreciative of the work that went into them.

The ultimate question is: where do we go from here? Under the chairmanship of Eric H. Weitz, the commission will undertake strategic planning to figure that out. For instance, while the idea of an expanded Primary Day outreach project is tantalizing, it remains to be seen whether we could muster enough volunteers to make that happen in an impactful way. We will certainly try.

Additionally, there are things that we can do to help people better understand our process and, as a result, better appreciate what the ratings reflect. One of the most frequently asked questions our volunteers received was why a particular candidate was rated certain way or more frequently why a candidate was rated “not recommended.” While the commission’s current procedures do not permit for the disclosure of this information without affirmative candidate consent, it is time that we had a discussion as to if, and how, this should change. In addition, we should couple our Primary Day efforts with targeted, organized community outreach designed to generate a greater appreciation for the commission’s work.

While we now have quantitative proof that the commission not only does a service of great value, but of potentially great impact, it is also time that we focus on some of the other factors that carry the potential for negative impact on our judicial elections. I am referring primarily to ballot position. Ballot position is consistently a factor in determining who becomes a judge, and this is simply unacceptable. We should not be choosing the people who judge us at random. Yet this is essentially what we are doing when we begrudgingly accept that those candidates with favorable ballot position will win.

This issue affects all attorneys who practice in our courts. While it does not matter to which age demographic you belong, I would certainly suggest that now is the time for young attorneys to take ownership of this issue. The system for electing judges as presently structured does not serve the public’s best interest. As our efforts this election cycle have shown, we can do better.

Matthew S. Olesh, chair, (left) and Andre Webb (right), executive committee, Young Lawyers Division; with YLD Diversity Scholarship law student recipients (center, left to right) Carlene S. Clark, Widener University Delaware Law School; Maya J. Brown, Temple University Beasley School of Law; and Francisco F. Guzman Andrade, Rutgers School of Law; at the YLD Diversity Reception at Estia on June 15.

Not pictured: Scholarship recipients Paul J. Ford III, University of Pennsylvania Law School, and Eric Macias Innriaki, Rutgers School of Law.
By Charles J. Klitsch

Emily is one of your favorite clients. In the past five years, she has called you with three legal problems and you have always been able to help her. Now she has contacted you again and the situation is different. Her new problem is outside of your areas of practice and none of your most trusted colleagues handle such matters. How do you help Emily?

The Philadelphia Bar Association has the answer. Its Lawyer Referral and Information Service refers to panels of attorneys in more than 160 practice areas. Established in 1948, LRIS has grown and evolved over the years to become the trusted source for lawyer referrals in the Greater Philadelphia area. In 2016, talented LRIS intake staff attorneys handled 26,802 contacts from the public and made 10,844 referrals to panel attorneys who meet the qualifications of the service. All others were referred to an appropriate legal aid organization or were provided with other guidance.

Applicants for panel membership are carefully vetted by the Association. They are screened through The Disciplinary Board of the Supreme Court of Pennsylvania and the Lawyers Fund for Client Security to confirm that they are in good standing in their practice and have no outstanding claims. These screenings are repeated annually for active panel attorneys. Applicants must provide proof of current professional liability insurance coverage with minimum limits of $250,000 per occurrence and $500,000 in the aggregate, and a $1,000,000 minimum coverage requirement for high-exposure practice panels. Proof of ongoing coverage is required to maintain panel membership.

In addition, many practice panels have specific experience requirements. For example, an applicant may be required to have handled a certain number of cases in the field of law in order to receive referrals on a particular panel.

LRIS is a public service providing access to justice for consumers and small businesses seeking qualified legal help. In order to maintain high standards, LRIS surveys all referred clients to gauge satisfaction with the service and panel attorneys. LRIS is also a service to Association members, building their book of business by providing a reliable source of potential clients.

How do you help Emily? With confidence, you can send her to LRIS at 215-238-6333 or PhiladelphiaBarLawyers.com.

Charles J. Klitsch (cklitsch@philabar.org) is the director of public and legal services at the Philadelphia Bar Association.
McDermott Honored for Distinguished Career

By Alexis C. Handrich

Gov. Tom Ridge appointed Susan M. McDermott as one of the first two female commissioners of the Workers’ Compensation Appeal Board and the first woman chairperson on June 12, 1996. At the time of her appointment, there were more than 7,000 pending appeals. As noted by current Chairman Alfonso Frioni, she streamlined the process to allow commissioners the opportunity to vote, publish and dissent in a more equal, fair and organized manner, and to facilitate legal consistency in the board’s decisions.

The Philadelphia Bar Association Workers’ Compensation Section honored Commissioner McDermott with its Lifetime Achievement Award at the Martha Hampton Awards Luncheon on May 5. The award recognizes a significant leader in the workers’ compensation community for a distinguished career and outstanding and sustained contributions to the legal profession, as well as exemplary professional practice, mentorship and positive impact on his/her colleagues. The Section chose to honor Commissioner McDermott as the first female chairperson of the board and for her impeccable integrity and her legacy of building consensus and implementing rules and procedures to make the process more efficient and equitable to all participants.

Shortly after Commissioner McDermott’s appointment to the Board, Act 57 was passed, significantly changing the Workers’ Compensation Act. Recognizing that it might take months if not years for new legal issues to form and make their way to the Board, she focused upon planning for the future. She credited workers’ compensation attorneys who raised new issues and workers’ compensation judges, who then “put pen to paper,” to issue decisions. She said that she greatly benefitted from the work of these attorneys and judges to fully develop the issues before they arrived on her desk.

Workers’ Compensation Judge Sarah Makin delivered remarks on behalf of Workers’ Compensation Judge Francine Lincicome reflecting on Commissioner McDermott’s ability to balance her personal and professional lives. Judge Lincicome first worked with Commissioner McDermott in private practice in 1986, when Judge Lincicome was pregnant with her first daughter. She recalled wondering how Commissioner McDermott could “do it all.” She once observed Commissioner McDermott walking down Market Street with two packs of diapers in one hand, a briefcase in the other and dry cleaning flung over her shoulder. Commissioner McDermott showed that not only could a woman have children and a professional career, but that she could enjoy them both.

Judge Makin met Commissioner McDermott in the Philadelphia City Solicitor’s office before heading into private practice. She was impressed by Commissioner McDermott’s measured, compassionate approach and the importance she placed upon the effect that her opinions would have on their intended recipients.

Commissioner McDermott raised two daughters, Katherine, an assistant chief in the Philadelphia District Attorney’s Office, and Mary Theresa, who works for a pharmaceutical consulting firm. She served as chairperson of the board until 2010, but continued to serve on the board until retiring in January 2017. She is now pursuing a career in real estate.

Alexis C. Handrich (AHandrich@pondlehocky.com) is cochair of the Workers’ Compensation Section Marketing and Communications Committee.
Bar Foundation

Update on the Equal Justice Center

The Philadelphia Bar Foundation is Philadelphia’s philanthropic hub for access to justice. We are the only foundation in the city solely dedicated to strengthening our city’s legal services system. However, our work involves far more than grantmaking.

The Equal Justice Center is a prime example of the wide range of programs managed by the Foundation. In April of this year, the EJC project achieved a major milestone when it was selected and approved by the Philadelphia Redevelopment Authority for construction at a site in Chinatown at Eighth and Vine streets.

The EJC is now part of a comprehensive plan to develop the Eight and Vine street site. The project team includes EZ Park, Pennrose Properties, the Philadelphia Bar Foundation, United Development and WRT. The overall development involves four separate buildings and other common features, including the EJC, affordable senior housing, market-rate rental apartments, a hotel, a large public green space with connections to the Chinatown neighborhood, community meeting rooms, retail business space, parking areas and other attractive elements.

This iteration of the EJC project began approximately five years ago when the Foundation, led by Judge Wendy Beetleton, conceived a plan to aggregate most of the legal aid agencies into one central location. The ultimate goal has always been to set a new national standard for inter-agency collaboration and operational efficiency for free legal services. The facility is expected to house 20-25 public service legal aid agencies from all around the city. The building will be a highly efficient facility encompassing approximately 160,000 square feet of office and retail space.

The Foundation has worked closely with our nonprofit partners and others to design the EJC to allow the legal-aid nonprofits and their clients to benefit from the efficiencies and synergies created by co-location. The EJC will allow Philadelphia residents to commute to one centrally located building to receive assistance, as opposed to traveling throughout the city to obtain the multiple services they often need to fully protect their rights. Due to a shared efficiency model, the EJC will help participating organizations to strengthen operations, reduce expenses, provide more efficient services and improve client outcomes. It is expected that the ownership and financing structure will allow the nonprofits to ultimately own the facility, and therefore secure their future delivery of quality legal services to the entire city.

The EJC will stand as a symbol of the Philadelphia’s commitment to the promise of equality under law, and as an enduring structure that continues to give back to the city and the Greater Philadelphia region. In total, the economic and social impact of this facility will exceed $200 million per year, benefiting thousands of clients and the whole community.

After many years of careful planning, we are truly grateful for the opportunity to move forward with the EJC project to benefit the Chinatown community and the whole city. We thank the Philadelphia Redevelopment Authority and the many Philadelphia leaders who have been deeply engaged in guiding this important effort. We look forward to working closely with Mayor Jim Kenney, Council President Darrell L. Clarke, Philadelphia City Council and other leaders to implement this project.

We are also committed to developing the Eighth and Vine site for the benefit of Chinatown. Community collaboration remains crucial to take in and reflect the community’s values and aspirations. We will work closely with the community to ensure this project meets their needs now and in the future. We welcome the involvement of local stakeholders to refine the development in response to community needs and priorities.

We have confidence in a bright future for all people in Philadelphia and are excited to begin implementing this project in partnership with the community and with city leaders. The next steps for implementation include a listening tour with Chinatown residents and business and community leaders this summer.

Read more information about the EJC, including a detailed analysis of the estimated social and economic impact of the project, online at www.philabarfoundation.org/work/programs/equal-justice-center.

Thank you for your support of the Foundation and our access to justice mission. Your donations are greatly appreciated, and can be made securely online at www.philabarfoundation.org/.

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

Board Elections

continued from page 1

Secretary, Marc J. Zucker serves as a non-voting member.

Offices for which candidates are being solicited are Vice Chancellor, Secretary, Assistant Secretary, Treasurer, Assistant Treasurer and five seats on the Board of Governors. Each Board seat carries a three-year term.

Association members may become candidates for any of these offices by filing with the Secretary, on or before Oct. 13 for the Dec. 5, 2017 Annual Meeting, nominations in writing which, for candidates of the Board, must be signed by at least 25 Members who are entitled to vote; for candidates for Secretary, Treasurer, Assistant Secretary and Assistant Treasurer, shall be signed by at least 35 Members who are entitled to vote; and for candidates for Vice Chancellor, shall be signed by at least 100 Members who are entitled to vote.

Individuals who wish to run for any of the above-named offices should contact Susan Knight, CFO/Director of Administration, at sknight@philabar.org for additional information. Signatures, along with a resume, and written authorization should be submitted to Association Secretary Marc J. Zucker, c/o Susan Knight, Philadelphia Bar Association, 1101 Market St., 11th Floor, Philadelphia, PA 19107, no later than 5 p.m., Friday, October 13, 2017.

Why a Credit Union is a better choice

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Show your “Brotherly Love” with this Philadelphia Bar Summertime Special!

Share the benefits of membership with your colleagues. For Philadelphia Bar Association members who bring a “walk-in” non-member to a CLE program anytime from June 1 - Aug. 31, 2017 and if the non-member joins on the spot, you both receive a discount!*

When the non-member joins at the time of the CLE program:

The Philadelphia Bar Association member receives $25 off the tuition fee for the next CLE program taken between June 1 - Aug. 31, 2017.

Members will receive a coupon and when they are ready to choose their course and register, they will email Tara Phoenix at tphoenix@philabar.org with course title and date and payment can either be made with Tara via phone or at the door.

The non-member will receive $25 off their membership dues when they join on-the-spot, as well as receive the member pricing for the CLE program. (First year attorneys not eligible.)

*Members will bring the non-member as a “walk-in” and discounts are applied onsite when the non-member makes payment.

**TO REGISTER** Visit the CLE page at PhiladelphiaBar.org

For questions regarding Philadelphia Bar Association CLE, contact Director of Continuing Legal Education Tara D. Phoenix at 215-238-6349 or tphoenix@philabar.org.
Navigating the Malpractice-Protection Landscape

By Pamela Thurmond

Minimizing an attorney’s chances of being sued for malpractice, as well as other ethical considerations, is a combination of client-engagement best practices and a comprehensive insurance policy. A Philadelphia Bar Association CLE titled “Ethics & Malpractice Avoidance” presented by USI Affinity was held on June 8 to help attorneys navigate malpractice implications and protections. The panel included Greg Cooke, sales manager for USI Affinity; Jeffrey B. McCarron, partner at Swartz Campbell LLC; Stephanie D. Propos, claims consultant, Lawyers Professional Liability Claims, CNA Insurance; Robert S. Tintner, partner at Fox Rothschild LLP; and Paul C. Troy, partner at Kane, Pugh, Kn oell, Troy & Kram er, LLP.

As an initial matter, the panel addressed engagement letter issues. It is important for attorneys to first have an engagement letter and for the engagement letter to define the scope of the attorney-client relationship. The engagement letter should address how conflicts will be handled, particularly if the attorney is representing more than one client, and explain how the matter will be concluded. The engagement letter should also explain the fee structure and who is responsible for paying the fee, and clearly identify the client. If the engagement is one of limited scope, which is allowed for under the Rules of Professional Conduct 1.2, then the letter should fully describe the scope of the attorney’s representation. The panel also talked about the need to manage expectations of potential clients during and after an initial consultation. If there is no commitment to perform further services, that should be specified in writing.

The panel discussed the interplay between ethical violations under the Rules of Professional Conduct as compared to malpractice claims. There is no per se malpractice claim for violating the RPC, however, there is overlap between the RPC and malpractice claims. The panel gave certain practice points to avoid malpractice claims. Do not “dabble” in an area of practice where you do not have the requisite experience or in cases beyond the ability of your office. Have a clear scope of representation in your engagement agreement and procedure to address conflicts, including those that might arise in the middle of the representation. Be diligent, return phone calls and do what is needed to move a case forward. An attorney should be upfront with a client if a mistake is made as well as report it to his/her insurance carrier.

Attorneys should keep track of the firm’s accounts receivables and avoid suing a client for unpaid fees until the malpractice statute of limitation has passed because a fee lawsuit almost always invokes a malpractice counterclaim. The panel also discussed some of the policy provisions in a comprehensive malpractice insurance policy, but said that each attorney needs to read his/her own insurance policy to understand the benefits and limitations of each policy.

PHILADELPHIA BAR ASSOCIATION CLE - BUSINESS LAW SECTION

Avoiding the Pitfalls Leading to Antitrust Violations

By Jon-Michael Olson

The newest buzzword in the media seems to be “collusion.” But those in the antitrust world have everyone beat; they have been talking about it for the last ten years. U.S. Supreme Court Justice David Souter wrote the opinion in May 2007 for the antitrust case, Bell Atlantic Corp. v. Twombly, and with it introduced a controversial heightened pleading standard that required plaintiffs to show sufficient facts to establish the plausibility, not mere possibility, of an antitrust violation. The Business Law Section’s Antitrust Law Committee hosted a Philadelphia Bar Association CLE titled “Navigating the Antitrust Cartel Labyrinth” on June 14. Jeffrey B. Gittleman, partner at Barrack, Rodos & Bacine, and Michael J. Hartman, associate at Pepper Hamilton LLP, led a discussion on Twombly’s aftermath and tackling the “plausibility” of antitrust cartel claims.

Generally, antitrust cartel claims concern illegal agreements between competitors, i.e. horizontal collusion, that usually manifest into price-fixing schemes that increase prices. Absent direct evidence of an agreement, plaintiffs mostly rely on circumstantial evidence to show that the competitors acted in illegal coordination. In the wake of Twombly, however, the plaintiff’s task was made that much more challenging.

Hartman, who represents antitrust defendants, and Gittleman, who represents plaintiffs, spoke about navigating the Twombly standard. For plaintiffs, Gittleman said he uses a holistic approach in crafting the complaint by including detailed facts to paint a picture of cartel collusion. In his experience, he found certain compelling allegations that were more likely to cross the plausibility threshold. These include focusing on the sudden uniformity in industry pricing structure where it was historically heterogeneous and complex, detailing specific facts regarding the temporal proximity of a price increase following a trade association meeting attended by high-level executives, and describing their words to make public announcements as a possible signal to its competitors to join a price-fixing agreement.

Hartman unpacked and described several arguments for each allegation. For example, uniformity in industry pricing structures is not compelling if it concerns newer, developing industries. Also, price increases after a trade association meeting will ultimately occur if there are numerous quarterly meetings. Additionally, attendance by company executives ensures the company’s interests are represented concerning the future of the industry. As for signaling, while they can be interpreted as an invitation to collude, they are likely public statements to uphold a fiduciary duty to inform the company’s investors and analysts regarding the company’s plans and goals. Hartman and Gittleman agreed that in navigating the plausibility standard, it is important to include as many detailed facts as possible and to be aware of the judge and jury’s receptiveness to complex economic theories.

The program ended with a brief overview of the Antitrust Criminal Penalty Enforcement and Reform Act, which grants defendants leniency and protection from treble damages and joint and several liability if they satisfactorily cooperated with the plaintiffs. While the exact meaning of satisfactory cooperation is still being developed, it seems that ACPERA protections may also apply to other intermingled claims, such as Racketeer Influenced and Corrupt Organizations Act violations.

Jon-Michael Olson (Jon-Michael.Olson@Phila.gov) is an assistant city solicitor at the City of Philadelphia Law Department.
As lawyers, we understand how to practice law, manage clients and handle cases. However, managing a firm requires the additional skill set of being able to operate a successful business. Whether you are just opening the doors of your own practice or have been managing your firm for some time, it is important to know how to find office space, create and stick to a budget and navigate tricky loan language to finance your practice.

The Solo, Small and Mid-Size Firm Management Committee hosted a Philadelphia Bar Association CLE titled “Office Space, Budgets and Loans: Considerations when Starting Your Own Practice” on June 15. The panel included Immediate-Past Chancellor Gaetan J. Alfano, partner at Pietragallo Gordon Alfano Bosick & Raspanti, LLP; Kevin V. Mincey, partner at Mincey & Fitzpatrick, LLC; and Carolyn Hochstadter Dicker, of E. Carolyn Hochstadter Dicker, LLC. The panelists brought three unique perspectives—Alfano of a mid-size firm, Mincey of a small firm and Hochstadter as a solo practitioner.

One thing that rang true for all three was that you need to find a way to continue to bring in business to keep yourself afloat. Mincey spoke about “being visible,” and that “you’re not going to make any money sitting behind a desk.” Alfano suggested obtaining more office space than you need, if feasible. This allows for firm growth, or income if you choose to sublease the extra space.

It was important, said Hochstadter, to keep her budget as slim as possible as a solo. Research tools like Lexis and Westlaw were too costly so she joined Jenkins Law Library, which allowed her to find the resources she needed at a lower cost. As a debtor-creditor lawyer, she suggested against obtaining a loan. However, if you are going to get one, make sure the rate is fixed, not adjustable; beware of hidden fees; try to avoid personal guarantees; and if your personal bank gave you the business loan, look out for a provision that allows the bank to freeze your accounts if there is a late payment.

It is important to stay organized, whether it is with case files, accounting or other office management. Alfano suggested using Prolaw for billing and Hummingbird for document management. Hochstadter said she uses Quickbooks for billing and MyCase for bankruptcy cases and Mincey said he utilizes MyCase for his clients, which has a feature that allows the client to log in to their case file to see the latest update. He said that his clients really appreciate being able to check in on their case whenever they would like.

You can find these tips and more from the panelists on the Solo, Small and Mid-Size Firm Management Committee subpage at PhiladelphiaBar.org.

Laura E. Laughlin (lel@freiwaldlaw.com) is program chair for the Solo, Small & Mid-Size Firm Management Committee.
Orgs. Provide Bankruptcy Assistance to Those in Need

By James C. Vandermark

Chapter 7 of the Bankruptcy Code can offer individuals who are most in need a financial fresh start. If those individuals need help wading through the complexities of the process, resources like the Consumer Bankruptcy Assistance Project are available. CBAP and the National Bar Association/Women Lawyers Division Philadelphia Chapter presented a Philadelphia Bar Association CLE titled “Chapter 7 Bankruptcy Practice” on June 19. The program was presented by Prince Altee Thomas, counsel at Fox Rothschild LLP, and John A. Gagliardi, partner at Werzel Gagliardi Fetter & Lavin LLC. Thomas and Gagliardi are both members of the CBAP board of directors.

The CLE offered a practical nuts-and-bolts look at Chapter 7 practice. Gagliardi and Thomas walked attendees through the process of preparing and filing a bankruptcy petition and schedules as well as obtaining a bankruptcy discharge for clients. They talked about the significant benefits that an individual receives in a Chapter 7 case. They include protection under the automatic stay in Section 362 of the Bankruptcy Code that allows individuals the time and opportunity to address their creditors, and the bankruptcy discharge that gives individuals a financial fresh start. Gagliardi talked about the risk of sanctions that creditors could face for violating the protections afforded individuals in bankruptcy.

The presenters said that attorneys should approach bankruptcy cases as a team effort with their clients. Gagliardi suggested sitting down with a client and filling out the required bankruptcy schedules together. Addressing all the items that need to be disclosed to the court can be challenging. Complicated issues often arise involving insurance proceeds, existing claims against third parties and inheritances.

The goal for the client be open and honest about their financial situation. “Bankruptcy is all about disclosure” and “the failure to disclose can have serious ramifications,” said Gagliardi. He said also that filling out the schedules together “makes it a lot easier because questions are going to come up and you can ask [the client] right there.” Thomas said that even in cases where CBAP is involved, “things pop up” and that it is prudent to “stress disclosure.” He suggested having conversations with clients about disclosures to “avoid surprises at the creditors’ meeting…with the [United States] trustee.”

Both Thomas and Gagliardi discussed opportunities with CBAP and the importance of volunteering to represent those most in need of the bankruptcy process. CBAP was founded in 1992 to provide bankruptcy assistance to low-income individuals seeking relief under Chapter 7 of the Bankruptcy Code. It offers bankruptcy services at no cost for individuals under the federal poverty guidelines. For context, that is $12,860 for a family of one and $24,600 for a family of four.

“There is a lot of reward to working with CBAP clients” said Thomas. “When you work with CBAP clients you get a whole new perspective about bankruptcy.” He said that CBAP provides ample support through the process, including knowledge of bankruptcy practice from its staff attorneys, Henry Sommer and Siana Newman.

Complexities of Worker Classification Addressed

By Annie K. Kernicky

Classifying workers as employees or independent contractors is a complex issue that vexes business owners, and getting it wrong can lead to severe consequences for misclassifying employees as independent contractors.

The Labor and Employment Law Committee presented Philadelphia Bar Association CLE titled “Classifying Workers - Employee or Independent Contractor? A Complicated Decision” on June 23. The panel included Natalie F. Hrubos, associate at Duane Morris LLP, and Kenneth A. Sprang, partner at Washington International Business counsel, LLC, who provided a comprehensive overview of various regulations, case law, and tests controlling when a worker can be classified as an independent contractor, as well as the penalties associated with misclassification. The two presenters also provided practical guidance on how to minimize risks associated with decisions on how to classify workers from the employer’s perspective.

This area of law is getting increasingly complicated as a worker’s status is a question of law that may be evaluated using different standards under the Fair Labor Standards Act, the accompanying regulations of the Department of Labor, state law and by the Internal Revenue Service, the panelists said.

Hrubos and Sprang evaluated and unpacked five common misconceptions about independent contractor misclassification. First, Hrubos addressed the common misconception that there is one uniform test for independent contractor misclassification. As many lawyers continued on page 22.

Volunteer With the Consumer Bankruptcy Assistance Project

If you are interested in volunteering with CBAP you can fill out the form at cbap-phl.org/volunteer.html or by calling CBAP at 215-523-9511.
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Advocate for Victims, End Rape-Kit Backlog

By Stephanie Kammer

The Joyful Heart Foundation began in 2004 to meet a need that actress Mariska Hargitay, star of “Law and Order: SVU,” recognized based on letters written to her by survivors of sexual assault, domestic violence and child abuse. The mission of the foundation is to make sure that survivors are treated with compassion and without judgment. The broader goal is to help them to heal and reclaim a sense of joy in their lives. In 2010, Joyful Heart made ending the backlog of rape-kit testing a primary policy goal. The goal is the end the backlog by 2020. Along with this effort, a production company was founded, which released its first film titled “I Am Evidence” at the Tribeca Film Festival in 2017. The film showed how the backlog hurts survivors by essentially putting their lives on hold and leaving the resolution of their cases in limbo. Joyful Heart hopes the film will be used as a grassroots tool to inspire action.

The Women in the Profession Committee hosted a Philadelphia Bar Association CLE titled “Campaign to End the Rape Kit Backlog - Education and Advocacy” on June 27. Panelists were Vaughan Bagley, special projects manager, and Ilse Knecht, director of policy and advocacy, at the Joyful Heart Foundation; Carol E. Tracy, executive director of the Women’s Law Project; and Lynne M. Abraham, former Philadelphia District Attorney. By some estimates 400,000 rape kits nationwide are untested. One in four of the kits leads to a conviction, and of those, one in four is a serial rapist. The panelists said that testing kits can prevent future victimizations.

The takeaway is that testing a primary policy goal. The goal is to help them to heal and reclaim a sense of joy in their lives. In 2010, Joyful Heart made ending the backlog of rape-kit testing a primary policy goal. The goal is the end the backlog by 2020. Along with this effort, a production company was founded, which released its first film titled “I Am Evidence” at the Tribeca Film Festival in 2017. The film showed how the backlog hurts survivors by essentially putting their lives on hold and leaving the resolution of their cases in limbo. Joyful Heart hopes the film will be used as a grassroots tool to inspire action.

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Kits are going untested because testing is left to individual law enforcement discretion. This might mean that an individual officer makes the determination that intercourse was consensual based on a woman’s behavior or their own opinion of what makes a rape victim, without any training on trauma-informed investigations. According to the panelists eliminating such discretion is crucial, as only eight states mandate the testing of rape kits. On top of this, resources for testing kits are limited. Joyful Heart is prioritizing advocacy in

10 states per year focused on a few main issues including inventory and making sure that states audit how many rape kits are untested; legislation to mandate testing; establishing tracking systems for the kits; increasing funding; ensuring earlier victim notification, since most rights attach after charging; and ensuring notification before the destruction of kits.

Pennsylvania law requires annual audits of untested rape kits, though Joyful Heart is

Implications of Sanctuary Status

By Adriana K. Gonzalez

If you have been following the news surrounding immigration lately, you may have wondered what a sanctuary city is and how it would affect many cities across the nation, especially Philadelphia. Sara A. Solow, former domestic policy advisor to Secretary of State Hillary Clinton and associate at Hogan Lovells, presented a Philadelphia Bar Association CLE titled “The Sanctuary City: An Analysis of the Legal Issues Facing Cities” on June 28.

Solow began with the fact that the term “sanctuary city” has no codified or uniform definition, but is rather a term of completely political invention. In fact, the executive order signed earlier this year by President Trump, and under litigation in several courts, that purports to deny funding to sanctuary cities does not define the term. To clarify what sanctuary cities are and how that affects localities’ interactions with the federal government Solow first talked about three main issues that set these cities apart.

The first issue is information exchange, which is the extent to which localities will exchange information with the federal government about people’s immigration status. Many localities, including Philadelphia, have confidentiality policies that categorize immigration status as confidential information that is only to be shared under specific circumstances. These localities believe that assurance of confidentiality to potentially undocumented persons encourages participation in local government programming and cooperation with law enforcement. However, the federal government’s position is that it should have unrestricted access to this information to use for whatever purpose it deems fit.

Secondly, sanctuary cities and the federal government clash over compliance with detainer requests. Detainer requests are documents from the Immigration and Customs Enforcement requesting that localities hold undocumented persons who have been arrested by local law enforcement until ICE can come collect those persons, even if they were scheduled to be released. Many localities refuse to honor these detainer requests because they raise possible 10th Amendment issues by forcing local government officials to perform federal functions.

In addition to detainer requests, ICE also issues notification requests. In these requests, it asks for advance notice of the release of undocumented persons. This gives ICE the opportunity to send a representative to detain individuals upon their release from the custody of local law enforcement. Again, many localities refuse to universally comply with these requests, especially if the undocumented individual is released without having been charged with a crime.

While it appears tensions over immigration and sanctuary status...
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**PRO BONO SPOTLIGHT - HOMELESS ADVOCACY PROJECT**

**Obtaining Identification for Those With Nothing Else**

*By Jeremy S. Spiegel and Michael D. LiPuma*

“May I see some ID please?” Countless transactions—from applying for a job to obtaining government benefits to entering an office building—require participants confirm their identity with photo identification. For most Philadelphians, the added step does not get a second thought. But for Homeless Advocacy Project clients lacking identification, photo ID requirements represent a significant barrier. That’s because, in post-9/11 America, it takes ID to get ID. Many HAP clients, by virtue of their homelessness, simply lack the documentation—usually a birth certificate—required by governments that issue identification.

HAP recognized that persons lacking identification face greater challenges to escape poverty. To address this crucial issue, HAP volunteer attorneys have worked diligently to obtain birth certificates for thousands of clients. For every jurisdiction in the country except New York City, a volunteer lawyer representing a homeless client could obtain a client’s birth certificate by submitting a special application that included the lawyer’s own photo identification.

New York City, however, refused to issue birth certificates to persons without photo identification, even when the person was represented by an attorney and the attorney submitted his/her own photo identification. The result for many Philadelphians, and other homeless individuals, has been devastating—until now.

After months of unsuccessful negotiation trying to get New York City to change its policy, in September 2016, HAP filed a federal civil rights lawsuit in New York against the city. HAP brought together a team of lawyers, working pro bono, from Dechert LLP, Steve Harvey Law LLC, the Law Office of Jeremy Spiegel, and the Law Office of Michael LiPuma. The plaintiffs in the case, Philadelphia residents born in New York City, had stories that perfectly demonstrated the cruel effects of the city’s policy. Plaintiff Anthony G. became homeless and lost all of his identification when his house burned down 10 years ago. He has had several potential jobs lined up, but was unable to get hired because he had no identification. Plaintiff John K. was unable to get into a housing program because he lacked identification, and wound up in prison. The lawsuit alleged that New York City’s policy violated the due process rights of these individuals.

After the lawsuit was filed, and discovery was pressed by HAP, in February 2017 New York City agreed to change its policy. Now, similar to other jurisdictions, New York City will issue birth certificates to individuals who themselves lack identification, if their attorneys submit their own photo identification along with the application. In May 2017, Anthony G. and John K. finally received their birth certificates, and are both on their way to escaping homelessness. HAP’s other New York City-born clients will also benefit from finally being able to obtain identification. And the benefits are not limited to HAP’s clients: HAP has heard from social service organizations in New York and elsewhere that this change—forged through the efforts of HAP and its pro bono attorneys—has allowed homeless individuals throughout the country to obtain identification and to better their lives. The case represents a wonderful example of the real-life good that pro bono attorneys can do.

Jeremy S. Spiegel (Spiegel@JeremySpiegel-Law.com) is the principal at the Law Office of Jeremy Spiegel, and Michael D. LiPuma (mlipuma@lipumalaw.com) is the principal at the Law Office of Michael D. LiPuma.
Recent Changes to Know About Philly Real Estate Laws

By Wendi L. Kotzen

In December 2016, Philadelphia City Council enacted several changes to the Philadelphia realty transfer tax rules as they apply to real estate companies effective July 1, 2017. These changes do not affect the Pennsylvania realty transfer tax rules, which remain unchanged. The Philadelphia changes include:

1. A real estate company will owe realty transfer tax on its real estate on a change of 75 percent or more of its ownership in a six-year period, instead of a 90 percent or more change in its ownership in a three-year period.
2. In an apparent nod to the press reporting that many commercial properties are under-assessed by the Philadelphia Office of Property Assessment, the realty transfer tax base in the case of an arm’s-length sale of interests in a real estate company will be presumed to be the consideration for those interests, instead of the computed value of the Philadelphia property.
3. Real estate leased under a long-term lease (more than 30 years) now is included in the definition of real estate to determine if a company is a real estate company.

In addition to these changes affecting real estate companies, Philadelphia City Council also changed the rules applicable to the Philadelphia realty transfer tax base when Philadelphia real estate is sold or exchanged and the consideration includes property with a readily ascertainable value. Currently, the Philadelphia realty transfer tax base is computed value when the consideration for a sale is property other than cash or debt assumption, for example an interest in an entity. This rule has been changed so that the realty transfer tax base cannot be less than the sum of any cash, debt assumed or taken subject to, and the value of property with a readily market ascertainable. This change also is effective July 1, 2017.

These changes are ambiguous, raise many questions and the city seems to be unsure of many of the answers. In many instances, the city is urging taxpayers to obtain prior rulings from the Law Department, which is a very inefficient and perhaps unconstitutional way of enforcing a tax law.

Some of the questions, answers and uncertainties are:

1. **Transition Rules:** The city’s position is that there are no transition rules. This means that to determine whether a real estate company experiences a 75 percent or more change in ownership, any change in ownership on or after July 1, 2017 is aggregated with all changes in ownership that occurred in the prior six years. Thus, if 89 percent of a real estate company was transferred in 2013 and the other 11 percent is transferred on or after July 1, 2017, the transaction is taxable.
2. **Is July 1 a Taxable Event:** The city has confirmed that July 1, 2017 is not a taxable event. As a result, the mere passage of time will not result in tax. There must be a transfer of interests in a real estate company on or after July 1, 2017 for tax to be imposed.

3. **Readily Ascertainable Market Value:** The city seems to believe that the term readily ascertainable market value has a far broader meaning than that normally understood. Typically, an asset has a readily ascertainable value if there is somewhere one can look to determine the value, such as a stock exchange. However, the city seems to think this term means if there is any manner of determining the value. If the city persists with this position, it likely will be inundated with ruling requests, it will interfere with transactions closing in due course, and the issue probably will be litigated.
4. **Rebuttable Presumption:** Upon a change of 75 percent or more of the ownership interests in a real estate company in a six-year period as the result of a bona fide sale, there is a rebuttable presumption that the transfer tax base is the actual consideration paid for the company. The taxpayer can rebut that presumption by alternative proof of the actual value of the included real estate. Thus, for example, if a real estate company owns a hotel and its associated personalty, the taxpayer could demonstrate that part of the consideration paid for the company related to the personalty, not the real estate. The city is not yet willing to provide examples of what might rebut the presumption.

New Member Benefit: Holman Premier Partners

The Philadelphia Bar Association has joined Holman Automotive’s Premier Partners Program as a corporate partner. Members of the Association are now eligible for competitive, no-haggle pricing on vehicles from a variety of brands.

Members must login to PhiladelphiaBar.org to access the link and register for this member benefit.

Once registered, you will receive an email confirming that you are enrolled and you can then sign into the Premier Partners website. Holman Automotive has dealerships in New Jersey, Pennsylvania and Florida.

Getting started is easy. Program specialists have created a stress-free process to help you find your next vehicle. They will guide you through the process from start to finish, working directly with the dealerships to help you find the car, truck or SUV of your dreams.

Medicaid

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many threats at both the state and federal levels. As an expansion state, Pennsylvania currently receives extra federal funding to cover the people who need. The U.S. Senate is considering proposed legislation that would give states limited per-person allotments for each Medicaid enrollee, called “per capita caps,” and funding increases would be capped at low rates. Under such circumstances, Pennsylvania would be forced to stop offering coverage to working families due to budget constraints. The caps would push an unbearable amount of cost for medical care to the states and would force states to make agonizing decisions regarding what services to reduce or eliminate.

Adrienne Gunter, 32, giving the consumer side of Medicaid in the first panel, talked about how she would be impacted by these cuts. Diagnosed with multiple sclerosis in 2013, Gunter was a senior at The University of the Arts studying to be a film and television writer when she learned she had the autoimmune disease. When she developed symptoms, she said, she instantly became unemployed and unemployable. Over and over she had been denied medical coverage and other benefits until Gov. Tom Wolf signed on to the Medicaid expansion. Her treatment copay under Medicaid is $3. Without Medicaid, her treatment to prevent further debilitating symptoms would have cost more than $6,000 per month.

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

For more information on ways to become involved and engaged in response to federal and state policy decisions, visit the Take Action Philly page at PhiladelphiaBar.org.
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LGBT Rights Cmte. Presents Rosenblum Award

The LGBT Rights Committee presented its annual David M. Rosenblum Law Student Leader Award to two students, Matthew Mecoli, Drexel University Thomas R. Kline School of Law, and Daniel Cole, Temple University Beasley School of Law, at the LGBT Rights Committee Summer Associate Reception at Ballard Spahr LLP on June 14. Rosenblum was the late legal director of the Mazzoni Center, a tireless lawyer and advocate and an LGBT organizer while in law school.

Left: Colin J. Beisel (third from right) and R. Barrett Marshall (center, right), cochairs, LGBT Rights Committee, present awards to Mecoli and Cole (second and third from left, respectively); with Daniel M. Filler, dean, Drexel University Thomas R. Kline School of Law (left to right); Sara Mohamed; and Katherine J. Atkinson, associate, Jason A. Leckerman, partner, and Lisa Feden, manager of entry level recruiting and integration, Ballard Spahr LLP; at the LGBT Rights Committee Summer Associate Reception on June 14.

Giants of the Business Bar: Frederick D. Lipman

Frederick D. Lipman, partner, Blank Rome LLP, was the featured speaker at the Business Law Section’s Giants of the Business Bar program at Ballard Spahr LLP on June 22. With more than 50 years of experience and a former chair of the Section, Lipman is an internationally known authority on business law and has authored 17 books on topics ranging from corporate governance to international business and finance. He has appeared on CNN, CNBC, Bloomberg Television and Chinese television and has been quoted in numerous publications including The Wall Street Journal, The New York Times, USA Today and Forbes.


Joyful Heart

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working on tweaks to legislation. Specifically, they are addressing the lack of a time frame for hospitals to notify law enforcement of rape kit processing and improving the definition of what a backlogged kit is.

Tracy said that Philadelphia was never as bad as other cities in processing rape kits. The Women’s Law Project led a reform effort in 1999 and 2000 to increase investigations of rapes and to expand the definition of rape. Police Commissioner Timoney reviewed all cases back to the statute of limitations. From this review a model for reviewing cases was created which includes an inquiry about whether a rape kit has been done, processed, and how timely the results were. Philadelphia is testing kits that go back to the 1990s, which can help identify serial rapists and inform sentencing proceedings.

Abraham talked about the importance of the investigations being victim-centered, including informing victims that statements taken at the hospital may not be confidential, eliminating the taking of such statements, and medical professionals being alert to a possible presence of date rape drugs and the preservation of evidence.

To follow the progress of ending the backlog in Pennsylvania, visit http://endthebacklog.org/pennsylvania.

Stephanie Kammer (stephanie.kammer@phila.gov), assistant city solicitor for the City of Philadelphia, is an associate editor of the Philadelphia Bar Reporter.
Choosing a Fiduciary for Wills, Trusts

By Mary E. Ashenbrenner

A major decision you will need to make when crafting your will or setting up a trust is choosing a proper fiduciary. Examining the areas of expertise required of the role is an essential step in identifying the executor of your will or trustee of a trust. For this month’s interview, I sat down with Carol Claytor, director of Fiduciary Services, PNC Wealth Management, to help steer you in the right direction.

Mary Ashenbrenner (MA): Why might someone choose a friend or relative to serve in the role of fiduciary?

Carol Claytor (CC): Many people believe that choosing a family member or a close friend to be their fiduciary is an honorary act, a way to show respect and trust. They reason that their closest friends and relatives can be counted on to carry out their wishes. While that may be true, the executor of a will or trustee of a trust usually needs specialized knowledge or experience to fulfill the duties of the role properly. It is essential to identify the expertise that will be required to determine if an individual, a corporate fiduciary, or a combination of both is best for you.

MA: What are some of those specialized skills that an ideal fiduciary should have?

CC: The types of assets in your trusts and estate and the complexities of your beneficiaries are among the factors that will influence the type of expertise your fiduciaries will need. Fiduciaries often need experience and knowledge in a wide range of technical and administrative areas including the ability to make tax decisions, manage investments, negotiate with third parties, allocate assets among beneficiaries, handle business interests and/or real estate holdings, and report all transactions to beneficiaries.

MA: What sort of liability does the fiduciary face?

CC: Liability exposure is part of being a fiduciary. Executors of wills and trustees of trusts may be held liable if beneficiaries are negatively impacted during administration, and it is determined the fiduciaries have not carried out their responsibilities. When choosing a personal friend or family member to act as a fiduciary, it is important that he or she is comfortable taking on that risk.

MA: Can a personal fiduciary remain impartial when it comes to the distribution of family assets?

CC: Fiduciaries have responsibilities that require them to remain impartial to the often-emotional beneficiaries. It can be tricky, especially when trustees are called upon to exercise discretionary authority to provide for a distribution to a beneficiary. Even when there is only a single heir, this decision can be challenging as it requires balancing the beneficiary’s needs today with needs he may have in the future. The nuances of the decision multiply quickly when there are multiple beneficiaries involved. Having a fiduciary who can act without emotion is especially important for those blended families that include offspring from multiple marriages.

MA: What happens if the person that was chosen as fiduciary decides that he or she no longer wants to serve in that capacity?

CC: For estates, and especially for trusts, continuity in the fiduciary’s ability to serve is important. A replacement must be found if a fiduciary becomes unwilling or unable to serve. Every state has a court with the jurisdiction to step in and name a party to fill the void, but that new party may lack the same level of skills, knowledge or impartiality of the original fiduciary. For this reason, many people choose to name a corporate fiduciary because it has a staff of advisors to continuously serve in the role.

MA: What information must the fiduciary report to the beneficiaries?

CC: All fiduciaries have an obligation to inform their beneficiaries of the actions they take and the assets they hold for their benefit. Informally, on a day-to-day basis, this responsibility might consist of delivering a statement showing receipts, disbursements, purchases and sales. More formally, fiduciaries may render “an accounting” from time to time which, in most states, is an explicit process where a particular court in that state reviews and approves the fiduciary accounting. Some individual fiduciaries do not have the expertise to prepare these formal accountings, and a corporate fiduciary may be preferred.

MA: How should I get started?

CC: The first and most important step in identifying your executor or trustee is to understand the skills that are required of your fiduciary. Whether you choose an individual, corporate fiduciary, or a combination of both, you should speak with the important people in your life and your trusted advisors to help you make the best decision.

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

Sanctuary Cities continued from page 15

ary cities between the federal governments and localities are running particularly high of late, many of the policies in question have been in place for more than 20 years. During this period, both federal and local support for more participation by localities in enforcement of immigration policies has waxed and waned. The most recent policy change at the center of the sanctuary city controversy, a new requirement that cities certify that they are compliant with 8 U.S.C. 1373 to be eligible for Justice Assistance Grants, was enacted by the Obama administration more than a year ago. The statute prohibits local governments from making any policy that would limit the information that officials would send to or receive from ICE and the funding grants that would be limited are for general improvements to local criminal justice programs.

Between changes to Justice Assistance Grant eligibility, shifting decisions in court regarding President Trump’s executive order, and local governments’ evolving policies on privacy and participation in immigration enforcement, future of sanctuary city policy looks to be increasingly dynamic and contentious.

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PNC Perspectives

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**Franco-American Spot Starts Off Strong**

*By Lee A. Schwartz*

Sylvia Senat’s long-awaited and much-anticipated restaurant, Maison 208, opened in June. Self-described as an American restaurant with a French flair, it is in a two-floor space on South 13th Street. The first floor is the traditional restaurant with approximately 15 tables surrounding one of three bars in the space. An open kitchen is in the back. The second floor is known as “The Social.” It also has bar space with couches and other seating areas.

My trusted companion and I went for dinner. We shared three appetizers, including the Island Kobe Beef Paté Lollipops, which were three deep-fried, slightly larger-than-golf-ball-sized servings. White and sweet potato mixed together formed the “ball” and in the middle, was a smallish portion of Kobe “paté.” While the Kobe paté was tasty, we felt the portion was small and was overwhelmed by the large potato encasement. They are served with a Haitian paté curry.

Next, we shared the Crab Cake, a generous portion of lightly sautéed crab meat that while very tasty, was a touch on the dry side. It is served atop citrus mayo and Skuna Bay salmon caviar. Lastly, we shared the Maison Lyonnaise, a take-off on the traditional French Lyonnaise salad. It was presented in a pastry shell. Unfortunately, the lettuce served was limp and while it apparently had dressing on it, the salad itself had little taste.

The main courses we tried were the Whole Frenched Dorade and the Duck Breast, both of which were very good.

The Dorade was served whole, but expertly filleted. It was served with a generous portion of petit vegetables in a consommé broth. It was the highlight of the meal. The fish was cooked perfectly, with the thick and meaty fish we have come to love in Dorade. The consommé gave the meat a beautiful light and moist feel, which was lovely.

The Duck Breast was cooked with Haitian coffee, foie gras, millet and béarnaise sauce, all of which worked very well together. However, while the duck was perfectly cooked, the portion was rather small. The foie gras was a treat and was perfectly prepared. The dish was served at room temperature rather than hot, but we do not know if that was intentional.

We also ordered the Haricots Verts as a side. Perfectly cooked and crispy, like a good bean should be, these were served with a generous coating of Herbs de Provence and topped with olive oil. What could be bad? If you love Herbs de Provence like we do, it was dreamy.

Maison 208 is located at 208 S. 13th St., Philadelphia. We arrived a little after 6:15 p.m. and the place was busy. By 6:30, there were no seats downstairs, so reservations are a must. On a scale of 1-5, with 5 being “excellent,” we would give it a 3, right now. Of course, restaurants need time to mature. We will return in a few months to see what is what.

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**LEGAL ADVISORY UPDATE FROM USI AFFINITY**

**No Harm, No Foul: Defending Malpractice Allegations**

An attorney-client relationship is fiduciary in nature and requires a great degree of trust. Legal malpractice occurs through an attorney’s negligent action, inaction, or advice that causes the client to incur damages.

Attorneys may be found liable for a variety of mistakes made in handling a client’s case, but one of the more challenging aspects of legal malpractice actions is proving that the lawyer’s misconduct caused the client to sustain financial injury.

**Proving Legal Malpractice**

To prove a claim of legal malpractice, the former client must plead and prove that:

- An attorney-client relationship existed.
- The attorney breached the duty of care to the client.
- That the attorney’s breach proximately caused the client’s injury.
- The client suffered a financial injury as a result of the attorney’s wrongful conduct.

Litigation is adversarial, and one side comes out the loser in every case that is decided by a judge or jury. Often a client may feel that their case went very poorly because the judge did not find in their favor and instead ruled for the other party. Not every mistake made by a lawyer constitutes legal malpractice. A bad result is not legal malpractice unless the attorney made a serious mistake that likely changed the outcome of the litigation. The mistake must have been one that a lawyer of ordinary skill, prudence, and diligence would not have made, and the mistake must have caused harm. Such mistakes are actually quite rare.

**Harm in a Legal Malpractice Case**

Injury or harm in a legal malpractice case requires that the client suffered a tangible, financial loss or a wrongful criminal conviction. Some examples include:

- Loss of the right to file a lawsuit
- Dismissal of a valid lawsuit
- Losing a case that should have been won.

Nominal damages, speculative harm, or the threat of possible future harm do not constitute an “injury” in legal malpractice cases and generally, damages are not recoverable for emotional distress.

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

For more information about insurance, visit the Philadelphia Bar Association Insurance Exchange at www.usiaffinityexchange.com/Philadelphia. For Lawyers’ Professional Liability and other business coverage, you can contact us at 1-855-874-0267.

For over 75 years, the divisions of USI Affinity have developed, marketed and administered insurance and financial programs that offer affinity clients and their members unique advantages in coverage, price and service. As the endorsed broker of the Philadelphia Bar Association and more than 30 other state and local bar associations and with more than 30,000 attorneys insured, USI Affinity has the experience and knowledge to navigate the marketplace and design the most comprehensive and innovative insurance and benefits packages to fit a firm’s individual needs.
Note: While the following listings have been verified prior to press time, any scheduled event may be subject to change by the committee or section chair. Lunches are $9 for members and $15 for non-members, unless otherwise indicated. Register online for most events at PhiladelphiaBar.org. Unless otherwise specified, all checks for luncheons and programs should be made payable to the Philadelphia Bar Association and mailed to Bar Headquar-
ters, 1101 Market St., 11th Floor, Philadelphia, PA 19107-2955.

Aug. 2
CLE - Bridge the Gap. 9 a.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.

Aug. 8
CLE - Disability Discrimination in Housing. 9 a.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.

Aug. 9
Section and Division Chairs: meeting, 8:30 a.m., 10th Floor Board Room. APABA-PA Board Meeting: meeting, 12 p.m., 11th Floor Committee Room South.

Aug. 10
Legislative Liaison Committee: meeting, 12 p.m., 10th Floor Board Room. Lunch: $9.

Aug. 11
Workers’ Compensation Section Executive Committee: meeting, 10:30 a.m., 10th Floor Board Room.

Aug. 14
Civil Rights Committee: 12 p.m., 10th Floor Board Room. Lunch: $9.

Aug. 16
Cabinet: 12 p.m., 10th Floor Board Room.
CLE - Addressing the Unique Challenges Facing Girls in the Adult Criminal. 9 a.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.
Legal Line: 5 p.m., LRIS Offices.

Aug. 17
Foundation Board: meeting, 12 p.m., TBD.

Aug. 18
Social Security Disability Benefits Committee: meeting, 12 p.m., 11th Floor Conference Center. Lunch: $9.
Criminal Justice Section Executive Committee: meeting, 12:30 p.m., 10th Floor Board Room.
Philadelphia Lawyer Editorial Board: meeting, 12:30 p.m., 11th Floor Committee Room South.

Aug. 19
CLE - Bridge the Gap. 9 a.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.

Aug. 21
Equitable Distribution Committee: 1meeting, 12 p.m., Klee, Harrison Harvey Beanzburg LLP, 1835 Market St., Suite 1400, Philadelphia.

Aug. 22
Real Property Executive Committee: meeting, 12 p.m., Ballard Spahr LLP, 1735 Market St., 48th Floor, Mattoon Room, Philadelphia.

Aug. 23
CLE - Damages Issues in Medical Malpractice Cases. 12:30 p.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.

Employee Benefits Committee: meeting, 12 p.m., 11th Floor Committee Room. Lunch: $9.

Aug. 24
Criminal Justice Section: meeting, 12 p.m., 11th Floor Conference Center. Lunch: $9.
Board of Governors: meeting, 4 p.m., 10th Floor Board Room.
CLE - Lien on Me: 4:30 p.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.
Solo, Small & Mid-Size Firm Manage-
ment Committee 5K Run/Walk: Details to follow.

Aug. 25
CLE - The Million-Dollar Sentence and Other Recent Trends in Employment Background Check Litigation: 12 p.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.
Senior Lawyers Committee: meeting, 12 p.m., 10th Floor Board Room.

Aug. 28
YLD Executive Committee: meeting, 12 p.m., 10th Floor Board Room.

Aug. 29
DLSC Intake Subcommittee: meeting, 3 p.m., 10th Floor Board Room.

Aug. 30
LGBT Rights Committee: meeting, 12 p.m., 11th Floor Committee Room South.

Classification
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know, which may be frustrating to clients, the answer to this issue is “it depends,” Hrubos said. Specifically, the answer depends on what jurisdiction you are in and the facts of your case, because there are different tests with many factors consid-
ered with varying degrees of emphasis relied upon by particular courts, she said.
For example, Hrubos said, the “eco-
nomic realities” test is utilized under the FLSA for wage and hour claims, and is a balancing test. On the other hand, the “ABC test,” generally used in state unem-
ployment compensation law to determine a worker’s status for unemployment pur-
poses, is not a balancing test, and, instead, all three prongs must be met. Sprang said that yet another test, the “IRS test” is utilized by the IRS to determine whether a worker is properly classified by consider-
ing 11 factors, with the focus on economic independence of the worker.
Sprang said out that many companies think they can classify workers as indepen-
dent contractors to save money (i.e. on worker’s compensation and/or attorneys’ fees, depending on the applicable law, as well the company being presented with a collective or class action, he said.
Another misconception Sprang talked about is that there is still risk if another company (such as a staffing agency) engages the worker, which can raise both joint employer issues as well misclassification problems. Sprang said that clients often overlook this as a risk area, where one business contracts with a second com-
pany and has minimal interaction with the second company’s workers, including its independent contractors, and then is surprised when a misclassification claim is made against both companies.
The panelists discussed that because different states and laws vary widely, it is most important to consider where you are located and to look carefully at that jurisd-
ciction and the governing law. In evaluat-
ing a classification, Hrubos recommended always starting by looking at the workers’ contract and to be sure specific expecta-
tions and specialized skills are included, but he recognized that a label within a contract is not determinative. Sprang also recommended an audit of all workers on payroll, or at least to target potentially higher risk groups, such as a high number of workers all doing the same type of job, to mitigate potential misclassification issues, because the potential economic loss risks can be significant, while the time to prevent such economic loss is compara-
tively low.

Annie K. Kernicky (Annie.Kernicky@flaster-
greenberg.com), associate at FlasterGreenberg, is an associate editor of the Philadelphia Bar Reporter.
Michael G. Fitzpatrick, partner at Obermayer Rebmann Maxwell & Hippel LLP, was presented with a Doctor of Humane Letters from Holy Family University during its 2017 Commencement ceremony.

Henry I. Pass, of the Law Offices of Henry Ian Pass, has been reappointed as counsel to the Nantucket Preservation Trust.

Jennifer Platzkere Snyder, partner at Dilworth Paxson LLP and editor-in-chief of The Philadelphia Lawyer magazine, has been elected as a Fellow of the College of Labor and Employment Lawyers.

Priscilla J. ("Sally") Mattison, of counsel to Bernard M. Resnick, Esq., PC., moderated the International Association of Entertainment Lawyers Masterclass titled “The Musician as Contestant: Legal Issues in Contests and Reality TV” at the 51st annual Midem convention in Cannes, France.

Alexander Ginsburg, of Peter Bowers, P.C., welcomed 13 new American citizens at the naturalization ceremony held at the Betsy Ross Memorial House on Flag Day, June 14.

Jay H. Ginsburg, of Jay H. Ginsburg, P.C., and chairman of the Philadelphia Flag Day Association, was honored with a City Council Resolution for presenting the annual Army Day/Flag Day “Stripes and Stars” celebration at Independence Hall on June 14.

Hon. Mark I. Bernstein (ret.) recently joined the Philadelphia Bar Foundation Board of Trustees.

Harris J. Chernow, partner at Rizzo & Damall LLP, has been appointed counsel to the Temple University Alumni Association.

“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.
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