Pa. Education Secretary Pedro Rivera Speaks at Education Law Committee Meeting

Preparing students for careers has become the focal point of schools in the commonwealth. The Education Law Committee hosted Pennsylvania Department of Education Secretary Pedro Rivera and Deputy Secretary Matthew Stem as guest speakers at the committee’s regular meeting on June 6 to provide a comprehensive overview of recent changes and developing initiatives in education in Pennsylvania. They then took questions from the attendees where the conversation focused largely on career readiness and the PDE’s multi-pronged approach to the issue.

Rivera and Stem said schools’ shift to greater emphasis on career readiness entails changes in standards, programming and outcomes. The impetus for this change came, in part, from new state and federal law—in particular, the Every Student Succeeds Act and Chapter 339 of the Pennsylvania School Code. Further, as Rivera and Stem explained, the nation’s and region’s evolving economy will require a more sophisticated workforce with some form of post-secondary education mandatory for sustaining employment.

Central to the PDE’s work has been a data-driven approach. With schools required to make career readiness central to their educational programs, the PDE took the opportunity to collect data for the metrics for such requirements into district and school profiles. Then, the PDE assembled all profiles into a comprehensive database and made them available in an online platform called the Future Ready PA Index, continued on page 12

By Michael Metz-Topodas

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If You Have Someone You Cannot Help... Refer Them to Us!
The two weeks I spent dismantling and packing up my mother’s charming, whimsically decorated apartment, because she was no longer able to live there independently, were among the saddest of my life.

It happened suddenly, but not really. The signs were there, but I did not see them. I did not want to see them. She was one of the brightest people I have ever known, and was very good, even expert, at hiding the signs, especially from me.

She misplaced her cordless phone a lot, sometimes even twice a day, but didn’t she always forget where she left things? She would call from her “emergency” cell to tell me the other phone was missing, that she had called it from the cell, but there was no ring. Usually, she called back to tell me she had found it, but if not, I would get a cab to her apartment as soon as I could. When I spotted the phone, in fewer than 30 seconds, on the dining room table, the kitchen counter or on her bed, and with the ringer on, I was more frustrated than worried. Of course, she could not hear the phone—the volume was blasting from both the bedroom and living room televisions. Obviously, she had looked for it everywhere except the place where I found it.

Yes, her stories were sounding a bit out there, but didn’t she always have a wonderful imagination which sometimes enhanced the narrative? Plus, didn’t people always confuse in her with their problems because she was empathetic and would find a way to help? So, when she told an extremely intricate, novel-like story about the life and family of the man who delivered her groceries, I did not think to question any of it. And sure, she repeated herself a lot, but was it was nothing new—it was just a matter of degree.

She was fine. She was better than fine. She was more than fine. She was happy, almost. Her last sentence was a bit of a surprise. She had mentioned one of the brightest people I have ever known, and was very good, even expert, at hiding the signs, especially from me.

On the floor. She said hello as if nothing was out of the ordinary. She went to a kitchen cabinet, and got a pan. She was fine, but I did not see them. I did not really. The signs were there, but I did not see them. She was fine, but I did not see them. She was very angry with me for forcing her to go to a hospital a second time. She was admitted and stayed for several weeks during which she appeared cheerful, although she also was mainly delusional. I was told that although the head injury was not serious, it would be enough to accelerate the dementia she had “been working on.” That phrase still makes me angry, as if it was her choice. It was not Alzheimer’s, but I was told to expect it to progress, and as it did, it would impact her other medical problems and make them less manageable. Before very long she would need a high level of care, including skilled nursing. She would be released to rehabilitation to build up her strength, but I should look for a placement.

I listened but did not really believe it. After a few weeks in rehabilitation, she would be fine to go to home. I knew it. I would get nursing aides. I would be there every day after work, probably also at lunchtime, and all weekend. She loved her apartment. She had lived there for almost 20 years and had many friends in the building. It would work. I would make it work. It had to work.

All the denials in the world could not change things, and as I packed up her apartment, I saw more signs — among others, grocery lists written on the back of her cherished family photos. When I received the call that there was a room available for her in the beautiful place that my aunt, son and I had visited, I cried with tears of relief. She spent the last five years of her life there, where she received excellent care and was part of a community of not only other residents, but their families, too. We were part of that community. Her room was charming, filled with many decorations from her apartment along with the new ones she loved for us to bring.

Still, accepting the “new normal” was not easy for my mother, and was heart-rending for those of us closest to her. Over those next five years, her normal changed in ways that sometimes shattered our hearts, but what never changed, what could never change, was her love for us and ours for her.

I have shared, actually entrusted you, with a very personal story, but why? Because none of us are immune from seismic personal experiences that can shake us to our core and yes, maybe even require us to close our office doors and cry. But, wait a minute, aren’t we lawyers? Aren’t we expected to tough it out, to compartmentalize, to not ever miss a beat? Isn’t that what we are wired for?

We hear and talk about wellness, and about work-life balance, but do we hear and talk enough about what happens and how to cope when the life part goes askew? It is not a new problem. It is not an easy conversation. It is not even easy to admit that we need to have those conversations, but we do.

I am working on a program, watch for it this fall, to start a conversation about experiences similar to the one I have shared, and how to “navigate the new normal” while managing to function as normally as possible in the office, in court and with clients. Looking at old problems in new ways is never easy, but it is something that Philadelphia lawyers always do.

By Shelli Fedullo

Tell Us What You Think!
The Philadelphia Bar Reporter welcomes letters to the editors for publication. Letters should be typed. There is no word limit, but editors reserve the right to condense for clarity, style and space considerations. Letters must be signed to verify authorship, and space considerations. Letters may be mailed, faxed or e-mailed to: Thomas E. Rogers, Senior Managing Editor, Philadelphia Bar Reporter, Philadelphia Bar Association, 1101 Market St., 11th floor, Philadelphia, PA 19107-2911. Periodicals postage paid at Philadelphia, PA POSTMASTER: Send address changes to Philadelphia Bar Reporter, c/o Philadelphia Bar Association, 1101 Market St., 11th floor, Philadelphia, PA 19107-2911. Telephone: (215) 238-6300. Association mail address: reporter@philabar.org. The Philadelphia Bar Reporter is not necessary those of the Association, its officers or its members. Advertising rates and information are available from Shawn D. Phillips at American Lawyer Media, 1617 JFK Boulevard, Philadelphia, PA 19103. Telephone: (215) 557-2340 or e-mail sphilips@alm.com.
In June’s Young Lawyers Division column, I encouraged young lawyers to use the summer months to reflect on their work year so far. But what is summer for, if not for a little bit of rest and relaxation? In addition to career self-reflection, it is also time for personal self-care.

Recharging your batteries will make you a better lawyer. Start with being fully present, wherever you are. Stay focused when you’re at the office, so that when you’re away from work, you can be truly away from work. When taking time off, getting mental space is just as important as physical space. Maybe that means checking your email less often on the weekends. Maybe that means staying at work late to get projects done before you leave for a trip so that you can fully relax while you are away.

Let’s be real though—we’re not on vacation all summer. We spend more of our summer time working than not. So, how can we practice self-care while still getting things done? My first tip, and something I have been working to implement myself, is to learn the power of saying no. When we overcommit, we inevitably stress about time and the quality of our work product. Simply saying no—whether it is to a weekend activity or to volunteering for an extra assignment—is surprisingly hard to do. But with practice, the free time allows me to more fully dedicate myself to the things I need to do, and really want to do.

What about the times when it’s too late? When we’re already stressed and overcommitted? Sometimes, small things can go a long way to staying sane. Take a short walk in the middle of the day for a breath of fresh air. If you can’t get away from your desk, just stopping for a few minutes to stretch, looking out the window or taking deep breaths will all help to reduce your stress level.

In managing our stress, many people strive for elusive “balance.” While I am a big believer in enjoying life, the idea of a work-life balance as something that can be achieved has never sat well with me. In my experience, balance is dynamic. The balancing scale is always moving, and the only trick is to keep it moving in a way that works for you.

I am happy to see that the Philadelphia Bar Association has been promoting stress reduction and self-care for our members. On June 15, the YLD partnered with the Wellness and Quality of Life Committee for puppy yoga.

The committee meets regularly to focus on member well-being. Last year, at the 2018 Bench-Bar and Annual Conference, we had a meditation and relaxation room available for attendees to have some quiet time during the busy weekend.

With all of these resources available, do not wait until you are burned out to prioritize. Taking care of yourself on a regular basis will keep you from reaching your breaking point.

Michaella Tassinari (michaella.tassinari.k85k@statefarm.com), attorney at Robert J. Casey, Jr. & Associates, is chair of the Young Lawyers Division.
Workers’ Compensation Section Remembers Joseph Bekelja

By Anna V. Rio

The Workers’ Compensation Section is saddened by the loss of Joseph Bekelja, a consummate professional and great litigator. Joe passed away, after a long battle with cancer, on May 29.

Joe graduated from the University of Notre Dame in 1959, and Georgetown School of Law in 1962. He got his start handling Pennsylvania insurance claims when he worked for Nationwide Insurance Company. In 1975, he began his long tenure at Margolis Edelstein, where he was a partner until his retirement in 2017.

Throughout his distinguished 55-year career, Joe was considered one of the preeminent attorneys in workers’ compensation. In 2009, Joe was recognized by the section, the only recipient to date, with the Workers’ Compensation Lifetime Achievement Award for his outstanding and sustained contributions to the legal profession, exemplary professional practice, mentorship and positive impact on his colleagues.

During his career, Joe was involved with and litigated many landmark cases such as Caso v. WCAB (School District of Philadelphia) and JFC Temps, Inc. v. WCAB (Lindsay). Although Joe will always be remembered as an excellent attorney, he will be remembered most for his kindness and integrity. Joe was a teacher, a mentor and a friend to so many in the field of workers’ compensation, and he treated everyone with respect and humility. Joe’s word was his bond, and as an attorney he knew how to be a zealous advocate without being confrontational.

Joe was a kind and gentle man, and at 6-feet-7-inches tall, he looked down upon no one. He had a big heart, a great mind and was an icon in the field of workers’ compensation.

Joe, you will be dearly missed.

Anna V. Rio (ARio@skr.legal) is an attorney at Schmidt, Kirifides & Rassias.
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**JUNE 14, 2019 FLAG DAY NATURALIZATION CEREMONY**

(Top, far left and far right) Hon. Gerald A. McHugh and Hon. Joshua Wolson, U.S. District Court for the Eastern District of Pennsylvania; (left to right) Association Secretary Jennifer S. Coatsworth; and Welynne Jargbah, Corporate & Investment Bank Analyst at Chase Bank at the Flag Day naturalization ceremony at the U.S. Courthouse, sponsored by the Philadelphia Bar Association, on June 14.

(Bottom) Fifty-nine people from 32 countries became U.S. citizens at the ceremony.

**JULY 1, 2019 FREEDOM WEEK NATURALIZATION CEREMONY**

(Left, from left) Hon. Eduardo C. Robreno, U.S. District Court for the Eastern District of Pennsylvania; Hon. Ida K. Chen, Philadelphia Court of Common Pleas; and Assistant Secretary Ira S. Lefton, at the Law Day naturalization ceremony at the U.S. Courthouse, during Freedom Week 2019, sponsored by the Philadelphia Bar Association, on July 1.

(Right) Sixty-seven people from 30 countries became U.S. citizens at the ceremony.
Boots on the Ground Community Service, 2018–2019

By Angie Yannaris

In continuation of the Boots on the Ground community service initiative started by former Chancellor Albert S. Dandridge III, the section partnered with the William McKinley Elementary School’s “Positive Behavior Interventions and Supports” program for the 2018–2019 school year. The Business Law Section provided year-long programming to the 6th, 7th and 8th-grade students at the school in North Philadelphia.

Over the course of the school year, Geneva Campbell Brown, member of the section’s executive committee, coordinated a monthly speaker series for the students. The series kicked off with speakers from University of Pennsylvania Law School teaching financial literacy. Students learned the basics of personal finance and had an opportunity to interact with the law students in small group settings. On other occasions, members of the section and other volunteer lawyers and law students in the Philadelphia legal community, spoke with the students to share their educational and career paths. The class discussed the steps to become a lawyer, how to analyze complex legal issues and what day-to-day life looks like for an attorney.

The teachers and parents of the students said that, because of these presentations, the students were empowered to make informed choices about their futures and consider careers as attorneys and other legal professionals. One student said that the speakers were among the best parts of the school year, and some students left the presentations planning to attend law school one day.

In November, through donations, the section sponsored a field trip for the students to the National Constitution Center. They spent the afternoon exploring the exhibits and learning about the laws and history of the United States.

The capstone event of this year’s program was a mock trial, held in May at the federal courthouse, before Hon. Timothy R. Rice, U.S. District Court for the Eastern District of Pennsylvania. Over the course of a month, students learned how to prepare for and put on a trial of Goldie Locks for trespassing in the home of the Bear family. In two separate class sessions members of the section and the Young Lawyers Division, along with the Rendell Center for Civics and Civic Engagement, taught students the basics of conducting a trial, including how to formulate questions for direct and cross-examinations. The questions that the students prepared were worked into a script that they learned and performed, appearing before Judge Rice. After impressive presentations by both the prosecution and defense, the jurors ultimately found Goldie guilty of criminal trespass.

Angie Yannaris (ayannaris@dilworthlaw.com) is an associate at Dilworth Paxson LLP.

Fighting for Fair Districts: Taking on Prison-Based Gerrymandering

By Benjamin D. Geffen & Jonathan McJunkin

In Pennsylvania’s 123rd House District, in Schuylkill County, 8% of the “residents” are disenfranchised inmates serving felony sentences in state or federal prisons. Very few of these inmates hail from Schuylkill County. Far more often, they come from Philadelphia or other urban areas, and will return to their hometowns when released. Most of the inmates in HD123 are black or Hispanic, whereas over 90% of HD123’s eligible voters are white.

Under the accounting magic of prison-based gerrymandering, inmates swell the populations of rural regions and urban areas, and minority communities lose representation in the legislature. A recent Villanova University study quantified this skew in Pennsylvania, finding that if inmates were counted at their home addresses instead of their cells, four predominantly white and rural state House districts would shrink below the legal population threshold, while Philadelphia would gain a majority-minority district.

After the 2020 Census, every state will redraw its district lines. At least six states will do so based on inmates’ home addresses. The Public Interest Law Center is taking steps now to ensure the body that draws lines for Pennsylvania’s state legislative districts, the Legislative Reapportionment Commission, will follow.

The Census Bureau counts inmates at their cells, but state agencies such as the Department of Corrections and the Department of State can compile data to link inmates to their pre-incarceration addresses. We are urging state agencies to begin this work now so they will be prepared to take an accurate snapshot of inmates’ home addresses on Census Day (April 1, 2020).

Our arguments are based not only on fairness. We believe state law forbids prison-based gerrymandering. Pennsylvania’s constitution requires legislative districts to be “as nearly equal in population as practicable,” and last year the Pennsylvania Supreme Court clarified, in League of Women Voters of Pa. v. Commonwealth, that this requires mapmakers to “accord equal weight to the votes of residents in each of the various districts.” Under the Pennsylvania Election Code, an inmate “shall [not] be deemed a resident of the election district where the [penal] institution is located,” but must instead “be deemed to reside” where he was registered to vote before incarceration, or if unregistered, at his “last known address before confinement.” In other words, the “one person, one vote” test in Pennsylvania should be based on inmates’ home addresses.

The Law Center has a long history of combating gerrymandering in its various forms. In 2012, we represented Amanda Holt in her successful challenge to the LRC’s legislative maps, which needlessly split municipalities. In 2018, we persuaded the Pennsylvania Supreme Court to strike Pennsylvania’s congressional map, which was among the worst partisan gerrymanders in American history. When the LRC convenes in 2021 to redraw our state legislative districts for the next decade, the Law Center and partner organizations will watch carefully to ensure it follows state law by counting inmates at their pre-incarceration addresses.

Benjamin D. Geffen is a staff attorney at the Public Interest Law Center. Jonathan McJunkin is a communications associate at the Public Interest Law Center.
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**JULY 2019 CLE/CJE COURSES**

**VIDEO ENCORE - The Reintroduction of Reconsideration in Pennsylvania**
Fri., 7/12/19 - 12:30 - 1:30 p.m. (1 SUB)

The Social Security Administration has re-implemented Reconsideration across the country, including Pennsylvania that began in April 2019. This timely video encore CLE will address how the Bureau of Disability Determinations will implement Reconsideration, the determination process, and provide practical tips for Social Security practitioners.

**Impact of Tax Cuts and Jobs Act on Nonprofit Organizations**
Tue., 7/16/19 - 12:30 - 1:30 p.m. (1 SUB)

Hosted by the Tax Section

This lunch presentation is designed to provide updates to lawyers representing nonprofit organizations on the changes in law under the 2017 Tax Cuts and Jobs Act and subsequent related guidance. Panelists will discuss unrelated business taxable income silos, NOL limitations, excise taxes on private colleges and universities and executive compensation among other topics.

**Election Year Issues Impacting Nonprofits**
Wed., 7/17/19 - 12:30 - 1:30 p.m. (1 SUB)

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

All charitable organizations that are tax-exempt under section 501(c)(3) of the Internal Revenue Code are subject to very restrictive limitations on the amount of lobbying and political campaign activity they may conduct. During an election year, it is extremely important for organizations to be aware of the applicable rules. This timely program will help organizations that are tax-exempt under section 501(c)(3) to better navigate these sometimes complex and overly vague rules that limit lobbying activities and prohibit political campaign intervention.

**VIDEO ENCORE - Notions on Oceans of Criminal Motions: A Map and Guidebook to CP Criminal Motions Court**
Fri., 7/19/19 - 12:00 - 1:30 p.m. (1.5 SUB)

This video encore presentation offers “how-to” guidance by those present and overseeing cases every day in criminal motions court. Panelists will address the return of property, forfeiture, fugitives from justice cases, bail motions, Nebbia hearings, the ethics involved in these hearings and so much more. This is a “must-attend” program for all attorneys practicing in criminal motions court.

**How to Handle Social Security Disability Continuing Disability Reviews**
Fri., 7/19/19 - 12:30 - 1:30 p.m. (1 SUB)

Hosted by the Social Security Disability Committee

This practical lunch program will examine Social Security Disability Continuing Disability Reviews (CDR); explain the CDR legal standard and how it differs from initial determinations; describe the CDR process and provide practical tips for handling CDR cases.

**Ethics and Malpractice Avoidance**
Tue., 7/23/19 - 9:00 - 11:15 a.m. (2 ETH)

Presented by the Insurance Programs Committee and USI Affinity

Attend and earn a discount on your malpractice insurance, advised and administered by USI Affinity. The discount does not apply to part-time policies.

This program will provide guidance to attorneys regarding how to protect themselves and minimize their chances of being sued for malpractice or being subject to other ethical issues. Panelists will address the primary reasons why attorneys are sued, the stages of a representation where attorneys get into trouble, practical steps an attorney can take to minimize risk, as well as professional liability insurance, which is critical in protecting the law firm and the attorney in the event of legal malpractice.

**Settle Down: Recent Trends in Employment Arbitration**
Tue., 7/23/19 - 12:30 - 1:30 p.m. (1 SUB)

Co-hosted by the Alternative Dispute Resolution and Labor and Employment Law committees

Last year the U.S. Supreme Court issued a landmark decision in Epic Systems Corp. v. Lewis, 138 S. Ct. 1612 (2018), holding that class action waivers contained in arbitration agreements, including agreements between employers and their employees, are permissible and enforceable. Basically, the Federal Arbitration Act can override the NLRB provisions in allowing arbitration and precluding class actions. What does this all mean for employers and employees moving forward? Attend this program to hear the panel’s examination of the recent trends in employment arbitration after Epic Systems. Receive practical tips and guidance for alternative dispute resolution in employment cases.

**VIDEO ENCORE - Construction Accident Investigation 101**
Wed., 7/24/19 - 12:00 - 2:15 p.m. (2 SUB)

This video-encore program will provide attendees with an opportunity to obtain insight regarding construction liability matters. Panelists will offer guidance regarding how to approach a construction case and what issues may arise during litigation. Experienced panelists will address application of Occupational Safety and Health Administration regulations; contract; statutory employer and borrowed servant issues; what to ask for depositions, discovery requests and preservation letters; and many other issues using case studies and examples.

**Bridge the Gap**
Tue., 7/30/19 - 9:00 a.m. - 1:15 p.m. (4 ETH)

The newly updated Bridge the Gap program is intended to give all newly admitted Pennsylvania attorneys the “know-how” that 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 attorneys admitted to practice law.

**VIDEO ENCORE - The New Title IX Regulations and Their Expected Impact**
Wed., 7/31/19 - 12 - 2 p.m. (2 SUB)

This video-encore program will provide an overview of the new Title IX regulations from the U.S. Department of Education and analyze their anticipated impact on all levels of education, from elementary to post-secondary. After a brief presentation summarizing new regulations, which are expected to be approved shortly, panelists explore how the new regulations will change schools’ enforcement policies and handling of Title IX-related investigations and cases.

*Additional courses may be added within the month.*

**TO REGISTER** Visit the CLE page at PhiladelphiaBar.org
The First Step Act passed by sweeping majorities in both the House and Senate, and was passed into law on Dec. 21, 2018. Its enactment serves as a step toward the attainment of reformative justice throughout America. Keith Donoghue, assistant director of the federal appeals office, discussed the First Step Act and its implications for prison and sentencing reform across the country at a CLE hosted by the Criminal Justice Section on May 23. The act provides for new evidence-based programming in federal-based programs designed to reduce recidivism and to counter drawbacks from punitive measures enacted in the 1980s.

Under Sections 841 and 846, which address attempt and conspiracy to distribute illegal substances, the three-tier penalty structure was discussed. Under the first tier, defendants are automatically subjected to a 10-year minimum sentence if certain thresholds are met, regardless of mitigating circumstances. However, certain minimum sentences have now been reduced by five years (from 20 to 15), and, under the secondary statutory threshold, life sentences are reduced to 25 years. The definition of qualifying predicates was changed, although this did not affect any baselines penalties.

The second tier of the penalty structure is triggered by a lower threshold of drugs; its baseline penalty is a five-year sentence, and its maximum penalty is a 40-year sentence. The third tier was met with no changes, and there are no mandatory penalties. Additionally, there are no changes to penalties with qualifying predicate cases. Donoghue said that it is important to note that this legislation did not change the definition of what qualifies a predicate.

The act established more lenient criteria for the defendant’s safety valve eligibility; if the defendant meets these criteria, a mandatory minimum sentencing is no longer required. Previously, the defendant was only allowed to maintain one point in their criminal history record, but they may now be allowed to maintain up to four points. One-point priors, in which the defendant served fewer than 60 days in prison or endured probation for any length of time, do not count toward this total. Two and three-point offenses do count toward this total. Under the charge of aggravated assault, a defendant may still apply for a safety valve if their offense did not maintain force as an element.

The act altered terms for what may constitute a serious drug felony. The felony must require trafficking conduct, and simple possession does not qualify. The offense must be punishable by more than 10 years, and it must meet the criteria established for the definition of a controlled substance. Some former statutes were made retroactive under the act, such as 2010 legislation regarding the possession of crack cocaine. The act also provided for the defendant’s ability to acquire earned time credits, which may potentially decrease the duration of a federal sentence. There are, however, 68 categories that are excluded from this provision.

Donoghue said the act has evidently proven itself as a powerful countermeasure toward former draconian punitive policies. It will hopefully continue to promote and spread such prosperous standards.

Fionna Farrell is a graduate of Central High School in Philadelphia.
#MeToo Legislative Update

**By Mary LeMieux-Fillery**

On May 28, the Women’s Rights and...
The Way Forward After Wayfair

By James Vandermark

Last year, the U.S. Supreme Court issued its decision in South Dakota v. Wayfair, Inc., overturning more than 50 years of jurisprudence that prevented states from requiring businesses to collect sales taxes unless they had a physical presence in the state. To address the impact of Wayfair on Pennsylvania and Philadelphia, the Tax Law Section presented “The Way Forward After Wayfair” on May 29. The program was presented by Frances Ruml Beckley, revenue chief counsel for the City of Philadelphia; Jennifer Weidler Karpchuck, senior counsel at Chamberlain, Hrdlicka, White, Williams & Aughtry; Matt Melinson, partner at Grant Thornton; and Cheryl Upham, member at Cozen O’Connor.

Prior to Wayfair, the U.S. Supreme Court consistently required a business to have a physical presence in the state before it could be considered to have substantial nexus with the state and be subject to sales and use taxes. This allowed many Internet retailers, such as Wayfair, to sell goods in a state but avoid the obligation to collect sales taxes. As Upham addressed, this “created market distortions…where brick-and-mortar businesses were being punished…[and] big companies were able to avoid the burden.”

Despite decades of U.S. Supreme Court decisions, South Dakota decided to challenge the physical presence requirement and enacted legislation that required out-of-state retailers selling goods in South Dakota to collect sales taxes. Melinson said that South Dakota knew the legislation would be challenged, and it did so with the “express and open intent to get to the U.S. Supreme Court.” This is exactly what happened, and the court upheld South Dakota’s law. While the four dissenting justices believed Congress should address the issue, all nine justices agreed that a physical presence test was not the correct test for determining which businesses should be required to collect sales taxes.

Several states have now enacted laws like the sales tax nexus legislation in South Dakota. Karpchuck says that many of the laws have both a monetary threshold and a minimum transactions threshold. Pennsylvania, however, only has a monetary threshold of $100,000 and does not have a minimum transaction threshold. Pennsylvania also requires remote sellers with sales over $100,000 in Pennsylvania to collect sales taxes or report their sales to the Revenue Department.

The City of Philadelphia imposes a business income and receipts tax, which includes a gross receipts portion. After Wayfair, the city updated its regulations for BIRT and incorporated a $100,000 threshold. Beckley said the city’s economic nexus standard is based on “the theory that the vast majority of people that succeed at selling $100,000 in Philadelphia have purposefully availed themselves of the market” and therefore should be taxed in Philadelphia.

Educational Rights for All: A Plaintiff’s Perspective

By Elisa C. Advani

Landmark cases can effect change nationwide for generations, but we do not always consider how they affect the families of the named plaintiffs. The Civil Rights and Legal Rights of Persons with Disabilities committees co-hosted a program about how impact litigation affects the daily lives of plaintiffs and their families on June 12. Kate Falkowski spoke about her family’s involvement in several landmark cases, including Halderman v. Pennhurst, PARC v. Commonwealth of PA and Falkowski v. Greenwich Home for Children. The lawsuits were ever-present in her upbringing, and she offered a unique perspective on the things attorneys should consider when representing families and individuals in impact litigation.

When we think about educational rights for persons with disabilities, so often, we are aware of the end result but not always aware of the individuals who suffered through the old system and were brave enough to challenge the status quo. Falkowski talked about how her parents wanted all of their children to receive an appropriate education, regardless of physical and mental disabilities. They were not seeking fame and fortune; they were seeking justice. Falkowski’s mother, who had served in World War II, refused to institutionalize her children in the Pennhurst home. “The condition of those types of homes was not unlike the concentration camps in WWII,” Falkowski said. Her disabled brothers were denied education and habilitation based on their not having reached a mental age of five. They were plaintiffs in PARC, where the court ruled that it was unconstitutional to deny children up to age 21 a free public education. The case created three fundamental educational rights: the right to a free and appropriate education, the right to education in the least restrictive environment. The plaintiffs on the frontlines reap the rewards. Attorneys need to do their part in preparing litigants for the toll that a lawsuit can take on their lives.

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launched in November 2018. Now, anyone with internet access can see how a school has performed on various career readiness indicators and in relation to other schools.

It looks like this and many other PDE initiatives to ensure equity across all school districts, Rivera said schools are moving away from the decades-old “college for everyone” model to one more tailored to students’ needs, including the help Chancellor Fedullo provided in support of this event,” said Sheilah Vance, chair of the committee.

Michael Metz-Topolos (mmt@cohensegalas.com) is associate at Cohen Segalas Palladino & Greenball & Furgal PC.

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including Equifax, Under Armor, Marriott International, Wendy’s and Toyota. Cyber security is something that all organizations need to take seriously.

The panelists said that organizations need to be proactive in their preparation for possible cyberattacks. Organizations should complete a risk assessment to learn about their cyber security program, how well it could defend against an attack and how effectively they can respond, as well as searching for vulnerabilities in their system. Phishing e-mail training is very effective for all organizations, as well as having a system in place to keep track of current phishing scams and attacks. Lastly, it is important for organizations to frequently back up their entire systems to preserve precious data in the event of an attack.

Karen M. Mascheke (Karen.Maschke@wilsonelser.com) is an associate at Wilson Elser Moskowitz Edelman & Dicker LLP.

Wayfair
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The panel said they believe that more states will enact nexus legislation to impose sales taxes on remote sellers. It is likely that some states will try lower thresholds or seek retroactive enforcement, which will likely lead to further litigation over the threshold requirements for nexus.

James C. Vandermark (vandermarkj@white-andwilliams.com) is an associate at White and Williams LLP.
PRO BONO SPOTLIGHT - GOOD SHEPHERD MEDIATION PROGRAM

Facilitative Mediation and Client Communication

By William F. McDevitt

Communication is the central issue of every dispute. Most of the time, my litigation clients no longer speak with their “adversaries” except through pleadings, written discovery and depositions. Before their lawsuit, litigants might have been close friends, business partners or coworkers. They may have known each other for decades, and they may have treated each other like family. Sometimes, litigants are family, a fact they only begrudgingly admit. Most of my civil cases involve people who no longer communicate with each other, except through their lawyers.

My mediation work is different, as facilitative mediation encourages communication. People arrive with a problem, as well as a relationship—parent/child, client/vendor, cohabitants, coworkers or neighbors. Connections are afforded equal or greater value than the outcome of the problem. This is true even when a change in the nature of the participants’ relationship gives rise to the problem at issue, as in the case of a divorce. Community mediation is about helping people navigate their connections with others in a deliberative way.

Facilitative Mediation

I came to the Good Shepherd Mediation Program through the Student Public Interest Network at Temple University James E. Beasley School of Law. The 24-hour basic mediation training satisfied my CLE requirements for almost two years, while teaching me skills, such as active listening, facilitating principled negotiations and consensus-building. I then apprenticed with experienced GSMP mediators who showed me how to foster mutual respect between participants. Now I am a volunteer mediator with GSMP and have handled a variety of assignments ranging from a harassment issue at a nonprofit organization to the shared custody of a former couple’s dog.

Mediations are conducted with two volunteer mediators and two or more participant “clients.” The mediators briefly describe the process, explain the confidentiality of the program and set guidelines to foster an open dialogue. Everyone has the chance to discuss their concerns and goals, both with the entire group and with the mediators privately. Mediators then focus the participants on their common interests and help brainstorm solutions. Often, participants agree on a written set of action points that help build trust and advance shared interests.

Client Communication

In facilitative mediation, the clients are in the driver’s seat. Unlike litigation, there isn’t a judge making decisions for the parties. Personal agency is retained as participants are encouraged to identify their common goals and choose their own solutions. Participants speak directly with each other, agree on a course of action and take control of their situation. After the mediation session is over, participants can continue to build on the work they have done.

While clients can return to GSMP for additional sessions, one goal of facilitative mediation is to show people they can respectfully speak to each other and resolve their own disputes. Helping people share their perspectives and reach consensus is the most satisfying part of my work as a GSMP mediator.

William F. McDevitt is a partner in the Philadelphia office of Wilson Elser Moskowitz Edelman & Dicker LLP. He can be reached at william.mcdevitt@wilsonelser.com.

Lessons For All Who Seek To Persuade

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Kirkus Reviews

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QUICK BITES: CRY BABY PASTA

Cry Baby Pasta: A Classic Queen Village Space Reborn

By James Zwolak

Until recently, my parents would host a festive, annual Fourth of July extended-family picnic on their lakefront front lawn near Syracuse, New York. We would feast on hot dogs, burgers and copious amounts of white-hued side dishes, ranging from mayo-engorged classic potato salads to mini-marshmallow-topped mystery casseroles and, occasionally, even a small green salad. Then one year, my cousin, Norma, brought a simple pasta-and-chicken dish that she lovingly called “chicken riggies.” It was the best name for an Upstate New York dish, ever.

So, when I read that riggies (the Rigatoni) was one of the signature dishes at the brand-new and seriously hyped Cry Baby Pasta at 627 S. 3rd St., I made a beeline with the wife and companions, “Nigel” and “Lola.” Owner Bridget Foy – rebounds with the wife and companions, “Nigel” and “Lola.” Owner Bridget Foy – rebounding from the horrible fire to her namesake South Street institution – and husband, Paul Rodriguez, have teamed up with chefs, David Gilberg and Carla Goncalves, of the NoLi’s former Koo Zee Doo to create one of the best new restaurants around. It is right up the street from Philly’s best bar, the incomparable O’Neals Pub. Perfect!

We started with cocktails. My wife loved her perfectly balanced and refreshing Aperol Spritz. My L’Avventura, with bourbon, Luxardo Amaro and bitters, was exceptionally smooth. Nigel’s Rosa Negroni was an interesting riff on the old standby, and a fitting compliment to the crispy marine goodness of the deep fried Frito Misto appetizer he and I inhaled. Lola’s straight-up vermouth simply hit her sweet spot.

Cry Baby’s appetizers are musts. The artichokes with parmesan and sweet balsamic were grilled to buttery perfection, and reminded me of trying them fresh in Siracusa (Sicily, that is, not my hometown). The wives barely let us sample their tart, tangy Arugula Salad with roasted grapes, gorgonzola and hazelnut dressing. The fluffy Meatballs filled with smoked ricotta are literally on par with Barbuzzo or Vetri’s well-loved versions. The Frito Misto is an affordable seafood “H-bomb” for only $13. Its flawlessly fried calamari, rock shrimp and smelts are a veritable fisherman’s delight, and my grilled Sardine bruschetta with roasted peppers was a rustic delight.

Cry Baby’s pastas and large plates are also amazing. They have gluten-free versions of all their pasta offerings. Gluten-free Lola adored her GF pasta with pesto. My wife’s “go-to” Spaghetti Cacio Pepe tasted just like when she had it in Rome; “really, really good.” Nigel and I thought his Roast Pork with crispy polenta, broccoli rabe and pork jus was a faithful rendition of the Italian stalwart. It was certainly very tasty, yet ultimately less remarkable than the exceptional pasta dishes that attract the customers in droves.

Like my chicken riggies. The Rigatoni is not for the spice averse. Its tender rigatoni with smoked chicken, cherry peppers and vodka sauce carry a sumptuous missile of heat that knocked the wives back in their seats after sample bites. Sublime but intense, this was the best pasta dish I have had in ages. Get it.

Given Cry Baby’s significant hype and understated excellence, this wonderful neighborhood addition should thrive in this moderately cursed location. Who knows, even the O’Neals crowd might even start going?

James Zwolak (james.zwolak@philagov.org) is a divisional deputy city solicitor in the City of Philadelphia Law Department.

QUICK TIP FROM USI AFFINITY

Inside the Lines: Scope Limitations and Legal Ghostwriting

As financial pressure from the Great Recession becomes the new normal and even the least tech-savvy Americans tackle most errands from behind a computer screen, consumers have cast a critical eye toward the traditional attorney-client relationship. For many, the cost of a full-service representation creates a barrier to any legal services at all, resulting in a growing army of pro se litigants who frustrate lawyers, exhaust court personnel, and seldom achieve their goals.

Enter the limited scope representation (“LSR”), often referred to as “unbundling,” “limited legal assistance,” or “discrete task representation,” where an attorney provides certain services and excludes others for an overall lower fee. This arrangement has long existed in the transactional realm, but has become increasingly common in litigation, particularly in family law, landlord-tenant, and small personal injury and property damage claims.

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Mark A. Aronchick, partner at Hangley Aronchick Segal Pudlin & Schiller, was named The Legal's 2019 Attorney of the Year.

Leonard A. Bernstein, partner at Holland & Knight, was recently named board president of the Philadelphia Ronald McDonald House by its board of directors.

Kelly Dobbs Bunting, shareholder at Greenberg Traurig LLP, was a presenter at the 2019 Society for Human Resource Management Conference & Exposition, one of the largest human resources events in the world, on June 24 in Las Vegas.

Frank Cervone, executive director for the Support Center for Child Advocates, was named the winner of the 2019 Kutak-Dodds Civil Prize from the National Legal Aid & Defender Association.

Charles Marion, partner at Blank Rome LLP, has been elected to serve as the new president of the Wharton Club of Philadelphia.

Neil Morris, chair of the Philadelphia Labor Group of the Regional Law Firm of Offit Kurman, was a presenter at the Pennsylvania State Association of Township Supervisors' Annual Conference in Hershey, PA on April 16.

“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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