

**Philadelphia Bar Association  
Board of Governors Meeting  
January 27, 2014 Meeting**

The meeting was called to order at 4:05 p.m. by Chair Eric Weitz.

Upon consideration by the Board, the minutes of the December 19, 2013 meeting were unanimously approved.

Treasurer Wesley R. Payne, IV presented the Financial Report for the period ending December 31, 2013. He reported that the Association is doing better than anticipated. The 2013 year finished with revenues up over \$171,000 due to the performance of LRIS and some gains on investments of approximately \$213,000. Total expenses increased by approximately \$158,000 for the year, with approximately \$100,000 of that amount relating to the Bench Bar; however, the Bench Bar generated approximately \$186,000 more than anticipated resulting in a net gain of approximately \$86,000. So, overall, the finances of the Association look healthier than anticipated at the outset of the year. After consideration, the Treasurer's Financial Report was unanimously accepted by the Board.

Chancellor Fedullo commenced his announcements by recognizing Chancellor-Elect Albert S. Dandridge, III for receiving The Honorable William F. Hall Award at the Dr. Martin Luther King, Jr. Annual Memorial Breakfast presented by the Barristers' Association of Philadelphia on January 20, 2014. Chancellor Fedullo complimented Chancellor-Elect Dandridge on this well-deserved honor and commended him on the speech he delivered at that event.

Chancellor Fedullo thanked everyone who participated in the Bar Leader's Retreat held at the Borgata Water Club in Atlantic City, NJ on January 10-11, 2014. Chancellor Fedullo thanked and applauded Mary Byers, CAE for the thought provoking presentation she delivered at the Retreat entitled "Race for Relevance: Radical Changes for Associations." Chancellor Fedullo praised the panels at the Retreat, and commented that they show the impact the Association can have on the legal profession and the City of Philadelphia. Chancellor Fedullo recognized the presence of the law students at the Retreat and noted that their participation helped everyone to ponder the future of the Association and the important contributions of the youth to the Association. Chancellor Fedullo thanked those who sent kind emails and letters to himself, Chair Weitz, and Executive Director Mark Tarasiewicz following the Retreat.

Chancellor Fedullo reported that, since the Retreat, he has been actively spreading the message announced at his inaugural speech given at the Association's Annual Meeting on December 10, 2013. He has given a series of live and printed interviews including with the Philadelphia Inquirer, Philadelphia Business Journals, Stu Bykofsky of the Philadelphia Daily News, and Robert Rovner of WWDB to emphasize the Association's efforts to assist the School District of Philadelphia. Chancellor Fedullo has met with Philadelphia School District Superintendent Dr. William Hite, Jr. along with

Philadelphia School District General Counsel Michael Davis, former budget director to Governor Rendell, Michael Masch, Rhonda Brownstein of the Pennsylvania Education Law Center, Judge John Young, and Jeffrey Lindy.

Additionally, Karen Buck, Executive Director of the Senior LAW Center, introduced Chancellor Fedullo to Patricia Cruice, Principal of the Dobson Elementary/Middle School in Manayunk. In response to the Chancellor's inquiries about the needs of the school, Cruice advised that extensive resources are needed for the school and nearly 300 students ranging from kindergarten through eighth grade. In response, Chancellor Fedullo's firm, Rosen, Schafer & DiMeo, LLP, is "adopting" that school. Chancellor Fedullo encouraged other practitioners and firms to adopt a school or a class, and vowed that those who do so will be recognized in the Philadelphia Bar Reporter since it helps the Bar Association, the city of Philadelphia, and the children of Philadelphia. Chancellor Fedullo has been actively spreading this message, including in a recent address to the Philadelphia Association of Paralegals.

Chancellor Fedullo reported that the Nutter administration failed to sign a contract the prior week to privatize the handling of cases when the Philadelphia Defender Association has a conflict, and remarked that the Association will continue to be involved in this cause. Additionally, Chancellor Fedullo announced that he has a commitment from both Chief Justice Ronald Castille and President Judge Sheila Woods-Skipper to engage in monthly meetings. Justice Castille is very committed to Civil Gideon and would like to accomplish this goal during this coming year. Additionally, the new Family Law Courthouse plans to open in August 2014 which will be cause for celebration. Chancellor Fedullo announced that the Association, along with the Barristers' Association of Philadelphia and its current President Amber Racine, Board Minority Appointment and Immediate Past Barristers' President Rachel Branson, and Chancellor-Elect Dandridge, will be commemorating the 60<sup>th</sup> anniversary of Brown v. Board of Education. At the suggestion of President Judge Woods-Skipper, a particular judge will be spotlighted in each issue of the Bar Reporter. Chancellor Fedullo related his plan to arrange for the Judicial Commission Task Force to meet shortly in order to review operations of the Commission and make recommendations for improvements.

Chancellor Fedullo extended thanks to many during this eventful month for himself and his family, including Executive Director Mark Tarasiewicz for facilitating a smooth and successful transition; Director of Communications and Marketing Meredith Avakian-Hardaway for helping him "find his voice;" Director of Meetings and Special Events Tracey McCloskey for all of her wonderful work and especially for coordinating the Chancellor's dinner event; Chancellor's Cabinet – Projects and Programming Advisor Rochelle Fedullo for the Chancellor's dinner; the Paralegals Association; and, to the entire Board for working so hard to help make his plans a reality this year.

Finally, Chancellor Fedullo thanked the Board, in advance, for entertaining the Resolution to support marriage equality at that day's meeting, and expressed his hope that the Resolution will pass so that the Association may help to advance civil rights including gay rights. Chancellor Fedullo noted that Pennsylvania's passing of this law would result

in more than fifty percent of the population passing a law in support of marriage equality, and this will cause Pennsylvania to be part of the majority of support for this important cause.

Chair Weitz thanked those present for coming. He said he would save his announcements, as Chair, until the end of the meeting, at which time he may be delegating work assignments.

Chair Weitz raised the agenda item of the appointment of Amanda Dougherty, Esquire to the Philadelphia Bar Reporter Editorial Board. Upon consideration by the Board, the Motion was unanimously passed.

LGBT Rights Committee Co-Chair Michael Viola and Family Law Section Chair Meredith Brennan presented a resolution supporting marriage equality in Pennsylvania. Viola announced that, because Pennsylvania does not allow same sex couples to marry, many people in Pennsylvania, including judges, lawyers, at least one Mayor and President of City Council, a past Chancellor, and the Association's current Executive Director, may not marry. Same sex marriages formed in other states are invalid in Pennsylvania. As a result, the House and Senate have identical marriage equality bills pending. For those bills to pass, two specific provisions of Pennsylvania law must be removed; first, the provision that defines marriage as being only between a man and woman; and, second, the provision that no same sex marriage entered into in any other jurisdiction is entitled to recognition under Pennsylvania law. The pending resolution, sponsored by the LGBT Rights Committee and Family Law Section and supported by twenty-four other Sections and Committees of the Association requests that the Board pass the resolution in support of the pending House and Senate Bills. Meredith Brennan thanked the LGBT Rights Committee for its hard work on the resolution and for inviting the Family Law Section to co-sponsor the resolution. Ms. Brennan reported that the Family Law Section unanimously supports this resolution. She noted that there are cases pending across Pennsylvania that deal with marriage equality including two in Federal Court, and either case could be heard by the U.S. Supreme Court and be the next Loving v. Virginia. Ms. Brennan echoed the Chancellor's message of the importance for the Association to support this issue.

Board member Lawrence Felzer commented that the issue could have an important impact on Association membership since every surrounding state now recognizes marriage equality which could cause Pennsylvania to lose qualified LGBT lawyers to other states. Mr. Viola said that if the resolution is approved, the Association's lobbyists in Harrisburg will be advised of the Association's official position on these bills and any similar bills. Although the resolution does not specifically address any of the current cases, it establishes the Association's position which may be persuasive in encouraging other bar associations to take a similar position. Mr. Viola believes that the Pennsylvania Bar Association is considering a similar resolution. Should the resolution be approved, the Association would issue a press release announcing its approval. Ms. Fedullo expressed her disappointment of being unable to vote on this resolution since she is an appointed member of the Board without voting

rights, but she is delighted to witness this important vote and hopes that it is unanimously approved. Upon consideration of the Board, with a friendly amendment involving punctuation, the motion was unanimously passed.

Graham Laub, Chair of the Securities Regulation Committee of the Business Law Section presented a resolution for comments regarding a proposed regulation of the Securities and Exchange Commission (“SEC”) on Crowdfunding under the SEC Act of 1933, to implement Title III of the Jumpstart Our Business Startups Act (the “JOBS” Act). It was explained that crowdfunding addresses the process of partially or completely funding startup companies by obtaining smaller amounts of funds from individuals and smaller investors, rather than seeking major funding through investment banking institutions. The goal is to encourage the development of startups that might not otherwise be able to come into operation if they are unable to obtain a major investment/infusion of cash from one funding source. These are intended to be small offerings of \$1,000,000 or less in any twelve month period for startup businesses. And, unlike most private offerings, this would not be limited to sophisticated accredited investors. The proposed rules list disclosure requirements based on the aggregate target offering amounts, using a tiered financial disclosure system. Generally, the threshold proposed by the Rules requires different types of disclosure for offers of \$100,000 or less, more than \$100,000 but not more than \$500,000, and for offerings of more than \$500,000. The proposed rules were published in November 2013, and comments are due by February 3, 2014.

The Committee prepared a comment letter addressed to Secretary of the Securities and Exchange Commission Secretary Elizabeth Murphy to suggest certain changes to the proposed rules to better balance the issues of flexibility for the issuers without compromising investor protection. The letter, approved by the Executive Committee of the Business Law Section, states that the comments contained therein represent the views of the drafting Committee only and do not necessarily set forth the official position of the Committee, the Business Law Section or the Philadelphia Bar Association. Graham Laub asked the Board to approve a resolution supporting the submission of the comments to the SEC. The letter addresses three areas: (1) disclosure requirements; (2) the ongoing reporting criteria; and, (3) a definition regarding how to aggregate which issuers are under common control for purposes of the financial limit.

The comment letter raises a variety of issues. Under the proposed rules, the SEC declines to propose to exempt issuers with no operating history (or an operating history of less than 12 months) from the financial disclosure requirements of SEC Act Section 4A(b)(1)(D). The Committee recommends that, given the cost and burden of preparing a financial statement, the SEC not require an issuer with no operating history or a newly formed issuer to provide a financial statement, and that the minimum threshold of target offering amounts at which audited financial statements are required are raised to \$1,000,000. The Committee believes it should be sufficient for such issuers to include a statement in its other disclosures that the issuer does not have any operating history and has nominal assets. It is believed that this statement should be sufficient to inform potential investors of the risks of investing in the crowdfunding offering.

Additionally, SEC proposed Rule 202 would require an issuer to file on EDGAR and post on the issuer's website annually a report of the issuer's results of operations and financial statements no later than 120 days after the end of the fiscal year covered by the report. Further, the Committee recommends that the Commission adopt rules requiring that financial statements be reviewed only when the issuer's total assets exceed a specified amount as of the last day of the issuer's fiscal year. Since Section 4A(b)(4) does not require that the annual report to be filed by an issuer include an audited financial statement, the Committee recommends that the Commission eliminate from proposed Rule 202 any requirement that an issuer that has completed a crowdfunding offering file an audited financial statement as part of the annual report. The Committee recommends that the Commission should consider requiring such audited financial statements only when the issuer's total assets exceeded \$1,000,000 as of the end of the issuer's fiscal year.

SEC proposed Rule 202(b) requires the issuer to continue to comply with the ongoing reporting requirements until (1) the issuer becomes a reporting company; (2) the issuer or another party repurchases all of the securities issued in reliance on Section 4(a)(6); or (3) the issuer liquidates or dissolves. The Committee recommends that the Commission modify the repurchase alternative to lower the repurchase threshold from 100% to 2/3's, so long as the issuer has made a bona fide offer to repurchase all securities held by investors who purchased securities in a crowdfunding exempt offering. The Committee also recommends that the on-going reporting requirements should terminate after the issuer has filed three consecutive annual reports.

Finally, the proposed rules contain a definition of "control" that was borrowed from Securities Act Rule 405. The Committee recommends an alternate definition that does not rely on the historical application of that definition in the context of determining persons or entities who are deemed to be "affiliates" under the Securities Act.

Chancellor-Elect Dandridge commented that the submission of comments does not require the approval of a resolution by the Board since there is no request for the Board or Association to take action. Mr. Laub responded that other bar associations have handled the submission of comments by passing a resolution.

Chancellor Fedullo inquired if the purpose of the resolution is to put the imprimatur of the Association, or the Chancellor, on the recommendations, to which Mr. Laub replied that the intent was more to add gravitas to the recommendations and to follow the paths taken by other bar associations.

Assistant Secretary the Honorable A. Michael Snyder (ret.) questioned whether the Business Law Section had approved the comments which had not yet been done as of the time of the Board's Cabinet meeting. Business Law Chair Michael Ecker advised that the Section's Executive Committee had approved the comments and proposed letter.

A vote was taken on a resolution stating that the Board supports the submission of the comment letter by the Securities Regulation Committee of the Business Law Section to the Securities and Exchange Commission. The resolution passed with no negative votes and one abstention.

Gregg Kanter, Chair of the Federal Courts Committee's Subcommittee on Proposed Rules Amendments, presented a resolution endorsing the Report and Recommendations of the Federal Courts Committee on Proposed Amendments to the Federal Rules of Civil Procedure.

Chair of the Public Interest Section Su Ming Yeh and Co-Chair of the Delivery of Legal Services Committee Joseph Sullivan presented a resolution regarding the Association's Position on the Proposed Amendments to the Federal Rules of Civil Procedure.

Additionally, a letter from PTLA President Nancy Winkler and President-Elect Lawrence Cohan to Chancellor Fedullo and Chair Weitz was distributed to the Board for review.

Initially, Mr. Kanter explained that the Federal Courts Committee's Subcommittee on Proposed Rules Amendments met and carefully deliberated on this issue for six months. At the December 2013 Cabinet meeting, the matter was addressed and the question was raised whether the Subcommittee's Report had been distributed to other Bar Association Committees. Thereafter, the Public Interest Section related its proposed changes. The proposed amendments are the subject of multiple hearings across the country, and the deadline for comments is February 15, 2014.

On behalf of their respective Section and Committee, Ms. Yeh and Mr. Sullivan related their respective Section and Committee concerns primarily relating to the proposed amendment to Fed.R.Civ.Pro. 26(b)(1) that allows a party to obtain discovery "proportional to the needs of the case, considering the amount of controversy, the importance of the issues at stake in the action, the parties' resources, the importance of the discovery in resolving the issue, and whether the burden or expense of the proposed discovery outweighs its likely benefit." See proposed amendment to Fed.R.Civ.Pro. 26(b)(1).

The impact of the proposed amendment language causes the Public Interest Section grave concern since it could curtail the amount of available discovery in cases having minimal value involving parties with low income and minimal education, where any loss of funds could have disastrous consequences. Further concerns were raised on behalf of litigants with politically unpopular positions whose cases or causes might not be deemed sufficiently important by the Court to support necessary discovery. The importance of discovery was stressed since it may shape the entire case, and it was concerning that certain information sought could be in the hands of an institution and not available through other means. Accordingly, the Section requested that the Association oppose the proposed amendments to Rule 26(b)(1) relating to proportional discovery;

33(a)(1) pertaining to a limit to the number of interrogatories; and, 36(a) regarding to a limit to the number of Requests for Admissions.

In response, Mr. Kanter explained that the Federal Courts Committee has a broad range of member and tried to represent everyone's interests. He stressed that the purpose of Fed.R.Civ.Pro. 26(b)(1) regarding proportionality is to end abusive and excessive discovery, and that "the values at stake transcend the economics of the case." See Reporter for Advisory Committee. Proportionality is moved from 26(b)(2)(C) where it imposes a limitation on discovery to 26(b)(1) where it will instead define the scope of discovery. Bruce Merenstein of the Federal Courts Committee said the Committee discussed the issue extensively and determined that safeguards were available, such as discovery agreed between counsel; pursuit of judicial intervention absent agreement; and, the likelihood that additional discovery would be granted upon a showing of need.

PTLA President Winkler and President-Elect Cohan stressed the importance of equal access of discovery to all and noted that proportionality could detrimentally affect that equality by imposing limits on the scope of discovery. Conversely, litigants could seek Court limitations on the overly burdensome discovery. Mr. Cohan stated the propose rule is a "sea change" and could cause litigants of all types to be denied appropriate discovery.

A hearty and vigorous debate ensued. Past Chair Marc Zucker asked how the proposed rule would impact a defendant. Ms. Yeh responded that, like a low income plaintiff, a low income defendant could also need information to rebut a claim, and the inability to obtain that information could be severely detrimental to their case. Mr. Sullivan added that the three proposed rules were objected to since they could limit information. Business Law Chair Ecker remarked that proportionality has emerged as a result of large amounts of discovery in commercial litigation cases, but there must be a balance. He suggested that the Association may choose to not endorse this controversial proposed rule change. Chancellor Fedullo stated that the concept of proportionality is a "scary word" and could send a message to low income litigants that they are not important. Ms. Fedullo commented that the change would encourage discovery disputes since it will cause defendants to routinely object to discovery. Family Law Section Chair-Elect Lee Schwartz stated that Family Court deals with the concept of proportionality on a case-by-case basis. Treasurer Payne noted that "proportionality" need not be added since the concept was already present and left to the discretion of the Court. The Federal Courts Committee replied that there is a body of law to govern any limitations, and Chair Weitz responded that the body of law is insufficient for that purpose. Chair Weitz concluded that, after seeing abuses of discovery on both sides, this is not a plaintiff or defense issue but, rather, an equal justice for all issue, which causes him to support the Public Interest Section's position.

It was questioned whether proportionality could remain in the proposed amendments with limits, but concluded that could not be done effectively and with consistency. Chancellor-Elect Dandridge noted that the contentious debate was troubling and presented an uncomfortable decision for the Board. Board Member Jeremy

Menkowitz remarked that if the Board declines to take a position, it is actually taking a position in support of the proposed amendments. Ms. Winkler commented that mechanisms controlling discovery currently exist in the rules, and there have not been complaints about unequal access to justice. Chancellor Fedullo concluded that, although the imposition of proportionality could result in a mere ten less interrogatories, it could cause a litigant to lose their home.

Assistant Treasurer Mary Platt suggested the Association support the Federal Courts Committee resolution but at the same time recognize the many comments made by Board members both in favor and against the proposed amendments. It was questioned whether the Federal Courts Committee would amend the resolution by opposing the proposed amendments to Rules 26(b)(1), 33(a)(1), and 36(a). The Public Interest Section declined to accept an amendment supporting the Federal Courts Committee resolution if all points debated at the Board meeting, both in favor and against the proposed amendment to Rule 26(b)(1), were included. A motion was made for the Board to adopt the Federal Courts Committee's Report revised to reflect the Public Interest Section's position in opposition to Rules 26(b)(1), 33(a)(1), and 36(a). Upon consideration of the Board, the motion was unanimously passed.

Chair Weitz commented that the productive debate and discussion at the meeting resulting in the passing of a resolution as controversial as the proposed amendments to the Federal Rules was a great example of what the Association can accomplish.

Chair Weitz requested comments about the presence and involvement of the law students at the Board Leaders Retreat, and whether Board members consider it a worthwhile priority to dedicate Association resources to continuing interaction with the law schools. Chancellor Fedullo responded that the sooner the Association involves law students in the Association, the better for the Association since it should be a part of law school culture. Those resources include the participation and involvement of both the Association staff and Board members. Executive Director Tarasiewicz is striving for every law school in the geographic area to have a relationship with the Association. Chair Weitz concluded that the discussion on this issue will continue at the next meeting.

There being no further business, the meeting was adjourned at 5:40 p.m..

Respectfully submitted,  
Jacqueline G. Segal  
Secretary

**Board of Governors  
Attendance  
January 27, 2014**

**Voting Members  
Present:**

William Fedullo  
Albert Dandridge  
Jacqueline Segal  
A. Michael Snyder  
Wesley Payne  
Mary Platt  
Eric Weitz  
Brad Shuttleworth  
Rachel Branson  
Jennifer Coatsworth  
Ourania Papademetriou  
James Rocco  
Kay Yu  
Rachel Gallegos  
Natalie Klyashtorny  
Dawn Tancredi

Rahat Babar  
Lawrence Felzer  
Lauren McKenna  
Jeremy Menkowitz  
Erin Siciliano  
Marc Zucker  
Edward Beitz  
Michael Ecker  
James Funt  
Lee Schwartz  
Scott Small  
Amara Chaudhry-Kravitz  
Judy Berkman  
Jeffrey Dashevsky  
Lauri Kavulich

**Absent:**

Gaetan Alfano  
Rachel Kopp  
Emily Marks  
Peter Newman

Kathleen Wilkinson  
Maria Bermudez-Harris  
Howard Goldberg

**Non-Voting Members  
Present:**

Michael Hayes  
Mark Tarasiewicz  
Sophia Lee  
Rochelle Fedullo

Kevin Mincey  
Deborah Gross  
Judy Stouffer

**Absent:**

Lawrence Beaser  
John Savoth  
Louis Rulli  
May Mon Post  
Heather Austin

Hilda Thompson  
Richard Alonso  
Cheryl Disch  
Sayde Ladov  
Abraham Reich

