File in Federal Court, Protect Immigrant Clients

By Lauren A. Strebel

The coming days and weeks will no doubt be challenging for immigration lawyers in light of President Trump’s executive order. To help attorneys navigate novel legal issues arising from the current administration’s stance on immigration, the Philadelphia Bar Association is providing a series of CLEs to address immigrant and refugee policy. The first course titled “Protecting Immigrant Clients: Filing Federal Court Actions” was co-hosted by the Immigration Law Committee and the Young Lawyers Division on Feb. 11. Panelists included Katelyn M. Hufe, partner at Gian-Grasso, Tomczak, & Hufe, P.C.; Wayne Sachs, partner at Sachs Law Group, L.L.C.; and Craig R. Shagin, member at The Shagin Law Group LLC. The most important message from the CLE: Attorneys who decide to tackle these new challenges are not alone. There are no egos involved in this type of litigation. Do not think you need to reinvent the wheel.

When it comes to filing a complaint on behalf of a client, the panel presented a series of practice tips, including: (1) if you know in your gut that your client’s rights are being violated, pick up the book, read the constitution, and match that up with the gut feeling you have; (2) the Universal Declaration of Human Rights, applicable treaties and covenants are great sources to cite in your complaint; (3) always document the efforts you make on behalf of your client – include every phone call, letter, etc.; (4) if you are not sure how to file a complaint in a particular jurisdiction...

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Parent Coordinators

Parent Coordinators continued from page 1

addition of a standard form order for the appointment of a Parenting Coordinator and a standard form for the recommendation of the Parenting Coordinator.

Parenting Coordination is a child-focused alternative dispute resolution process in which an attorney with appropriate qualifications (as defined in the Proposed Rule) assists in resolving minor custody disputes, first by attempting to help parties mediate their disputes, but if no resolution is possible, by making recommendations to the Court about such issues. Many of these minor issues are time-sensitive issues that often cannot be resolved in a timely manner by the Court system and the lack of resolution often serves to increase the level of conflict between the parties.

The pursuit of a court remedy creates family financial hardships, and requires parents to take time off from their jobs, which could be in jeopardy due to absences from the workplace. Parenting Coordination offers litigants access to a process that permits them to quickly air their grievances, and obtain timely resolution to their issues and diverting these issues out of the judicial system frees up valuable court time for other litigants so that other family law issues can also be handled by the Court more expeditiously.

The Supreme Court of Pennsylvania Domestic Relations Procedural Rules Committee has proposed Recommendation 155, calling for amendments to Pennsylvania Rules of Civil Procedure, Rule 1915.11-1, allowing for judicial appointment of a Parenting Coordinator to resolve parenting issues in cases involving repeated or intractable conflict between the parties affecting implementation of the final custody order. Recommendation 155 acknowledges the role the judiciary has in the custody process, with proposed amendments to Rule 1915.11-1 mandating that the appointing judge maintain a supervisory role over the recommendations of the Parenting Coordinator and calls for the adoption of a standard form order for appointing a Parenting Coordinator and a standard form for the recommendation of the Parenting Coordinator, providing a uniform practice across the Commonwealth.

“The Family Law Section supports this measure to restore the practice of attorneys acting as Parent Coordinators in Pennsylvania. If approved, this rule change will provide very troubled families another tool to resolve conflicts in a way that also reduces the already crowded custody docket,” said Richard B. Bost, chair, Family Law Section, sponsor of the resolution.

The Chancellor or a designee of her choosing will communicate the position of the Philadelphia Bar Association to the Domestic Relations Procedural Rules Committee and take such other steps as may be necessary to effectuate this Resolution.

To view the full resolution, visit PhiladelphiaBar.org.
Taking Action Through Advocacy, Partnership

By Deborah R. Gross

As we were again reminded on Feb. 24 at the #TakeActionPhilly convening, with nearly 600 people in attendance, Philadelphia’s legal community is truly amazing. The convening was led by a group of hardworking, dedicated, forward-looking attorneys that has been meeting weekly since December 2016 to organize, prepare for and address the serious issues expected to be faced by Philadelphians and beyond this year. This was a result of the overwhelming outpouring of attorneys asking how they can help some of our most vulnerable residents in response to federal and state policy changes.

With that being said, I want to give a shout out to Jenny Clarke, the executive director of the Public Interest Law Center, for her foresight to assemble this group, comprised of representatives from the following organizations: American Civil Liberties Union of Pennsylvania, American Immigration Lawyers Association, City of Philadelphia, City of Philadelphia Office of Immigrant Affairs, Community Legal Services of Philadelphia, Council on American-Islamic Relations, HIAS Pennsylvania, Mazoni Center, Nationalities Service Center, Philadelphia Bar Association and Public Interest Law Center. From there, an idea was hatched to have a series of convenings to better educate the members of our community on the current legal landscape; hear from individuals and groups impacted by the current situation; and offer up suggestions and volunteer opportunities. The first #TakeActionPhilly convening addressed immigration and refugee policy and was held at the Loews Philadelphia Hotel.

Pedro Ramos, the CEO of the Philadelphia Foundation, served as the moderator. Philadelphia Mayor Jim Kenney, City Solicitor Sori Tulante, Cathryn Miller-Wilson, Meredith Rapkin, Steven Larin and I addressed the importance and need for lawyers to be involved in protecting civil rights. The Philadelphia Bar Association has created a section of its website - www.philadelphiaBar.org/page/ChallengeAhead - that lists trainings, clinics and other volunteer opportunities for lawyers to volunteer; provides a place for attorneys to complete a volunteer form, which can be accessed by legal aid organizations; and includes relevant information and resources. This encompassing response came together in less than one month and the outpouring of support has been invigorating. Additionally, the Philadelphia Bar Foundation has created a “Special Circumstances Fund” to specifically provide an immediate infusion of resources due to special, unexpected circumstances.

In all of this was occurring, the Philadelphia Bar Association spoke out on behalf of judicial independence and against hate crimes, hosted a legal name change clinic, celebrated one year as a CLE provider with a special Chancellor’s Forum CLE on cybersecurity, held more than 50 Section, Division & Committee meetings, was introduced to the new Clerk of the Court of the U.S. District Court, and planned a series of upcoming Chancellor’s Forums. Next month, we will be hosting the following forums, all held at 4 p.m.:

- April 4 – District Attorney Candidates Forum (featuring seven candidates)
- April 18 – Superior Court Candidates Forum (in partnership with Pennsylvanians for Modern Courts)
- April 25 – Law School Deans Forum (featuring all six new local law school deans)

Additionally, please note that our Young Lawyers Division will host “Striking Injustice: The Bar Abides” - its annual fundraiser, benefitting the Philadelphia Bar Foundation - at 6 p.m. on April 27 at North Bowl in Northern Liberties, Philadelphia. Sponsorship opportunities are still available.

The Judicial Commission review process also began in February. Eric Weitz, Esq., chair of the Commission, is leading its 33 members, comprised of lawyers, non-lawyers and judges, every Friday afternoon through an intensive analysis of the judicial candidates’ applications. There are vacancies for the following:

- Philadelphia Municipal Court – 3
- Philadelphia Court of Common Pleas – 10
- Commonwealth Court – 2
- Superior Court – 4
- Supreme Court – 1

This doesn’t include the retention elections. We anticipate there will be more than 50 applications for the Commission to review this year. This review is dependent on the hard work of investigators who research at least 20 individuals who have worked with, against or for the applicant, analyze the applicant’s writing samples, and interview the candidate in his/her office. In February, there was a training session for 40 new investigators, who joined the existing team of 100 investigators. Five investigators are assigned per candidate. The investigative team makes a presentation to the Commission, after which the candidate also makes a presentation and then answers questions from the Commission. There is no discussion of the candidate’s position on issues. The Commission then has extensive discussions and based on 10 specifically delineated criteria makes a determination as to whether to recommend, highly recommend or not recommend the candidate. For the first time, the Philadelphia Bar Association is now releasing the Commission’s ratings on a rolling basis via social media and the Association’s website.

This entire process is nothing short of amazing. The Commission members take their responsibility very seriously and the integrity of the judicial system is foremost in their minds. It is important that the voting public can have confidence in our ratings and we need you to be our messengers.

Finally, the month concluded with the departure of Sara Woods, the executive director of Philadelphia VIP, the “hub of pro bono services since 1981.” Sara’s guidance, leadership and passion over the past 10 years changed the face and impact of VIP. She mobilized volunteers, created new sources of volunteers and funding, significantly increased the number of cases taken, clinics provided, and hours of volunteer services devoted. She created and fostered a wonderful culture of commitment by Philadelphia’s legal community and VIP’s staff. Her smile, friendship and support will be missed by many; especially me. Sara will be the executive director of Philadelphia Futures and I am sure they have no idea how extremely fortunate they are as she will make a significant difference to the lives of many.

Deborah R. Gross (dgross@kcr-law.com), of counsel to Kaufman, Coren & Ress, P.C., is Chancellor of the Philadelphia Bar Association.

Tell Us What You Think!

The Philadelphia Bar Reporter welcomes letters to the editors for publication. Letters should be typed. There is no word limit, but editors reserve the right to condense for clarity, style and space considerations. Letters must be signed to verify authorship, but names will be withheld upon request. Letters may be mailed, faxed or e-mailed to: Thomas E. Rogers, Senior Managing Editor, Philadelphia Bar Reporter, Philadelphia Bar Association, 1101 Market St., 11th floor, Philadelphia, PA 19107-2955. Telephone: (215) 238-6345. Fax: (215) 238-1159. E-mail: reporter@PhilaBar.org.
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MARCH CLE COURSES

How Any PA Tax-Paying Person or Entity Can Use Their State Tax Bill to Directly Invest in Quality K-12 Education
Thu., 3/2/17 - 12:30 - 1:30 p.m. (1 SUB)
This CLE will focus on the little-known legislative updates to the Pennsylvania Educational Tax Credit Program (EITC), and its related Opportunity Scholarship Tax Credit (OSTC) Program. Specifically, the CLE will address, the purpose and impact of educational tax credits, mechanics of how the educational tax credits work, differences between the EITC and OSTC programs, an explanation of the legislative changes to these laws, real-life examples and illustrations of impact of the legislative changes on you and your clients, as well as, the process for how any individual or business entity can utilize these tax credits.

March 2017 Probate & Trust Law Section Quarterly - Tin Anniversary: A 10 Year Retrospective of the PA Uniform Trust Act
Tue., 3/7/17 - 12:30 - 2:30 p.m. (2 SUB)
Hosted by the Probate & Trust Law Section
This CLE presentation examines how courts have applied various provisions of the Uniform Trust Act. Speakers review provisions regarding trust modification, non-judicial settlement agreements, trustee commissions, and more and explain the effect those decisions may have on trustees, beneficiaries and their counsel. Join your Probate & Trust Law Section colleagues for the first Quarterly of 2017 and hear how a decade of the Pennsylvania Uniform Trust Act has affected trusts and estates practice.

Navigating Language Access in Legal Proceedings
Wed., 3/8/17 - 12:00 - 3:15 p.m. (3 SUB)
Presented with the American Translators Association
Another CLE program in a series of Philadelphia Bar Association CLE programs that Prepare You to Take Action
As a fundamental principle of law, fairness and the fundamental right to justice, persons participating in a legal environment should be able to do so in a language they understand and all parties should be able comprehend one another throughout the proceedings. This CLE session will provide an in-depth look at what is driving the growing need for language access, why it is so important, how it is structured so as to achieve effective results and when it is required by law.

Mindfulness and the Law
Thu., 3/9/17 - 1:00 - 3:15 p.m. (1 SUB/1 ETH)
Joint CLE program presented by the Chicago Bar Association (CBA) and the Philadelphia Bar Association
Explore the practice of mindfulness and how it can benefit your life and your practice.
Learn what mindfulness is and how it can help you become a better lawyer. The speakers will provide tips to incorporate mindfulness into your day to increase productivity in your professional life and improve your relationships. The program will explore mindfulness and its relationship to practice forms, including trial practice, mediation, negotiation and oral advocacy, as well as fundamental tools for effective practice that include attention skills, listening skills, reflective capacity, empathy, emotional regulation and ultimately, decision-making.

Tips and Practice Tools from the Workers’ Compensation Bench, including a 2017 WCAIS Update
Fri., 3/10/17 - 12:30 - 2:30 p.m. (1 SUB/1 ETH)
Hosted by the Workers’ Compensation Section
In this lunchtime CLE program, Workers’ Compensation judges will provide practical guidance regarding the legal practices and procedures within their courtrooms. They will offer tips on the Workers’ Compensation Automation and Integration System (WCAIS) to help attorneys and their staff with the litigation process. The judges will discuss the September and December 2016 WCAIS updates, address the use of the tabs on the Claim and Dispute Summaries, and provide guidance on the use of the following communication tools: requests, judge communications and instructions from the judge. Finally, they will address the Rules of Professional Conduct as applied to the use of WCAIS.

Expungement Hearings Training (two dates)
Mon., 3/13/17 - 12:00 - 1:00 p.m. (1 SUB)
Hosted by the Young Lawyers’ Division
This expungement petition has been filed, now what? Once the expungement petition has been filed a hearing date may be set. During a contested expungement hearing, the judge will conduct a balancing test weighing the right of the petitioner to be free from the harm of keeping the arrest record versus the Commonwealth’s interest in preserving the record. Join your colleagues to receive step-by-step guidance as to how to prepare for and represent a client in an expungement hearing. This CLE training program serves as training for all volunteer attorneys willing to accept and represent a client in an upcoming expungement hearing.

Amendments to the Federal Rules of Civil Procedure – 1 Year Later
Wed., 3/15/17 - 12:30 - 1:30 p.m. (1 SUB)
Hosted by the Federal Courts Committee
In this lunchtime CLE, panelists will examine the impact these amendments have made in just 12 months. The program will focus on the following, among other topics: cooperation in e-discovery matters - how has the court been asked to participate to resolve problems; amended Rule 26’s Proportionality Standard; FRE 502(d) – the judges’ thoughts on the use of FRE 502(d); and Spoliation/Sanctions - has there been a decline/reduction in sanctions? Join fellow Federal Court practitioners to hear what lessons can be drawn from experiences under the new rules over the last year.

Conservatorship Law 101
Thu., 3/16/17 - 9:30 – 11:00 a.m. (1.5 SUB)
Hosted by the Real Property Section
The Philadelphia Bar Association and Philadelphia Association of Community Development Corporations (PCDC) collaborated to present this CLE program to provide an explanation of the provisions of the amended Abandoned and Blighted Property Conservatorship Law; examples of how the law has been used in Philadelphia since the 2014 amendments; as well as best practices for success in implementing the law into your practice.

For questions regarding Philadelphia Bar Association CLE, contact Director of Continuing Legal Education Tara D. Phoenix at 215-238-6349 or tphoenix@philabar.org.
PhiladelphiaBar.org March 2017 Philadelphia Bar Reporter

Which Way Do I(P) Go… Patent, Copyright or Other to Protect My Software?
Fri., 3/17/17 - 12:00 - 1:00 p.m. (1 SUB)
Hosted by the Intellectual Property Committee
An organization’s or product’s intellectual property is sometimes its biggest asset. This CLE program examines the intellectual property rights’ protection of software. Panelists will provide guidance regarding software protection by patent, software protection by copyright, as well as licensing and other contracts that may be used to protect software.

Ethics of Pro Bono Representation and the Naturalization Process
Mon., 3/20/17 - 4:30 – 6:30 p.m. (1 SUB/1 ETH)
Another CLE program in a series of Philadelphia Bar Association CLE programs that Prepare You to Take Action!
In a time where immigration law faces many uncertainties, naturalization is the best defense to deportation. This CLE course will focus on the ethics of pro bono representation and an overview of the naturalization process. The critical components of this naturalization training include benefits of citizenship, basic eligibility requirements, red flag issues, N-400 form preparation and follow-up, and fee waiver assessment and preparation. We will also cover communications with clients, competence, candor towards the tribunal, and appropriate termination of representation. Lori Alexander, program manager of immigration services and Jason Hernandez, asylee outreach coordinator, both of HIAS Pennsylvania, will offer practical guidance and instruction regarding these matters.

Family Law Training: Permanency Planning for Immigrant Families Facing Deportation
Tue., 3/21/17 - 10:00 a.m. – 12:00 p.m. (2 SUB)
Another CLE program in a series of Philadelphia Bar Association CLE programs that Prepare You to Take Action!
This CLE program provides training on something that has been coined, in other contexts, “permanency planning.” The experienced lawyer will learn the tools for assisting mixed status families where parents of minors are facing deportation away from their U.S. citizen children. Parents facing this prospect need to be able to ensure that someone will have legal authority to make important decisions on behalf of their children and that their children will be well cared for if they are not able to provide the care themselves. Kathryn Miller-Wilson, executive director of HIAS Pennsylvania and Stephanie A. Gonzalez Fernandez of Gonzalez Fernandez Law will offer practical guidance and instruction regarding these and other family law matters for clients for whom immigration status may be a concern.

Citizenship Training: Naturalization 101
Thu., 3/23/17 - 8:30 – 10:30 a.m. (2 SUB)
Held at Ballard Spahr LLP, 1735 Market St., 48th Floor, Philadelphia
Another CLE program in a series of Philadelphia Bar Association CLE programs that Prepare You to Take Action!
With recent changes to national immigration policies, many immigrants legally residing in the U.S. are anxious to complete the process of becoming U.S. citizens. The Philadelphia Bar Association, Ballard Spahr LLP and Esperanza Immigration Legal Services offer this CLE program to provide training for volunteer attorneys to enable them to help applicants complete the naturalization process. Mary R. Clark, executive director of Esperanza Immigration Legal Services, will provide an overview and materials on the naturalization process, including eligibility requirements, fee waiver applications, and barriers to naturalization.

Adjustment of Status Training
Thu., 3/16/17 - 3:30 – 5:30 p.m. (2 SUB)
Held at Blank Rome LLP, One Logan Square, 130 N. 18th St., Comisky Conference Center, Philadelphia
Another CLE program in a series of Philadelphia Bar Association CLE programs that Prepare You to Take Action!
Numerous changes to national immigration policies have prompted immigration advocates and the legal community to mobilize and prepare to assist individuals looking to become lawful permanent residents. This CLE program will provide training to assist individuals with the completion and filing of adjustment of status paperwork. The program will offer an overview of the Adjustment of Status (AOS) Application Process, eligible status and visa categories, intake procedures, including qualifying family members in the AOS process and filing the AOS packet.

Mediating Before the EEOC
Fri., 3/24/17 - 12:00 - 1:00 p.m. (1 SUB)
Hosted by the Labor & Employment Law Committee
Each year, the number of charges of discrimination filed with the U.S. Equal Employment Opportunity Commission (EEOC) continues to increase. Litigating these charges at the agency level and later in court is time consuming and costly. The EEOC offers a voluntary mediation program that provides an efficient and economical alternative to litigation. This CLE presentation will provide an overview of the EEOC’s voluntary mediation program. Attendees will learn the advantages and disadvantages of participating in the EEOC mediation program, as well as receive practical tips for both employees and employers for success in an EEOC mediation.

Philadelphia Lobbying Ordinance: An Ethics CLE for Real Estate Attorneys
Mon., 3/27/17 - 12:00 - 1:00 p.m. (1 ETH)
Hosted by the Real Property Section
This CLE program will review 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 will 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 or what are exempt.

Canon Law 101: The First Two Thousand Years
Thu., 3/16/17 - 3:30 – 5:30 p.m. (2 SUB)
Canon Law is the internal ecclesiastical law, or operational policy, governing the Catholic Church. Canon Law is the oldest continuously functioning legal system. Though strictly defined by the Code of Canon Law, the way that such church law is legislated, interpreted and adjudicated at times may vary. This innovative CLE program answers the questions, “What is Canon Law,” “where did it come from,” and “how does one become a canon lawyer?” Our featured speaker, who maintains both a civil and Canon Law practice, will provide guidance on Canon Law in today’s world and an understanding of the 1983 Code of Canon Law.

Equal Pay for Equal Work: State of the Legal Profession
Tue., 3/28/17 – 4:30 - 6:45 p.m. (2 SUB)
Hosted by the Women in the Profession Committee
Women currently earn 79 cents for every dollar a man earns. Female lawyers earn even less with partners earning 69 cents for every dollar their male counterparts earn. Join the Women in Profession Committee and the Labor & Employment Law Committee in discussing the state of equal pay for women in the workplace. Discussion will include female partnership rates and attrition, and a historical look at whether and to what extent improvements have been made. The panel will also examine legal protections and remedies available to level the playing field. Future legislative and policy developments in this current political climate will also be explored.

Effective Nonprofits and Board Promising Practices
Wed., 3/29/17 - 12:30 - 1:30 p.m. (1 SUB)
Hosted by the YLD as part of the Philadelphia Bar Foundation Board Observer Program
Are you serving on a Nonprofit Board or considering it? Learn what an attorney acting as a board member needs to understand about his or her legal and fiduciary duties and how to effectively advance the organization’s goals and mission. This CLE addresses the special issues facing lawyers who serve as board members, as well as provide best practices to improve board performance and productivity.

From Criminal Conviction to Civil Nightmare
Thu., 3/30/17 - 12:30 - 3:45 p.m. (2 SUB/1 ETH)
Hosted by the Criminal Justice Section
Another CLE program in a series of Philadelphia Bar Association CLE programs that Prepare You to Take Action!
This CLE program breaks down the civil consequences of a criminal conviction and analyzes the devastatingly negative impact these consequences can have on your client (and his or her family). The panelists examine remedies to counteract any potential negative consequences for people released from prison. Hear updates on substantive changes to the Commonwealth’s expungement laws and the effect convictions will have on current hot-button issues affecting your clients, such as, immigration status, welfare, housing, child custody, disability, professional licensing, etc.

*Additional courses may be added within the month.

TO REGISTER
Visit the CLE page at PhiladelphiaBar.org
Calculating Remedies in the Fallout of Apple v. Samsung

By Matthew S. Olesh

As a young attorney, it is oftentimes easy to miss the forest for the trees and forget about what our legal system is really about. Our system is designed to further the aims of truth and justice wherever possible. Occasionally we are presented with conflicting facts or versions of events, and it is the duty of the fact-finder to determine what holds up. Is the system perfect? Of course not. However, it is set up to allow our courts to do the best they can to carefully evaluate the matters that are before it based on actual evidence.

When I first heard the use of the phrase “alternative facts” to describe the current administration’s since-rebutted view of the crowd size at the recent inauguration, I had a number of reactions. One of my first thoughts, however, was the implication that this dangerous concept could have for our justice system and courts.

Our legal system is grounded in rules designed to present evidence that is reliable in hopes that it will allow us to arrive at one thing: the truth. There is a reason that we have so many rules of evidence, just as there is a reason why attorneys have ethical duties of candor. In situations where we are given conflicting versions of events, we want to be sure that the information being presented to the finder(s) of fact will support this quest for truth.

The notion of “alternative facts” threatens the very core of this. By definition (and through the example by which it was created), it allows for an alternate version of reality that is not only unsupported by evidence, but may in fact stand in stark contradiction to the evidence that actually exists. Although our legal system has procedural mechanisms to deal with these precise circumstances – motions for summary judgment, directed verdict, etc. – the backbone sustaining the concept of “alternative facts” – that something is a fact simply because someone in a position of authority says it is – still presents a danger to the quest for truth and justice our legal system is supposed to represent.

As a younger attorney, I have always tried to keep perspective on the big picture. We are advocates, hired to represent our clients’ interests, and we must do so zealously. However, we must also not lose sight of the fact that, at the end of the day, the job of our legal system is to judge the weight of the evidence and figure out what actually happened. Our quest as a profession is not for “alternative facts” – it is to seek out, and arrive at, facts. Facts that are supported by actual, reliable evidence.

Matthew S. Olesh (molesh@chamberlainlaw.com), senior counsel at Chamberlain, Hrdlicka, White, Williams & Aughtry, is chair of the Young Lawyers Division.

Calculating Remedies in the Fallout of Apple v. Samsung

By Brian A. Stickel

Since 2011, more than 50 patent infringement lawsuits have been filed in 10 countries, involving half of all smartphones sold worldwide in 2012.

On Jan. 25, the Philadelphia Bar Association’s Intellectual Property Committee presented its first Philadelphia Bar Association CLE program offering titled “Apple v. Samsung: Takeaways from the Smartphone Wars.” The program was presented by Committee Cochair Larry Ashery and a panel including Committee Cochair Roberta Jacobs-Meadway, member at Eckert Seamans Cherin & Mellott, LLC; Dana Smith, partner at EiserAmper LLP; and Gary Greene, licensed professional engineer and partner at Caesar Rivise, PC.

A awareness of design patents have increased dramatically due to the huge awards granted to Apple, Inc. in the recent cases, as well as the December 2016 Supreme Court ruling regarding components as “articles of manufacture” – one of the four principle categories of things that may be patented. The Court held that components of the infringing smartphones could be the relevant “article of manufacture,” even though consumers could not purchase those components separately (Samsung Electronics Co., Ltd. v. Apple, Inc. 137 S.Ct. 429, 436 (2016)).

The statutory basis for a design patent is that it must be new, “ornamental” and not obvious, whereas a utility patent’s basis that the article be new, “useful” and not obvious. However, the most important difference between a utility patent and design patent in terms of infringement is that the damages available to the patent holder. A utility patent holder may be entitled to lost profits or “reasonable royalties,” calculated to be the reasonable amount that the infringer would have to pay to license the design. Design patent holders have an additional remedy: they may be entitled to the infringer’s profit as it relates to the patent.

Dana Smith notes that this creates difficulty in calculating the damages to be sought in infringement cases. When the patent is only for a small component of the smallest saleable unit, how is its value determined? Relating value to manufacturing cost may be unworkable; a small infringing piece may cost little to produce, but increase the value of the unit greatly. In Apple, the Supreme Court conspicuously declined to provide any test for determining relative values of infringing components. Case law requires damages to be apportioned to the value of the patented feature, but specified damages from the value involve a “level of granularity below what’s in financial records,” Smith said.

Moving forward, damages analysis must require increased reliance on technical expert opinion to determine the relation of the component to the whole, with factors such as whether it is a “key component” or whether the component is the feature driving demand. Jacobs-Meadway said, “No one buys a car for the stereo.”

Ashery said that he hopes that the Circuit Court will provide guidance as to measuring value upon remand; as of yet, calculation of damages is uncertain and difficult in the fallout of the smartphone wars.

Brian A. Stickel (bastickel@gmail.com) is an attorney in Philadelphia.

CLE Topic Idea?

To submit a topic idea for a CLE course or volunteer to be a course planner or presenter, contact Director of Continuing Legal Education, Tara D. Phoenix, at 215-238-6349 or tphoenix@philabar.org.
New Administration Brings New Tax Implications

By Enrique Marquez

It is that special time of year when we hurry to our accountants with all of our receipts and pray to the tax gods for a favorable tax season. One thing you might consider this year is how our tax system might look completely different in a few years’ time. The changes that can potentially be implemented are still not certain, but we have the proposed changes from President Trump’s camp on one hand and then the House of Representatives’ “blueprint” plan on the other. Both plans are similar to an extent, but differ in key areas. If either plan is adopted, it certainly means we would have a system of taxation that would be notably different.

The Business Law Section’s LLCs and Other Unincorporated Entities (LOUIE), Mergers & Acquisitions and Venture Capital & Private Equity Law Committees hosted a Philadelphia Bar Association CLE titled “Analysis of Changes to Federal Taxation of Businesses” on Feb. 1. The program was presented by Saba Ashraf, partner at Ballard Spahr LLP, and Joan C. Arnold, partner at Pepper Hamilton LLP.

While both plans grow increasingly similar thanks to necessary refinements of the Trump plan, both seem in favor of tax cuts and broadening the tax base. Among the Trump plan, both seem in favor of tax cuts and broadening the tax base. Among these plans are similar thanks to necessary refinements of the Trump plan, both seem in favor of tax cuts and broadening the tax base. Among these plans are similar thanks to necessary refinements of the Trump plan, both seem in favor of tax cuts and broadening the tax base.

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While both plans grow increasingly similar thanks to necessary refinements of the Trump plan, both seem in favor of tax cuts and broadening the tax base. Among the most likely to be impacted is the business community. Both the blueprint and Trump plan provide for “immediate expensing.” Under the blueprint, businesses will be able to immediately deduct costs of business investments. For example, a company can buy equipment and deduct all depreciation in year one. Trump’s proposal is similar. Companies engaged in manufacturing in the U.S. may elect to immediately expense “capital investments.” However, this election would require the company to forgo the deduction for interest expense.

A key component of the blueprint plan is the “so-called” border adjustment tax. Effectively, this is a tax on imports and exemption of exports. Application of this adjustment would move corporate income tax from an origin-based tax to a territorial-based tax. This sounds like good news for businesses if everything is bought and sold in the U.S. However, in an increasingly global corporate environment, a large amount of U.S. corporations might find themselves having to pay this tax. This rings true especially in the retail sector.

Anyone who watches the news is well familiar with the gridlock on Capitol Hill these days. It begs the question, how is something so pivotal to be passed? The Trump plan would have such impact. However, there is a certain 1974 rule that Congress abides by in special circumstances. This is the Budget Reconciliation rule. In order to use this, the proposed bill has to have a budgetary impact. There is no doubt that any tax plan would have such impact. However, both the House and the Senate must introduce, almost simultaneously, the same budget resolution. If all these conditions are met, only a simple majority would be needed to pass the bill and there would be no filibustering.

Of course, there is much more to all of this. No concrete conclusions can be ascertained at the time and we will have to tune in to the reality show of tax reform to see what gets voted off the island.

CLE Topic Idea?
To submit a topic idea for a CLE course or volunteer to be a course planner or presenter, contact Director of Continuing Legal Education, Tara D. Phoenix, at 215-238-6349 or tphoenix@philabar.org.

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March 2017 Philadelphia Bar Reporter 7
Art of Dodging Hidden Barriers to Mediation

By Mary-Kate Martin

“Mediation advocacy is different than court advocacy,” said Bennett G. Picker, former Chancellor and senior counsel at Stradley Ronon Stevens & Young, LLP. Picker was a panelist at a Philadelphia Bar Association CLE hosted by the Alternative Dispute Resolution Committee on Feb. 2 titled “Effective Mediation Strategies through the Lens of Mediator, Advocate and Client.” Picker was joined on the panel by Francine F. Griesing, managing member, Griesing Law LLC, and Anthony S. Volpe, Volpe and Koenig, P.C.

Picker said that too often attorneys mediate the same way they litigate, and “It’s a disturbing trend.” Mediation is not limited to legal rights and dollar amounts. Instead, mediation should address the underlying interests of the parties. For instance, part of the resolution of a medical malpractice case could be an apology; an employment case might require a great reference; or maybe the parties would be satisfied with pooling patents in a patent infringement lawsuit.

It is essential to uncover the non-monetary hidden barriers and interests before mediation, and Picker identified four of those invisible barriers that can contribute to failed mediations. The first barrier could be a disconnect between the lawyer and the client, such as overreaching client expectations, or failure on the part of the attorney to “deliver the bad news.” He said that “in negotiations, expectations are everything.” The second invisible barrier can be disagreements between stakeholders on one side of the litigation. Emotional barriers, and cognitive and psychological barriers round out the remainder of the four. For instance, Picker spoke about the inherent advocacy bias because it is “impossible for anyone with an interest in the outcome, or their lawyer, to make an objective assessment in a case.”

Volpe approached mediation from an advocate’s perspective, saying that “it takes a lot of client preparation … to have a meaningful mediation.” He suggested planting “the seed for what’s going to happen at the mediation.” “You don’t want the client to go in and be fixed on a certain resolution” he said, rather the client should be encouraged in advance to have an open mind and be flexible. He emphasized the importance of understanding the “buried issues” such as residual animosity among parties from the result of previous dealings.

Analyzing mediation from the standpoint of the client, Griesing said “nothing prepared me for the experience of being the client in a mediation.” Considering relationships among parties, and personal agendas can help prepare for mediation. She said that advocates do not always appreciate “how absolutely terrified most clients are, if they are real people with real problems, it’s their life, it’s their business that’s at stake.” A client may not immediately understand that mediation can create options, rather than narrow options for the parties, and stress of mediation can be reduced by an abundance of preparation.

To ensure readiness and preparedness, Griesing said that she “always prepares a settlement agreement in advance” of mediation so that she can refer to the client’s terms in writing. She said that the “client is incredibly vulnerable,” and that often people who have something at stake simply need to be heard.

Mary-Kate Martin (MaryKate.Breslin@phila.gov), divisional deputy city solicitor, City of Philadelphia, is editor-in-chief of the Philadelphia Bar Reporter.
Measuring Impact – A Truly Innovative Idea

By Thomas A. Brophy

THE CHALLENGE

In my role as president of the Philadelphia Bar Foundation, I am often asked to describe the impact of our work. Not just “What do you do?” but also “What is achieved?”

I know that I am impacted on a personal level when I hear of the successful outcomes obtained for the disadvantaged through the hard work of legal aid and pro bono advocates supported by the Foundation. It is rewarding and inspiring when I hear of how children with disabilities are helped by legal aid lawyers to receive the instruction needed to succeed in school. It is remarkable to learn of families who are confronted with the possibility of being evicted from their homes and forced to live on the street who are then helped by pro bono attorneys to obtain or maintain safe and stable housing.

These amazing efforts deliver justice, opportunity and hope for people in Philadelphia struggling with poverty, abuse and discrimination. Their examples strengthen my desire to sustain and expand the access to justice programs in our community. We should all be highly driven to ensure that the full range of nonprofit legal aid organizations are available for people in need. But currently only one in five low-income individuals and families receive the civil legal assistance essential to address crucial problems affecting their lives.

To be able to generate greater support for the legal services sector, the Foundation is committed to more fully explaining the powerful impact of legal aid and pro bono work. To go beyond success stories, we need to improve our ability to describe the scope of this work, the depth of its impact, and the measurable benefits achieved for clients and the broader community.

THE ANSWER

For these reasons, the Foundation has embarked on a truly innovative project called the “Economic Benefits Calculator” (patent pending). We are working to develop the EBC with leading university researchers and information technology experts. This project will allow us to produce more thorough answers and detailed calculations in response to fair questions such as “What is the real impact of legal aid?” or “Can you quantify the benefits of this work in different scenarios?”

Here is how the EBC will work – The benefits of legal services can be quantified and calculated through the use of mathematical formulas designed after peer-reviewed and published research. When legal aid or pro bono clients achieve a successful result, the affected individuals and families improve their life circumstances and avoid harmful outcomes. This positive social and economic impact multiplies as the benefits received directly by the clients ripple through the community in both the short and long terms.

Research throughout the country in recent years has produced formulas to show the dollar value of these client outcomes in cases involving education, family violence, housing, immigration and in many more areas.

For example, when a legal problem is successfully addressed, both the client and the whole community benefit from the resulting improvement in family stability, safe housing, increased income for food and clothing, and more. These factors can be quantified and incorporated into impact formulas. It is noteworthy that a legal aid case on one issue, such as domestic violence, often has wide ranging benefits for multiple aspects of the lives of the people involved, including the health of all family members, the education of their children, and the ability of the parents to maintain employment. Calculations for the impact of legal services take these various factors into consideration, to the extent supported by credible research and available data.

THE DETAILS

As being developed by the Foundation, the EBC will be an easy-to-use, self-help website for nonprofits, foundations, law firms, government agencies and other businesses. We are developing this truly innovative tool to make it available without charge to nonprofit organizations. The EBC will initially focus on calculating the impact of legal aid and pro bono efforts, but will have extensive applications over time.

The EBC will automatically translate statistics about client outcomes into data analysis, graphs, charts and narrative summaries on the impact of these services. The EBC is based on published, up-to-date, and verified research, so the results are accurate and reliable. An organization will be able to enter its own service data into the EBC website and download the economic benefit calculations for its work. Each nonprofit can then use this information in grant proposals and reports, press releases, advocacy materials, testimony, board reports and annual reports.

In this way, the EBC will help the Foundation and its donors to better understand the long-term results of their investments. The EBC will also help individual nonprofits to more effectively demonstrate their outcomes, develop their programs, manage their staffs, raise funds, perform advocacy and communicate about their work. The EBC will encourage nonprofits and funders to work together to better understand how organizational impact can be further increased by expanding productive programs and replicating successful staff efforts. In addition to being a practical tool, the EBC will spur new academic studies on these issues.

THE INITIAL TEST

The Foundation has tested the first limited model of the EBC, as part of our proposal to the Philadelphia Redevelopment Authority of the City of Philadelphia for constructing an Equal Justice Center – another innovative project of which I am quite proud. Overall, the legal aid nonprofits that would be co-located in the Equal Justice Center have an annual social and economic impact totaling at least $200 million. This represents the annual individual and community benefits resulting from legal services to clients who would be served through organizations operating in the building. You can read our “Social Impact” document here – www.PhilaBarFoundation.org/EJCImpact.

Thank you for supporting the only foundation in Philadelphia solely dedicated to our city’s legal services community. Please let me know if you are interested in participating in the EBC’s Advisory Group. Check out all of our various programs at www.PhilaBarFoundation.org.

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

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“Being part of the community and living as independently as possible are among the most important values and goals shared by people with disabilities,” said Brooke Schipporeit, Regional Housing Coordinator at the Self-Determination Housing Project of Pennsylvania (SDHP). Schipporeit presented a Philadelphia Bar Association CLE hosted by the Legal Rights of Persons With Disabilities Committee on Feb. 7 titled “Disabilities and Affordable Housing 101.” In Philadelphia, under the Fair Housing Act, it is illegal for housing providers to discriminate against tenants for various reasons, including physical disability. The SDHP is a statewide non-profit organization that strives to empower persons with disabilities and older adults with their housing choices. The SDHP’s mission is to educate, provide information and referrals, promote state and local partnerships and coalitions, and increase the stock of affordable and accessible housing.

By definition, “affordable housing” means the rent plus utilities is equal to or less than 30 percent of the adjusted household income. The U.S. Department of Housing and Urban Development provides public housing, in addition to vouchers and subsidies to privately owned housing developments.

To live independently, people with disabilities need accessible homes that often require reasonable modifications and accommodations. A reasonable accommodation is a change in policies, practices or services to enable a person with a disability equal opportunity and physical access to use and enjoy a dwelling. “For example, waiving a no-pet policy for a service animal or providing a closer parking space,” Schipporeit said. Reasonable modifications are structural or physical changes to the housing. Schipporeit talked about some resources for home repairs and modifications, including the Senior Housing Assistance Repair Program and the Adaptive Modifications Program. Disabled individuals in particular should explore home-ownership versus short-term rentals since their disability may require home modification. "A great resource for information about home-ownership assistance is available on HomeHUB’s website, www.homehubpa.org,” Schipporeit said.

Other tools for finding affordable housing that Schipporeit mentioned included PAHousingSearch.com, GoSection8, and the Pennsylvania Housing Finance Agency. The Office of Homeless Services also offers emergency services such as rental and utility bill delinquency assistance, and security deposit or first month’s rent assistance. Schipporeit also talked about services and programs to help veterans in need of housing assistance. “When it comes to finding housing, persons with disabilities face a frustrating array of barriers,” Schipporeit said. Help is available through various resources; they just need to be accessed.

Elisa C. Advani (eadvani@paworkinjury.com), associate at Martin Law LLC, is an associate editor of the Philadelphia Bar Reporter.

Making Smart Decisions for Living Independently

CLE Topic Idea?
To submit a topic idea for a CLE course or volunteer to be a course planner or presenter, contact Director of Continuing Legal Education, Tara D. Phoenix, at 215-238-6349 or tphoenix@philabar.org.
Medical Settlements: Maintain Compliance With CMS

By Leah Cilo

Workers’ compensation attorneys should be mindful that Section 1862(b)(2) of the Social Security Act directs that Medicare payments may not be made for medical items or services to the extent that the payments have been made under state workers’ compensation law. These compensation entitlements become an acute issue in situations where claimants have “a reasonable expectation” of enrolling in Medicare within the next 30 months, and the parties are directed to seek a Medicare set-aside arrangement (MSA) approval from the Centers for Medicare and Medicaid Services (CMS) when they compromise their claims for a lump sum settlement.

Furthermore, under federal law, these MSAs be must accounted for and managed into the future.

On Feb. 10, Benjamin M. Basista, shareholder at Dickie, McCamey & Chilcote, P.C., and Theodore Smyk, Ametros Financial Inc., presented a Philadelphia Bar Association CLE about Medicare compliance and MSAs titled “Medicare Compliance Tips and Practical Guidance for Attorneys and Professional Administration of MSAs and Medical Settlement Funds.” Basista, who specializing in the field, advised that attorneys should first establish the Medicare benefit status of a claimant and that this information is most easily obtained by having the individual go to SSA.gov, set up an online account, and printout a benefit statement. He also said that a denial letter from Social Security can also serve as a benefit-status verification.

Basista said that in October 2015, CMS began requiring insurers to perform monthly benefit searches to determine if a Medicare lien exists and then report their findings to the federal government on a quarterly basis. Thus, the benefit status is also obtainable from the insurance adjuster.

Basista pointed out that there are now different types of Medicare, including private advantage plans and that these organizations are more aggressive about pursuing liens than CMS. One area where they are looking for liens is in denied claims and most states, including Pennsylvania, recognize payment liability when an insurer pays any medical bills.

If medical bills have been paid in error on a claim that is Medicare eligible, the parties can craft a settlement agreement where the claimant “reimburses” the carrier for the medical bills that it paid from the settlement amount. Basista said that Medicare issues should never kill a settlement, because they can always be negotiated and that Medicare is known to agree to lessening its lien when a claimant’s settlement is severely reduced by it.

Basista said that even in situations where a claimant is not Medicare eligible, the settlement agreements should still state that its interests were considered and that because of the claimant’s age and life situation, Medicare does not have an operative concern in this matter.

Rounding out the presentation, Smyk spoke to the attendees about Ametros Financial, a management service for the professional administration of post-settlement funds that will set up bank accounts and maintain reporting compliance with CMS. He also said that the service has a network of doctors and pharmacies and can obtain discounted services for individuals who contract for their services.

Leah Cilo (lcilo@paworkinjury.com) is an associate at Martin Law LLC.

To submit a topic idea for a CLE course or volunteer to be a course planner or presenter, contact Director of Continuing Legal Education, Tara D. Phoenix, at 215-238-6349 or tphoenix@philabar.org.
Immigrant Clients

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teon, call the court and ask; and (5) always make sure the defendant gets notice of the complaint.

Do you have a client waiting for their naturalization determination? If your client has had their interview but no determination has been made, and 120 days have passed, then you can request a hearing before a district court under 8 USC 1447(b). Shortly after filing the request, you can expect a U.S. attorney to contact you. If your client is still waiting for their interview after an unreasonable amount of time, file a complaint for a writ of mandamus against United States Citizenship and Immigration Services in district court detailing everything—the length of the delay, all of your client’s qualifications and the statutory requirements. Be creative with your arguments and be prepared to amend your complaint if the USCIS comes back with an excuse for its delay.

Is your client currently detained? You will need to file a petition for a writ for habeas corpus. File the action in the federal district court where your client is physically detained. The most important person named in the lawsuit is the immediate custodian—the warden of the jail where your client is held. However, you should also sue the district director, attorney general and head of the Department of Human Services. When the government files that the wrong parties are named, push back. Argue (and find the supporting documents) that there is an agreement between DHS and the prison and that as a result, DHS controls where your client goes.

The panel acknowledged that everyone is afraid. Clients are afraid to travel, to be separated from their families, to go to work or even attend school. Attorneys are afraid to file petitions that might initiate additional proceedings against their clients, or to give the wrong advice. The solution: the more that attorneys can empower themselves, the better their services will be. If you are trying to find a way to get more involved in immigration law, reach out to the American Immigration Lawyers Association or contact the Pennsylvania Immigration Resource Center.

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CLE Topic Idea?

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38TH ANNUAL PHILADELPHIA BAR ASSOCIATION 5K: REGISTRATION OPEN

Registration is now open for team and individual entries for the 38th Annual Philadelphia Bar Association 5K benefitting the Support Center for Child Advocates, celebrating its 40th Anniversary in 2017, to be held on Sunday, May 21, 2017 at Memorial Hall in Fairmount Park.

Online registration for individuals is accessible through Friday, May 19 at www.phillybarcharityrun.com. The deadline for mail-in registration forms, which can also be downloaded from the site, is Friday, May 12. Applications and information for the Caesar Rivise PC-sponsored Legal Team competition may also be obtained online and downloaded at www.phillybarcharityrun.com. The deadline for receiving team registrations is also May 12. Should you have any additional questions regarding team sign-up please contact Michael Berkowitz at mberkowitz@caesar.law.

The event includes a 5-kilometer (3.1 miles) race and a 5-kilometer walk. Anyone may run or walk as an individual in the Open Competition. Members of the Philadelphia Bar Association will be included, at no extra charge, in the Bar Competition in addition to the Open Competition. There will also be a free 200-yard non-competitive dash for children 5-10 years old sponsored by Buchanan Ingersoll & Rooney PC. Registration for the kids’ dash will be on the day of the event.

The entry fee for the Open and Bar Association Competitions is $35 if your registration is postmarked by midnight May 12; if you register in person on Thursday, May 18 or May 19; or if you register online by midnight May 19. A service fee is added for online registrations. Pre-registration is encouraged, as the entry fee on the day of the event increases to $45.

Individuals can register in person at the office of Caesar Rivise, PC, located at 1635 Market St., 12th Floor, Philadelphia, Pa. 19103 on May 18 and May 19, from 9 a.m. – 4 p.m.

The Philadelphia Bar Association is being joined as a corporate level sponsor this year by: Firstrust; Buchanan Ingersoll & Rooney PC; Caesar Rivise, PC; Friends of Stephen J. Anderer; Philadelphia Runner; Veritext Legal Solutions; Robson Forensics; Exponent; The Legal Intelligencer; USA Track & Field; and Philadelphia Parks & Recreation.

In addition, to date, the following law firms have signed on as legal sponsors: Akin Gump Strauss Hauer & Feld; Anapol Weiss; Clark Hill PLC; Cozen O’Connor; Dechert, LLP; DLA Piper LLP (US); Drinker Biddle & Reath LLP; Feldman Shepherd Wohlgelernter Tanner Weinstock Dodig, LLP; Fox Rothschild LLP; Pepper Hamilton, LLP; Reilly, Janiczek, McDevitt, Henrich & Cholden, PC.; and Stevens & Lee/Griffin. If you would like your firm to become a legal sponsor or legal supporter, and be listed on upcoming advertising, please call Manny Pokotilow at (215) 567-2010. Please encourage your friends and family to participate in the 38th Annual Philadelphia Bar Association 5K Charity Run/Walk benefiting the Support Center for Child Advocates.

Attendees of the Philadelphia Bar Association CLE after being admitted to practice in the Eastern District of Pennsylvania on Feb. 13.
Helping Vulnerable Students Year-Round

By Jeffrey Lerner, Jonathan Cloar, Grant D. Johnson and Rachel Fried

Beginning in May 2015, Covington & Burling LLP partnered with the Public Interest Law Center (PILC) to represent a group of students with disabilities and their parents against the The School District of Philadelphia. Covington and PILC recently finalized a settlement with the School District that will force the school district to immediately provide improved special education services to students with disabilities during school breaks such as summer recess. For the 26,000 students with disabilities in the school district, school breaks can significantly disrupt academic progress. To avoid that harm, the Individuals with Disabilities Education Act (IDEA) requires that school districts provide Extended School Year (ESY) services to eligible students during school breaks.

Although the IDEA requires that services be individualized based on students’ needs, PILC had learned that the school district only offered a one-size-fits-all ESY program. Covington was eager to step in and help PILC ensure that students with disabilities in the school district received the services they are entitled to by law. Although the Covington team looked forward to working with PILC on such a worthwhile cause, we did not foresee just how much the project would mean to us.

First, working alongside PILC was truly a pleasure. The PILC team’s dedication to ensuring that students with disabilities in the school district receive the education they deserve was unwavering and inspiring. Working with the PILC team helped us focus on our ultimate goal throughout the litigation and settlement process, during which it was easy to lose sight of the forest for the trees. In addition to their staunch advocacy, the attorneys at PILC were a pleasure to work with. Collaborating with such an excellent team of people was one of the most enjoyable aspects of Covington’s experience.

Second, learning more about the legal protections for students with disabilities was both interesting and empowering. A large part of what we do as litigators is delve deeply in multiple areas of the law. Gaining expertise in schools’ legal obligations toward students with disabilities and putting that knowledge to use was at times challenging but exceptionally rewarding.

For the Covington team, the most rewarding moment by far was meeting and listening to the clients we represented. Working with PILC allowed us the opportunity to fight and advocate for our clients and all ESY-eligible students in the school district. Throughout the representation, we wanted to make a difference in the lives of students and their families. We truly hope and believe that the settlement agreement will accomplish that, and we are thankful for the opportunity that PILC gave us to partner with them.

Jeffrey Lerner (jlerner@cov.com) is a partner, Jonathan Cloar (jcloar@cov.com) is an associate, Grant D. Johnson (gjohnson@cov.com) and Rachel L. Fried (rfried@cov.com) are associates at Covington & Burling LLP.
This year marks the 20th anniversary of the Philadelphia Bar Association’s Philadelphia-Lyon Bar Exchange Program. The program provides lawyers-in-training from Lyon, France, with the opportunity to spend a six-month internship at a Philadelphia law firm. At the International Law Committee’s Feb. 16 meeting, hosted by Pepper Hamilton LLP, this year’s exchange lawyers capped off their internships with presentations on French law.

Committee Cochair Jeremy Heep welcomed attendees and introduced the two presenting French lawyers — Marine Hannequart, who interned at McElroy, Deutsch, Mulvaney & Carpenter LLC, and Raphael Dionis, who interned at Pepper Hamilton LLP.

Hannequart spoke about the differences between French and U.S. approaches to discovery. She said that in the United States, parties involved in litigation have an obligation to maintain and disclose evidence. In France, however, discovery is not compulsory, and there are only limited processes for parties to obtain evidence, all of which are controlled by judges.

“[I]n the U.S., you have access to many documents. In France, you can only access a few documents. French lawyers see U.S. discovery as intrusive,” she said.

To protect French parties from comprehensive discovery requirements in U.S. matters, France enacted the French Blocking Statute, which prohibits French parties from providing documents for litigation abroad. The only means by which French parties may share evidence abroad is through the formal procedures of the Hague Evidence Convention.

Hannequart said that the French position on discovery is not “compatible” with the U.S. position. U.S. courts have held that they owe no deference to the blocking statute, and they often weigh in favor of their own discovery rules when deciding whether to apply U.S. rules or the Hague Convention.

So what should parties remember as they balance these incompatible discovery regimes? “Enforcement of judgments is the endgame,” she said. “And French courts are unlikely to enforce foreign judgments based on evidence obtained outside of French channels.”

Dionis continued the discussion of enforcement with his presentation on arbitral awards. He said that France has a system that favors arbitration, but that awards must be formally executed before they can be enforced.

“This is known as exequatur — the official recognition of an arbitration award by the court,” Dionis said. “And French courts are unlikely to enforce foreign judgments based on evidence obtained outside of French channels.”

Dionis gave an overview on requesting exequatur in France and the different procedures for domestic and international awards. For domestic awards, a party must request exequatur from the court in the location where the award was rendered. For awards from abroad, the parties must request exequatur from the court in Paris.

If the losing party in an arbitration wants to have the award vacated, the process can be difficult. “Asking for an award to be vacated in the United States is hard enough, but in France, it’s even harder,” Dionis said.

The grounds for vacating an award are detailed in the New York Convention, but there is one notable exception in France. Under the Convention, awards that are vacated in the country of origin may be held unenforceable elsewhere. In France, however, this is not grounds for vacating an award.

“Legality in the country of origin doesn’t matter, it’s legality in the country of enforcement that matters,” Dionis said.

The Philadelphia-Lyon Bar Exchange Program will be celebrated at a 20th anniversary reunion and networking conference held on April 20-22. For more information, visit PhiladelphiaBar.org.

Erin Murphy (murphye@pepperlaw.com) is a marketing writer and editor at Pepper Hamilton LLP.
The Business Law Section hosted its annual reception at Estia on Jan. 31. At the reception, the Section presented its Albert S. Dandridge III Diversity and Dennis H. Replansky Memorial Awards. Left: Prince Altee Thomas, recipient of the 2016 Dandridge Award and partner at Fox Rothschild LLP, with Sarah B. Gelb, Section chair (left to right); Katayun I. Jaffari, vice chair, Board of Governors, and 2016 Section chair; and Lauren P. McKenna, chair, Women's Rights Committee and 2016 Board chair. Right: Leonard A. Bernstein, recipient of the 2016 Replansky Award and partner at Reed Smith LLP; with Gelb (left to right); Lisa D. Kabnick, senior advisor, Reed Smith LLP; and Jaffari.

![Business Law Section Annual Reception](Photo by Thomas E. Rogers)
PNC Perspectives

Smart Ways to Invest in Family

By Mary E. Ashenbrenner

Your brother-in-law has asked you to back his new business venture. Your daughter needs help paying her bills during her divorce. The urge to give financial support in these situations can be strong—as is your concern about short-changing your own long-term finances. How can you be fair to everyone, including yourself? For this month’s interview, I sat down with Leanna Johannes, senior wealth strategist, PNC Wealth Management, who offers some helpful advice on how to decide whether—and in what way—you can contribute monetary support to your family.

Mary Ashenbrenner (MA): What is the best way to determine if I should support my family member’s request for financial support?

Leanna Johannes (LJ): Helping family members financially can be tricky because there is an emotional aspect to your decision, along with the financial component. Keep in mind that saying “yes” doesn’t have to mean just writing a check. The first step in approaching family requests for money is to strip out the emotional elements and use simple math. It’s neutral and very clear. Your financial advisor may be able to help you analyze how you’ve been asked to do will affect your finances down the road.

MA: What are the most important financial considerations when deciding if I should give money to a family member?

LJ: The first thing to think about is the cash flow issue. Decide if giving the asked-for amount might limit your ability to reach your other financial goals or decrease your income. Second, consider taxes. Could gifting cash use up some of your lifetime exemption? If you would need to sell assets to raise the liquid cash needed, would it generate capital gains taxes for your income. Second, consider taxes. Could gifting cash use up some of your lifetime exemption? If you would need to sell assets to raise the liquid cash needed, would it generate capital gains taxes for your income. Second, consider taxes. Could gifting cash use up some of your lifetime exemption? If you would need to sell assets to raise the liquid cash needed, would it generate capital gains taxes for your income. Second, consider taxes.

MA: Are there other ways to transfer wealth to a family member besides a loan?

LJ: In other cases, setting up a trust or ongoing gifting program might better suit the family’s desire to transfer wealth to a family member in need. Another approach may be to simply pay some expenses directly, such as tuition or medical bills, as long as you comply with IRS rules so that you don’t accidentally trigger gift taxes.

MA: How can I explain my decision to the family member who is clearly in need?

LJ: Talking about money with family can be uncomfortable even when you’re saying yes. We recommend working with your financial advisors who can help you frame what you want to say. These conversations are difficult, yet can be very rewarding and satisfying. They give you a chance to talk with the next generation not only about money, but the values that are guiding your choices as well.

MA: What should I do if the request is for capital to fund a business?

LJ: It’s important to learn more about the situation before you can decide how to structure your involvement. Asking for details, such as a business plan and whether your business would work with any other investors, you must exercise the same rigor when family is involved. View it as a chance to encourage smart entrepreneurship rather than getting someone into a business they’re not prepared to run well.

MA: How can I refuse my child’s request for money?

LJ: Refusing a request to a child is harder. Parents may fear damaging a relationship with a child over money, but they must look at the practicality of each situation and be careful not to reward a poor financial decision. Most often, an adult child who is told “no” will maintain the family connection. Then, they will either continue in their status quo, or will repair money problems on their own—especially when parents have taken time to explain their decision. There’s no single way to handle family requests for funding. It’s about balancing the family’s values with the lessons—whether they are good or bad—that are likely to be learned.

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

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Quick Bites

Chinatown Square Hints at Manhattan’s Koreatown

By James Zwolak

In my opinion, food courts rule. Everyone can order something totally different, and the options are generally affordable. One of my favorite recent culinary experiences was dining at the new food court in the middle of Manhattan’s Koreatown neighborhood. I’ve been waiting to experience that magic again. But Reading Terminal Market aside, the options in Center City range from scrumptious teppanyaki at Tien Bo to the half-vacant basement at the Bellevue. The culinary experiences was dining at the new food court in the middle of Manhattan’s Koreatown neighborhood. I’ve been waiting to experience that magic again. But Reading Terminal Market aside, the options in Center City range from scrumptious teppanyaki at Tien Bo to the half-vacant basement at the Bellevue.

The initial street front tenant is the New York City Middle Eastern chain, Halal Guys. We passed. I eat enough halal from the 27 “free soda with fish gyro” trucks cannibalizing each other near my office. But our group hit every other venue that was open. The Mexican/Korean fusion stand Coreanos was disappointing – the meat in the carnitas with Korean veggies we ordered was not properly seared, and combined with the mushy veggies, was bland and textureless.

The choices improved from there. My co-worker, Susan, ordered a tasty Japanese Curry Chicken Katsu from the Kurry Korner; it was the largest portion of anything we tried and reminded her of a curry Weiner schnitzel. Their menu looks promising. The Bao Bar serves both its namesake Bao (steam buns filled with meat or veggies) as well as banh mi and rice bowls. The duck in the “roast duck bao” reasonably approximated the “gold duck standard” of nearby Sang Kee restaurant, and Bao Bar’s recommended BLT Bao’s crispy bacon and firm lettuce perfectly complemented the bun’s pillowly exterior.

The last two venues we tried were Philly Poke, which is joining the Hawaiian raw-fish bowl craze rapidly taking over blue city America, and my personal favorite, Khmer Grill. They do one thing – Cambodian meat skewers. At Philly Poke, you can customize your Poke Bowl with your choice of add-ons. We had the Tuna Poke with beets, cucumber, ginger and sesame misu. Everything was very fresh, but the portions were not filling and fairly pricey at approximately $12. Far better was Philly Poke’s other Hawaiian staple, Spam on a bed of rice and seaweed. Sautéed and caramelized in a soy, ginger and sugar mixture, the Spam was a lava flow of flavor that even Don Ho would have savored. At Khmer Grill, I ordered the three-piece combo of grilled pork, sausage and chicken heart. The pork and sausage were sizzled to perfection and delicious, and even my initially hesitant boss joined in the chicken heart feast. Wonderful stuff – I wish I had also ordered the gizzard.

The food at Chinatown Square may not equal the vibe yet, but once all the businesses are fully open and operating till the wee hours (I am sure the proprietors already envision the whiskey-soaked Hop Sing Laundromat patrons stumbling across the street), this welcome addition should be a hit.

Chinatown Square is located at 1016-18 Race St., Philadelphia.

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Legal Advisory Update from USI Affinity

The Importance of Good Client Selection

Developing and implementing a client selection process is an effective way to define and develop a good client base. Effective client screening is all about trying to identify the good clients and weeding out all those who simply aren’t.

While there isn’t necessarily one correct way to do this, developing a standard set of questions to think about during that first meeting can go a long way in helping you and those with whom you practice make sound business decisions.

Effective Client Selection and the Initial Meeting

Efficient client selection requires an initial lawyer-client meeting that will allow you focus on the firm as well as on the prospective client to uncover potential issues before services are retained.

Some questions for the firm:
• Do you have time to take a new matter on and give it your full attention?
• Do you have the necessary expertise to handle this type of matter?
• If the case would be handled on a contingency basis, does the firm have the funds to take it on? If the case is a large and complex one, do you have sufficient support staff to handle it?

Now for the client:
• Can you afford the firm’s services?
• Have you discussed this matter with other attorneys prior to coming to this firm?
• Do you have a retainer agreement concerning this matter with any other law firm?
• Do you have any family members or friends affiliated with the firm?

While a new case or client may initially look like a great opportunity, a thorough client selection process will go a long way in building a caseload that is practical as well as profitable.

To learn more about LPL coverage, contact Jenny Shazes at USI Affinity at (610) 537-1456 or jenny.shazes@usiaffinity.com.

For more information about insurance, visit the Philadelphia Bar Association Insurance Exchange at www.usiaffinity.com/PhiladelphiaBar. For lawyers’ Professional Liability and other business coverage, you can continue to visit the regular Philadelphia Bar Association Insurance Program website at www.mybarinsurance.com/PhiladelphiaBar. If you’d like to talk to someone about insurance and benefits options for Philadelphia Bar Association members, call USI Affinity Benefit Specialists 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 know-how to navigate the marketplaces and design the most comprehensive and innovative insurance and benefits packages to fit a firm’s individual needs.
CALENDAR OF EVENTS

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. Lunchees 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 Headquarters, 1101 Market St., 11th Floor, Philadelphia, PA 19107-2955.

March 1
Delivery of Legal Services Committee: meeting, 8:30 a.m., 10th Floor Board Room.
State Civil Litigation Committee: 12 p.m., 11th Floor Conference Center. Lunch: $9.

March 2
Cheryl Ingram Awards Reception: 5:30 p.m., Field House, 1150 Filbert St., Philadelphia. Register: PhiladelphiaBar.org.

March 3
Philadelphia Family Court, 1501 Arch St., 15th Floor Conference Center. Lunch: $9.

March 4

March 5

March 6
Law Firm Pro Bono Committee: meeting, 12 p.m., Ballard Spahr LLP, 1735 Market St., 51st Floor, Philadelphia.

March 7
Orphans’ Court Litigation and Dispute Resolution Committee: meeting, 12 p.m., 10th Floor Board Room.
Law Firm Pro Bono Committee: meeting, 12 p.m., Ballard Spahr LLP, 1735 Market St., 51st Floor, Philadelphia.

March 8

March 9
State Civil Litigation Committee: meeting, 12:30 p.m, 11th Floor Committee Room South.

March 10

March 11
Civil Rights Committee: meeting, 12 p.m., 10th Floor Board Room. Lunch: $9.

March 12
Orphans’ Court Litigation and Dispute Resolution Committee: meeting, 12 p.m., Reed Smith LLP, 1717 Arch St., Suite 3100, Philadelphia.

March 13

March 14

March 15
Business Law Section Executive Committee: meeting, 12 p.m., Reed Smith LLP, 1717 Arch St., Suite 3100, Philadelphia.
Cabinet: meeting, 12 p.m., 10th Floor Board Room.

March 16
Probate and Trust Law Section Executive Committee: 9:30 a.m., Flaster/Genberg PC, 1835 Market St., Suite 1050, Philadelphia

March 17
Philadelphia Family Court, 1501 Arch St., 15th Floor, Philadelphia.

March 18
State Civil Litigation Committee: meeting, 12:30 p.m., 11th Floor Board Room. Lunch: $9.
CLE - Adjustment of Status Training: 3:30 p.m., Blank Rome LLP, One Logan Square. 130 N. 18th St., Philadelphia. Register: PhiladelphiaBar.org.

March 19
CLE - Which Way do IPI Go...Patent, Copyright or Other: 12 p.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.

March 20
Philadelphia Family Court, 1501 Arch St., 15th Floor, Philadelphia.

March 21

March 22
Employee Benefits Committee: meeting, 12 p.m., 11th Floor Conference Room. The Survivors Club: forum, 4:30 p.m, 11th Floor Conference Center. Register: www.brandeislawociety.org.

March 23

March 24
CLE - Mediating Before the EEOC: 12 p.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.

March 25

March 26

March 27
CLE - Which Way do IPI Go...Patent, Copyright or Other: 12 p.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.

March 28

March 29

March 30
Civil Gideon Task Force: meeting, 12 p.m., 10th Floor Board Room.
CLE - From Criminal Conviction to Civil Nightmare: 12:30 p.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.

March 31
CLE - Delivery of Legal Services Committee: meeting, 8:30 a.m., 10th Floor Board Room.
State Civil Litigation Committee: 12 p.m., 11th Floor Conference Center. Lunch: $9.

Criminal Justice Section Executive Committee: meeting, 12:30 p.m., 11th Floor Committee Room South.

Family Law Section: 12 p.m., Philadelphia Family Court, 1501 Arch St., 15th Floor, Philadelphia.

Legal Rights of Persons With Disabilities Committee: meeting, 9 a.m., 11th Floor Committee Room South.


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

Municipal Court Committee: meeting, 3:30 p.m., 1339 Chestnut St., 10th Floor, Philadelphia.

Workers’ Compensation Executive Committee: meeting, 10:30 a.m., 11th Floor Conference Room South.
CLE - Tips and Practice Tools From the Workers’ Comp Bench: 12:30 p.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.
Candace Embry, associate at Marshall Dennehey Warner Coleman & Goggin, P.C., has been elected to the Board of Directors of Philadelphia VIP, where she will serve as board secretary.

Ryan Allen Hancock, associate at Willig, Williams & Davidson, recently received Philadelphia’s 3rd Senatorial District Community Service Award for his contributions to the district.

David Hyman, managing partner at Kleinbard LLC, was recently elected to serve as secretary of the Philadelphia Authority for Industrial Development’s board of directors.

Roberta Liebenberg, senior partner at Fine, Kaplan and Black, received the Martha Fay Africa Golden Hammer Award from the American Bar Association’s Law Practice Division at the ABA Mid-Year Meeting in Miami, Fla.

Alan C. Kessler, partner at Duane Morris LLP, has been reappointed to the Pennsylvania Inter-governmental Cooperation Authority for a two-year term.

George Voegele, member at Cozen O’Connor, was named to the board of directors of the Homeless Advocacy Project (HAP).

Bernard M. Resnick, principal at Bernard M. Resnick, Esq., P.C., has joined the board of directors of the Musical Fund Society of Philadelphia and was recently appointed a member of the Philadelphia Music Industry Commission, a City Council advisory board.

James C. Schwartzman, partner at Stevens & Lee, has been re-elected to a second term as chairman of the Judicial Conduct Board of Pennsylvania.

Steven J. Engelmayer, partner, and Paul G. Gagne, senior counsel, at Kleinbard LLC, will present at the American Camp Association’s 2017 Tri-State Camp Conference at the Atlantic City Convention Center on March 14 on “Understanding the Implications of Abuse Claims - Lessons Learned From the Sandusky Case.”

Theodore “Ted” Simon, Law Offices of Theodore Simon, spoke at the third annual Symposium on Representing Students Accused of Sexual Assault in Washington, D.C.

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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