Chief Judge of Eastern Dist. Addresses Full House

The Federal Courts Committee hosted Chief Judge Juan R. Sánchez of the U.S. District Court for the Eastern District of Pennsylvania on Feb. 7, before an audience of approximately 100 lawyers, over 10 judges and the clerk of court. Chief Judge Sánchez discussed his new role as chief judge in one of the busiest district courts in the United States at this CLE program. He discussed the role of the judiciary, new programs being implemented, expectations for attorneys practicing in federal courts, and challenges faced by the court.

Chief Judge Sánchez is the 15th Chief Judge in the 229-year history of the Eastern District of Pennsylvania. The court’s mission is to provide fair and impartial justice in a timely and efficient manner and Chief Judge Sánchez emphasized that judges “strive to make transparent decisions with faithful adherence to the rule of law, treating everyone equally, and without fear of public opinion or outcry.” As chief judge, he plays a key role in setting policy goals and managing the administration of the court.

Chief Judge Sánchez stated that the immediate focus of the Eastern District is on increasing juror participation, diversity, and access to the courts; improving the management of public resources; harnessing technology in the courtroom; and educating the public about the importance of the judiciary as a co-equal branch of government.

The court currently has 17 active district court judges, 11 senior judges, four inactive senior judges, 11 magistrate judges, five bankruptcy judges, and 473 total employees. In 2018, though September, 6,664 new civil cases and 575 new criminal matters were filed. Concerning diversity in the judiciary, at present, one in five Article III judges are persons of color and less than one in four are women. There is less diversity among bankruptcy, magistrate judges and law clerks.

Chief Judge Sánchez emphasized the importance of the public’s access to the courts, and the need for attorneys to volunteer for pro bono service in pro se employment, prisoner civil rights, and social security cases. Chief Judge Sánchez continued on page 13

Board Urges Continuous Funding for Federal Courts

The Board of Governors unanimously adopted a resolution on Feb. 28 urging full and adequate court funding be provided on a continuous and uninterrupted basis, and at all times in the future, for the federal judicial system, so that all individuals, as well as business and other organizations, have access to justice by assuring that the federal judicial system has the funding necessary to permit the courts to remain open and perform their constitutional functions and duties effectively and efficiently.

The federal judicial system, including the U.S. Third Circuit Court of Appeals and the Eastern District of Pennsylvania courts, have faced significant staff cuts and faced budget constraints in the past, as well as the longest shutdown ever of the federal courts.
Visit PhiladelphiaBar.org/Renew to continue to take advantage of all the Philadelphia Bar Association has to offer, including:

- Legislative programs to champion your interests
- Free and low-cost CLE courses - members receive six free CLE credits*
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Please renew your membership today and join us for another outstanding year of great programs and professional development.

Questions? Contact Manager of Member Services Andrea Morris-Tracey at amorris@philabar.org or (215) 238-6313.

*Free continuing legal education programs chosen at the discretion 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) 238-6300. Association Web site: philadelphiabar.org. Newspaper e-mail address: reporter@philabar.org. The editorial and other views expressed in the Philadelphia Bar Reporter are not necessarily those of the Association, its officers or its members. Advertising rates and information are available from Shari D. Phillips at American Lawyer Media, 1601 JFK Boulevard, Philadelphia, PA 19103. Telephone: (215) 592-2304 or e-mail sphilips@alm.com.

Frontline

'Us' v. 'Them'

By Shelli Fedullo

English was not my father’s native language. I do not know how or when he learned it, except that it was after being liberated from a Nazi concentration camp when he was a teenager. Although I lost him more than five decades ago, I still remember the cadence and nuances of his accented voice, his syntax. I remember his difficulty with pronouncing words, which included sound combinations that did not exist in his native Hungarian. I remember my mother gently teasing him at times, and his sheepish laughter, when he did not get an idiom quite right—a “doggy-dog,” instead of a “dog-eat-dog” situation.

Despite this, as I grew up, I never gave thought to being the child of an immigrant. It was not unusual in my neighborhood. I had friends and classmates whose parents spoke English that was more heavily accented than my father’s had been. I was not even the only one who had a parent with numbers tattooed on their arm. Almost everyone, including me, had at least one grandparent who was an immigrant, and it was not only parents and grandparents. My friend, Ruthie, and my classmates, Pavel and Roman, along with several other children in my elementary school, were born in different parts of Europe and around the world.

As an adult, I rarely thought about the privilege of being born into American citizenship. It was my “normal,” and, probably like most people, I have taken it for granted. Although I have always felt a deep connection to being the child of a Holocaust survivor, somehow there was a disconnect between that awareness and my personal sense of entitlement as an American citizen.

Several years ago, I had my first opportunity to speak on behalf of our association at a naturalization ceremony. About 100 people, from almost as many countries, took the oath of citizenship at a ceremony that was solemn and moving, as well as celebratory. The experience led me to think deeply about my own roots as the daughter and granddaughter of immigrants, and what it means for citizenship to be a goal and an achievement. I have since spoken at several naturalization ceremonies, and have felt the same way each time—inspired and honored to share the day with new citizens, while very deeply appreciative of the privileges of citizenship.

About a year and a half ago, after having recently spoken at a naturalization ceremony, I was in conversation with an acquaintance whose four grandparents had all been immigrants, and I shared details about the event with her. She listened, pleasantly smiling, and said that it sounded lovely. With the same pleasantness and smile, she continued to say that she hoped they (the new citizens) were the “good ones.” I asked, “What do you mean?” Without missing a beat, she said, “You know what I mean.” Unfortunately, I did know. She meant that immigrants from certain countries are unwelcome, unacceptable. I replied that she was expressing the same kind of prejudice that her own family members had probably once faced. Her answer was just a mild shrug of her shoulders. Apparently, to her thinking, there were “good” immigrants, like those in her family, and “bad” ones, who have no business being here, even if they achieve citizenship. I saw no hint of recognition that she saw anything even vaguely wrong with the “good-bad” dichotomy, and it was obvious to me that she thought that I was the one who did not get it. I ended the conversation because it was pointless to continue, but it has sticked with me. Whether xenophobia (and its good friend, racism) is expressed in visceral rhetoric, or pleasantly with a smile, it is dehumanizing and dangerous, and unfortunately, not uncommon.

Here is the part where I should be tying this all together, but I have been struggling to do it. Of all the things I could have written about, why this? My best answer is that ugly, destructive bias should be called out. That is what I am doing now, and it is what Philadelphia lawyers always do.

Rochelle M. Fedullo (Rochelle.Fedullo@wilsonelser.com), partner at Wilson Elser Moskowitz Edelman & Dicker LLP, is Chancellor of the Philadelphia Bar Association.

DID YOU KNOW?

On Nov. 13, 2018, the study, “Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants,” was published after being commissioned by the Philadelphia Bar Association and conducted pro bono by the Chicago-based international financial advisement firm, Stout Risius Ross, LLC.
As chair of the Young Lawyers Division, I have the opportunity to represent young lawyers on various legal committees and boards throughout Philadelphia. One of the most important groups that I get to participate in is the Philadelphia Bar Association’s Commission on Judicial Selection and Retention.

Each year, the commission evaluates candidates running for judge in the Philadelphia Court of Common Pleas, Philadelphia Municipal Court, and those running for a statewide Appellate Court with an office or chambers in Philadelphia.

Candidates voluntarily participate in the process and are evaluated based on their legal ability, trial experience, reputation for integrity, financial responsibility, temperament, record of community involvement, physical and mental capacity to discharge the duties of the office, administrative ability, devotion to improvement of the quality of justice and demonstrated sound judgment.

For months, the commission and its investigative teams thoroughly vet the candidates. Each candidate must complete a questionnaire about his or her experience and submit writing samples. The candidate is personally interviewed by a five-person investigative team. A minimum of 20 people who have had professional dealings with the candidate are interviewed. Finally, the commission completes a comprehensive review of the candidate’s online presence and social media sites.

Once the investigation is complete, the candidate may make a statement in person to the commission. The commission reviews the investigative report and votes on each candidate. Candidates are rated as “Not Recommended,” “Recommended” or “Highly Recommended.” While participation in this process is voluntary, any candidate who chooses not to participate will receive a rating of “Not Recommended.”

The importance of electing qualified judges is not lost on most lawyers, especially litigators. We practice in front of these judges every day. We appreciate when a case moves smoothly because of a judge’s expertise. Young lawyers in particular benefit from a thoughtful bench, as some judges now request a larger role for young attorneys at trials.

More significant, though, is the effect that these judges have on the Philadelphia community. They determine the rights of Philadelphians every day. Custody of children, compensation for wrongdoing, and people’s freedom are directly affected by those who we elect to the bench. Interactions with these judges may be a person’s only contact with the justice system, and our citizens deserve a system that is comprised of qualified judges.

The commission’s process is vital to the election of qualified judges. In the past, ballot position has played a disproportionately large role in which candidates get elected. However, due to the association’s efforts over the last two years, more Philadelphians are learning what the commission’s ratings mean and are using our recommendations when voting.

For the commission’s recommendations to make an impact, the public needs to learn about the hard work that goes into the investigations of the candidates. We must share our recommendations with a broader audience than simply association members. I hope that you will join me on May 21 when we send volunteers to the polls to share this important information.

Michaella Tassinari (michaella.tassinari.kfyk@statefarm.com), attorney at Robert J. Casey, Jr. & Associates, is chair of the Young Lawyers Division.

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**DINNER & RECEPTION**

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Join the Philadelphia Bar Association for Honoring our History, a Spring dinner and reception at VIE on Tuesday, April 16 at 5:30 p.m. Registration includes full-bar reception with three course surf and turf dinner and complimentary valet parking.

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Founding Member Tenants Announced for EJC

We have achieved an important milestone in the Equal Justice Center project. The Philadelphia Bar Foundation has secured commitments from many of the city’s leading civil legal aid agencies and social-service nonprofits to become founding member tenants.

In addition to the Philadelphia Bar Foundation, member tenants in the EJC include the Center for Advocacy for the Rights and Interests of the Elderly, Community Legal Services, Consumer Bankruptcy Assistance Project, Court Appointed Special Advocates of Philadelphia, Good Shepherd Mediation Program, Pennsylvania American Civil Liberties Union, Pennsylvania Health Law Project, Philadelphia Legal Assistance, Regional Housing Legal Services, SeniorLAW Center and Women’s Law Project. Additional agencies may have an affiliation with the EJC in the future. We are pleased to have this outstanding group of organizations joining the EJC.

For clients of our member tenants, the ability to address their interlocking issues at one location will be life-changing. The EJC will increase access to information and legal aid resources by simplifying the task of finding free or low-cost legal services for all members of the community. We expect that tens of thousands of people will be served through the work of member tenants.

In addition, the EJC will make it easier for member tenants to collaborate, helping to position Philadelphia as a leader in the national movement to leverage technology to improve the civil legal justice system and address the unmet legal needs that contribute to the cycle of intergenerational poverty. The project also will raise the visibility of access to justice issues.

The EJC will enable the city’s legal aid system to sustain and improve its operations and enhance its ability to meet client needs. Member tenants’ operational costs will be reduced by as much as 20 percent through group purchasing, shared infrastructure and shared back-office operations. These savings may then be allocated to staffing, programs and client services.

The EJC will be built at 800-30 Vine Street in Philadelphia and will be a permanent and purpose-built location for the city’s legal aid community to call home. The EJC is just one component of the complex 800-30 Vine Street site. The development also will include market-rate and affordable senior housing, a community park and a hotel. Construction will begin later this year, and the EJC is set to open in 2022.

The Foundation has provided support to member tenant organizations for many years through grant-making, training programs, fellowships and assistance with technical and operational issues. Along with others in the Philadelphia legal aid community, our member tenants have been collaborating for more than 40 years through the Philadelphia Bar Association’s Delivery of Legal Services Committee to develop innovative ideas for the civil legal needs of the city’s most vulnerable citizens. Collaboration through the EJC will take the collective work of these organizations to a new level.

I would like to thank our developer, PENNROSE PHIL.II, LLC and our architects at WRT for their continued partnership and for all that they have invested to get us to this point in the project.

I hope that you will join us in this effort to change the face of legal aid in Philadelphia. The EJC depends on support from those who care about transforming the way the city will provide civil legal aid services to those in need. Our capital campaign plans to raise $50 million to support construction and EJC programs.

You can donate to the EJC online at www.philaequaljusticecenter.org/donate. Please contact Laura Powers at LPowers@philabarfoundation.org for information about naming opportunities in the building.

I would also like to thank you for your support of the EJC thus far. I look forward to sharing our continued progress with you throughout the year.

Leslie E. John (john@ballardspahr.com), partner at Ballard Spahr LLP, is president of the Philadelphia Bar Foundation.

Donate to the Philadelphia Bar Foundation

Please consider making a gift to the Philadelphia Bar Foundation in 2019. With your support, the Foundation strengthens the provision of free legal services in our justice system and the delivery of civil legal aid in Philadelphia. Through various programs, services and partnerships, in conjunction with annual grants and other support provided to almost 40 legal aid nonprofit partners, the Foundation promotes access to justice for all people in the community. You can make a difference in the lives of tens of thousands of people in need across Philadelphia and our region by donating today at PhilaBarFoundation.org/donate.
On Jan. 17, the Hispanic Bar Association of Pennsylvania and The Barristers’ Association of Philadelphia, Inc. cohosted a “Joint Affinity Bar Interviewing and Mentoring Workshop” for Philadelphia-area law students. In attendance were over 70 law students and affinity bar mentors.

Part one of the program featured panelists Brenda Marrero, deputy director of operations at Community Legal Services; Crystal Espanol, deputy city solicitor in the City of Philadelphia Law Department; Sophia Lee, partner at Blank Rome LLP; and Tiffany Southerland, manager of associate recruitment, diversity and inclusion at Pepper Hamilton LLP.

Speaking about the dos and don’ts of interviewing, from preparation to follow-up and everything in between. Part two of the workshop was three sessions of speed mentoring, where law students from different schools were placed in small groups with practicing attorneys to discuss life as a practitioner, the interviewing process and any other topics the students wanted to discuss. The workshop would not have been possible without the generous support of firm-sponsor, Saul Ewing Arnstein & Lehr LLP, and event sponsor U.S. Legal Support.

Additionally, PAP is again partnering with the association by offering 2019 memberships to both associations at a discounted rate. Chancellor Fedullo discussed her mentoring, working and coaching initiatives and the similar critical need for paralegals to serve as leaders and mentors to those new to the profession. She also addressed the role of soft skills in the workplace as invaluable traits to one’s paralegal career.

PAP looks forward to continuing its work with the association in 2019 by connecting on pro bono projects as well as continuing legal education. PAP also extends its congratulations to its 2019 board members.

— Christine M. Flynn, paralegal at Haggerty, Goldberg, Schleser & Kapersmith, P.C.

— Melissa A. Martinez, associate at Saul Ewing Arnstein & Lehr LLP

Affinity Bar Association Mentoring Forum
Grooming the Next Generation of Practitioners

By Kaitlin Files

The Workers’ Compensation Section Diversity and Inclusion Subcommittee has focused its efforts on the youth of Philadelphia. The subcommittee has aimed to engage the students in the community to broaden their knowledge of the legal profession and enhance opportunities with the legal community. This past fall, members decided to volunteer time to serve as the attorney advisors to the Academy at Palumbo’s high school mock trial team competing in the Pennsylvania statewide Mock Trial Competition. The Mock Trial Competition, run by the Pennsylvania Bar Association and its Young Lawyers Division, is one of the largest in the nation. Academy at Palumbo is a charter high school located in the Bella Vista neighborhood enrolling students from all areas of Philadelphia. Beginning in the fall, Kaitlin Files, chair of the subcommittee, attended weekly practice at the school. This was the first year of participation by the Academy at Palumbo. There was a total of 12 students who committed to the team and were assigned a particularly intricate criminal case involving the sad reality of the nationwide opioid crisis. Six students were assigned to the defense, and six students were assigned to the prosecution. Over the course of a few months, the students were tasked with learning the facts of the case, the rules of law, the procedures of the courtroom and the roles of attorneys and witnesses. The students voluntarily met each week after school to learn and practice for their debut appearance. Hon. Tina Maria Rago, Workers’ Compensation Office of Adjudication, who also serves on the section’s executive committee, volunteered her time to coach the students.

The first round was held on the final Thursday of January. The entire team set off in the single digit weather to Temple University Beasley School of Law’s moot courtroom. The prosecution team put on their case, and the Academy of Palumbo students left the courtroom holding their heads high, proud of their performance after many months of hard work. The prosecution was defeated that round, by a slim margin. The students had performed brilliantly, and the defense team was eager to showcase their new skills.

The next week, the 12 made their way to the federal courthouse at 6th and Market streets to defend their “client.” After another impressive performance, utilizing new talents, including introducing evidence and arguing objections, the defense team won their round of the competition. The teams will not be advancing to the next round this year.

Academy at Palumbo decided to extend their mock trial program to the off-season to help the students continue to hone their skills in preparation for next year’s competition. The board will continue to provide support to the school in the off-season. The students and board advisors are already looking forward to next year’s mock trial competition. The future is bright in the hands of these young students, and the Workers’ Compensation Section is thrilled to continue to engage and support them as they further explore the legal profession.

Kaitlin Files (kfiles@pondlehocky.com), associate at Pond Lehocky Stern Giordano, is cochair of the Workers’ Compensation Section Diversity and Inclusion Subcommittee.
VIDEO ENCORE: Practice and Procedure in Philadelphia Municipal Court
Fri., 3/8/19 - 12:00 - 3:30 p.m. (3.5 SUB)
Attend this nuts-and-bolts video-encore of common practice in Municipal Court. This video-encore program covers the fundamentals of municipal court practice in Philadelphia. Panelists will examine the most common issues and hone in on essential information that municipal court practitioners, general practice attorneys, and municipal prosecutors face. Attendees will learn about practice and procedure relating to diversion programs, preliminary hearings and DUI, among other topics. Panelists will also offer guidance on how to avoid common pitfalls of municipal court practice.

VIDEO ENCORE: Philadelphia Real Estate Tax Briefing
Tue., 3/12/19 - 12:00 - 3:00 p.m. (2 SUB/1 ETH)
In this comprehensive video-encore presentation, attendees will learn about the current state of Philadelphia real estate taxes from those who interpret and enforce the rules and regulations and render critical decisions, including representatives from the Office of Property Assessment, the Board of Revision of Taxes and the Philadelphia Law Department. The panelists, as well as experienced legal counsel, provide guidance on crucial process and strategy; detail significant case law; and outline potential legislative changes on the horizon.

Practice Tips, Expectations and New Federal Practice Developments
Wed., 3/13/19 - 12:30 - 1:30 p.m. (1 SUB)
- Attendance available via WEBCAST ONLY!
Hosted by the Federal Courts Committee
Please join U.S. District Court Judges Mark A. Kearney and Chad F. Kenney, the newest judge to join the Eastern District of Pennsylvania, as they offer tips, expectations and suggestions for attorneys practicing before them and practicing in federal court in general. Judge Kearney will also provide an update on new federal practice developments after the Dec. 1, 2018 amendments and more.

VIDEO ENCORE: Implicit Bias: Identification in the Law and Action Plans
Thu., 3/14/19 - 12:00 - 2:00 p.m. (2 ETH)
This dynamic video-encore program will help attendees gain a comprehensive understanding of implicit bias in the law and learn how to identify implicit bias both within themselves and in others. Attendees will also learn strategies to best address internal and external implicit biases.

VIDEO ENCORE - Is Good Health and Well-Being Our Ethical Obligation?
Wed., 3/19/19 - 12:00 - 1:00 p.m. (1 ETH)
Need an ethics credit? This video-encore presentation will explore whether well-being should be included in the definition of competence under Rule 1.1 of the Rules of Professional Conduct or whether it should be referenced solely in the Comments to the Rules. Panelists will also address the responsibilities of partners, managers and supervisory attorneys and judges to put in place measures to ensure the well-being of its subordinate lawyers and judges.

Spotting Competency and Cognitive Deficit Issues in Litigants
Tue., 3/19/19 - 3:30 - 5:00 p.m. (1.5 SUB)
Hosted by the Municipal Court Committee
Held at the Municipal Court Philadelphia, 1339 Chestnut St., 10th Fl. Conference Center
In this program, attendees will learn how to recognize conditions that may result in the incapacity of litigants in the Philadelphia Municipal Court, as well as strategies for addressing such incapacity. Panelists will address the differential diagnosis of mental dysfunction in adults with an emphasis on screening techniques for non-health professionals, as well as discuss the remedies that are available to assist adults in need of support in connection with decision-making or the appointment of surrogates up to and including guardians.
Not If But When: Planning For The Crisis That Will Strike Your Law Firm

Wed., 3/20/19 - 12:30 - 2:45 p.m. (1 SUB/1 ETH)

Hosted by the Law Firm Risk Management Committee

In life and business, reputation is everything. It only takes one misstep to cause irreparable damage to a law firm and its attorneys. And it’s not if, but when, because life happens, mistakes happen and crises happen to law firms of all sizes and areas of practice. What is your law firm doing to proactively protect its most valuable asset - its reputation? This program addresses the elements needed for a viable crisis communications plan, working through the six stages of a crisis - scenario-style, and things a firm can do to manage its reputation before, during and after a crisis.

2019 Update on Support Rules

Thu., 3/21/19 - 12:30 - 2:00 p.m. (1.5 SUB)

Hosted by the Family Law Section

The rules regarding the calculation of child support, spousal support, alimony pendente lite, and alimony have changed with the passing of the federal tax bill. This program will provide attendees with an in-depth update on those important changes.

Discovery and Civility in Workers’ Compensation

Fri., 3/22/19 - 12:30 - 1:30 p.m. (1 ETH)

Hosted by the Workers’ Compensation Section

This program will examine the best practices from the defense and claimant perspective regarding discovery in workers’ compensation cases from the initiation of the claim through the closure of a claim and/or litigation. The applicable case law, sections of the Pennsylvania Workers’ Compensation Act, judge’s rules and regulations and civil procedure regarding discovery will be addressed. Panelists will explore various scenarios and the Rules of Professional Conduct, as well as civility in the practice of workers’ compensation.

VIDEO ENCORE: Using the Law to Solve Climate Change: What Can Pennsylvania Do?

Mon., 3/25/19 - 12:00 - 2:00 p.m. (2 SUB)

Missed this program live? Attend this informative and timely video-encore. On Oct. 8, 2018, the United Nations scientific panel charged with tracking climate change issued a special report that dominated international headlines for days. The report paints a far direr picture of the immediate consequences of climate change than previously thought. This video-encore will address the legal landscape for solutions to climate change, the case for carbon pricing policies, the authority under Pennsylvania law for carbon pricing and a specific proposal for using carbon pricing to make Pennsylvania a leader in fighting climate change while generating revenues for the Commonwealth.


Mon., 3/25/19 - 4:00 - 6:00 p.m. (2 SUB)

Attend this video-encore to volunteer to participate in the Clean Slate Screening Project.

Clean Slate is an innovative new Pennsylvania law that is serving as a national model on how to help people with criminal records get a fresh start. The new law brings web-based expanded criminal record sealing to Pennsylvania (including arrest records and some minor/old misdemeanor convictions). This video-encore program will cover the nuts and bolts of the new law necessary to prepare volunteers to participate in the Clean Slate Screening Project, which provides individualized record assessment and advice to people who are looking to clear their records. Volunteers MUST screen a minimum of three people for Clean Slate eligibility.

It’s Not What You Make That Counts ... It’s What You Keep and How You Manage It: The Confluence of Fiduciary Responsibility and Financial Wellness

Tue., 3/26/19 - 12:30 - 2:45 p.m. (1 SUB/1 ETH)

Presented by RPU Investment Management

Many adults possess insufficient financial literacy; they don’t engage in on-going and continuous, comprehensive financial planning; and, this leads to financial stress and poor retirement readiness. This program will explore prudent investment practice for plan sponsors under both ERISA and Pennsylvania’s Prudent Investor Rule. The program will also address retirement readiness and its impact on personal well-being and professional productivity. Further, the program will demonstrate how plan sponsor fiduciary responsibility and financial wellness training in the workplace addresses the financial wellness crisis in America. Attendees will be provided with clear steps to improve retirement readiness and be armed with the tools and information needed to help their employer improve outcomes.

VIDEO ENCORE: Power of Attorney, Health Care Directive and Living Will - Understanding All Three Documents and Avoiding Pitfalls

Wed., 3/27/19 - 12:00 - 2:00 p.m. (1 SUB/1 ETH)

This practical video-encore program examines a basic trifecta of estate planning documents: power of attorney, health care directive and living will. Panelists address issues practitioners must consider when drafting a power of attorney to avoid problems for their clients and their clients’ families down the road. Attendees will gain insights on how to craft effective POAs as well as tips for advocacy. Panelists also offer guidance on living wills and health care directives, including exploring the difference between a living will and power of attorney and what documents may work best together. The program finally highlights changes in the law and considerations when discussing the delicate issue of the need for these documents with clients.

Ethics and Malpractice Avoidance

Thu., 3/28/19 - 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 and 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.

VIDEO ENCORE: Best Practices in Settlement Conferences Before United States Magistrate Judges

Fri., 3/29/19 - 12:30 - 1:30 p.m. (1 SUB)

This video-encore program, featuring United States magistrate judges, examines settlement conferences involving labor and employment cases. The judges discuss best practices and offer guidance to practitioners to achieve a successful outcome.

Additional courses may be added within the month.

DID YOU KNOW?

For each of the four days the Workers’ Compensation Section served lunch at St. John’s Hospice, 250-300 men were served, for a total of 1000-1200 served in 2018.
Streamline Utilization of WCAIS for All Parties

By Mary LeMieux-Fillery

Avoid common mistakes and improve requests and submissions to judges through the Workers’ Compensation Automation and Integration System to expedite the overall case handling process. The Workers’ Compensation Section hosted a CLE titled “WCAIS Advice to Keep Judges Happy” on Jan. 25. Panelists included the Hon. Lawrence Beck, Hon. Sandra Craig and Hon. Erin Young of the Pennsylvania Department of Labor & Industry Office of Adjudication.

When filing petitions, the panelists asked that attorneys reference the already generated WCAIS claim number on all requests to prevent duplicate claim numbers from being issued for the same incident. They explained that requests for review are prioritized by WCAIS. This makes it imperative for attorneys to check the correct box when filing requests so that WCAIS can assign proper priority to the request. Panelists also recommended checking WCAIS every day to get the most current status updates and communications from the judge on your case.

Concerning the submission of evidence, panelists explained that unless the submitted evidence is underlined—presenting as a hyperlink in WCAIS—it has not actually been uploaded to the system. Panelists asked that all transcripts be uploaded as a regular copy to make it easier for the judge to view. All 52 weeks or less cases should have the medical records numbered, and the number of pages in the packet should be entered into WCAIS so that the judge can specifically refer to individual pages.

Panelists further advised that determinations need to be uploaded by attorneys as, currently, judges cannot upload these on WCAIS. Panelists also reminded attendees that they are not able to circulate decisions that contain Social Security numbers or dates of birth, so this information must be redacted. Lastly, the panel asked that if attorneys cannot upload an exhibit all at once, to please label the different parts of the exhibit per your particular judge’s preference.

For continuation requests, panelists asked attorneys to be as specific as possible and enter the requests into the correct tab—in brief extension requests should go in the brief tab, rather than in the miscellaneous tab, along with a reason for the request. The panel highlighted the need to include the position of opposing counsel when submitting a continuance request or a brief extension as well as the number of attempts made to advise opposing counsel of the same.

For mediation cancellation requests, the panel asked that all details concerning the mediation be provided to make it easier for the judge to send notice to all requisite parties. When submitting mediation statements, panelists advised that it is helpful for all medical bills to be supplied or brought along to the mediation so that the case can be evaluated and the medical issues can be resolved.

Panelists reminded attendees that requests for interpreters must be submitted at least two weeks in advance of the hearing and that if a claimant speaks a particular dialect, this should be noted on the interpreter request.

Pa. Definition of Parentage Evolving With the Times

By Rebecca L. Kolsky

A recent decision reflected on what classifies a parent in Pennsylvania. The Family Law Section hosted a CLE titled, “An Inside Look at C.G. v. J.H.: What to Consider When Establishing Parental Status and Standing for Third Parties” on Feb. 4. Tiffany L. Palmer of Jerner & Palmer, P.C, and Julia Cronin Rater of McQuaide Blasko, spoke to the Family Law Section about their recent case before the Pennsylvania Supreme Court, C.G. v. J.H. Also on the panel was Helen E. Casale of Hangley Aronchick Segal Pudlin & Schiller, who filed an amicus brief in support of C.G. on behalf of the American Academy of Matrimonial Lawyers. Mark A. Momjian of Momjian Anderer, LLC, moderated.

In C.G. v. J.H., a lesbian couple were in a relationship in Florida when J.H. paid for artificial insemination and gave birth to a son in 2006. The parties lived together until their separation in February 2012, when J.H. moved to Pennsylvania with the son, who was then six years old. Three years later, in 2015, C.G. filed for partial physical custody in Pennsylvania. J.H. contested C.G.’s standing and argued that she was not a parent under the law. Surprisingly, Pennsylvania’s child custody statute did not—and still does not—explicitly define the term “parent.” Throughout the parties’ underlying trial and subsequent appeals, the experts disagreed as to C.G.’s role in raising the child. J.H. asserted that she unilaterally made the decision to have the child and that she was the sole caretaker, despite living with C.G. for six years with the child. C.G. was arguing for “intent based” parentage—that the parties made the decision to create the child together, and that she should have the same rights as a biological parent.

J.H. contested C.G.’s argument, and the trial court found that prior to the couple’s separation, C.G. did not act as a parent, and the Superior Court of Pennsylvania affirmed that ruling. Rater said that the trial court focused on the evidence presented, so it is always important for practitioners to be sure to create a record reflecting all relevant details of the case at the trial court level.

Palmer said the most concerning continued on page 15
'Clean Slate' Provides Another Day, Another Chance

By Zachary Lipschutz

Pennsylvania’s new Clean Slate Bill is meant to open doors and help people who may have come from troubled beginnings make a fresh start. At the CLE titled “New Clean Slate Law: Automation and Expansion of the Criminal Record Sealing Process in Pennsylvania” on Feb. 14, Pa. Rep. Jordan Harris presented the Clean Slate Bill. As its author, he told the attendees that it will help to seal more than 10 million charges on records, but also said that because of the existence of non-digital records, there will be an especially large amount of work to be done. Harris said that the bill will allow people to get better jobs and thereby improve their economic statuses. David Trevisakis, pro bono coordinator for the Pennsylvania Bar Association, described the Clean Slate Screening Project. The panelists were Community Legal Services’ Jamie Gullen and Seth Lyons.

The scope of the problem at hand is huge. Gullen said that one third of Americans have some kind of criminal record. Technology has increased the ramifications of having such a record, as it means that large numbers of individuals can access other peoples’ criminal information online for free. She then explained that the Clean Slate Screening Project is aimed at helping people get their criminal records sealed, and it is a state-wide initiative that volunteers from all over Pennsylvania have registered to help the cause.

The Clean Slate Bill does not change Pennsylvania laws regarding expungements, but it does change the law related to the sealing of records. An expungement is when something is completely destroyed from criminal record information. Sealing refers to the removal of criminal information from public view. There are two types of sealed records: automatic sealing and sealing by petition. With automatic sealing, the material in question automatically gets removed from public view. This occurs if it meets certain criteria. The record can be unsealed if a prosecutor motions for it, but this can only happen under certain serious conditions.

Automatic sealing does not always work. Even if something is eligible to be automatically sealed, there may be factors that prevent completing the process. A computer query is used to determine automatically sealable records, and the query is based on specific information in the database. If a piece of data is missing from the database, then the otherwise automatically sealable record might not be sealed. In this case, the individual must file a petition in order to seal the record.

Sealing by petition requires someone to motion for the material to be removed from public view. It is important to note that all fines and costs must be paid before a record can be sealed.

Individuals can confirm that something in their records is sealed in two ways. First, they can go to the courthouse where they were prosecuted and request to see their record. Once they are provided with it, the record will show if something is sealed. The second way that an individual can find this information is that they can pay $20 for access and review, but this process can take six months. Gullen said that they are working on creating a better way for individuals to confirm the content of their records.

Gullen and Lyons went through various practice problems. The problems listed a person and their criminal record, and the goal was to determine if the individual would be a candidate to get anything from their record sealed. Hopefully this, along with the rest of the presentation, prepared volunteers to help with the Clean Slate Screening Project. Many people could be greatly helped.

To volunteer, please contact Tara Phoenix at tphoenix@philadelphiabar.org.

Federal Courts

continues from page 1

believes that this type of work provides lawyers with “fantastic opportunities to grow as trial lawyers,” “get in court experience,” and can be one of the “most rewarding experiences in a lawyer’s career.” The court currently has 38 pro se cases awaiting volunteer representation, which attorneys can accept through the court’s Volunteer Attorney Panel program. More information on this program can be found on the court’s website.

The court is also working to establish a program that redresses how it reviews pro se and death penalty cases and expedites their resolution. In addition, the court is refining its Criminal Justice Act Panel, to increase the number of appointments panel attorneys receive per year and increase its gender and racial diversity. Judge Sánchez further discussed how the court is increasing the utilization of magistrate judges. One way is a two-year Social Security Pilot Program where the court automatically assigns social security cases to magistrate judges for adjudication. Unless a party opts out, the parties are deemed to have consented to a magistrate judge handling their case. The Eastern District has further implemented new initiatives as part of its Re-Entry Court program that assist persons transitioning from custody with mental health and relapse prevention assistance. These initiatives are led by Judge Elizabeth T. Hey and Judge David R. Strawbridge.

With regard to tips for practitioners, Chief Judge Sánchez emphasized the importance of preparation and that an attorney’s writing provides a first impression and introduction to the court. He also suggested that lawyers focus on what they really need in discovery, as opposed to simply on what they may want.

Chief Judge Sánchez wants to increase communications with the bar associations in each of the counties within the district. He would like to see counties which do not have a federal courts committee to develop one so there can be a voice for each county. As an example of the benefits that increased communication between the court and the counties brings, he spoke about a meeting with leadership from the Philadelphia Bar Association in 2018, which included Federal Courts Committee Cochair Kathleen Wilkinson, where attorney admissions to federal court had been discussed. As a result of that meeting, Chief Judge Sánchez announced the court has implemented a new program where attorney admissions to the court are held every Thursday at 10:30 a.m. in Courtroom 5A before a magistrate judge.

Chief Judge Sánchez concluded his remarks by discussing the independence of the judiciary which “is the touchstone of our Constitutional government that allows the checks-and-balances system to function effectively.” He believes “the United States Court system is the pinnacle of judicial systems” and must be viewed in “an independent light.”

The CLE portion of the program concluded with a brief question and answer session. Chief Judge Sánchez was asked about issues the court faced during the government shutdown. He explained how the court managed its resources so that the court could sustain funding through Feb. 8, 2019 without any lapse in pay for its employees. He also reported that no services to the public were ever cut during the shutdown. He noted, however, that employee morale was still impacted by the uncertainty brought on by the shutdown. Chief Judge Sánchez was appreciative of the opportunity to speak at the Philadelphia Bar Association and of its role in the community when it speaks out in support of the judicial branch.

Kathleen D. Wilkinson (Kathleen.Wilkinson@wilsonkeller.com), partner at Wilson Eber Moh Kotowitz Eidelberg & Etche, is a former Chancellor and is cochair of the Federal Courts Committee.
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Phila. Bar Charity Run/Walk Celebrates 40 Years

The Philadelphia Bar Association Charity Run/Walk benefiting the Support Center for Child Advocates will be held on May 19, 2019, at Memorial Hall in Fairmount Park. This year’s Run/Walk is a milestone achievement as it marks the 40th Anniversary of the Charity Run/Walk and the association’s continuing efforts to combat and improve the lives of abused and affected children. Since its inception in 1979, the Charity Run/Walk has raised more than $2 million in support of these efforts. The event includes a 5-kilometer (3.1 miles) race and the 5-kilometer walk. In addition, to commemorate the 40th anniversary, a 10-kilometer (6.2 miles) race has been added. Anyone may run or walk as an individual in the Open Competition. Members of the association are included, at no extra charge, in a special Bar Competition, in addition to the Open Competition. There is also a free 200-yard non-competitive Kids’ Dash for children ages 5-10 sponsored by Buchanan Ingersoll & Rooney PC.

Online registration is now open and accessible for individual entries through May 17, 2019, at www.phillybarcharityrun.com. The deadline for mail-in registration forms, which can also be downloaded from the site, is May 10. Applications and information for the Caesar Rivise, PC-sponsored Legal Team Competitions may also be obtained online and downloaded at www.phillybarcharityrun.com. The deadline for receiving team registrations is Friday, May 10, 2019. If you have questions regarding team sign-up, please contact Magdalena Lozada at mlozada@caesar.law.

Registration for the Kids’ Dash is on the day of the event. The individual 5K walk entry fee is $25 and the fee is $35 for the Open and Bar Association Competition 5K race, if the registration application is postmarked by May 10. For those registering for the 10K race, the individual entry fee for the Open and Bar Competitions is $45, if the registration application is postmarked by May 10. Individuals can register in person at the office of Caesar Rivise, PC, 1635 Market St., 12th Floor, Philadelphia, Pa. 19103, on May 16 and 17, between 9:00 a.m. and 4:00 p.m. Online registration is also available at www.runsignup.com. A service fee is added for online registrations.

Pre-registration is encouraged as entry fees on the day of the event increase to $45 for the 5K run and $55 for the 10K run. At this time, the Philadelphia Bar Association has already been joined by the following corporate level sponsors: Firstrust Bank; Buchanan Ingersoll & Rooney PC; Caesar Rivise, PC; Philadelphia Runner; Veritext; 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 LLP; Cozen O’Connor; DLA Piper; Drinker Biddle & Reath LLP; Fox Rothschild LLP; Offit Kurman, Attorneys At Law; Pepper Hamilton LLP; and Stevens & Lee PC. There is still time to be a sponsor of the race. For information regarding the levels of sponsorship and for being listed on upcoming advertising, please call Manny Pokotilow at (215) 567-2210.

Board Supports Proposed Pa. Rules of Evidence

The Board of Governors unanimously adopted a resolution on Feb. 28 approving the submission of a comment letter to the Supreme Court of Pennsylvania Committee on Rules of Evidence representing the position of the Philadelphia Bar Association supporting the adoption of proposed Pennsylvania Rules of Evidence 902(13) and 902(14).

The Supreme Court of Pennsylvania Committee on Rules of Evidence has proposed the adoption of Pennsylvania Rules of Evidence 902(13) and 902(14) and has issued a Notice of Proposed Rulemaking soliciting comments, suggestions or objections from interested parties prior to submission of the proposal to the Supreme Court. Proposed Rule 902(13) establishes a procedure by which records generated by an electronic process or system that produces an accurate result may be authenticated by use of a certification rather than through the live testimony of a foundation witness. Proposed Rule 902(14) establishes a procedure by which data copied from an electronic device, storage medium or file may be authenticated by use of a certification rather than through the live testimony of a foundation witness.

Proposed Rules 902(13) and 902(14) are identical to Federal Rules of Evidence 902(13) and 902(14), bringing Pennsylvania state court practice into conformity with federal court practice.

To view the full resolution, visit PhiladelphiaBar.org.

Court Funding continued from page 1

A limited time period and were deferring to only be able to pay employees for cutting travel unrelated to cases, asking for shutdown, courts were delaying new hires, affecting the ability of government lawyers to perform their duties and meet deadlines.

It is anticipated that there could be shutdowns of the federal government that could impact the federal judicial system in the future. A continuous level of funding is necessary for the federal judicial system to carry out its mission of providing fair and impartial justice in a timely manner.

The inability of the federal judicial system, including the U.S. Third Circuit Court of Appeals and the Eastern District of Pennsylvania courts, to carry out its mission and/or to face possible closure will interfere with being able to provide fair and impartial justice to all, which is of great concern to the Philadelphia Bar Association and the public. Any funding dispute between the legislative and executive branches should not impact full and adequate funding of the judicial branch, a coequal branch of the government.

The Philadelphia Bar Association urges Congress and the executive branch of the federal government to take all actions, and to adopt laws and policies that ensure full and adequate court funding is provided at all times for the federal judicial system, including the U.S. Third Circuit Court of Appeals and the Eastern District of Pennsylvania courts, so that federal courts will be able to remain open in order to fulfill their constitutional duties at all times.

To view the full resolution, visit PhiladelphiaBar.org.
Importance of Drafting Detailed Retainer Agreements

Since the cost of “full service” representation is cost-prohibitive for many, it is not uncommon for clients to retain an attorney to perform designated legal services. In the corporate world, it is also not uncommon for corporate clients to divide legal representation into discrete tasks and to retain different lawyers to perform specialized and specific legal services.

A Limited Scope Retainer (LSR) is a retainer agreement wherein the client agrees that the attorney will provide legal services for part, but not all, of the client’s legal matter. Common examples include a pro se litigant retaining an attorney to “ghost write” pleadings, a consultation to evaluate the legal merit of a potential claim; or an engagement to provide tax advice on a corporate transaction.

LSRs clearly provide benefits to both attorneys and clients. For clients, LSRs reduce the cost of legal services and provide options. Clients are not forced to choose between “full service” representation or no representation. For attorneys, LSRs provide an opportunity to expand their client base and to tailor their practice’s focus.

That being said, LSRs carry certain risks, especially to attorneys who do not clearly communicate the limited nature of the legal work they are agreeing to perform. If a scope of one’s retention is not effectively communicated to a client, the attorney may, unwittingly, be held liable for failing to perform duties that were outside of the limited retention originally anticipated.

In order to avoid risks stemming from unclear communication regarding the scope of the retention, it is vital that every attorney prepare a written retainer agreement clearly articulating the scope of the representation. An attorney should carefully review the ethical requirements and rules for entering into a LSR in his or her specific jurisdiction before entering into such an engagement, to ensure compliance. While requirements vary by jurisdiction, at a minimum, the retainer should be in writing, describe the limited work the attorney was retained to perform and reflect the client’s informed consent to the arrangement. Depending on the circumstances, the attorney should consider including a statement of what legal services will not be provided or included in the representation. The retainer should also include a statement of who is in charge of filing documents (if applicable), of how disbursements are to be treated; and how fees are to be calculated and paid. As with any type of retainer, it is important that the agreement describe the circumstances in which the engagement is completed or in which the attorney is entitled to withdraw. If the client seeks further assistance from the attorney after the original matter is completed, the attorney must be sure to draft a new full or limited scope retainer.

Read more at insurancefocus.usaffinity.com.
To learn more, visit usaffinity.com, or call (800) 265-2876.

For more information about insurance, visit the Philadelphia Bar Association Insurance Exchange at www.usiaffinityex.com/PhiladelphiaBar. For attorneys’ Professional Liability and other business coverage, you can continue to visit the regular Philadelphia Bar Association Insurance Program website at www.MyBarInsurance.com/Philadelphia. If you’d like to talk to someone about insurance and benefits options for Philadelphia Bar Association members, call USI Affinity Benefit Specialists at 1-855-874-0657.

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People

Joe Khan, attorney at Weisbrod Matteis & Copley, was elected president of the board of directors of Smith Memorial Playground & Playhouse.

Robert Wiygul, of counsel to Hangley Aronchick Segal Pudlin & Schiller, PC, was recently elected to the board of directors of the Public Interest Law Center.

“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.

Parentage Evolving

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sentence in the Superior Court’s opinion read that “Pennsylvania Courts have interpreted parent to include only biological and adoptive parents.”

Ultimately, the Supreme Court granted certiorari to determine whether a former domestic partner of a biological parent had standing to pursue custody either as a de facto parent, or as someone standing in loco parentis to the child.

On appeal, C.G. argued for expanding the meaning of legal parentage under Pennsylvania’s child custody statute. C.G. urged that in addition to traditional concepts of parentage by biology and adoption, legal parentage should also include: “those who intend to bring a child into the world with the use of assistive reproductive technology and then co-parent the child subsequently born through that process.”

During oral arguments, Palmer argued that such a ruling would strengthen the rights of all children born via assisted conception, including children born into LGBTQ families.

In its Sept. 21, 2018 opinion rejecting C.G.’s argument, the high court reasoned that C.G.’s case did not provide a factual basis upon which to expand the definition of “parent.”

Although C.G. did not prevail in her efforts to obtain custody of this child, the Supreme Court clarified that their decision was based specifically on the circumstances of that case and left open the idea of a “parentage by intent” standard in the future—for example, when a child is conceived via assistive reproductive technology.

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