Judiciary Talks Court Priorities, Initiatives at Bench-Bar

By Thomas E. Rogers

Rehabilitation and electronic filing were two of the utmost priorities of Pennsylvania courts in 2016. Both initiatives have been credited with improving the efficiency and success of the judicial system in the state. Attendees of the 2016 Bench-Bar & Annual Conference heard from representatives of the state, federal and local courts at the newly rebranded “Brunch With the Bench” CLE program on Sept. 24. The panel included: Justice Debra McCloskey Todd, Supreme Court of Pennsylvania; President Judge Susan Peikes Gantman, Superior Court of Pennsylvania; Judge C. Darnell Jones II, U.S. District Court, Eastern District of Pennsylvania; President Judge Sheila A. Woods-Skipper, Philadelphia Court of Common Pleas; and President Judge Marsha H. Neifield, Philadelphia Municipal Court.

Functioning as the “people’s court,” according to Judge Neifield, Philadelphia Municipal Court sees approximately 9,000 criminal cases and more than 100,000 civil cases each year. It issues summary, misdemeanor and felony judgments and all appeals are sent to the Philadelphia Court of Common Pleas. Philadelphia Treatment Court, the first court of its kind in Pennsylvania, continues to help rehabilitate defendants dealing with substance abuse issues.

The Philadelphia Court of Common Pleas is broken up into three distinct bodies, Trial Court, Orphans’ Court and Family Court. The Trial Court hears criminal cases and civil cases with controversies of more than $50,000; Family Court hears cases involving delinquencies, dependencies, terminations of parental rights and more; and Orphans’ Court hears cases over issues including guardianships of minors, incapacitated persons and estates. According to President Judge Woods-Skipper, Orphans’ Court is working on a new case management system with the Administrative Office of Pennsylvania Courts to launch in 2017-18. All appeals are sent to the Superior Court of Pennsylvania.

U.S. District Court for the Eastern

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Board Adopts Resolution Supporting Anti-Harassment Model Rule Amendment

By Matthew Cockayne

The Board of Governors unanimously adopted a resolution on Oct. 26 urging the Pennsylvania Supreme Court to adopt the amendment to ABA Model Rule 8.4, adding section (g), making it an ethical violation to engage in conduct...

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Board Adopts Resolution Opposing Anti-Sanctuary City Legislation

By Matthew Cockayne

The Board of Governors unanimously adopted a resolution on Sept. 29 opposing House Bill No. 1885, which would amend Pennsylvania’s Equal Pay Law by prohibiting employers from asking about an applicant’s prior salary history and requiring hiring managers to state a salary offer based on what the applicant’s perceived worth is to the company, as opposed to what she made in a previous position.

Additionally, the amendment would bar employers from prohibiting their employees from discussing their salaries with each other, and require employers to pay women the same compensation as men for “comparable work,” which is defined as being “substantially similar” in skill, effort, responsibility, and working conditions.

“We hope that our adoption of the resolution will prompt both the general assembly and Philadelphia City Council to pass important legislation to advance gender pay equity,” said Natalie Klyashtorny, assistant treasurer, Board of Governors, and drafter of the resolution.

The Philadelphia Bar Association’s resolution formally supports the Pennsylvania General Assembly to enact and the Governor to sign this legislation into law. To view the full resolution, visit PhiladelphiaBar.org.
Introduction

In August 1961, Clarence Earl Gideon stood trial for breaking and entering a pool hall in Panama City, Fla., on a felony charge. Indigent, Gideon asked the court to appoint a lawyer to represent him. His request was denied because Florida law required the appointment of counsel only in capital cases. After he was convicted and sentenced to five years in prison, Gideon unsuccessfully appealed his conviction to the Florida Supreme Court, maintaining that the Sixth Amendment required the state court to appoint counsel to represent him at trial.

Gideon then petitioned the U.S. Supreme Court. The Court ultimately held that the Sixth Amendment right to counsel is obligatory upon the states and ordered the states to provide counsel to indigent criminal defendants. A few months after the Supreme Court’s decision in Gideon v. Wainwright, the Attorney General of the United States, Robert F. Kennedy, said that “If an obscure Florida convict named Clarence Earl Gideon had not sat down in his prison cell with a pencil and paper to write a letter to the Supreme Court, and if the Court had not taken the trouble to look for merit in the one crude petition … the vast machinery of American law would have gone on functioning undisturbed. But Gideon did write the letter, the Court did look into his case … and the whole course of American legal history has been changed.”

Sadly, this machinery is broken in Pennsylvania. The change in legal history spurred by Gideon has been undermined by the failure to adequately fund public defender’s offices and other court-appointed criminal counsel in this state. This crisis is particularly acute in Philadelphia, where the defender’s office faces burgeoning criminal dockets and limited resources, while court-appointed counsel have been burdened with substantial fees and delayed payments.

But once again, the course of legal history may change. In September 2016, the Supreme Court of Pennsylvania issued its own landmark decision on an indigent defendant’s right to counsel. In Kuren et. al. v. Luzerne County, the Court held that the inadequate funding of the Luzerne County’s Office of Public Defender was a constructive denial of the Sixth Amendment right to counsel. As Justice David N. Wecht wrote, “The level of funding provided by a county to operate a public defender’s office has left that office incapable of complying with Gideon, [the county has created] the likelihood of systemic, widespread constructive denial of counsel in contravention of the Sixth Amendment…” Effective assistance mandates the expenditure of actual resources and not the mere formality of the appointment of counsel.

The Court recognized the financial burden that its decision would place on county governments, but noted that this burden was an unfortunate result of Pennsylvania’s “dubious distinction” as the only state in the nation that continues to rely exclusively upon local, rather than statewide, funding of public defender’s offices.

As with other issues involving access to justice, the Pennsylvania legislature has been conspicuously absent, requiring Pennsylvan-
As I took the opportunity recently to reflect on my tenure as chair, it was fitting that I was overwhelmed with a feeling of gratitude. I began my year inspired by past successes of the Young Lawyers Division, like the creation of the Support Center for Child Advocates. I was determined to show my colleagues that not only is that kind of service something the YLD and the Philadelphia Bar Association can handle, but that it’s something that as attorneys we are morally obligated to provide. On the other hand, I wanted to protect the programs that are already part of our legacy and open up their possibilities to a newer crop of YLD members.

I am deeply grateful that I didn’t have to answer that question, because they did. The YLD accomplished so much this year. None of it would have been possible without the help and support of not only our members, but also of the staff of the Association, who keep our meetings scheduled, our happy hours booked, our CLEs eligible, and in a major undertaking, our press conferences with the mayor, district attorney, House Representatives and judges, humming along.

Through the efforts of two of our YLD Executive Committee members, Meghan Claiborne and John Coyle, the YLD, partnering with Community Legal Services, the Office of the District Attorney, the Pennsylvania Court of Common Pleas, the City of Philadelphia, and Rep. Jordan Harris, planned a city-wide expungement clinic program on Nov. 12, scheduled to coincide with Act 5 taking affect. The law expands the number of offenses that can be expunged in Pennsylvania. The program includes six locations throughout the city, including a location staffed by Spanish-speaking volunteers, which is a partnership with the Hispanic Bar Association — another partnership without which this initiative could never have happened on this scale. The program also includes a prescreening component that allows citizens to sign up in advance that would not have been possible without the work of the Association’s communications staff.

Many Philadelphians are eligible to have their records expunged and cannot afford to do so. At the time of this writing, more than 1,800 people have signed up to be prescreened for eligibility. Having a record expunged increases one’s chances of employment. It is both a relatively simple process for an attorney to navigate and yet intimidating to a lay person. In that, it is representative of so many of the pro bono efforts that are undertaken every day by attorneys in our city. Many of them will not take much time for an attorney to handle and yet make all the difference in the world to the person thrust into the legal system. I am very proud of my friends and my Association, and so grateful for the hard work, support, drive and ability of them all.

Looking at the big picture, I am also proud that at just about every level and in every organization involved, this initiative was spearheaded by us much-maligned millennials. It looks to me like the world’s in pretty good hands.

Erin E. Lamb (elamb@rawle.com), associate at Rawle & Henderson LLP, is chair of the Young Lawyers Division.
VIDEO ENCORE: Be the Judge, Be the Jury... Become An Arbitrator!
Thu., 11/3/16 - 12 - 3 p.m. (2 SUB/1 ETH)
If you missed the live presentation of this practical and entertaining presentation, you can attend this video encore and learn how to conduct your first or next arbitration.
Compulsory arbitration was created as a means of efficiently disposing of smaller civil cases and conserving judicial resources by requiring as a first step that such cases be tried before a panel of three local court-appointed attorneys, with the understanding that any party can later appeal the decision and obtain a new trial. Experienced practitioners offer guidance and practical strategies to successfully conduct an arbitration and serve as an arbitrator. Attend this video CLE program and become certified to sit as an arbitrator for the Philadelphia Court of Common Pleas!

VIDEO ENCORE: Uniform Trust Code: New Jersey v. Pennsylvania
Mon., 11/7/16 - 12 - 2 p.m. (2 SUB)
Attend this video encore to hear the similarities and difference between the Uniform Trust Code in New Jersey and Pennsylvania.
Now that the Uniform Trust Code has crossed the river into New Jersey, practitioners practicing in both New Jersey and Pennsylvania are asking, how are these two “Uniform” Trust Codes similar and how do they differ? This practical video encore CLE seminar will explore the key provisions from both states, identify where they mirror each other and explore the differences between the two codes.

2016 Securities Litigation & Regulatory Update
Thu., 11/10/16 - 9 a.m. - 3 p.m. (4 SUB/1 ETH)
Co-hosted by the Philadelphia Bar Association Securities Regulations Committee and the New Jersey Bar Association Securities Litigation Committee
As lawsuits, investigations and enforcement actions continue apace, it is critical that securities litigators and enforcement lawyers keep up with the latest developments.
Join colleagues from both sides of the Delaware for an annual update in securities litigation and regulatory practice, a full-day program that explores and profiles significant developments and trends in securities laws. Don’t miss this annual update featuring prominent securities litigators and lawyers, high-level enforcement officials, senior in-house counsel and economists!

Peer Review - For Whose Benefit Is It?
Mon., 11/14/16 - 12 - 1 p.m. (1 SUB)
Hosted by the Medical-Legal Committee
This CLE course will examine the most recent case law developments in the area of Peer Review Protection. Experienced practitioners focus on the Peer Review Protection’s actual purpose and answer the question whose benefit is it - patients or healthcare providers?

Addressing the Challenge of Climate Change: The Role of the Law and Lawyers
Wed., 11/16/16 - 8:30 a.m. - 5:00 p.m. (6.5 SUB/1 ETH)
 Held at Perry World House, University of Pennsylvania, 3801 Locust Walk, Philadelphia
Co-presented by the Philadelphia Bar Association, A Call to the Bar: Lawyers for Common Sense on Climate, and the Pennsylvania Environmental Council
This full-day event focuses on the challenge of climate change, the legal framework for addressing the challenge, the need for much stronger and quicker action, the economic case for action, legal and economic issues specific to Pennsylvania, and the ethical and philosophical argument for action by lawyers and others. Hear from industry leaders at this groundbreaking one-day conference on the role of law and lawyers in addressing the challenge of climate change: Jeffrey D. Sachs, world-renowned economist and university professor at Columbia University; John Quigley, senior fellow, Kleinman Center for Energy Policy at the University of Pennsylvania, former Secretary of Pennsylvania Department of Environmental Protection; and John C. Dernbach, Commonwealth Professor of Environmental Law and Sustainability and director, Environmental Law and Sustainability Center, at Widener University Commonwealth School of Law.

Ethics and Incorporating New Technologies in Your Law Practice Digital Marketing
Thu., 11/17/16 - 12:00 - 3:15 p.m. (1 SUB/2 ETH)
Hosted by the Law Practice Management Committee
Join your colleagues to learn the ethical considerations of what you can and can’t do when digitally marketing your legal services.
Digital marketing is inevitably injected into the conversation as an integral part of a successful overall marketing plan. “Techy” or not, digital marketing remains a challenge for attorneys to implement given the limited amount of resources including the attorney’s time and money. Understanding the ethics involved with self or law firm promotion is important to comprehend before implementing any marketing campaign regardless of the medium. This CLE program will provide ethical considerations when promoting a law practice in the digital environment.

Assessing Credibility and Reasoned Decisions
Fri., 11/18/16 - 12:30 - 1:30 p.m. (1.0 SUB)
Hosted by the Workers’ Compensation Section
The most important thing in any workers’ compensation case is the credibility of the evidence provided. A judge needs to consider many things in order to justify the credibility of a Pennsylvania Workers’ Compensation case. Join your colleagues for a panel presentation by three experienced Workers’ Compensation Judges (WCJs) to discuss possible factors a judge may review in assessing credibility. The basis for credibility determinations may differ depending on numerous factors, such as whether the witness testified live before the WCJ or via deposition. The appellate courts have upheld several varying factors listed in a WCJ decision as a proper objective reason for making a specific credibility determination. This CLE program examines what credibility is, what can be the most important factors in assessing credibility, and how a reasoned decision may be concluded.

The Representation of LGBTQ Witnesses, Victims and Defendants in the Justice System
Mon., 11/21/16 - 3 - 4 p.m. (1 SUB)
Hosted by the Criminal Justice Section
Members of the LGBTQ community face unique obstacles in the criminal justice system. From their first contact with law enforcement, regardless of whether they are a witness, victim or defendant, they are at-risk for harm from both conscious and unconscious bias. This CLE will present common scenarios where the human and constitutional rights of members of the LGBTQ community are violated in the justice system and how members of the bar can work to bring about change. Join your colleagues and learn how to spot and navigate through these issues to advocate for the members of the LGBTQ community ethically, fairly and equitably.

Bridge the Gap
Tue., 11/22/16 - 9:00 a.m. - 1:15 p.m. (4 ETH)
The Bridge the Gap program is intended to give all newly admitted PA attorneys the “know-how” which is otherwise learned through trial and error. The Supreme Court of Pennsylvania approved a rule change requiring newly admitted lawyers to complete the Bridge the Gap program by their first CLE compliance deadline. This program focuses on key issues of ethics and professionalism that are essential for all attorneys admitted to practice law.

Annual Pennsylvania Rules of Evidence Refresher with Professor Jules Epstein
Tue., 11/29/16 - 12:30 - 1:30 p.m. (1 SUB)
Hosted by the Criminal Justice Section
Criminal law practitioners can’t afford to miss current updates in this vitally important area.
This nationally anticipated and widely acclaimed one-hour evidence law refresher, presented by Professor Jules Epstein, will examine recent evidence decisions in Pennsylvania, as well as the law of witness and mental health record privilege. Professor Epstein will also highlight new developments in the area of forensic science evidence in the courtroom.

Video Encore: Mediating a Landlord Tenant Dispute
Wed., 11/30/16 - 12:00 - 2:15 p.m. (2 SUB)
Attendees MUST agree to handle at least one mediation within 30 days of the course in order to receive CLE credits.
Through the Landlord Tenant Appellate Mediation Program (LTAMP), volunteer lawyers meet with parties in landlord tenant disputes that have been appealed from Municipal Court to the Court of Common Pleas before trial and attempt to bring the parties to an agreement through mediation. In this video encore program, lawyers will learn the rules of LTAMP, review the documents used at mediation and hear typical case scenarios. The Philadelphia Bar Association’s Senior Staff Counsel, Public & Legal Services, Amy Seefeld, will be there to answer questions regarding the LTAMP program.
The definition of infertility, or as Dr. Deanna Brasile, reproductive endocrinologist at Main Line Fertility, calls it, “subfertility,” is the inability to become pregnant after trying for a year, or the inability to become pregnant after six months, if the woman is over 35 years old. After the age of 35, becoming pregnant becomes more difficult, and after the age of 40 becoming pregnant with a healthy child can be very difficult. The causes of infertility include egg quality or ovulation issues, coital issues and anatomical problems. Around 1 percent of births in the U.S. happen through assisted reproductive technology.

The Women’s Rights Committee and The Women in the Profession Committee hosted Dr. Brasile on Sept. 22. She was on hand to answer questions about fertility and family planning: the things you have always wondered about, and the things you may not think of asking until the situation arises. It was a fascinating look at the intricacies of the rapidly evolving science behind reproduction.

Dr. Brasile discussed issues around in vitro fertilization (IVF), including cost (around $15,000 for procedure and medication), and the alternative method of freezing eggs, including cost (around $6,000). Scattered throughout her presentation were general fertility “fun facts” and medical ethics quandaries.

IVF is the process of fertilizing an egg with sperm, outside of the body, in a laboratory. Medication is initiated in the form of daily injections of a hormone that tells the ovaries to produce eggs. Once it is determined though ultrasound that the eggs are “ripe,” they are removed with a needle through the vaginal wall. Each egg is placed in a Petri dish with around 20,000 sperm cells for fertilization and then reintroduced into the uterus. Essentially, IVF is making sure the best eggs meet the best semen in the best possible environment for pregnancy to take place.

Dr. Brasile explained the benefits of freezing eggs for women in their thirties, who want to have biological children later in life. The process of removing the eggs is the same as it is in IVF, but eggs are then frozen instantly. Eggs can be frozen indefinitely and there is no increased risk of birth defects. Therefore, Dr. Brasile recommends egg freezing to women who are in their early thirties, want to have biological children in the future, and have not yet met the person they would like to have children with. The main concern with freezing eggs is how they will survive the thaw. She encourages women to research centers and inquire about thaw rates.

Dr. Brasile’s straightforward, fact-based presentation offered a wealth of information for those pursuing child bearing at a later age.

Stephanie Kammer (stephanie.kammer@phila.gov), assistant city solicitor for the City of Philadelphia, is an associate editor of the Philadelphia Bar Reporter.
Malawian Judge Discusses Sentencing Disparities

By Erin Murphy

In 2012, the U.S. Supreme Court in Miller v. Alabama held that it was unconstitutional to impose a mandatory sentence of life in prison without parole on juvenile homicide offenders. When the Court made this holding retroactive in 2016, it meant that thousands of offenders had the right to be resentenced. Meanwhile, half a world away in Malawi, the African country was navigating its own resentencing issues after the High Court of Malawi invalidated mandatory death sentences for murder convictions. The overlap of these developments was discussed by Malawian Senior Resident Magistrate Chikondi Mandala at a Sept. 14 seminar presented by the Philadelphia Bar Association’s Public Interest Section, Criminal Justice Section, Civil Rights Committee, Legal Rights of Children Committee and the International Law Committee; Pepper Hamilton LLP; and the Youth Sentencing & Reentry Project.

As a senior resident magistrate, Mandala presides over civil and criminal matters and is the Malawian equivalent of a U.S. trial judge. She spent time in the United States this summer through the Mandela Washington Fellowship, a program for young leaders from Sub-Saharan Africa.

Mandala began her presentation, titled “My Hands Are No Longer Tied: The Enhancement of Judicial Discretion,” by providing a background on Malawi’s history and its judiciary. Malawi became an independent country with its own constitution in 1963. A referendum in 1993 established a multiparty political system, and the country passed a new constitution that incorporated a bill of rights for the first time.

Still, Mandala said there are areas in need of improvement, particularly the criminal justice system. She noted that the country’s penal code dates back to the early 1900s, when Malawi was colonized by the British. It reflects the colonial goals of controlling Malawi’s native population and disproportionately affects the poor.

“When you are using these very old laws, you are subjecting yourself to what the colonizers wanted. You are implementing their laws against your own people,” Mandala said.

Mandala next spoke about mandatory death sentences for murder convictions and the High Court decision that deemed them unconstitutional.

In 2010, she explained, the High Court confirmed the retroactivity of its decision in Kafantayeni v. Attorney General, which stated that the automatic death penalty for murder violated the right to life and constituted inhuman punishment because it did not provide the individuals concerned with an opportunity to mitigate their sentences. At that time, there were 192 inmates in the Malawian prison system who had been sentenced to death, and each was entitled to a resentencing hearing.

By 2013, however, no resentencings had taken place. The Kafantayeni Resentencing Project was then formed to ensure each inmate would receive his or her rightful rehearing. Mandala noted that the project has been very successful so far — from February 2015 to January 2016, there were 74 rehearings, with 55 inmates being granted immediate release and 14 having their sentences reduced.

“The implementation of basic human rights standards is a process,” Mandala said. She concluded her presentation by discussing the lessons learned from the two countries’ resentencing efforts. More than anything, collaboration is needed, she said. This type of collaboration will be crucial in the United States, where the number of individuals affected by the Miller decision is far greater than the number affected by the Malawi High Court opinion.

Malawian Senior Resident Magistrate Chikondi Mandala (third from right); with Gaetan J. Alfano, Chancellor (left to right); Leanne L. Litwin, secretary, Criminal Justice Section; Joanna Visser Adjoian, co-chair, Legal Rights of Children Committee, and co-director, Youth Sentencing & Reentry Project (YSRP); Eli M. Segal, chair, Public Interest Section, and associate, Pepper Hamilton LLP; and Lauren Fine, co-director, YSRP; at Pepper Hamilton LLP on Sept. 14.

For details on placing a Lawyer to Lawyer referral ad, contact Lana Ehrlich at 215-557-2392 or lehrich@alm.com.
‘Place of Public Accommodation’ Targets Internet

By Annie Kernicky

Under Title III of the Americans with Disabilities Act (ADA), no individual may be discriminated against on the basis of disability with regards to the full and equal enjoyment of the goods, services, facilities or accommodations at any place of public accommodation. Title III typically has been interpreted to apply to such brick-and-mortar places as restaurants, hotels, stores, schools and commercial facilities. However, the Internet and digital world have grown exponentially since the ADA was enacted in 1990, leading federal agencies, courts and lawyers to struggle with whether the virtual world of websites qualify as “place[s] of public accommodation.”

On Oct. 6, Philip R. Voluck, managing partner, and Kaufman Dolovich Voluck, presented to the Labor and Employment Law Committee on this timely issue of web accessibility under the ADA.

Under the ADA, a “place of public accommodation” must fall within the following three criteria: it must be operated by a private entity, its operations must affect commerce and it must fall within one of the 12 categories of public accommodation. Because the ADA does not specifically state whether it applies only to brick-and-mortar versus digital “places,” Voluck explained that businesses of all types are now being threatened with digital and website accessibility claims. Voluck noted that there are approximately 75 suits currently pending in federal courts against companies for allegedly inaccessible websites. These suits, Voluck explained, are across the country – including many in Pennsylvania – but are primarily brought by the same group of plaintiffs.

Despite the burgeoning litigation, the circuit courts are split on the issue of whether the ADA applies to websites, Voluck said. The Third, Ninth, and Eleventh Circuits apply the ADA only to websites that have a brick-and-mortar physical space, while the Second and Seventh Circuits apply the ADA even without a connection to a physical space, Voluck said. Adding even more confusion, Voluck noted, the Department of Justice (DOJ), which is responsible for ADA Title III enforcement, will not be issuing formal guidelines until at least 2018. Voluck said that the DOJ has, however, explicitly stated that it expects public accommodations to cover making websites accessible. Because up to 20 percent of Americans have some type of disability, whether that be visual, hearing, motor or cognitive, Voluck said the issue could have a significant effect on businesses and other entities with a public website.

Private standards, such as the Web Content Accessibility Guidelines (WGAC 2.0), provide guidance and suggestions as to what websites need to do to be ADA compliant, Fogarty said. For example, the WGAC 2.0 guidelines provide checkpoints as to “all non-text content (with certain exceptions) presented to the user should have an equivalent text alternative,” and “web pages have titles that describe topic or purpose.”

The good news for the owners of websites is that Title III of the ADA does not provide for the payment of compensatory damages to a plaintiff. Instead, the law provides only for limited relief in the form of remediation of the inaccessibility issues, and the payment of attorneys’ fees and costs, Voluck said.

Voluck explained that typical settlement terms of a web accessibility claim include the adoption of a website accessibility policy, training related to specific job responsibilities, achieving substantial compliance with the WGAC 2.0 guidelines, and a monetary component. If the DOJ is involved, the agreement will not be confidential, he said. Given the threat of litigation, the current lack of official guidelines, and the split in circuits, this emerging area of law is expected to grow along with the digital world. Law firm websites may be the next target, Voluck concluded. As a result, he recommended that all owners of websites, including law firms, look into updating their website accessibility – both to comply with the law and to reach the estimated 20 percent of the population with a disability.

Annie Kernicky (annie.kernicky@flastergreenberg.com), associate at FlasterGreenberg, is an associate editor of the Philadelphia Bar Reporter.

LAWYER TO LAWYER REFERRALS

For details on placing a Lawyer to Lawyer referral ad, contact Lana Ehrlich at 215-557-2392 or lehrlich@alm.com.
Bar Foundation
An Attitude of Gratitude

Given that this is the month in which we celebrate Thanksgiving, I want to take the opportunity to reflect on the many things for which we at the Philadelphia Bar Foundation are grateful. Appreciation for our blessings is important by itself and can also motivate all of us to work together to make the upcoming year even better.

We are grateful to live in a nation of laws where a fundamental tenet is the promise of equality for all before the law. Those of us who are lawyers are grateful for the privilege of practicing law in a society that embodies and respects the rule of law. We are grateful for the honor of being guardians of the rule of law and, in this crucial role, we are both humbled and motivated to promote equal access to justice. The Foundation is the only philanthropic agency in our region that serves the entire community on these issues. The Foundation supports the full scope of legal aid options for people in need, which is only possible owing to the generosity of law firms, corporate legal departments, individual lawyers and businesses serving the legal field – for which we are especially appreciative.

We are grateful for all the public interest lawyers, staff and volunteers at the almost 40 legal aid nonprofit agencies in Philadelphia who receive unrestricted operating grants from the Foundation. These public interest advocates devote themselves to serving the poor and underrepresented, eschewing the material benefits and renown they might otherwise acquire in private practice. Each year we recognize one outstanding public interest lawyer with the Philadelphia Bar Foundation Award. The choice is always a difficult one because the field is ripe with extraordinary lawyers whose brilliant work is matched only by their devotion to seeing justice done, especially for the most vulnerable and marginalized among us.

At the Access to Justice Benefit on Nov. 5, we demonstrated our gratitude for the work of these phenomenal public interest leaders and committed ourselves to raising critically needed funds, which allow them to continue their inspiring efforts.

We are grateful to the pro bono partners from the private bar and in-house counsel offices whose many thousands of donated hours of service support the work of public interest lawyers. Each year we pick one such partnership to honor with the Philadelphia Bar Foundation Pro Bono Award. Here again, the choice is difficult because compelling examples of these extraordinary partnerships abound. We honor these pro bono partners not only to express our gratitude for their individual pro bono service, but also with the hope that it will inspire others to act.

As President John F. Kennedy noted in the Thanksgiving Proclamation of 1963, “As we express our gratitude, we must never forget that the highest appreciation is not to utter words, but to live by them.” In that regard, we are enormously gratified that following up on the Bar Foundation’s recognition in 2014 of the extraordinary expungement work done by the firm of Mincey & Fitzpatrick, this month on Nov. 12 from 10 a.m. – 1 p.m., the Philadelphia Bar Association’s Young Lawyers Division (YLD) is organizing a free expungement clinic in six locations across Philadelphia.

The Foundation is proud and grateful for our many collaborations with the Association. We are deeply thankful for the support – both material and otherwise – we have received from the current, future, and many former Association Chancellors. We are especially grateful to the YLD for their enthusiastic partnership with the Bar Foundation on the award-winning Board Observer Program for the fifth year in a row this year, and for their recent bowling tournament fundraiser, “Striking Injustice – The Bar Abides.”

We are grateful to all of our donors without whom our work promoting access to justice would not be possible. During September and October, the Grants Committee of the Foundation conducts interviews with each and every agency we fund. Without exception, the executive directors underscore the incredible worth of the Foundation’s unrestricted operating grants. Our monies allow these agencies the flexibility to immediately staff efforts to address emergent and urgent legal needs before proposals to other funders for on-going programmatic support can be submitted or won. Our annual donors – large and small – help us to help these brilliant and resilient public interest lawyers keep the lights on as they desperately work to diversify and expand their services in response to the growing demands they face with declining resources.

On 1964, the year the Foundation was founded, President Johnson’s Thanksgiving Day Proclamation included observations that are still remarkably apt in Philadelphia today:

Although we have been blessed with unsurpassed prosperity, we recognize that poverty and want exist throughout the world – even among us – and we pledge ourselves to the eradication of those evils. Yet, we are filled with an instinctive impulse to give thanks for our:

• Freedom of speech, our freedom of the press and our freedom to worship as our conscience dictates;

• Emphasis upon the dignity, equality and worth of man;

• Humanitarian instincts;

• Unalienable right to life, liberty and the pursuit of happiness; and

• Confidence in our ability to meet the challenges of today and of the future.

With the skill, ingenuity and devotion of the public interest lawyers and their pro bono partners to #GettingJusticeDone, and with your continued support, we at the Foundation remain confident in our ability to meet the challenges of today and of the future.

Thank you. Gracias. Merci. Spasiba. In any language, we appreciate your ongoing support. We are grateful to everyone who participated in our “Jeans for Justice Campaign” last month. Please be on the look-out for our “Giving Tuesday Campaign” in November, and our end-of-year “Individual Giving Campaign” in December.

Steven E. Bizar (steven.bizar@dechert.com), a partner at Dechert LLP, is president of the Philadelphia Bar Foundation.

ATTORNEY DISCIPLINARY / ETHICS MATTERS
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• Former Federal Prosecutor
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By Steven E. Bizar

Donation Opportunity
Contributing to the Philadelphia Bar Foundation shows you care about our justice system and the assistance it provides to the community. With one contribution you are supporting all the public interest legal organizations in the Philadelphia area that serve those who need a lawyer to help them assert their legal rights but who cannot afford one. For more information, please visit www.philabarfoundation.org.

PhiladelphiaBar.org
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Nuts and Bolts of Depositions, Learning on the Job

By Enrique Marquez

No attorney learns how to conduct a deposition in law school. However, it is essential for any attorney who is involved in litigation to learn at least the basics because a deposition is something you will likely face at a certain point in your career. Raynes McCarty presented a CLE titled “Deposition Skills Every Courtroom Litigator Needs to Know” featuring Raynes McCarty attorneys Timothy R. Lawn, Mark J. LeWinter and A. Roy Decaro on Aug. 18. During the program they gave insights on how to prepare, how best to utilize technology, and ultimately offered a strategy on how to manage a deposition.

According to Lawn, the time to think of preparing for a deposition is before you file a complaint. This is the time when you ought to learn the ins and outs of the potential case before you. Anticipate that there might be a deposition. This mentality will have you start thinking about how to speak with the client during your interview with them. Go visit the scene where any particular event took place. The best tool at your disposal is going to be the Internet. It definitely has changed the game, and this deserves its own CLE (and article). It behooves you to research who your opposition is, what other products are doing that your client failed to do with theirs. Identify the who, what, when, where and why.

Once you obtain all pertinent information, create a discovery plan that involves who you should depose and in what order you should depose them. The order may seem irrelevant at first thought, but if you anticipate learning certain details that will prove useful in deposing another person, you may be interested in deposing that person first. This plan should be your roadmap and upon completing it, distill it to a one page outline to keep with you during the deposition. You want to make certain you hit every point on that map. The more you prepare for a deposition, the more you will learn from deposing a witness.

As with any map, it has to lead to the “X.” Always make sure you have a goal in mind. Do you need to lock in a particular story or chip away at an anticipated defense? Make sure you are able to check off that you have accomplished your goal. Now, it is deposition time. Going in, have copies of your exhibits to give the court reporter, and have them organized. During your questioning of a witness, think about delivering open-ended questions. Witnesses might divulge in more detail than what was solicited from them. To that end, you must listen to the answers a witness is giving you. Anticipate that a witness might be reluctant to answer and be relentless, but respectful. If you know a witness knows an answer, then make sure you have more than one way of getting to the information you want. You must take control of the deposition, not the other way around.

Finally, a novel topic discussed was the use of technology in a deposition. Technology can be useful in relaying your theory to a jury. It can also prove useful during a deposition. You are limited by your imagination in this regard. Technology allows you to create digital versions of your exhibits. When you present this to a witness, you can have him or her make their annotations on the exhibit. Then, you are able to save those changes for future use at trial. Technology has allowed depositions to be much more interactive than before.

One more piece of advice that was provided, during a deposition never go “off record.”

Enrique Marquez (Enrique.Marquez@Phila.gov), assistant city solicitor for the City of Philadelphia, is an associate editor of the Philadelphia Bar Reporter.

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.

Assisted Reproductive Technology Creates New Options

By Elisa C. Advani

Assisted Reproductive Technology (ART) is the new norm for couples unable to conceive or reproduce naturally. This topic is especially relevant for same-sex couples looking to start families. The LGBT Rights Committee hosted a Sept. 28 CLE program titled “The Work of ART: Assisted Reproductive Technology and Family Law Considerations” with panelists Dr. Jacqueline N. Gutmann of Reproductive Medical Associates and clinical associate professor, Obstetrics and Gynecology, at Thomas Jefferson University, and Tiffany L. Palmer, founder and shareholder, Jerner & Palmer, PC. The panelists discussed ways lawyers can be proactive in securing their clients’ parental rights in the use of ART prior to conception or birth, thereby avoiding future litigation. Gutmann helps thousands of families in the Philadelphia area with ART and explained the various options. In vitro fertilization (IVF) involves removing eggs from the ovaries and combining them with sperm, then placing the embryo back into the uterus. The process requires fertility medications, monitoring, egg retrieval and implantation. Co-maternity involves a sperm donor and IVF with eggs from one partner implanted into the uterus of the other partner. This involves two patients and is more expensive since the partner receiving the eggs would need medication to prepare the uterine lining. Cost also depends on the amount of medication needed for producing eggs, which varies depending on the age and health of the patient. Other ART options include egg donation, sperm donation and surrogacy, either gestational or traditional. In gestational surrogacy, the surrogate is not genetically related to the child and acts only as a carrier during pregnancy. Traditional surrogacy can be achieved without IVF but tends to be more legally complex since the surrogate is genetically related to the child.

Palmer discussed the legal aspects of ART arrangements. Donors and gestational carriers must be distinguished from “intended parents” who ultimately want to become “legal parents” having custody, child support, inheritance and medical decision making power. Donor or gestational carrier contracts and intended parents agreements can help to avoid litigation. Marriage was once a way of securing one’s parental rights but when couples who used ART got divorced, these rights can be lost. Some courts have chosen not to apply the marital presumption due to the factual impossibility of same-sex couples reproducing without third party assistance. The marital presumption did not apply in Kansier v. Kansier, where a Florida court invalidated the parental rights of a transgender male husband since the child was conceived through artificial insemination. Similarly in Puchowski v. Puchowski a New York court ruled that a nongenital spouse in a same-sex marriage had no standing as a parent because the presumption of legitimacy was one of a biological relationship and not of legal status. Parents can seek a pre-birth parental court order wherein a judge orders that intended parents are legal parents. Post-birth legal options include second parent or step parent adoption. Palmer said that contracts, and even clinic consent forms, reflect the intent of the parties. In co-maternity, for example, the mother going through egg retrieval must not sign a “donor” consent form containing language that would relinquish her rights as a parent.

Another obstacle for couples in a divorce is determining who has the right to use or dispose of frozen embryos that resulted from IVF. In Reber v. Reiss, a Pennsylvania court held that a wife’s interest in procreating after having gone through cancer treatments was greater than the husband’s interest in avoiding procreation. State laws governing ART and donor contracts are inconsistent. In New Jersey, a husband whose wife is artificially inseminated is treated in law as if she were the natural father of

continued on page 20
Crash Course in Arbitration Resulting in Certification

By Lauren A. Strebel

Philadelphia’s Compulsory Arbitration Program was created as a means of disposing smaller civil cases to conserve judicial resources. Cases involving damages less than $50,000 are automatically funneled through arbitration. Approximately 70 percent of these matters are resolved prior to trial. During the CLE program titled “Be the Judge, Be the Jury... Become an Arbitrator!” on Oct. 5, attendees learned the ins and outs of being an arbitrator and some litigation techniques through an interactive session. The program was hosted by the Compulsory Arbitration Committee of the State Civil Litigation Section and presented with the Philadelphia Court of Common Pleas Compulsory Arbitration Program.

Panelists were Ryan D. Briskin and James P. Tolerico, co-chairs, Compulsory Arbitration Committee; Brad S. Rush, co-chair, State Civil Litigation Section; Maureen Eagen, director, Arbitration Center, Philadelphia Court of Common Pleas Compulsory Arbitration Program; Ronald A. Kovler, Kovler & Rush, P.C.; Thomas D. Summerville, Law Offices of Thomas D. Summerville; and Michaella A. Tassinari; Robert J. Casey, Jr. & Associates.

In order to become an arbitrator, you must: (1) be a member of the Supreme Court of Pennsylvania; (2) have a Crash Course in Arbitration Resulting in Certification

Maureen Eagen, director, Arbitration Center, Philadelphia Court of Common Pleas (at podium); with (dais, left to right) Ryan D. Briskin, co-chair, Compulsory Arbitration Committee; Brad S. Rush, co-chair, State Civil Litigation Section; Thomas D. Summerville, Law Offices of Thomas D. Summerville; Michaela A. Tassinari, Robert J. Casey, Jr. & Associates; and Ronald A. Kovler, Kovler & Rush, P.C.; spoke to a full house at the Philadelphia Bar Association CLE on Oct. 5.

Leading Mindfully: Investment of Presence, Awareness

By Curt Woolford

The fundamental qualities of mindful leadership, and how those qualities relate to legal practice and the various leadership roles lawyers hold, are based in physical balance, emotional connection, and ethical mental focus. The Philadelphia Bar Association’s Business Law Section presented its third program in a series of CLE programs on mindfulness on Sept. 28. The presenters were Katayun I. Jaffari, chair of the Section; Tanuja Dehne, Silver Bay Realty Trust Corp.; Esther Wyss-Flamm, Ph.D., Me.D., E-RYT, Healing Arts Studio, LLC; and Curt Woolford, M.A., E-RYT.

Jaffari opened the program by asking participants to consider personal experiences of “mindless” leadership. As many participants could relate, leadership can easily break down and be ineffective when it is void of presence and awareness. Jon Kabat-Zinn teaches that “mindfulness means paying attention in a particular way; on purpose, in the present moment, and non-judgmentally.” Such a practice in the workplace can bring immeasurable positive results for clients, teams and colleagues alike. Jaffari provided an overview of the practice of mindfulness and a summary of essential skills that could enhance an attorney’s leadership value including greater awareness, focus, clarity, creativity and compassion. Dehne then shared a variety of experiences that demonstrated “mindful” leadership as well as mindless leadership. For example, she shared one of her experiences with President Bill Clinton noting that he always clearly practiced mindful leadership. President Clinton’s charismatic leadership was his ability to give full attention to an individual and listen deeply. These are the essential interpersonal communication skills of a mindful leader. “A boss says ‘Go!’ - a leader says ‘Let’s go!’” says E.M. Kelly. The difference between doing, managing and leading is significant. As we evolve professionally we are often put in a position to lead. Dehne discussed the continued on page 20

LEADING MINDFULLY: INVESTMENT OF PRESENCE, AWARENESS

PHILADELPHIA BAR ASSOCIATION CLE - BUSINESS LAW SECTION

Leading Mindfully: Investment of Presence, Awareness

By Curt Woolford

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ONLINE ELECTION

Ballots will be emailed **Monday, Nov. 21, 2016** to members in good standing and the deadline to vote online is **Wednesday, Dec. 7, 2016 at 5:30 p.m.**

**Candidates for the 2016 Election:**

**Vice Chancellor:**
Rochelle M. Fedullo

**Secretary:**
Marc J. Zucker

**Treasurer:**
Regina M. Foley

**Assistant Secretary:**
Jennifer S. Coatsworth

**Assistant Treasurer:**
Natalie Klyashtorny

**Board:**
Hon. Mark B. Cohen
Katayun I. Jaffari
Michael Mattioni
Hon. Sandra Mazer Moss (Ret.)
Maureen M. Olives
Amber M. Racine
Jennifer L. Seme

For questions regarding the Philadelphia Bar Association online election, contact Chief Financial Officer/Director of Administration Susan Knight at 215-238-6325 or sknight@philabar.org.
Business Abounds in Iran, U.S. Firms Face Challenges

By J. Michael Considine

Foreign, not U.S., companies are seizing opportunity in Iran and there is pent-up demand for Western consumer goods and technology, said Gerhard Barcus of Certius, a business consultancy based in Iran.

Some of the reasons for this are that, while there are restrictions for U.S. citizens, ventures do not require an Iranian partner, 70 percent of industry is government-owned, travel is permitted except for military areas and women have broader rights than in Saudi Arabia. Iran signed international arbitration treaties and does much business with its neighbors, Barcus said at a recent meeting of the International Business Initiative.

Certius helps companies assess business opportunities, establish their business, and thrive long-term in Iran. Its European and Iranian management and consulting professionals in many industries and networks, in local business and administration, perform strategy and planning, risk assessment, sales and distribution set-up, local partner match-making, marketing strategy, locating and working with local law and financial services firms and human resource service providers, branding, sales, mergers and acquisitions.

According to Barcus, companies should not seek a quick profit in Iran because it is a complex country. They should start with importation and sales by a national distributor. The next steps of this process include defining expansion milestones, phasing in production and a fully owned and managed sales and distribution system, tailoring products and services to consumers, and investing in data, consumer understanding and intelligence. Other things companies can do to be successful are secure appropriate local talent, build relations with public authorities, and invest within Iran’s Foreign Investment Promotion and Protection Act framework that protects investors.

Iran has improved in many areas in recent years. German exports rose 15 percent to 1.13 billion euros through June 30, 2016, a strategy to attract $100 billion in investment in oil prompted new model contracts, youth literacy is at 98 percent and university enrollment is at 58 percent.

Additionally, the economy is diversified. Opportunities exist in the transportation, aviation, oil and consumer products industries. Procter & Gamble, through foreign subsidiaries, established a solid foothold in Iran, even though Pantene and Head and Shoulders cost four times as much as local products. South Pars is the largest natural gas field in the world and India, Pakistan and Turkey rely on Iran’s natural gas. Tourism will likely increase with Persepolis, Shiraz and Isfahan and many UNESCO world heritage cultural sites.

Iran also has significant deposits of zinc, copper, iron ore, silver and manganese. Twenty percent of world oil trade passes through the Strait of Hormuz connecting India, Central Asia and Russia. Links to China’s new Silk Road by rail could boost trade between those countries by $600 billion.

The downsides of Iran are that its courts are slow and rulings unpredictable. Alcohol is harder to find than in non-Muslim countries and Iran Transactions and Sanctions Regulations, 31 CFR §560.206(a)(2), still ban most transactions by U.S. companies, with exemptions for agriculture, food, health and civil aviation.

J. Michael Considine (adventure7@juno.com), The Law Offices of J. Michael Considine Jr., P.C., is chair of the International Business Initiative.
Fedullo Is Sole Candidate for Vice Chancellor

Rochelle M. Fedullo, a partner at Wilson Elser Moskowitz Edelman & Dicker LLP, Parliamentarian for the Board of Governors and a member of the Editorial Board of The Philadelphia Lawyer magazine, is the sole candidate for Vice Chancellor of the Philadelphia Bar Association in this year’s election.

Fedullo has served on the Board of Governors at various times in the last 20 years, serving as chair in 2001, and as a member of the Cabinet in 2000, 2001, 2014 and 2016. She has been a member of the magazine’s Editorial Board since 2015. Fedullo has been chair or co-chair of the State Civil Committee, Women in the Profession Committee, Lawyer Referral & Information Service Committee and co-chair (2011) and chair (2014) of the Bench-Bar & Annual Conference. She is a former trustee of the Philadelphia Bar Foundation and co-chair (2013) of its Andrew Hamilton Benefit (now the Access University and Temple University Beasley School of Law. Prior to her law career, she taught English for nearly a decade at William Penn High School in North Philadelphia.

She has been involved in other legal organizations and activities including the Philadelphia Association of Defense Counsel, Temple University Beasley School of Law Alumni Association, Israel Bonds Legal Division Tribute Dinner, the Louis D. Brandeis Law Society, the Justinian Society, Philadelphia VIP and the Pennsylvania Bar Association. Fedullo also served as the co-chair of the 2016 SeniorLAW Center annual gala.

She is the proud mother of William Hollender Fedullo, a first-year law student at the University of Pennsylvania Law School. Her husband, William F. Fedullo, past Chancellor, is of counsel to Rosen, Schafer & DiMero in Philadelphia.

4 Line Office Posts Unopposed

For 2016, the four candidates for Association line office posts are unopposed. The candidates are Marc J. Zucker, secretary; Regina M. Foley, treasurer; Jennifer S. Coatsworth, assistant secretary; and Natalie Klyashtorny, assistant treasurer.

Zucker is a partner, Weir & Partners LLP and a graduate of Villanova University Charles Widger School of Law.

Zucker was chair, Board of Governors, 2013 (member, 2011-2014); chair, Business Litigation Committee; (2007-2008) (Chair of the Year, Business Law Section); investigator, Commission on Judicial Selection & Retention; chair, Israel Exchange Committee, 2007-2011; chair, Bylaws Committee, 2016; chair, Commerce JPT Task Force; member, Professional Guidance Committee, Federal Courts Committee; former member, Audit Committee, Director Search Committee, LRIS Committee, Marketing Task Force, Pension Committee, Revenue Task Force, Rule 205 Task Force.

He also served on the ABA Commercial & Business Litigation Committee (vice chair, editor-in-chief of committee newsletter; co-chair, ADR Subcommittee); and was president, Villanova Inn of Court, 2008-2010; fellow, American Bar Foundation; chair, JCRC of Greater Philadelphia, 2007-2010; national board member, Jewish Council of Public Affairs; Jewish Federation of Greater Philadelphia (board of directors, 2007-2010; board of trustees, 2005-14); chair, National Program Awards Committee, American Inns of Court Foundation, 2007-2008; Commerce Judge Pro Tem; volunteer, Philadelphia VIP; Zucker is a member of the Brandeis Law Society, The Barrister's Association of Philadelphia, Inc., the Brehon Law Society, and the Justinian Society.

Foley is an attorney at Raynes McCarty and graduated from Widener University Delaware School of Law.

Foley currently serves as treasurer of the Association (2016) and as chair, Solo, Small & Mid-Size Firm Committee (2015, 2016). She was co-chair of Women in the Profession Committee (2013-2014); ex-officio member, Board of Governors (2012); chair of Board of Governors (2011); Bar Leadership Institute (2011); elected member Board of Governors (2009-2011); Chancellor’s Appointment to Board of Governors (2008); Elections Committee (2011-2014); co-chair of Bench-Bar Conference (2010); Bench-Bar Conference, Scholarship Committee (2008-2013; 2015); appointed member, Membership Task Force (2011, 2012); Long Range Advisory Council (2013-2015); co-chair, Sandra Day O’Connor Award Committee (2013, 2014), member (2015, 2016); team member, Advancing Civics Education Program (2007-2012); Young Lawyers Division Executive Committee (2001-2004), chair, YLD Harvest for the Homeless, Habitat for Humanity/Community Outreach; member: Philadelphia Bar Foundation, Young Lawyers Division of the Hamilton Circle; Philadelphia Bar Foundation, Young Lawyers Division of the Hamilton Circle; Philadelphia Bar Foundation, Hamilton Circle; State Civil Litigation Section; Women in the Profession Committee; Medical-Legal Committee; Professional Responsibility Committee.

Foley is a member (1997-present) of the board of directors (2012-present) and is assistant treasurer of the Philadelphia Trial Lawyers (2015, 2016); is a member (1997 to present) and served on the Board of Governors (2001-2006) of the Pennsylvania Trial Lawyers Association; and serves in the House of Delegates, (2002 to present) of the Pennsylvania Bar Association. She is a member of the Brehon Law Society; the Brandeis Law Society; The Barristers’ Association of Philadelphia, Inc.; The Lawyers Club; the Montgomery County Bar Association; and is a volunteer attorney with Support Center for Child Advocates (2001 to present).

Coatsworth currently serves as assistant secretary for the Association. She was Board of Governors Parliamentarian (2015), elected member (2012-2014); co-chair, Military and Veterans Affairs Committee (2012, 2014); Budget Committee (2013) (Elections Committee (2013); Chancellors Retreat Planning Committee (2012, 2014); Committee on Insurance continued on page 15.
Hon. Mark B. Cohen

Professional Background: of counsel, Rosner, Allen, Rosner, Zimmerman, and Nash; Widener University Delaware Law School.

Activities: member, Criminal Justice Section; member State Civil Litigation Section; member, Public Interest Section; member, Workers’ Compensation Section.

Candidate’s Statement: I have served a record 42 1/2 years as an elected member of the Pennsylvania House of Representatives, including a record 21 years as an elected Democratic Caucus leader charged with leading analysis of bills and amendments to be voted. I will use skills in consensus building, public advocacy, budget balancing, fundraising, organization building, public engagement, community outreach, media relations and other related fields to grow our noble, energetic, and highly relevant Association into the compelling force it should become. My plan is to tap the energies and insights of members old and young, of law firms big and small, to raise our reputation and performance from current excellence to an even higher level. Our diversity – of gender, age, race, religion, ethnicity, areas of practice, expertise, educational institutions attended, communities of residence, etc. – has never been greater. Our challenge is to match the sum of our parts. We should understand our prestige and seek partnerships with bar associations and affinity groups throughout Pennsylvania, New Jersey and Delaware. Our foreign sister associations should extend beyond our current one with the Lyon, France bar association; our members can establish similar relationships elsewhere. We should survey our members for new program proposals, not just current program evaluations.

Katayun I. Jaffari

Professional Background: partner, Ballard Spahr LLP; George Washington University School of Law.

Activities: chair, Business Law Section and former vice chair and communications officer, former Small Business Committee chair, former Securities Regulation Committee vice-chair; co-chair, Governance and Sustainabilty Subcommittee, ABA Business Law Section; board member, Governance/ Nominating chair, National Scleroderma Foundation; board member, Governance Committee member, Corporate Advisory Committee co-chair, Maternity Care Coalition; board member, Forum of Executive Women and ION; child advocate for 18 years, former president, vice-president, secretary, Support Center for Child Advocates; former vice chair, Scleroderma Foundation Delaware Valley; former board member, Committee of Seventy.

Candidate’s Statement: My parents instilled in me that our duty in life is service to society. Membership on the Board of Governors would give me the opportunity to devote myself to public service by representing the voices of the Bar members, as well as supporting advancements to our legal and judicial systems. My prior leadership roles have given me the ability to listen to my peers, empower and engage others, support positive change for the community and promote equal access to justice. I would be honored to be of service to the legal community and accomplish what our members deem most important.

Michael Mattioni

Professional Background: president, Mattioni, Ltd.; University of Pittsburgh School of Law.

Activities: member, Real Property Section; member, Business Law Section.

Candidate’s Statement: I am running for the Board of Governors to continue the excellent work of the Philadelphia Bar Association. There are many attorneys who are not members; I hope to find ways to reach these non-members and convince them to become members. We must show the value the Bar Association provides to bring these attorneys into the Bar Association, while continuing the excellent service it provides the profession. I hope to bring greater publicity to the work of the Association in reviewing judicial candidates to the public. The Bar Association provides excellent vetting of candidates. The recommendations of the Bar Association need to be better publicized to aid the public in selecting judges. Our justice system is dependent upon continuing to have well-qualified judges; the Association’s work helps insure we have qualified judges.

Hon. Sandra Mazer Moss (Ret.)

Professional Background: mediator/arbitrator, The Dispute Resolution Institute; executive director, Sheller Center for Social Justice, Temple University Beasley School of Law; Temple University Beasley School of Law.

Activities: First Judicial District liaison, State Civil Litigation Section (2000- continued on page 16

7 Candidates Seek 5 Seats on Board
Bar to Elect Officers, Board Members

The Philadelphia Bar Association’s Annual Election of Officers and members of the Board of Governors will be conducted in 2016 via online ballot for the first time. Officers to be elected are vice-chancellor, secretary, treasurer, assistant secretary, assistant treasurer and five members of the Board of Governors for three-year terms.

According to Article IV, Section 406, Paragraph B, “The election shall be conducted electronically over the Internet pursuant to procedures established by the Board to preserve the confidentiality of the Member’s vote and the integrity of the voting process. The position of the nominee on the ballot shall be determined by lot. The drawing of lots shall be conducted by the Judge of Elections not less than 25 days before the commencement of voting in the presence of the nominees and/or their representatives. The form of the ballot shall be prescribed by the Board.”

Candidates for Office

Vice Chancellor
Rochelle M. Fedullo
Secretary
Marc J. Zucker
Treasurer
Regina M. Foley
Assistant Secretary
Jennifer S. Coatsworth
Assistant Treasurer
Natalie Klyashorny

Board of Governors (elect five)
Hon. Mark B. Cohen
Katayun I. Jaffari
Michael Martioni
Hon. Sandra Mazer Moss (Ret.)
Maureen M. Olives
Amber M. Racine
Jennifer L. Seme

My goal is to be an effective voice for all by recognizing our common goals while respecting our differences.

Jennifer L. Seme

Professional Background: Associate, Gibbons P.C.; Cleveland Marshall College of Law.

Activities: member, State Civil Litigation Section; member, Women in Profession Section; member, Executive Committee; member, State Civil Litigation Section; chair, pro bono and volunteer efforts. I have been involved in pro bono and volunteer activities ever since. My dedication to service is rooted in my belief that all lawyers have an obligation to give back to our chosen profession and to the communities in which we live and work. The bar association should be the place where lawyers meet to learn about developments in the law, to network and develop lasting relationships with members of the bench and bar, and to serve the public through pro bono and volunteer efforts. I have experience presenting and networking at events, hosting and recruiting sponsors for networking events, and I have a demonstrated record of pro bono and volunteer service. I am excited about the opportunity to put my years of experience to work for the members of this Association and would be honored to receive your vote.

Jennifer L. Seme

Professional Background: director of intake & service delivery, Philadelphia Legal Assistance; University at Buffalo, State University of New York School of Law.

Activities: Public Interest Section liaison, Board of Governors (2016); co-chair, Intake Subcommittee, Delivery of Legal Services Committee (2016); chair (2015), vice chair (2014) and treasurer (2013). Public Interest Section; chair, uKNIt Community Service Project (2015); chair, Law School Outreach Committee, Public Interest Section, (2007-2012); co-chair, Diversity Subcommittee, Delivery of Legal Services Committee (2008-2009).

Candidate’s Statement: Thank you for the opportunity to ask for your support. I have dedicated my legal career to working in the public interest as a legal services attorney as well as counseling and mentoring law students seeking public service careers. I am committed to diversity and inclusion in the legal profession, bridging the justice gap, and fairness in our criminal and civil justice system. As a member of the Board of Governors, I would support actions that promote equal access to legal process, promote civil rights and demand fairness in our profession.

Amber M. Racine

Professional Background: attorney, Raynes McCarty; Temple University, Beasley School of Law.

Activities: co-chair of Women in the Profession Committee (2015, 2016), co-chair, Sandra Day O’Connor Award Committee (2015, 2016), member, Editorial Board of The Philadelphia Lawyer magazine (2015, 2016); served on the Long Range Advisory Council (2015); served on the Elections Committee (2014); and was Young Lawyers Division liaison, The Barristers’ Association of Philadelphia, Inc. (2009).

Candidate’s Statement: I have been an active member of the Philadelphia Bar Association for the eight years that I have been a Philadelphia lawyer. I am currently co-chair of the Women in the Profession Committee and a member of The Philadelphia Lawyer magazine’s Editorial Board. Among other positions of leadership, I have had the privilege of serving as president of The Barristers’ Association of Philadelphia, Inc. From my history of being active in many different arenas within the Philadelphia and Pennsylvania legal communities, I understand that leadership and hard work go hand-in-hand. I am running for a seat on the Board of Governors to expand my service to the Bar Association. I believe it is vital for the Association to continue its efforts to promote its relevancy within the legal and Philadelphia-at-large communities.
9 Seek 7 Seats on YLD Executive Committee

Robert (“Bert”) H. Bender Jr.

Professional Background: associate, Montgomery McCracken Walker & Rhoads, LLP; Temple University Beasley School of Law.

Activities: Military Affairs Committee liaison, Young Lawyers Division; mentor, Philadelphia Veterans Court; pro bono attorney, Philadelphia VIP; Brehon Law Society; Young Friends of the Youth Sentencing and Re-Entry Project.

Candidate’s Statement: I believe as lawyers we have a responsibility not just to work within our profession but also to be proactive members of the greater community, and the Philadelphia Bar Association is the natural arm of that community involvement. Through my work with various veterans groups, I have witnessed issues affecting the veterans community that also affect our greater community, such as treatment for addiction and a lack of access to basic legal services. As a member of the Executive Committee, I will focus on finding ways to allow us as attorneys to utilize our unique skills and collaborate within the Greater Philadelphia community, especially the growing millennial population. When I moved back to Philadelphia for law school, I returned home to a city in the midst of a renaissance, teeming with opportunity but also filled with untapped potential and still struggling to overcome systemic and longstanding problems. I am excited for the opportunity to continue to work with the Young Lawyers Division, the Bar Association, and the community as a whole to build on this momentum.

Eli H. Klein

Professional Background: law clerk to the Hon. R. Barclay Surrick, U.S. District Court for the Eastern District of Pennsylvania; University of Pennsylvania Law School.

Activities: Federal Courts Committee liaison, Young Lawyers Division; board member, Graduate Philadelphia; board member, Greater Philadelphia Hispanic Chamber of Commerce; board member, Youth Sentencing and Reentry Project; Justice Rising Advocate and Young Friends board member, Community Legal Services; board member, Young Friends of Philly Fights Cancer; board member, Young Friends of Rittenhouse Row; outreach chair, board member, Jewish Federation of Greater Philadelphia.

Candidate’s Statement: As a native of the Philadelphia area, I am dedicated to this city, professionally, philanthropically and personally. I am actively engaged in the Philadelphia legal community, and remain committed to charitable endeavors to seek to continually improve the most energized city in the country. During my time in private practice I represented a variety of pro bono clients: I handled cases from the Prisoner’s Civil Rights Panel and the Pennsylvania Innocence Project, and assisted some of Philadelphia’s most at-need clients in conjunction with Philadelphia VIP. In joining the Executive Committee, I hope to build on my current role as the Federal Courts Committee liaison to the Young Lawyers Division and continue the YLD’s current momentum to maximize our exposure, service, and networking offerings to young lawyers across the city.

Negar M. Kordestani

Professional Background: associate, Blank Rome LLP; Villanova University Charles Widger School of Law.

Activities: Class of 2014 Advisor to the NovUS Chapter of the Villanova Law Alumni Association; Member, Columbia University Alumni Club of Philadelphia; YLD Member, Philadelphia Bar Association.

Candidate’s Statement: I hope to expand my engagement in the Philadelphia legal community as a member of the Young Lawyers Division Executive Committee. My civil practice includes matters related to business disputes, and I also have experience representing companies in litigation arising from the enforcement and defense of restrictive covenant agreements. In addition, I have represented pro bono clients in a variety of matters including a parole revocation matter and a breach of contract case. If elected, I will actively engage and participate in the numerous YLD committees that develop programs that help children, the elderly, and the disadvantaged in the Philadelphia community.

Hillary N. Ladov

Professional Background: associate, Wade Clark Mulhany; Rutgers University School of Law.

Activities: Brandeis Law Society liaison to Young Lawyers Division; managing attorney, Rutgers 501(c)(3) Pro Bono Project; pro bono attorney, Philadelphia VIP; vice president, Rutgers School of Law Recent Graduate Council; board member, Friends of Farmworkers (formerly Board Observer for Friends of Farmworkers); secretary, Hillel of Greater Philadelphia.

Candidate’s Statement: With great privilege comes great responsibility, which is why it is my responsibility to serve the community and create equal opportunities for all to succeed. This organization brings to young members of the Philadelphia Bar Association. Soon after joining, I became my law school’s liaison. I knew I always wanted to have an active leadership role within the YLD because it does so much more than provide networking opportunities for young attorneys – it provides a voice for the future of our Association. I am campaigning for an opportunity to be a part of that voice.

Catelyn McDonough

Professional Background: associate, Anapol Weiss; Widener University Delaware Law School.

Activities: Community Service Committee, Brehon Law Society; Fundraising Committee, Young Lawyers Division of the Philadelphia Bar Association; New Lawyer’s Division, Pennsylvania Association of Justice; member, American Association of Justice.

Candidate’s Statement: I have always been one to stay actively involved in my social and professional communities. I originally joined the Young Lawyers Division when I was a law student and quickly learned all of the great benefits this organization brings to young members of the Philadelphia Bar Association. Soon after joining, I became my law school’s liaison. I knew I always wanted to have an active leadership role within the YLD because it does so much more than provide networking opportunities for young attorneys – it provides a voice for the future of our Association. I am campaigning for an opportunity to be a part of that voice.

Jason W. Poore

Professional Background: associate, White and Williams LLP; Temple University Beasley School of Law.

Activities: committee chair, Youth Court Ad Hoc Committee; Medical-Legal Committee liaison, Young Lawyers Division; board member, The Spruce Foundation; committee member, Committee to Organize Lawyer in the Classroom program; court-certified arbitrator, Philadelphia Court of Common Pleas.

Candidate’s Statement: I have always been one to stay actively involved in my social and professional communities. I originally joined the Young Lawyers Division when I was a law student and quickly learned all of the great benefits this organization brings to young members of the Philadelphia Bar Association. Soon after joining, I became my law school’s liaison. I knew I always wanted to have an active leadership role within the YLD because it does so much more than provide networking opportunities for young attorneys – it provides a voice for the future of our Association. I am campaigning for an opportunity to be a part of that voice.

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Candidate’s Statement: I believe dedication to improving one’s community is an inherent part of the practice of law. Since law school I have consistently pursued my passions for justice and the Philadelphia community in various ways, including organizing get-out-the-vote campaigns and representing Philadelphia VIP clients. This past year, I started an Ad Hoc Youth Court Committee as part of my participation on the YLD Executive Committee. Youth Court is a student-run disciplinary system for student offenders who incur minor school infractions. The goals of Youth Court include fostering a positive view of the justice system, changing the paradigm from punishment to restorative justice and teaching students about the legal system. This is an exciting program that benefits the students and Philadelphia community-at-large. I hope to earn an elected position on the YLD Executive Committee to continue my work with the Youth Courts and the Philadelphia Bar Association.

Stephanie Stecklair

Professional Background: associate, Berner Klaw & Watson LLP; Widener University Delaware Law School.

Activities: Board Observer for Philadelphia VIP; Family Law Section Liaison, Young Lawyers Division; volunteer attorney, Philadelphia VIP; volunteer attorney, Support Center for Child Advocates; alumni advisor, Public Interest Law Alliance, Widener University Delaware Law School.

Candidate’s Statement: An attorney’s achievements do not rest in their billable hours alone. Being an active and engaged participant in our legal community is tantamount to personal success. My commitment to the Philadelphia legal community and citizens is demonstrated by my work with Philadelphia VIP, Support Center for Child Advocates and active involvement with the planning and organization of events for the Young Lawyers Division as the Family Law Section Liaison. My prior experience in domestic violence and public interest organizations inspires me to advocate for those without a voice. I look forward to bringing my perspective to the YLD Executive Committee.

Michael C. Witsch

Professional Background: associate, Montgomery, McCracken, Walker & Rhoads LLP; Temple University James E. Beasley School of Law

Activities: Appellate Courts Committee liaison, Young Lawyers Division; co-president, Holy Cross Club of Greater Philadelphia; alumni admissions representative and Class Reunion Committee member, College of the Holy Cross; volunteer attorney, Philadelphia VIP; volunteer attorney, Homeless Advocacy Project; member, Brethren Law Society; member, Bachelors Barge Club.

Candidate’s Statement: I am running for the Executive Committee to further the Young Lawyers Division’s efforts in serving the public and providing a collective voice to the members of our profession. It has been a tremendous privilege to work with the YLD this year to accomplish many of its core goals, such as introducing students to the law during Law Week’s “trial” of Gold E. Locks and raising money for worthy groups such as the Philadelphia Bar Foundation. I look forward to achieving our many remaining goals for this year, including having moderated a panel on interviewing skills for young lawyers at the YLD’s October Boot Camp program, helping Philadelphians clean their slates through the YLD’s historic expungement clinic, and spearheading our annual holiday toy drive. I have enjoyed all that we have done this year to achieve these goals and hope to take on a leadership position to further them next year.

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For more information, visit the Member Benefits page at PhiladelphiaBar.org.
Judge Bernstein Not Retiring, ‘Retooling’

By Matthew Cockayne

The Philadelphia Bar Association’s Justice William J. Brennan Jr. Distinguished Jurist Award is presented each year to a jurist whose life and work exemplify the high ideals and constant achievement of the late Justice Brennan, who died in July 1997. During the Quarterly Meeting at this year’s Bench-Bar & Annual Conference on Sept. 23 at Harrah’s Waterfront Conference Center in Atlantic City, Hon. Mark I. Bernstein (Ret.) was presented with the 2016 award.

Chancellor Gaetan J. Alfano began by introducing the history and purpose of the Brennan Award. He then continued off the presentation to 2016 Brennan Award Committee Chair Gino J. Benedetti, who presented Judge Bernstein with the award.

“Judge Bernstein’s body of work nobly serves the important principles underlying this award,” Benedetti said. “We all know he is very smart and compassionate. He is a man dedicated to the fair and equal administration of justice, a leader of leaders, and one who has enjoyed a long love affair with the law.”

Judge Bernstein, who served on the First Judicial District of Pennsylvania beginning in April 1987, retired from that position on Sept. 30. In his acceptance remarks, he thanked his friends, coworkers and the Association. He detailed his plans after leaving his position in court, including teaching at the Drexel University Thomas R. Kline School of Law, serving on the Committee for Proposed Standard Jury Instructions, editing his book titled “Pennsylvania Rules of Evidence” and being involved with mediations and arbitrations in the court.

“Please don’t say I’m retiring,” he said. “As Judge [Annette] Rizzo says, I’m just retooling.” Judge Bernstein praised the courts saying, “I want to talk about our court, the best urban court in the nation. Through the incredible, diligent and hard work of everyone in our court system, we have slain the dragon of delay. This was possible only because of the hard, dedicated work of the judiciary and voluntary lawyers who served as judge pro tem and the many hard working civil servants of the First Judicial District.”

Matthew Cockayne (mcockayne@philabar.org), junior at Temple University, is a communications intern at the Philadelphia Bar Association.

Employers Must Consider Medical Marijuana Implications

By Regina Parker

With the legalization of medical marijuana in Pennsylvania an injured worker may be certified by a physician to use marijuana for the treatment of work injuries. The Philadelphia Bar Association’s Workers’ Compensatio n Section presented a CLE on medical marijuana to discuss the Pennsylvania Medical Marijuana Act (the Act) at the 2016 Bench-Bar & Annual Conference on Sept. 23. The panel included Lee S. Fiederer, partner, The Chartwell Law Offices, LLP; and Steven T. Auerbach, founder and principal, Keystone Cannabis Law, a division of the Law Office of Steven T. Auerbach. The panel was moderated by Section Co-Chairs Danielle R. DeRosa and Eric B. Pearson.

Under the Act, marijuana must be dispensed in a processed form, typically a pill, cream or oil, and smoking of medical marijuana is prohibited. There are 17 approved medical conditions specifically listed in the Act, including cancer, that could be challenging in occupational disease cases. There are other conditions that we deal with on a regular basis in workers’ compensation cases. Some of these conditions are also included in the list approved for medical marijuana, including: (1) post-traumatic stress disorder; (2) damage to the nervous tissue of the spinal cord with neurological indication of intractable spasticity; (3) neuropathy; and (4) severe chronic or intractable pain of neuropathic origin or severe chronic intractable pain in which conventional treatment or opiates therapy is ineffective. The Act suggests that conventional treatment or opiate therapy should be shown ineffective prior to the use of medical marijuana. However, Fiederer explained that in the future, carriers may opt to pay for medical mari juana which could be significantly less than the monthly cost of opioids, compound creams and injections. The panelists cautioned that federal law does not recognize marijuana as a legal drug, even for medicinal purposes. However, the federal government has not prosecuted...
Mindfulness continued from page 10

“do - manage - lead” concept as it applies to professional development and mindful leadership. She reminded us that leading mindfully is a skill that takes consistent practice to master.

The remainder of the program provided hands-on exercises to apply mindful techniques in leadership situations. As Wyss-Flamm noted, “The sensory world is a portal into the present moment.” What can you do when you are really busy and an important meeting is imminent? Anchoring attention in the present moment is an important skill for leaders.

Wyss-Flamm led an activity to bring increased awareness into the body. Power postures were explored as a preparatory tool for potentially contentious situations. When we are fully present as leaders, we are in a position to make decisions mindfully and we can listen effectively to members of our team.

Woodford then led an exercise to develop mindful listening skills for leaders. Practicing with a partner, participants were asked to anchor attention on the speaker’s individual words while suspending the need to comprehend and respond. This practice develops essential listening skills for mindful leaders by freeing the mind from the typical distraction of forming mental responses. As leaders learn to bring their full awareness to members of their team, there is increased synergy and communication efficacy. Woodford noted that “mindful listening is an integral part of mindful leadership.” We cannot have one without the other. Woodford concluded with a lifelong assignment: Practice mindful listening several times a week in a safe environment - fully anchor attention on the speaker for several minutes, suspending the need to comprehend and respond. This practice can provide lawyers with a powerful tool to be successful in their careers.

Please join the Section for its final program of the series on Dec. 1 at Ballard Spahr LLP.

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.
cuted any individuals with small amounts of medical marijuana in any of the states that adopted a medical marijuana program, Auerbach said. He explained that the federal government is not likely to prosecute if states vigorously enforce laws involving medical marijuana.

Due to the conflict between state and federal law, insurers have a valid concern about paying for medical marijuana, Fiederer said. This concern is addressed under Section 2012 of the Act that makes clear that insurance companies, including workers’ compensation carriers, are not required to provide coverage for medical marijuana. Auerbach said that although the Act does not require carriers to pay for medical marijuana, he takes the position that carriers could potentially be obligated to pay for this treatment under the Workers’ Compensation Act which requires payment of reasonable, necessary and causally related medical treatment. Auerbach said that although the Act does not require carriers to pay for medical marijuana, he takes the position that carriers could potentially be obligated to pay for this treatment under the Workers’ Compensation Act which requires payment of reasonable, necessary and causally related medical treatment. Auerbach said that although the Act does not require carriers to pay for medical marijuana, he takes the position that carriers could potentially be obligated to pay for this treatment under the Workers’ Compensation Act which requires payment of reasonable, necessary and causally related medical treatment. Auerbach said that although the Act does not require carriers to pay for medical marijuana, he takes the position that carriers could potentially be obligated to pay for this treatment under the Workers’ Compensation Act which requires payment of reasonable, necessary and causally related medical treatment. Auerbach said that although the Act does not require carriers to pay for medical marijuana, he takes the position that carriers could potentially be obligated to pay for this treatment under the Workers’ Compensation Act which requires payment of reasonable, necessary and causally related medical treatment. Auerbach said that although the Act does not require carriers to pay for medical marijuana, he takes the position that carriers could potentially be obligated to pay for this treatment under the Workers’ Compensation Act which requires payment of reasonable, necessary and causally related medical treatment. Auerbach said that although the Act does not require carriers to pay for medical marijuana, he takes the position that carriers could potentially be obligated to pay for this treatment under the Workers’ Compensation Act which requires payment of reasonable, necessary and causally related medical treatment. Auerbach said that although the Act does not require carriers to pay for medical marijuana, he takes the position that carriers could potentially be obligated to pay for this treatment under the Workers’ Compensation Act which requires payment of reasonable, necessary and causally related medical treatment. Auerbach said that although the Act does not require carriers to pay for medical marijuana, he takes the position that carriers could potentially be obligated to pay for this treatment under the Workers’ Compensation Act which requires payment of reasonable, necessary and causally related medical treatment. Auerbach said that although the Act does not require carriers to pay for medical marijuana, he takes the position that carriers could potentially be obligated to pay for this treatment under the Workers’ Compensation Act which requires payment of reasonable, necessary and causally related medical treatment.

The legalization of medical marijuana also presents some challenges to the employer-employee relationship. Section 2103 of the Act provides that no employer may discharge, threaten and refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee’s compensation, terms, conditions, location or privileges solely on the basis of such employee’s status as an individual who is certified to use marijuana. While the law provides some protections to employees, it also provides employers with the power to discipline an employee under the influence of medical marijuana when the employee’s conduct falls below the standard of care normally accepted for that position. The Act also provides circumstances where an employer may deny employment. For example, an employee cannot operate or handle chemicals if the blood level exceeds a certain amount, including performing work dealing with high voltage, working at heights, confined spaces or when the employer deems the job life threatening to the employee or other employees.

As it relates to the actual use of medical marijuana, the employer is not required to accommodate or provide a place for an employee to use medical marijuana in the workplace.

The defenses an employer can raise against a claim petition is likely to be impacted by this new legislation, Fiederer said. In cases involving violation of law and intoxication, the employer must establish that the illegal use of drugs and intoxication caused the injury. Marijuana stays in the system for 30 days, therefore, it would be difficult to prove when the marijuana was ingested, or intoxication. In cases involving violation of an employer policy or work rule as a defense, the employer must prove that the employee knew of rule, that the rule is routinely enforced, and that the rule implicated an activity not connected with job duties, Fiederer said. Even if employers have a zero tolerance drug policy, an employer cannot fire someone because he or she uses medical marijuana, although some businesses, such as heavy equipment operators, may have other policies in place on substances.

The legalization of medical marijuana raises new and complicated issues for our workers’ compensation system. The panelists agreed that many changes and challenges are expected.

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

Lee S. Fiederer, partner, The Chartwell Law Offices, LLP (left to right); Steven T. Auerbach, Law Office of Steven T. Auerbach; and Workers’ Compensation Section Co-Chairs Eric B. Pearson and Danielle R. DeRosa; during the 2016 Bench-Bar & Annual Conference CLE at Harrah’s Resort in Atlantic City on Sept. 23.

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Helping Veterans Who Have Fallen Through the Cracks

By Albert Ciardi III, Daniel Siedman and Adrienne Anderson

A general principle in Chapter 7 law is that student loans are rarely dischargeable. For extreme cases, the Brunner standard affords possible discharge. Required are (1) showing that debtor cannot maintain a “minimal” standard of living if required to pay the loans, (2) proof that debtor’s financial situation is not likely to improve and (3) evidence of prior good faith efforts to repay the loans. While the Military Assistance Project (MAP) opened intake in 2012, not until 2015 did we have a client for whom we were prepared to make such a case.

Donovan is a U.S. Navy veteran who had spent most of the past eight years either homeless or staying with relatives. He owned no property, and came to MAP as an unemployed veteran earning $0/month. He suffered from severe debilitating depression, insomnia, post-traumatic stress disorder, hypertension and hypervigilance. He was living at the Coatesville VA Medical Center. He had considerable debt, including student loans, and was legally married but had no regular contact with his spouse. They had never lived together as husband and wife.

Sarah Pitts, in-house counsel for MAP, handled the initial Chapter 7 filing for Donovan in April 2015, then referred the case to the law firm of Ciardi Ciardi & Astin. The firm took responsibility for several adversarial actions contesting individual debts, including the student loan matters. Working with University of Pennsylvania Law School volunteers, we pulled Donovan’s medical records from the VA and interviewed his psychologist as a means of substantiating his health issues to demonstrate the repayment of the loans was an undue hardship. We filed an adversarial action in July 2015 against the Department of Education (DOE) and then engaged in discovery. On July 14, 2016, before the case went to trial, we received word that the DOE had stipulated to the discharge of his loans because they were able to establish through discovery that undue hardship was present. While it would have been nice to try the case, we were very excited to be successful on our first attempt to discharge student loans. Donovan’s reaction that day was music to our ears; he thanked us for our help, and explained that this was the best news he had heard all year.

Donovan’s overall financial picture improved markedly during our work with him. He re-enrolled in the U.S. Department of Veterans Affairs program known as Compensated Work Therapy. Through that program, the VA compensated him for time spent in a vocational rehabilitative program. He was also enrolled in Social Security Disability, which provided him much-needed cash flow to survive. It is our hope that his fresh start will be more than just financial.

Pitts connected Donovan to the team at Momjian Anderer, LLC, which kindly offered to do a pro bono divorce to clean up his marital status. We remain grateful to our partners across the hall for that work. Today we remember the good work that Stephen Anderer did; not just for this client, but for many people throughout Philadelphia. We are all better for having known him.

2 Name changed to protect client’s privacy

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Planning for Long-Term Care Eventualities

The odds of needing long-term care at some point in your life are relatively high, and for many people, that’s a financial risk they can’t afford to take. Long-term care insurance may be one way to mitigate that potential risk.

For this month’s interview, I sat down with Senior Wealth Strategist Patricia Valeri of PNC Wealth Management® to explain some of the major financial considerations of planning for long-term care.

Mary Ashenbrenner (MA): What is long-term care?
Patricia Valeri (PV): Long-term care refers to the ongoing services and support needed by people who have chronic health conditions or disabilities. It is not just provided in nursing homes. In fact, a common type of long-term care is home-based care. Long-term care services may also be provided in a variety of other settings, such as assisted living facilities and adult day care centers.

MA: Why is it important to plan for long-term care?
PV: The odds of needing long-term care are high, and not just for senior citizens. Younger people may need long-term care too, as a result of a disabling accident or illness. In fact, approximately 70 percent of people will need long-term care at some point during their lifetimes after reaching age 65.¹

MA: What is the typical cost of long-term care?
PV: Like most goods and services, the cost of long-term care is rising. Currently, the average annual cost of a one-year nursing home stay is $80,000 and in many states the cost is much higher. In the future, long-term care is likely to be even more expensive. If costs rise at just 3 percent a year, a conservative estimate in 20 years, a one-year nursing home stay will cost approximately $144,489.

MA: Doesn’t Medicare pay for long-term care?
PV: Many people mistakenly believe that Medicare, the federal health insurance program for older Americans, will pay for long-term care. But Medicare provides only limited coverage for long-term care services, such as skilled nursing care or physical therapy. And, although Medicare provides some home healthcare benefits, it doesn’t cover custodial care, the type of care older individuals most often need.

MA: Can individuals simply pay for long-term care out-of-pocket if the need arises?
PV: The major advantage to using income, savings, investments and assets, such as your home, to pay for long-term care is that you have the most control over where and how you receive care. But, because the cost of long-term care is high, you may have trouble affording extended care if you need it. That’s why long-term care insurance can be a very helpful financial tool.

MA: What is long-term care insurance?
PV: Long-term care insurance offers protection against the chance that long-term care will cost more than you can afford. In exchange for your premium payments, the insurance company promises to cover part of your future long-term care costs. Long-term care insurance can help you preserve your assets and provide access to a range of care options. However, it can be expensive, so before you purchase a policy, make sure you can afford the premiums both now and in the future.

The cost of a long-term care policy depends primarily on your age. In general, the younger you are when you purchase a policy, the lower your premium will be. It also depends on the benefits you choose.

MA: What are the benefits of long-term care insurance?
PV: If you decide to purchase long-term care insurance, there are five key features to consider. First, look at the benefit amount, which is the maximum your policy will pay for your care each day, that generally ranges from $50 to $350. Second, know the benefit period, which is the length of time your policy will pay benefits. Third, there will be an elimination period to consider. That’s the number of days you must pay for your own care before the policy begins paying benefits. Fourth, examine the types of facilities included. Many policies cover care in a variety of settings including your own home, assisted living facilities, adult day care centers and nursing homes. Finally, you may want to consider inflation protection. With this option, your benefit will increase by a certain percentage each year. It’s an optional feature available at additional cost, but having it may enable your coverage to keep pace with rising prices.

Undoubtedly, many people put off planning for long-term care. Although it’s hard to face the fact that health problems may someday result in a loss of indepen-

1Source: longtermcare.gov

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Hackers are executing sophisticated data breaches on large and small companies all over the world, making the need to protect your law firm from the dangers of cyber breach more important than ever.

Although many attorneys prefer to believe that their firm is unlikely to be the target of a hack, such thinking often proves to be naïve. Cyber criminals are continually adapting, looking for easy targets and sources of potentially valuable data. Because law firms are essentially warehouses of client and employee data, they should acknowledge that they are not immune to such attacks.

Personally Identifiable Information

Law firms are often considered to be perfect targets by cyber criminals looking to hack into businesses that keep lots of data containing personally identifiable information (PII) but lack protective security. Some examples of PII include:

- Names, identifying numbers, symbols or other identifiers assigned to particular individuals;
- Information that describes anything about a person;
- Information that indicates actions done by or to a person; and
- Information that indicates a person possesses certain characteristics.

Most, if not all, law firms posses a great deal of PII. This information was historically kept in paper files, but is now stored electronically for the most part. The most commonly reported cyber breach reported by law firms is related to the loss or theft of a laptop, thumb drive, smartphone, tablet or some other mobile device. If the information on the lost or stolen device was not encrypted and contained PII, a breach likely occurred. With access to office email and other law office networks, cyber criminals can gain access to and steal confidential information.

This is an ethical dilemma for attorneys for several reasons. Besides the common law duty owed by attorneys to protect the confidential information entrusted to them by clients, the ABA Rules of Professional Conduct requires an attorney to maintain the confidentiality of information related to the representation of current and former clients, and state and federal law also imposes a duty upon attorneys to protect PII for clients.

To learn more about data breach and cyber liability coverage, contact Jenny Shazes at USI Affinity today at (610) 537-1456 or jenny.shazes@usiaffinity.com.

For more information about insurance, visit the Philadelphia Bar Association Insurance Exchange at www.usiaffinityex.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.

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Destination Dogs – World Hot Dog Cuisine Hits Philly

By James Zwolak

When the artisanal hot dog craze hit Philadelphia a few years ago, I was all in. I frequented Underdogs far more often than its chain successor, Luke’s Lobster. And Hot Diggity on South Street? Yum! If they had just patented their killer poutine recipe, they might still be in business. But they are both long gone; the simple, yet sublime lunch combo of an $8 Chicago Dog, crispy fries with sriracha mayo and a Coke just doesn’t cut the mustard for millennials anymore.

But for the “young lawyer” readers of this newspaper who like exotic twists on comfort food with cocktails to boot, Destination Dogs (DD) is aiming to land on your culinary runway. The first offshoot of its popular New Brunswick location, ‘The Farmers’ Cabinet (to entertain yourself, Google that place and “legal troubles”) space has been transformed into a bright, cheery ode to dining in business class. Airline themes abound. Menu items include the three-digit airport code of the dish’s origin. The servers dress strikingly like flight attendants. Despite this silliness, the dogs/sausages are great.

You can “pilot your own dog” a la carte, but why bother. My four City of Philadelphia Law Department millennial companions started with the Patatas Ridiculas, a decadent poutine on steroids layered with duck confit and pork belly bacon. Although we did not try any “signature dogs,” we happily plunged into DD’s sausage party. DD’s signature Rocky Bal-Bo-A featured sizzling Italian wild boar, steak, onions, peppers and cherry pepper relish. A TKO for my taste buds. We also inhaled the Poi Boy, DD’s Hawaiian twist on the humble boar; its teriyaki, pork belly and pineapple relish toppings were so feisty they might resurrect Don Ho from his grave. We tried to normalize our sausage overload with the Conquistadog, a faithful Spanish (if Spaniards ate sausages on buns) mix of chorizo, potatoes and “brava sauce” (whatever that is). But this was just the warm-up to my raison d’etre - the double shot of kangaroo and python I badly craved. First, the Underdog was a down-under mix of grilled marsupial, onions and vegemite aioli. It had perfect spice levels without any accompanying chewiness. Then...finally...the python. As a young teen in the woods of upstate New York, I enjoyed eating water snake cooked creek-side on a stick over an open flame by a slightly insane/feral older teen woodsman my friends and I worshipped. And DD’s One Bite in Bangkok – with its hearty slab of reptile topped with cucumber salad, chili sauce, crushed peanuts and cilantro – brought back some great memories and completely fulfilled my very high expectations. For those diners with some trepidation – do not worry; DD makes all the sausage fresh and onsite, even the python. DD’s draft beer list contains good local brews, as well as old standbys like Abita. Their specialty cocktails looked so good I wished I was there for dinner. Time will tell if Destination Dogs catches on here - I just wish I had bought that Hot Diggity t-shirt when I had the chance.

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CALAEBDAR 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. Lunches are $9 for members and $15 for non-members, unless otherwise indicated. Register online for most events at philadelphia.bar.org. Unless otherwise specified, all checks for lunches 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.

Nov. 1
Bar Reporter Editorial Board: meeting, 8:30 a.m., conference call.
Legal Rights of Persons With Disabilities Committee: meeting, 9 a.m., 11th Floor Committee Room South.
CLE - Expunging & Sealing Criminal Records: 6:30 p.m., Duane Morris LLP, 30 S. 17th St. 12th Floor, Philadelphia. Registration closed.

Nov. 2
Delivery of Legal Services Committee: meeting, 8:30 a.m., 10th Floor Board Room.
State Civil Litigation Section: meeting, 12:00 p.m., 10th Floor Board Room. Lunch: $9.
Criminal Justice Section Executive Committee: meeting, 12:30 p.m., 11th Floor Community Room South.
CLE - Expunging & Sealing Criminal Records: 12:30 p.m., Duane Morris, LLP, 30 S. 17th St. 12th Floor, Philadelphia. Registration closed.
CLE - Expunging & Sealing Criminal Records: 6:00 p.m., 11th Floor Conference Center. Registration closed.

Nov. 3

Nov. 4
CLE - Expunging & Sealing Criminal Records: 12 p.m., 11th Floor Conference Center. Registration closed.

Nov. 5

Nov. 7
Family Law Section: meeting, 12 p.m., Philadelphia Family Court, 1501 Arch St., 15th Floor.

Nov. 8
Business Law Section Executive Committee: meeting, 12 p.m., Reed Smith, Three Logan Square, 1717 Arch St., Suite 3100, Philadelphia.
Cabinet: meeting, 12 p.m., 10th Floor Board Room.

Nov. 9
Election Forum - Diversity in the Profession Committee: 4 p.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.

Nov. 10
International Business Initiative: meeting 12 p.m., 11th Floor Committee Room South.
Legislative Liaison Committee: meeting, 12:00 p.m., 10th Floor Board Room. Lunch: $9.
Tax Section - SALT Committee: meeting, 4 p.m., Ballard Spahr LLP, 1735 Market St., 48th Floor, Philadelphia.
International LL.M. Reception: 6 p.m., Pepper Hamilton LLP, 3000 Two Logan Square, 18th and Arch streets, Philadelphia. Register: PhiladelphiaBar.org.

Nov. 11
Appellate Courts and Federal Courts Committee: meeting, 12 p.m., 11th Floor Conference Center. Lunch: $9.
Election Forum - Criminal Justice and State Civil Litigation Sections: 12 p.m., 10th Floor Board Room. Register: PhiladelphiaBar.org.

Nov. 12
YLD Expungement Clinic: 10 a.m.-1 p.m. Various locations across Philadelphia. Info: GetExpunged.org. Registration closed.

Nov. 13
CLE - Peer Review -- For Whose Benefit Is It?: 12 p.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.
Philadelphia Lawyer Editorial Board: meeting, 12:30 p.m., 11th Floor Committee Room South.

Nov. 15
Law Firm Pro Bono Committee: meeting, 12 p.m., Ballard Spahr, LLP, 1735 Market St., 51st Floor, Philadelphia.
Employee Benefits Committee: meeting, 12:30 p.m., 11th Floor Committee Room South. Lunch: $9.
Board of Governors: 4 p.m., 10th Floor Board Room.

Nov. 16
City Policy Committee: meeting, 12:00 p.m., 10th Floor Board Room. Lunch: $9.
Immigration Law Committee: meeting, 12 p.m., 11th Floor Committee Room South. Lunch: $9.
Federal Courts Committee: meeting, 12:30 p.m., 11th Floor Conference Center. Lunch: $9.

Nov. 17
Family Law Section Executive Committee: 12 p.m., 11th Floor Committee Room South.

Nov. 18
Foundation Board Meeting: 12 p.m., Blank Rome LLP, One Logan Square, 130 N. 18th St., Philadelphia.
YLD Cabinet: 12 p.m., 11th Floor Committee Room.

Nov. 19
Workers’ Compensation Section Executive Committee: meeting, 10:30 a.m., 11th Floor Committee Room South.
Social Security Disability Benefits Committee: meeting, 12 p.m., 10th Floor Board Room. Lunch: $9.

Nov. 20
Public Interest Executive Committee: meeting, 12 p.m., 10th Floor Board Room. Lunch: $9.
CLE - The Representation of LGBTQ Witnesses, Victims, and Defendants in the Justice System: 3 p.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.

Nov. 21
CLE - Bridge the Gap: 9 a.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.

Nov. 24
Thanksgiving: offices closed.

Nov. 25
Thanksgiving: offices closed.

Nov. 26
YLD Executive Committee: 12 p.m. 10th Floor Board Room.

Nov. 28
Women in the Profession Committee: 12 p.m., 10th Floor Board Room. Lunch: $9.
DLSC Intake Subcommittee: 3:00 p.m., 10th Floor Board Room.

Nov. 30
LGBT Rights Committee: 12 p.m., 11th Floor Committee Room South.
YLD Annual Holiday Party, Award Ceremony and Gift Drive: 6 p.m., Top of the Tower, 1717 Arch St., Three Logan Square, 50th Floor, Philadelphia. Register: PhiladelphiaBar.org.
Alaine S. Williams, partner at Wil- ligma, Williams and Davidson, has been elected as a Fellow of the College of Labor and Employment Lawyers.

Kimberly Rice, president and chief strategist of KLA Marketing Associates, was recently appointed to the board of trustees of Grace in the Mud, a for-purpose enrichment service for local “at-risk” girls.

Lorena E. Ahumada, of counsel at Kleinbard LLC, was recently selected to serve as a regional president of the Hispanic National Bar Association for Region IV, the Pennsylvania/Delaware region.

Ronald H. Levine, principal at Post & Schell, P.C., was recently appointed chair of the Practitioners Advisory Group of the U.S. Sentencing Commission.

Pamela Coyle Brecht, partner at Pietragallo Gordon Alfano Bosick & Raspanti, LLP, was a panelist at the 2016 Federal Litigation and Qui Tam Conference for the Federal Bar Association in Washington, D.C. on Tuesday, Oct. 18.


Mary Beth H. Gray, partner at Kleinbard, LLC, spoke at the National Center for Employee Ownership meeting on “Is an ESOP Right for You? An In-Depth Look at Employee Stock Ownership Plans,” in Providence, R.I. on Oct. 19-20.

Howard Bruce Klein, of the Law Offices of Howard Bruce Klein, P.C., was recently accepted as a Fellow of the American College of Trial Lawyers.

JoAnne Epps, provost and executive vice president of Temple University, has been inducted into the inaugural class of the Philadelphia Business Hall of Fame, presented by The Philadelphia Inquirer.


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.

The Philadelphia Association of Defense Counsel awarded Kathleen D. Wilkinson the O’Brien Award for outstanding service to the legal community as a leading defense attorney. The award was presented at the Philadelphia Association of Defense Counsel luncheon at Davio’s Italian Steakhouse on Sept. 20 and Wilkinson chose PhiladelphiaVIP as her donor organization. Pictured above: David Wolf, president, Philadelphia Association of Defense Counsel (left to right); Kathleen D. Wilkinson, Past Chancellor and partner, Wilson Elser Moskowitz Edelman & Dicker LLP; and Sara Woods, executive director, PhiladelphiaVIP; at the luncheon.

Members of the Clifford Scott Green Judicial Council spoke with the senior class at Bartram High School about the importance of the college selection process. Students were greeted by local judges and attorneys at their school during the 3rd Annual Clifford Scott Green College Mentoring Workshop on Oct. 13. Pictured above: Steven Sykes, vice principal, Bartram High School (left to right), Hon. Giovanni Campbell, Philadelphia Court of Common Pleas; Hon. Sierra Thomas Street, Philadelphia Court of Common Pleas; Rep. Kenneth Pratt; and Piayon Lassanah, attorney, Page Law LLC; at the workshop.

The Philadelphia Bar Association for Hispanic National Lawyers, the Hispanic National Bar Association and the Hispanic National Bar Association’s Philadelphia Chapter, presented the Hispanic National Bar Association’s Annual Gala and Awards on Wednesday, Nov. 16 at Vie in Philadelphia.
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