Bar Wins Tweed Award for Record Fifth Time

On Aug. 9, the Philadelphia Bar Association, through the work of its Civil Gideon and Access to Justice Task Force, received the American Bar Association’s 2019 Harrison Tweed Award in recognition of the ground-breaking study “Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants,” which was released on Nov. 13, 2018. The Mississippi Bar also received the award this year for its work on a project to conduct civil legal clinic events throughout the state, which began in January 2018.

Created in 1956, the Harrison Tweed Award recognizes the extraordinary achievements of state and local bar associations that develop or significantly expand projects or programs to increase access to civil legal services to persons living in poverty, or criminal defense services to indigent individuals.

The Stout report, commissioned by the Association and prepared by Stout Risius Ross, LLC, detailed the economic justification for the funding of legal counsel for all eligible low-income tenants. It found that if the City of Philadelphia spent $3.5 million annually to provide legal counsel for low-income tenants at risk of eviction, it would save approximately $45.2 million annually.

The awards ceremony was held in San Francisco and was attended by Chancellor Rochelle M. Fedullo, Harvey Hurdle Jr., executive director of the Association, and Merrill Zebe, public interest coordinator for the Philadelphia Bar Association.

Left: (from left to right) Joseph A. Sullivan, cochair of Delivery of Legal Services Committee and director of pro bono programs at Pepper Hamilton LLP; Ethan D. Fogel, partner at Dechert LLP; and Merrill Zebe at the Tweed Award ceremony in San Francisco on Aug. 9.

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September Optimism

By Shelli Fedullo

September was my favorite month because it was time to go back to school. I loved getting new school supplies. I loved when my pencils were still full-length and freshly sharpened with clean erasers. I loved having a box of pointy, unbroken crayons. I loved my composition book with its speckled cover and a space to write my name and grade—all of its clean pages waiting for me to fill them, and for the teacher to stamp them with a star when I did a good job. I loved bringing a cigar box to put inside my desk. I also loved my desk. I loved my new school dresses and school shoes which my mother was able to get out of lay-away, just in time. September, not January, always felt like the real start of each year. September was full of optimism and promise.

One thing about returning to school that I did not look forward to, was assembly. The teacher in charge read aloud to us from the Bible, but only always from the parts that I thought were read in church. I was one of many Jewish children in my school. Yet, in a way I could not have explained then, I felt separate and alone during Bible reading. I knew that the Bible was important and that I should show respect, but I was uncomfortable and worried. I felt confused and embarrassed because I did not know what I should think, or even where I should look—up at the teacher, down at my lap—while the Bible was being read. As I got older and a little more mature, I realized it was okay to listen and think about what I heard. I still loved going to school, even if assembly was not my favorite part.

By the September when I started sixth grade, Bible-reading in assembly stopped. One of my classmates said her older brother had told her that it used to be the law, but it was now against the law. That was the full extent of my information.

Decades of Septembers have come and gone since those school assemblies, but I still think about them this September. Why? It is not because I thought then, or now, that anyone was trying to prevent or change me from being Jewish. It is unlikely that the statute that required Bible reading in Pennsylvania public schools was intended to convert anyone. For me, it is not exactly about religion qua religion—it is something else. What I learned from those school assemblies was that, because of an important part of my identity as a person, I was different. Although I was part of a group, probably even the majority at my school sharing the same difference, in the larger world, my difference, our difference, might not be respected. I could not put it into words then, but I can now—I felt like I was the “other.”

Our society has changed in good and promising ways in the years since those long-ago Septembers, but still not enough, and not for everyone. Many, far too many, people in our country have had, and continue to have, far worse and consequential experiences around being “different,” being part of a group that is “different.” Our differences are increasingly being weaponized by abhorrent rhetoric. We are increasingly being defined as members of groups with monolithic, and often unfavorable, characteristics. The ideology of “us vs. them,” the culture of “the other,” is getting nurtured, and is feeling stronger and more powerful.

Still, I am optimistic this September. I know that empathy, compassion, kindness and respect are more abundant and powerful than acrimony and anger. I know that our nation is full of people of good will. I know that Philadelphia lawyers will work to ensure that our country is never parted from its better self. It is what Philadelphia lawyers always do.

Tell Us What You Think!

The Philadelphia Bar Reporter welcomes letters to the editors for publication. Letters should be typed. There is no word limit, but editors reserve the right to condense for clarity, style and space considerations. Letters must be signed to verify authorship, and space considerations. Letters may be mailed, faxed or e-mailed to: Thomas E. Rogers, Senior Managing Editor, Philadelphia Bar Reporter, Philadelphia Bar Association, 1101 Market St., 11th floor, Philadelphia, PA 19107-2911. Periodicals postage paid at Philadelphia, PA POSTMASTER: Send address changes to Philadelphia Bar Reporter, c/o Philadelphia Bar Association, 1101 Market St., 11th floor, Philadelphia, PA 19107-2955. Telephone: (215) 238-6300. Association Web site: philadelphiabar.org. Newspaper e-mail address: reporter@philabar.org. The editorial and other views expressed in the Philadelphia Bar Reporter are not necessarily those of the Association, its officers or its members. Advertising rates and information are available from Shawn D. Phillips at American Lawyer Media, 1617 JFK Boulevard, Philadelphia, PA 19103. Telephone: (215) 557-2340 or e-mail sphilips@alm.com.

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

BenEFits that Help YOU Succeed
Many people tell me that they want to get more involved in the Young Lawyers Division, but they do not know where to begin. Getting involved sounds good, but without knowing concrete steps to take, it can be tough. Read on to learn about the different ways to participate and what may be best for you.

The first and most significant way to get involved is to run for election to a three-year term on the YLD’s Executive Committee. Each year, seven individuals are elected to the committee. Committee members attend monthly meetings and help to plan the YLD’s events and programming, and elected members are the only YLD members who can vote at committee meetings. This position is the most hands-on way to shape what the YLD does. Visit philadelphiabar.org for all election information. The deadline to submit a nomination petition to run for a seat on the committee is Oct. 16.

Another way to get involved with the committee is to become a liaison. A liaison acts as a connection between the YLD and another group, either another section of the Association or another attorney group, such as an affinity bar. The liaison keeps each group apprised of important things going on in the other, and is a nice entry point to becoming involved in the committee on a grander scale. A liaison position lasts for one year.

If you are looking to get involved with YLD without having a regular monthly commitment, there are still more options for you. The YLD regularly hosts CLEs, and we look for proposals from our members. Planning a YLD-sponsored CLE is a great way to build your legal reputation, especially in a specific area of the law. You can simply organize a CLE, or you can be a presenter at the CLE itself. Either way, it is a step for young lawyers to build leadership and recognition. Reach out to Tara D. Phoenix, director of continuing legal education, at tphoenix@philabar.org for more information.

Looking to attend YLD CLEs or other educational programming, but not host one? Our Boot Camp series continues with CLEs and other programs focusing on different areas of interest to newer attorneys – from discovery court to health and wellness. If you are looking to get CLEs knocked out in one weekend, come to the 2019 Bench-Bar and Annual Conference in Atlantic City on Oct. 11-12. The YLD is co-hosting a CLE about running an ethical law office, and there are plenty of opportunities for more CLE credit, networking and fun! Visit benchbar.philadelphiabar.org for more information.

If you are just looking to relax and meet other YLD members after work, join us for one of our monthly happy hours. These free events are open to anyone who wants to network and socialize with fellow young lawyers.

Wherever your interests lie, there is a way to get involved in the YLD. It is your Association – help shape it into what you want it to be!

Michaella Tassinari Bowser (michaella.t.bowser.kfyk@statefarm.com), attorney at Robert J. Casey, Jr. & Associates, is chair of the Young Lawyers Division.
Summer is officially behind us and fall is in full swing here at the Philadelphia Bar Foundation. Fall is the perfect time to get involved and make a difference in the legal community. It has been an eventful month so far, but there is still more to come. Read more about what we have been up to, and we hope to see you at our upcoming events.

Asian Americans United will host its 24th annual Mid-Autumn Festival on Sept. 14 in Chinatown, and the Bar Foundation will be sponsoring a booth at the event. The festival will be the perfect opportunity to engage with the Chinatown community before the Equal Justice Center’s groundbreaking event later this year. The Mid-Autumn Festival is a celebration of community pride and collective responsibility – and we look forward to furthering that pride through the collaborative amenity spaces inside the EJC.

The Philadelphia Bar Association’s Young Lawyers Division hosted a ping pong-playing fundraiser at SPIN Philadelphia on Sept. 10. Proceeds from this event support the Philadelphia Bar Foundation’s annual unrestricted grants to nearly 40 legal aid organizations in our region. We appreciate the hard work of YLD members and Association staff who organized the event, and the generosity of the sponsors and attendees.

The Philadelphia Bar Association will hold its annual Bench-Bar and Annual Conference on Oct. 11 and 12 at Borgata Hotel Casino & Spa in Atlantic City. This year’s conference theme is “Philadelphia 2020: Looking Forward With Perfect Vision” in recognition of the legal community’s focus on Philadelphia’s future. Stop by the Bar Foundation’s booth at Bench-Bar to learn more about how we are focusing on the future of legal aid in our region.

Our long-awaited Access to Justice Celebration and Awards Reception is approaching on Nov. 6. Last year, we transformed our traditional fundraising benefit into a relaxed weekend event, and the change was very well received. The reception will take place at the Crystal Tea Room and will feature a keynote address from Hon. Timothy K. Lewis (Ret.) on the importance of the Equal Justice Center. This event honors the generous contributions of our donors and recognizes the achievements of pro bono and public interest lawyers in our community. Through the support of our Unified Giving partners, we are able to offer complimentary attendance to all of our 2019 supporters. We hope that your organization will consider becoming a Unified Giving partner to the Bar Foundation and join us for our annual celebration.

We are excited to announce that we will be honoring Hausfeld LLP and Linda Peyton, Esq. at the Access to Justice event. Hausfeld will receive the Pro Bono Award of the Philadelphia Bar Foundation for their outstanding pro bono legal service, which includes more than 11,800 hours of pro bono work by their attorneys during the last 10 years in Philadelphia and across the United States. Peyton will be recognized with the Philadelphia Bar Foundation Award for her work in representing vulnerable and underserved individuals for the last 36 years, first at the Philadelphia Public Defender Association and now at the Legal Clinic for the Disabled. We look forward to celebrating the accomplishments and the impact of these exceptional attorneys.

As we move through September and into the last quarter of the year, I hope you will reach out to me at any time with your thoughts, questions and ideas for the Bar Foundation and our Equal Justice Center project. As always, we have many ongoing programs, events and activities that depend on your support and engagement. I look forward to discussing them all with you.

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

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AUGUST 15, 2019 - NATURALIZATION CEREMONY

Top: (Middle and far right) Hon. Jeffery L. Schmehl, U.S. District Court for the Eastern District of Pennsylvania presided over the naturalization ceremony with Hon. Wendy Beetlestone, U.S. District Court for the Eastern District of Pennsylvania, featuring as the distinguished speaker. Chancellor Rochelle M. Fedullo (far left) provided remarks on behalf of the Philadelphia Bar Association.

Bottom: Sixty-nine people from 35 countries became U.S. citizens at the ceremony.

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By Brittany Anne Robertson

Since October 2016, the U.S. Court of Appeals for the Third Circuit has been headed by Chief Judge D. Brooks Smith. Chief Judge Smith was the featured speaker at “State of the Third Circuit” on April 25, co-hosted by the Federal Courts and Appellate Courts committees, which provided an overview of the state of the Third Circuit. The court has seen an increase in oral arguments, implemented technological innovations in its courtrooms and has contended with judicial vacancies and other issues.

Since he has been in this role, said Chief Judge Smith, he has made a concerted effort to strengthen the ties between the Philadelphia Bar Association and the judiciary. He asked for comments and constructive criticisms about the court from attendees and from members of the Association, generally.

He said the state of the Third Circuit is sound. Nationally, appellate court caseloads have declined since 2008, which has been attributed to the Great Recession and a decline in civil litigation. In 2016, there was a jump in the number of appellate cases after Johnson vs. United States wherein an aspect of the residual clause of the Armed Career Criminal Act was ruled unconstitutionally vague. The Third Circuit, which has a below-national-average caseload, has seen a decrease in the number of cases since 2014.

Of particular concern to appellate practitioners has been a decrease in the national rate of oral arguments. Despite said concerns, Chief Judge Smith said that “oral argument is very valuable.”

He covered a “phenomenon” in the origins of recent appellate cases. New Jersey, for example, is seeing an increase in drug, health care and pharmaceutical cases. Delaware has seen an increase in civil dockets. In Pennsylvania, there is a “huge” number of pending immigration cases, he said. As of the date of the program, 16,377 cases were before immigration judges in Pennsylvania, with more than 16,000 in Philadelphia alone, translating to about 521 days’ worth of immigration cases.

Chief Judge Smith reported on technological upgrades to courtrooms. High-definition cameras and televisions have been installed to record and broadcast oral arguments. The Third Circuit has also been using CiteLinks, a live linking program that scans documents for citations and creates hyperlinks to recognized research providers linking to statutes, regulations and briefs.

On the issue of judicial personnel and vacancies, 13 of the 14 vacancies of the Third Circuit were filled. District courts were facing vacancies that made it difficult for them to clear their caseloads. New Jersey was in “dire straits,” he said, with five judicial vacancies.

Chief Judge Smith then talked about judicial misconduct in the wake of the Kozinski scandal. The scandal’s “issues of considerable substance and consequence” necessitated the formation of a review continued on page 18
Privacy and Security Training: Ethical Obligations of Digital Confidentiality and Safekeeping
(Presented by Law Firm Risk Management & Corporate In-House Counsel Committees)

It is imperative to look forward with perfect vision when it comes to data privacy and security, which is one of the leading challenges facing law firms and the judiciary today. This is not a program you can afford to miss. This program will address what you need to know about privacy and security including:

- Ethics obligations of securing employee, client and litigant data
- Common threats including phishing, ransomware, and password management
- Security management of internal systems, business and personal electronic devices

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Learn how trial attorneys can draw from the experiences, tactics and techniques of the world’s best interrogators to take more productive and efficient depositions and witness interviews, and present better testimony in court, by establishing and maintaining genuine communication and rapport.

Due Process and the Border Crisis: The Reality and the Legalities
(Presented by the Immigration Law Committee)

With conflicting and constantly changing reports in the news every day, what really is happening at the US Mexican border? This panel will discuss:

- The causes of increased migration from Central America and exactly who is trying to “come to America”
- How the Mexican government is handling the increased level of migration
- The actual process at the border—Reports from Immigration attorneys who have volunteered at the border regarding conditions, asylum processes (“la lista”) and access to legal counsel/representation.
- Who qualifies for asylum under the current law—update on legal standards and procedures, especially regarding pro bono representation.
- What we, as a Bar or as individuals can do to assist
DRAM SHOP
(Sponsored by ROBSON FORENSICS)

Dram shop and social host laws vary state by state. When evaluating a case involving an individual that was served alcohol at a restaurant, bar or other establishment, knowing the standard of care for serving and monitoring the consumption of alcohol is key. Expert panelists from Robson Forensics address that standard and the effect that alcohol has on the body. Was a person visibly intoxicated? What was their BAC at a certain point in time? What signs of intoxication would someone have exhibited after x number drinks?

Sexual Orientation and Transgender Status under the Civil Rights Act of 1964 — A Two-Sided Argument
(Presented by the LGBT Rights Committee)

Dean Rodney Smolla will argue both sides of the consolidated cases pending before the United States Supreme Court concerning the Civil Rights Act of 1964 and whether it applies to workplace discrimination based on sexual orientation or transgender status. Dean Smolla, a nationally recognized Constitutional Law scholar, has performed this presentation involving various constitutional issues many times across the country. His captivating speaking style coupled with his renowned scholarship in this substantive area provides a highly entertaining presentation on an important cutting-edge constitutional issue. The audience/court will vote at the conclusion of the presentation on which “side” won the argument.

Detecting Fraud in Closely Held Businesses
(Presented by the Business Litigation Committee)

The most notable frauds that have characterized the past decade have largely been perpetrated by principals of closely held businesses. The lack of controls, structure and conflict oversight often creates an environment that is opportunity-rich for bad actors.

This panel would explore some of the most common signs to the pending discovery of fraud. Case examples will be provided of certain notable frauds and the red flags that were missed. Panelists will address fraudulent schemes, experience in unravelling Ponzi and ‘Ponzi-like’ schemes and the aftermath of such offenses.

What I Wish I’d Learned in Law School: Running an Ethical Office in the 21st Century
(Presented by LawPay and Presented by the Young Lawyers Division)

Join us for a fast-paced discussion on the ethical rules and guidelines required in client relations, documenting representation, running your office, and using trust accounts. Attendees also learn strategies for avoiding the five most common mistakes made in law firms today.

Transition Services for Students and Youth with Disabilities
(Presented by Legal Rights of Persons with Disabilities)

This session will examine the changing landscape of preparing individuals with disabilities for life after high school and will highlight some of the additional obstacles for court-involved youth. It will review the transition requirements under the individuals with Disabilities Education Act and PA child welfare law and discuss how the Workforce Innovation and Opportunity Act provides additional transition services to these individuals until age 24. The training will conclude by providing the audience with strategies and resources for obtaining the supports students and youth need in order to succeed in life after high school.

Register for the 2019 Bench-Bar & Annual Conference at PhilaBenchBar.org

Early-Bird Registration Deadline: Sept. 12
Registration Deadline: Oct. 7
Handling Custody Cases Involving Teenagers: Perspectives from the Bench and Mental Health Professionals Regarding Contempt, Mental Health, and Reunification

Mon., 9/19/19 - 12:30 - 2:45 p.m. (2 SUB) - LIVE and WEBCAST ▪

Hosted by the Family Law Section

Lunch generously sponsored by Freeman's Auction.

This must-see program will help attendees understand and navigate issues that may arise in custody matters involving teenagers. Panelists will provide best practice tips, valuable perspectives from the bench and insight from mental health professionals. Panelists will discuss the following topics, among others: contempt in custody matters and how to help your client in these situations, issues of mental health and how to address them within the context of the custody case and when reunification is necessary and the process associated with reunification therapy.

Emergency Immigration Updates: A Report from the Battlefield

Tue., 9/10/19 - 12:00 - 2:15 p.m. (2 SUB) - LIVE and WEBCAST ▪

Immigration Law Committee

This timely and practical program provides much needed updates on changes in immigration law, procedure and environment. Our panelists will cover the following topics among others: executive bodies exercising judiciary functions, reorganization of EOIR (Immigration Court) allowing a politically appointed director to adjudicate cases, rather than immigration judges, drastic changes to established financial sponsorship rules in family and employment-based immigration cases to redefine who constitutes a “public charge,” change to guidance on children of U.S. citizen military parents stationed abroad, expansion of expedited removal without due process hearings, new social media questions on Forms DS-160 and DS-260, and much more. If you represent clients in any type of immigration case, you CANNOT miss this program!

VIDEO ENCORE: Recent Decisions and Developments in Pennsylvania Eminent Domain Law - 2019 Update

Thu., 9/12/19 - 12:00 - 1:30 p.m. (1.5 SUB)

This video-encore will provide an overview of important and relevant Pennsylvania appellate court decisions on Pennsylvania eminent domain (condemnation) law from 2018 forward, as well as recent developments in and changes to related court procedures. Additionally, panelists will address proposed revisions and updates to Philadelphia Civil Rule *1028.1., “Preliminary Objections to Declaration of Taking Pursuant to Section 406 of the Eminent Domain Code or to Petition for Appointment of Viewers Alleging De Facto Taking or Other Compensable Injury Pursuant to Section 502(e) of the Eminent Domain Code”.

Ethical Issues for Attorneys Serving on a Nonprofit Board

Thu., 9/12/19 - 4:30 - 5:30 p.m. (1 SUB) - LIVE and WEBCAST ▪

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

Many attorneys have the opportunity to join a nonprofit board throughout their careers. Whether you are a new or experienced attorney, there are many ethical considerations to take into account before serving. This CLE will review common ethical issues lawyers encounter and provide practical tips for those considering serving or already serving on a nonprofit board. Attendance by Board Observers is encouraged.

Feast Amongst Famine: The Most Interesting Commonwealth Workers’ Compensation Cases of 2019

Fri., 9/13/19 - 12:30 - 1:30 p.m. (1 SUB) - LIVE and WEBCAST ▪

Hosted by the Workers’ Compensation Section

Although 2019 has been a very active year in workers’ compensation, very few cases have been published. In this informative luncheon CLE, speakers will highlight five of the most interesting cases that have been published this year. Hear how recent case law may affect how you advocate for your clients moving forward.

VIDEO ENCORE: Be the Judge, Be the Jury... Become an Arbitrator!

Mon., 9/16/19 - 12:00 - 3:00 p.m. (2 SUB/1 ETH)

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 from 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-encore CLE program and become certified to sit as an arbitrator for the Philadelphia Court of Common Pleas!

Ten Years of Twombly and Iqbal: Has the Shift from Notice to Fact Pleading Changed Anything? Are We Better or Worse Off?

Tue., 9/17/19 - 12:00 - 1:00 p.m. (1 SUB) - LIVE and WEBCAST ▪

Hosted by the Antitrust Law Committee

The Supreme Court’s 2007 decision in Bell Atlantic v. Twombly and 2009 decision in Ashcroft v. Iqbal sent shockwaves through the federal litigation bar. Under Twombly, plaintiffs must plead “enough facts to state a claim to relief that is plausible on its face.” Iqbal further explained that “judicial experience and common sense” should inform Twombly’s plausibility standard. But have courts interpreted Twombly and Iqbal in ways that actually represent the decried seismic shift? And, assuming a real shift occurred, has that shift caused a meaningful change in the way courts resolve motions to dismiss? This program will delve into precedent and explore empirical studies to answer these questions.

VIDEO ENCORE: The Million Dollar Sentence and Other Recent Trends in Employment Background Check Litigation

Tue., 9/17/19 - 4:00 - 5:00 p.m. (1 SUB)

In this practical CLE, panelists will explore, from the plaintiff and defense perspective, the federal, state and municipal consumer laws governing employment background checks, recovery of damages in class action and individual contexts, and an overview of trending theories as to both claims and defenses. Hear practical guidance on how best to understand and navigate through this maze of laws to avoid litigation.

My First Federal Trial: Proper Procedure and Successful Advocacy

Wed., 9/18/19 - 12:30 - 2:45 p.m. (2 SUB) - LIVE and WEBCAST ▪

Hosted by the Federal Courts Committee

Federal court practice varies greatly from state court practice. Attorneys learn quickly that there are significant substantive differences in practices and procedures when trying their first federal case. Federal court boasts its own rules of civil procedure, rules of evidence and discovery. Attorneys must also learn the role of magistrate judges in the process. This program offers fundamental guidance to attorneys with little or no experience trying federal cases, and acts as a refresher course for attorneys looking to brush up on best practices for federal trials.

TO REGISTER Visit the CLE page at PhiladelphiaBar.org

For questions regarding Philadelphia Bar Association CLE, contact Director of Continuing Legal Education Tara D. Phoenix at 215-238-6349 or tphoenix@philabar.org.
Effective & Ethical Social Media Strategies for Small Firms
Thu., 9/19/19 - 12:30 - 2:45 p.m. (1 ETH) - LIVE and WEBCAST

Co-hosted by the Solo and Small Firm Management Committee along with the Legal Marketing Association Philadelphia Small Firm/Solo Marketing SIG

Social media can be a powerful and inexpensive marketing tool for small firms’ legal marketing professionals and solo practitioners, but the platforms are not without their hazards. In this program, panelists will provide tips for marketing your firm and practice online effectively and efficiently, while remaining compliant with the rules of professional responsibility. Hear how to get the most out of social media on a limited budget, with limited resources and learn why social media is an important tool in marketing your firm and yourself.

VIDEO ENCORE: Addiction and the Legal Profession: A Philadelphia Bar Association Community Forum and CLE
Mon., 9/23/19 - 12:00 - 2:30 p.m. (1.5 SUB/1 ETH)

In this video-encore, thought leaders address the topic of addiction and its impact on the legal profession. The lead speaker, Brian Cuban, Esq., attorney and author of the book “The Addicted Lawyer,” will begin the program with his story, then attendees will hear from additionally featured presenters, Link Christian, Esq., executive director, Caron Treatment Centers’ Legal Professional Program; Laurie J. Besden, Esq., executive director, Lawyers Concerned for Lawyers of Pennsylvania, Inc.; Matthew Miellette, MSSP, RN-BC, policy associate, Leonard Davis Institute for Health Economics, policy director, Action Tank and member, Mayor’s Opioid Task Force; Robert S. Tintner, Esq., co-chair of the Association’s professional guidance committee, and the program’s moderator, Debbie Epstein Henry, Esq., consultant, best-selling author and public speaker.

Chartier Schools: Oversight and Regulation
Tue., 9/24/19 - 12:00 - 2:15 p.m. (2 SUB) - LIVE and WEBCAST

Hosted by the Education Law Committee

Philadelphia is home to 87 charter schools enrolling approximately 70,000 students. The charter sector intersects with law in numerous ways. This CLE program will provide an overview of the regulations relating to and oversight of charter schools. Panelists will highlight facilities issues, current oversight structure for authorization of new charter schools, and renewal of existing charters, issues and processes for non-renewal and revocation of charters, impact of the new provisions for Multi-School Charter Organizations, and more.

Philadelphia Commerce Court Judge Pro Tempore Training Session
Tue., 9/24/19 - 3:30 - 6:00 p.m. (2.5 SUB) - LIVE and WEBCAST

Hosted by the Business Litigation Committee of the Business Law Section

The Commerce Program recently celebrated its 20th year. The Judge Pro Tempore Program has served as an important mechanism for resolving business cases efficiently and effectively. This program, Commerce Court judges and experienced attorneys serving as JPTs in Commerce Court, will provide an overview of JPT process, procedural developments, roles for commerce court JPTs, as well as offer best practices for an effective settlement conference. If you currently serve as a Commerce Court JPT or wish to become one, this is a “can’t miss” CLE program!

The Tax and Wage and Hour Ramifications of Worker Misclassification
Wed., 9/25/19 - 12:00 - 1:30 p.m. (1.5 SUB) - LIVE and WEBCAST

Hosted by the Tax Section

In today’s 21st Century “gig economy,” the issue of worker misclassification is increasingly salient for practitioners, workers, and employers. When employers misclassify their employees as independent contractors, the consequences can be challenging for both employers and their workers. The panelists, with experience in wage and hour and tax law, will address various aspects of misclassification, as well as the federal, state and city tax ramifications of misclassification.
On June 5, 2019, the 2019 Federal Bench Bar, a half-day annual conference, hosted by the Philadelphia Bar Association Federal Courts Committee and the Eastern District Court of Pennsylvania (E.D. Pa), offered in-depth CLE discussions on legal and practice topics important to the Federal Court Practice community in the Eastern District of Pennsylvania.

On left: (top) Federal Courts Committee Cochair Kathleen D. Wilkinson, delivers opening remarks. (Center and bottom) Historically attended by many of the federal practice leaders and members of the judiciary in the Eastern District of Pennsylvania, the conference offered an opportunity for education, ideas exchange and networking.

On right: (center) Conference participants included (top, left to right) panel moderator Kate Barkman, Clerk of the Court for the Eastern District of Pennsylvania; Timothy McGrath, clerk for the U.S. Bankruptcy Court for the Eastern District of Pennsylvania; Kathleen D. Wilkinson; (bottom, left to right) Hon. Linda K. Caracappa, Chief Magistrate Judge, and Hon. Juan R. Sanchez, Chief United States District Judge, Eastern District Court of Pennsylvania; Hon. D. Brooks Smith, Chief Judge, Third Circuit Court of Appeals; and Hon. Eric L. Frank, U.S. Bankruptcy Court for the Eastern District of Pennsylvania.
AFFINITY ASSOCIATION - HISPANIC BAR ASSOCIATION OF PENNSYLVANIA

August Cafecito on Art of Salary Negotiation

On Aug. 19, the Hispanic Bar Association of Pennsylvania held its sixth Cafecito at host firm Saul Ewing Arnstein & Lehr LLP. Cafecito is the Hispanic Bar Association of Pennsylvania’s women’s breakfast series focused on fostering deeper relationships among Philadelphia-area minority attorneys. Twana Harris and Alison DiFlorio from Exude led an interactive and activity-oriented session on salary negotiation. The session was designed to help the women attendees build self-awareness, assertiveness and negotiating skills while addressing the unique challenges women face in negotiations. Attendees left the session with specific tools and resources that they can put into practice to help them command respect while being respectful, negotiate salary and handle almost any situation they are likely to encounter.

(Right) Attendees included representatives from other affinity bar associations, including the Asian Pacific American Bar Association of Pennsylvania and the Barristers’ Association of Philadelphia. (Left) Twana Harris and Alison DiFlorio at the Cafecito. For more about the series, visit http://www.hbapa.net/cafecito-corner, or contact Melissa A. Martinez at melissa.martinez@saul.com.

The Federal Courts Committee hosted “Fireside Chat With U.S. Attorney William McSwain” on May 13. It was a candid conversation with William M. McSwain, U.S. Attorney for the Eastern District of Pennsylvania, moderated by Catherine M. Recker, partner at Welsh & Recker, P.C.

McSwain addressed issues facing government lawyers, examination and insights on types of cases being handled in the criminal and white collar arena and practice tips regarding federal criminal prosecutions and civil litigation in the Eastern District of Pennsylvania.

Left: U.S. Attorney William M. McSwain (center, right) with (left to right) Joe H. Tucker Jr., committee cochair; Catherine M. Recker; and Kathleen D. Wilkinson, committee cochair; at the CLE.
PHILADELPHIA BAR ASSOCIATION CLE - TAX SECTION

TCJA Affects Nonprofits in Unexpected Ways

By P Michael Jones

The Tax Cuts and Jobs Act, passed by Congress in 2017, created widespread implications for individuals and business entities. Surprising, even “consternating,” to the nonprofits are the significant overhaul taken within the statute that upend decades of tax-free benefits previously provided making these benefits now taxable.

The TCJA affects nonprofits in unexpected ways. The Tax Cuts and Jobs Act, passed by Congress in 2017, created widespread implications for individuals and business entities. Surprising, even “consternating,” to the nonprofits are the significant overhauls taken within the statute that upend decades of tax-free benefits previously provided making these benefits now taxable.

The Tax Section hosted “Impact of Tax Cuts and Jobs Act on Nonprofits” on July 16. The course provided updates to lawyers representing nonprofit organizations on the changes in law under the TCJA.

Leila Vaughan, counsel for Royer Cooper Cohen Braunfeld, LLC, moderated the panel featuring Marka K. Conley, founding partner of Conley Fleming LLP, and Steven M. Glueck, CPA, a partner at BBD LLP, as they presented on unrelated business taxable income silos, net operating loss limitations, employee parking issues, executive compensation, excise taxes on private colleges and universities and qualified opportunity zones.

There was a brief discussion on how NOLs arising after 2017 can no longer be carried forward, only forward, and that that the NOL deduction is limited to 80% of taxable income.

The panelists quickly dove into what they said was the largest problem created by the new statute, that certain fringe benefits, previously provided tax-free to employees, are now unrelated business taxable income. Conley said that previously qualified transportation fringe benefits could be offered to employees tax-free, but now expenses associated with transit passes, parking passes and even parking lots must now be factored into the 990-T.

This new rule hurts private and nonprofit industry, said Glueck, and that Congress did this to “level the playing field” between these two sectors after they disallowed the transportation fringe benefit to for-profits. Making taxable these previously tax-free benefits has caused panic in nonprofits, he said, many of which may have never filed a 990-T or contemplated complex calculations about the expenses of employee sections of parking lots.

Long-term questions remain on whether this will drive down nonprofit numbers. Not all that has come out of the TCJA is cause for panic, however, as the corporate tax rate has been reduced dramatically from 35% to 21%. Choice of entity, namely between trusts and corporations, now needs greater thought. Where before, according to Conley, operating as a trust was advantageous for income tax purposes, now many trust entities may learn after crunching the numbers that operating as a corporation may better suit the bottom line.

Excise taxes on employers’ earnings in excess of $1 million are now to be taxed at the 21% corporate tax rate. Likewise, severance payments exceeding three times the employee’s five-year average compensation will be subject to the 21% tax.

Other topics addressed included the ending of a tax deduction for athletic tickets received in return for a charitable donation, the substantiation exception for acknowledging charitable gifts in a list to the IRS has now been repealed, the standard deduction rule modification, and the impact of the repeal of the individual

PHILADELPHIA BAR ASSOCIATION CLE - SOCIAL SECURITY DISABILITY COMMITTEE

Knowing Where, What to Look for in SSD CDRs

By Mary LeMieux-Fillery

Congress requires beneficiaries of SSD and SSI to undergo Continuing Disability Reviews every three years. Cases are diaried for CDRs based on when the Administrative Law Judge feels the condition might be improved.

The Social Security Disability Committee hosted “How to Handle Social Security Disability Continuing Disability Reviews” on July 19. This CLE provided updates and information for Social Security Disability practitioners to assist their clients when presented with CDRs. The presenter was Richard P. Weishaupt, senior attorney, Health and Human Services, Community Legal Services of Philadelphia.

The standard with CDRs is whether there has been medical improvement in the formerly disabling condition that affects a claimant’s ability to work. For children’s cases, the standard is improvement in the child’s intellectual or developmental disability.

There are two types of CDRs, a simplified version where the beneficiary must complete a function report outlining the status of the condition and their medical providers and another more comprehensive review where SSA conducts a full medical review along with a consultative examination before a determination is made. Weishaupt told attendees that it is important to understand that the CDRs are based on the criteria of the new listings and not the old ones.

The statute and regulations pertaining to CDRs mandate that a comparison point decision be made to demonstrate improvement to warrant the denial of continuation of benefits. This means that all evidence that was available when the original award was made must also be made available for comparison to demonstrate improvement for an ALJ to deny benefits. The ALJ, not the representative, is responsible for gathering this evidence. If the ALJ does not have all the available evidence, benefits must be awarded.

If a claim is denied on a CDR, the claimant has the option to have the case heard by a disability hearing officer. If the case is not granted on a CDR, the claimant has the option to have the case heard by a disability hearing officer. If the

continued on page 19
Election Year Options for Nonprofits

By Matthew S. Olesh

Nonprofits often tread carefully when it comes to the world of politics to avoid risking tax-exempt status. This dynamic between nonprofits and politics is often heightened during election years. The Young Lawyers Division and the Board Observer Program hosted a program geared toward board observers on July 17 that focused on these issues to provide guidance to current and future nonprofit directors. Panelists Patrick Christmas, policy director for the Committee of Seventy, and Marni Jo Snyder, owner of Law Offices of M.J. Snyder, LLC, presented a discussion on this topic.

Christmas and Snyder addressed the distinction between organizations that are registered under Section 501c3 of the US Internal Revenue Code, as opposed to Section 501c4. In the former situation, the tax-exempt status restricted organizations from suggesting to voters for whom they should vote. 501c4 organizations have no such restriction.

The issue of lobbying was discussed, and the panelists said that 501c3 nonprofits often do not realize they are able to engage in advocacy work to further that agenda. Effective organizations will often publicize their “wish lists” for what they want to see in a candidate and work to advocate for those traits. Even if they happen to align with a candidate’s position, the advocacy work is permitted if it is focused on the issues — not the candidates.

Nonetheless, nonprofits may be reluctant to engage in lobbying due to both the negative connotation that may attach and vagueness in the applicable law governing such conduct. Oftentimes, analysis of whether certain lobbying work is permitted will be guided by how consistent the lobbying activity is with the organization’s mission, purpose and typical activities, the panelists said. Whether the activities have a partisan nature is a relevant consideration, and the activities cannot be used as a pretext to focus on a party or candidate. They noted that diligence, on the part of directors, is important to ensure that the lobbying activity is with the organization’s mission and work to advocate for those traits. Even if they happen to align with a candidate’s position, the advocacy work is permitted if it is focused on the issues — not the candidates.

The issue of perception was also discussed. The panelists said nonprofits need to be careful in choosing issues and ensuring that any lobbying does not contribute to a perception that is not in furtherance of an organization’s best interests. Nonprofits should not assume that they are restricted from engaging in any such political activity, but should be careful to pay attention to the applicable law and regulations to ensure compliance.

The Philadelphia Bar Association has formed its Elections Committee, which is chaired by Past Chancellor Mary F. Platt and consists of Jennifer S. Coatsworth, Chancellor Rochelle Fedullo, Lawrence S. Felzer, Francesca A. Iacobangelo, Niki Ingram, Sayde J. Ladov, Lauren P. McKenna, Kevin V. Minneci, Chancellor-Elect Hon. A. Michael Snyder (Ret.), Patrice A. Toland, Michael T. van der Veen and Kathleen D. Wilkinson. As Secretary, Jennifer S. Coatsworth serves as a non-voting member.

Offices for which candidates are being solicited are Vice Chancellor, Secretary, Assistant Secretary, Treasurer, Assistant Treasurer and five seats on the Board of Governors. Each Board seat carries a three-year term.

Association members may become candidates for any of these offices by filing with the Secretary on or before Oct. 15 for the Dec. 12, 2019 Annual Meeting, nominations in writing which, for candidates of the Board, must be signed by at least 25 Members who are entitled to vote; for candidates of Secretary, Treasurer, Assistant Secretary and Assistant Treasurer, shall be signed by at least 35 Members who are entitled to vote; and for candidates for Vice Chancellor, shall be signed by at least 100 Members who are entitled to vote.

Individuals who wish to run for any of the above-named offices should contact Susan Knight, CFO/Director of Administration, at sknight@philabar.org for additional information. Signatures, along with a resume, and written authorization should be submitted to Association Secretary Jennifer S. Coatsworth, c/o Susan Knight, Philadelphia Bar Association, 1101 Market St., 11th Floor, Philadelphia, PA 19107, no later than 5 p.m., Tuesday, Oct. 15, 2019.
**After Epic Systems: Trends in Employment Arbitration**

By Zani Ishitiaq

More and more employment issues are going to arbitration and mediation. The trend may increase after the United States Supreme Court decision in Epic Systems Corp. v. Lewis deciding that the Federal Arbitration Act trumps the provisions of the National Labor Relations Act. Companies can now require arbitration and prevent class action arbitration or litigation.

The Alternative Dispute Resolution and Labor & Employment committees hosted “Settle Down: Recent Trends in Employment Arbitration” on July 23. Panelists were Andrew S. Abramson, of Abramson Employment Law, LLC; Joan Parker Ph.D., of Joan Parker ADR; and Paul C. Lantis, a shareholder in Littler Mendelson, PC. The panel was moderated by ADR Committee co-chair, Hon. Richard B. Klein (Ret.).

None of the panelists had seen an uptick in arbitration cases following the Epic Systems case. However, Lantis said, “Just wait.” He noted that companies are considering adding clauses requiring mandatory arbitration and precluding class actions. He said companies are concerned that the courts will strike them down for unfairness, and lawyers are busy reviewing the clauses. In the future, there may be more employment cases going to arbitration.

Parker said that employers may be sorry that they got what they asked for as the costs of multiple cases, rather than one action, may escalate. She noted that she has recently handled several large cases in mediation, where both sides wanted to mediate. Abramson said he was concerned that arbitration may cost more for employers than the existing system.

Lantis and Parker said they agreed that the arbitration clauses should rigorously comply with due process protocols and not be limiting for the employee. Lantis noted that both JAMS and the American Arbitration Association had strict protocols, and unless the clauses conformed to the protocols, they would not administer the case. While Lantis said that no “one-size-fits-all” arbitration clause, a reference to the rules of either JAMS or the AAA rules, would be the safe thing to do.

The panel discussed whether discovery could or should be limited in arbitration.

 Abramson said that strict deposition limits hurt plaintiffs. He said that in the ordinary case, all the defense needs is the deposition of the employee, while the employee may need several people in the company to make a case. Lantis suggested that the panelists said... continued on page 19

**Wild World of Jury Selection is a Hit Once Again**

By Jordan Strokovsky

At the 2018 Bench-Bar and Annual Conference, the State Civil Litigation Section’s “Wild World of Jury Selection” filled a conference room with attorneys and judges and other attendees. The “Wild World of Jury Selection” was presented again by Judges Marlene F. Lachman and Lisa M. Rau, Philadelphia Court of Common Pleas at a CLE on Aug. 8. The course involved the entire jury selection process, from calling the prospective jurors to attention and opening remarks by the judge, to conducting general, and then individual, voir dire.

Judge Rau discussed the magnitude of a juror’s service by telling attendees the Constitution was written to establish justice for our country, and many died for the idea that it is the citizens who decide justice. Judge Lachman said she shares similar notions of justice to her prospective jurors. She said her goal with jury selection is to provide logical arguments for picking a juror who will hear him out. She said he is a stickler for organization and making sure all prospective jurors are included in the case. While Lantis said that no “one-size-fits-all” arbitration clause, a reference to the rules of either JAMS or the AAA rules, would be the safe thing to do.

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Bias is There, Trick is How to Overcome it

By Thomas E. Rogers

Biases are part of everyday life, and guide us through the decision-making process. But facts and research should influence us, as well. LawPay, a Philadelphia Bar Association member benefit, sponsored “Biased! Me? – Decision-Making and Litigating in a Divided Nation” on Aug. 6. Claude E. Ducloux, director of LawPay Education, Ethics and Compliance for LawPay Affinity Solutions, presented. This program was one of the free CLE courses included in membership for members in good standing.

Heuristics, or mental shortcuts, help people come to a decision without a heavy cognitive lift. Ducloux used the example of reacting to a foul ball headed into the crowd during a baseball game. He said you could potentially see the ball coming and wonder “Could this cause damage?” Practically speaking, you would instinctively duck as you saw the ball hurtling toward you. Those instincts or other experiences help create mental shortcuts that influence unconscious bias, or preferences, which influence involuntary decisions. Unfortunately, Ducloux said, unconscious bias hardens opinions and creates conflict, complicating the rational decision-making process.

Although influenced by unconscious bias like everyone else, Ducloux said that lawyers need to take a step back, reflect and exercise more of their cognitive ability. In a case or with a client, it is important to gather all the information and get other opinions from trusted sources. Bar association membership, he said, facilitates this communication by providing opportunities to engage with other lawyers and seek advice.

Lawyers need to be aware of hurdles to understanding. People are “fixed,” “fluid” or “mixed,” meaning they are wary of cultural shifts, open to societal and cultural changes or adapt to their surroundings, respectively. Contradictory information, a refusal to accept information and ignoring one view over preference for another, can stymie negotiations and relationships. For success, lawyers need to re-frame issues to appeal to all types of people. Conflict will naturally arise, but that is okay, because it brings issues into focus and encourages diplomacy. By challenging others, conflict opens minds, theirs and yours, to new ideas.

Some of the best tactics for success are considering all other points of view, remembering lawyers’ vital role in the justice system and resolving conflicts with the rule of law in mind. Ducloux shared some traps to avoid, which are particularly treacherous in the current U.S. political climate. False consensus is thinking everyone else understands things the same way you do. Do not assume that because you think one way, that everyone else does. Another trap is thinking you know more than you actually do, causing an illusion of explanatory depth. If you think saying something enough must mean it is true, then you are guilty of falling into the trap of a no-evidence conspiracy. That trap leads to believing that anyone who challenges you must be part of a conspiracy against you and others who share your opinions or values. Also, avoid manipulative fear-mongering. Stoking fear leads people to overreact, keeping them from making well-reasoned decisions on their own.
Pennsylvania has one of the highest percentages of injured workers on chronic long-term opiates. To address the widespread misuse and abuse of opioid medications, we are seeing a shift in prescription patterns to include non-opioid treatment options. With this shift, we may also face several ethical implications that must be addressed when considering alternative treatment options, panel members told attendees during the Workers’ Compensation Section CLE titled “Alternative Treatments in Chronic Pain Management: Ethically Treating Outside of Opioids” on Aug. 9. The panel included interventional pain medicine specialist H. David Qu, M.D.; Andrea C. Rock; and Maureen Cassidy, senior associate at Pond Lehocky Stern Giordano.

To combat the opioid epidemic, physicians are turning to treatment options outside of opioid medications such as minimal invasive injections, acupuncture, massage and medical marijuana. Additional interventions include the spinal cord stimulator, intrathecal pump and regenerative treatment options consisting of platelet rich plasma and stem cells, which have shown good results for treating herniations and meniscus injuries, Dr. Qu said. He noted that more physicians are avoiding the traditional lumbar decompression surgery and opting for the minimally invasive lumbar decompression procedure, or the vertiflex procedure. It takes 10-15 minutes to perform these procedures, which are done on an outpatient basis without any downtime. Dr. Qu also said that the incision is the size of an aspirin, and is more cost-effective when compared to traditional decompression surgery.

While we are seeing an increase in the number of alternative treatment options, Dr. Qu said that opioids may continue to be an appropriate form of treatment for certain acute injuries like bone fractures or post-surgical lumbar conditions involving spinal hardware. He explained that the key is educating patients, performing random urine drug screening and keeping the dosage under 90 morphine equivalent. Also, some form of functional improvement must be apparent.

With these alternative forms of treatment, Rock said that attorneys may have an ethical obligation to address the impact of medical treatment, including non-opioid treatment options in the workers’ compensation setting. She noted that the Pennsylvania Rules of professional conduct Rule 1.4 provides that a lawyer shall exercise independent professional judgement and render candid advice. Also, Rule 2.1 provides that a lawyer may refer not only to the law but to other considerations such as moral, economic, social and political factors that may be relevant to the client’s ability to accomplish his or her objectives.

From the defense perspective, this issue may arise when addressing the reasonableness or necessity of medical treatment. Rock stated that it is important to explain to the insurance carrier the implications of the utilization review process and what bills should be paid or denied. Also, in certain instances, such as settlements or obtaining a Medicare Set-Aside, the carrier may be amenable to the claimant trying alternative cost-effective, non-opioid treatment options, Rock said.

From the claimant’s perspective, Cassidy said that the risk to the injured worker is significant during the utilization review process if the prescribed opioid medications are deemed unreasonable or unnecessary. However, regardless of the outcome, the utilization review process opens the discussion for the claimant to consider alternative treatment options, Cassidy said. She added that if the claimant seeks a second opinion, it can lead them in the right direction.

Regina M. Parker (rparker@tthlaw.com) is a partner at Thomas, Thomas, & Hafer LLP; and is an associate editor of the Philadelphia Bar Reporter.
Co-parenting class helps parents take responsibility for plans

By Jolene Wilson-Glah, Attorney, Mediator, Arbitrator (retired) | Cathy Tutty, Solo Practitioner

A newly released, revolutionary, online co-parenting course offers the opportunity to embrace one’s past, its effects on relationships and children, and to forge a new path for the benefit of the children. That course is coparentingintothefuture.com.

Family law attorneys all know the drill. As the holidays approach, or just before big family events and vacations, your client is calling daily (or more often) to get your ‘advice’ on how to handle their former spouse. They want you to tell them it’s OK to change times, force a drop-off location, or in some way alter the written agreement that took a full day of mediation to draft.

And every family law practitioner also knows that:
• You are not the parent,
• You do not have control over your own client, let alone their ex; and
• Nothing you can say will resolve this situation permanently.

It is the bane of our existence as family law attorneys when we are the arbiters of parenting time, the interpreters of parenting plans and the expected answer to how to really get parenting time to work.

After only a few cases, you have learned that the only way to really resolve issues in parenting is for the parents to be responsible for the situation, the children, their relationships and how it got to this place. Law school has left most of us ill-equipped to deal with these issues to reduce mediation to draft.

And every family law practitioner also knows that:
• You are not the parent,
• You do not have control over your own client, let alone their ex; and
• Nothing you can say will resolve this situation permanently.

Co-Parenting Into the Future addresses the responsibility of the client for identifying, communicating and completely resolving every parenting issue with the intention of creating a powerful plan. Being responsible for their own parenting plans may be the one gift a client can give to their attorney in a family law case. This is a real probability for those clients who complete the program.

Designed by two divorced parents, the course guides participants through the often difficult look at their relationship and how they can create a future for their children that defeats the odds and the difficulties set out above which face so many of our children. The course provides the opportunity to make an ongoing, post-divorce relationship with the other parent. It is interactive in its approach, including homework, listening as others struggle with similar issues in designing their futures, resources to assist you in communication and examples of how to develop workable agreements with the other parent. There are regular blog articles on a range of subjects such as holidays, resources, helpful books, money, the benefits of grandparents, and encouraging respect for and in our children.

In one instance in a Montana court, a client had an average of three daily contacts to her attorney to address parenting issues. Her stance heading into the mediation: She fully intended to force the matter to Court in the absence of her child’s father agreeing to her demands.

During the weekend before mediation, the attorney demanded that the client complete the program before the mediation began. While she resisted, the client completed the program and wrote for herself a full plan for caring for her child and parenting with her former partner. According to the client, “I took responsibility of my role in our relationship dissolved. I saw where I could change, and it left me being a mom first and foremost. I started to see what (her ex-husband) was seeing and how he wanted a relationship with our son. In fact, it shifted from MY son to OUR son. Once I saw that, drafting and following the parenting plan became simple.”

The attorney for this client reports that the client contact reduced to fewer than three contacts per month after completion of the course. Issues with the parenting plan are not always easily resolved, and the parties resolve the issues between themselves. Parenting of the child is final for attorneys on both sides, even though only one of the parties has completed the program. The client also reported, “I love OUR son now and have more compassion for myself and for my ex. What matters most is what is important for our son, not for either one of us.”

During decades of practice, we have all seen a wide range and array of resources. None of those resources is as transformational and effective as this program for many parents across eight states.
Ms. C* and Mr. A* were similar in many ways. Both were reduced to homelessness due to significant traumas and hardships; both came to us through the Homeless Advocacy Project, seeking pro bono legal help to secure SSI/SSDI benefits on grounds of severe mental disability; and both were awarded sufficient benefits, after Hogan Lovells volunteer attorneys represented them in tough and long-awaited appeal hearings, to put them on the road to secure housing.

To many homeless, indigenous clients like Ms. C and Mr. A, HAP is synonymous with hope.

Ms. C suffers from PTSD, severe depression, bipolar disorder, anxiety and agoraphobia. Growing up, she was physically abused by her father and emotionally abused by her schizophrenic brother and mother. Her brother had repeatedly threatened to “rape and kill” her. In college, she became the victim of a sexual assault, and witnessed the horrific Sept. 11 attack. Even in those conditions, Ms. C persevered. For years she worked as an in-home family nurse, but she lost her job because her agoraphobia and depression became so severe that she could not get out of bed. Eventually, she could not even bring herself to attend psychiatric treatment and her conditions worsened.

Like Ms. C, Mr. A is a hardworking individual who concealed his mental illness (and functional illiteracy) for decades while continuing to work. But by the time we met him at age 55, Mr. A had been broken down by a series of health issues and family tragedies. According to his psychologist, Mr. A had been “putting up a facade,” but in reality, he was losing the ability to function, eat or sleep due to severe mental and physical disabilities. While hospitalized for emergency abdominal surgery, Mr. A reached a breaking point when he found out that the landlord had sold his family’s longtime home, causing him to become homeless.

It was under these dire circumstances that Ms. C and Mr. A sought help from HAP, an organization that connects legal professionals to individuals who are experiencing homelessness in Philadelphia. Both Ms. C and Mr. A came to one of the legal clinics that HAP conducts at homeless shelters and soup kitchens throughout Philadelphia. At these sites, volunteer attorneys and paralegals, like those of us at Hogan Lovells, work under the guidance of HAP attorneys to interview clients, provide advice and referrals and open cases for ongoing representation. These on-site clinics are followed by tireless research, client meetings, evidence collection, document drafting and other zealous advocacy on behalf of pro bono clients.

The gratifying results for Ms. C and Mr. A would not have been possible without the diligence and caring support of our Hogan Lovells attorneys and staff. But more importantly, they would not have been possible without the platform that HAP had provided. While these victories were encouraging, the need in our community remains. We sincerely hope others will join us in supporting HAP and continuing to provide hope to these most vulnerable Philadelphia citizens.

Stephen A. Loney Jr. (stephen.loney@hoganlovells.com) is a partner and Yyang Cheng (yyyang.cheng@hoganlovells.com) is an associate at Hogan Lovells.

* Names changed to protect privacy

By Steve Loney and Yiyang Cheng

By Deborah Gordon Klehr

Thanks to the hard work of advocates across the county – including the Education Law Center – we have a wide array of civil rights protections for students. ELC provides information to families about these protections and advocates for students’ rights, racial equity and fair treatment for all.

The approach of the school year is a good time to review some key rights, several specific to Pennsylvania.

1. Enrollment

Students have the right to be enrolled in school within five days of submitting only four documents: proof of age, proof of residency, immunization records and a sworn statement that the child is not currently expelled for weapon possession.

Students experiencing homelessness or in foster care are entitled to immediate enrollment without these documents. Schools cannot require additional information before enrollment; they cannot require state ID, proof of citizenship or Social Security numbers.

2. School discipline

Students have important protections when facing exclusionary discipline (suspension, expulsion, disciplinary transfer). These include the right to proper notice, the right to ask questions, the right to an appropriate hearing and, in most cases, the right to receive education services in the interim. Students with disabilities may not be punished for behavior that is a manifestation of their disability.

Pennsylvania now has improved rules governing placement of students in “alternative education for disruptive youth programs.”

3. Bullying

All students have the right to be free from bullying in school, whether verbal, written, graphic, cyberbullying or physical. Bullying can significantly impact children’s learning. Pennsylvania schools must have a written policy against bullying and must investigate and address complaints of bullying. Students have additional rights if bullying qualifies as “harassment” — offensive conduct related to one’s race, color, national origin/ethnicity, gender, age, disability or religion.

These protections also apply to students who are LGBTQ or gender non-conforming. If your child experiences bullying or harassment, keep detailed records of each incident and request in writing that the school take action.

4. Students with disabilities

Students who have a disability that interferes with their learning have the right to a “free appropriate public education,” a planned program of education and special services that takes account of a student’s individual needs. Special education and related services must be provided free of charge. Parents have the right to participate in the special education process and can consent to or refuse services.

Students with disabilities cannot be punished for behavior related to their disability.

5. English learners

English learners have protections, including the right to learn English; to support, modifications and accommodations in core classes; and to be free from harassment based on immigration status. Parents with limited English proficiency have the right to receive information about their child’s education in a language they understand.

6. Students in foster care or experiencing homelessness

Children in foster care and students experiencing homelessness have the same rights as other students, plus additional rights to ensure a stable school environment, even if they change living arrangements. The right to “school stability” includes the right to remain in the same school when youth change living placements, the right to enroll in a new school immediately without the required documents and the right to have an involved education decisionmaker.

As the school year begins, we welcome pro bono assistance from attorneys to help ensure Pennsylvania students can exercise all their rights.

Deborah Gordon Klehr is executive director of the Education Law Center-Pennsylvania.
LRIS refers potential clients to approximately 175 attorneys.

- LRIS attorneys are in good standing, have professional liability insurance and must meet certain experience requirements.

- LRIS attorneys practice in more than 150 areas of law.

- In 2017, LRIS received 25,425 inquiries and made 11,208 referrals.

If You Have Someone You Cannot Help… Refer Them to Us!
QUICK BITES: WINKEL

Winkel: A Touch of Amsterdam Comes to Wash. West

By James Zwolak

Most establishments in my old Washington Square West neighborhood from the late 80s are long gone. The lifesaving U-Do-It Laundry now houses TriA, the crack house that terrorized my old block became Mercato. But the infamous More Than Just Ice Cream – a mere block from the infamous All Night Disco (weapons mandatory) – fed folks for 43 years until it sadly closed last November.

However, Noon owner/chef Joncarl Lachman has brought the MTJIC space back to life with his new Dutch-infused breakfast/lunch spot Winkel, at 1119 Locust St. The space remains cute; albeit the Dutch themes kind of annoying - are they seriously begging customers to Google Translate the giant “eet smakelijk” painted on the wall?

Seven ravenous attorneys, plus adorable three-year-old Emily, chewed down over two visits; with varying opinions. Portions are huge (all of Lachman’s joints feed you) and service is excellent. Most dishes are accompanied by a mix of greens, particularly the spicy, tart chicory green. Dan ever, spared no quarter about this (or any of the menus). She initially complained about the reuben being on a roll, thought the corned beef was lean but too salty, and that the dishes generally had “too many da*% potatoes,” crying “this is not how people eat, nowadays.” Whatever, I had no complaints. Try it.

Christine and Frances also shared the Beet & Gouda Salad with mandarin orange, speculaas-spiced walnuts, and sweet-and-sour dressing. Christine thought the beets were overcooked and dry and the gouda portion was skimpy. Frances, conversely, enjoyed it lots, and I did too, with the spicy punch of the walnuts a perfect complement to the beets.

George ordered — and survived — the decadent Strawberry Almond Deep Fried French Toast; artery-destroying but totally recommended. Finally, I ordered the Mustard Crisped Crabcake Benedict and the Hot Chicken on my two visits. Though Christine thought the crab cake had too much filler, and that it was ridiculous and overpowered by a river of hollandaise, I had zero problems stuffing it down my gut. And the Hot Chicken was a delightful mess; maybe not Nashville-level, but yummy, nonetheless.

Lachman is an awesome restauranteur (I still miss his 9th Street couscous joint, Neuf), and I hope Winkel does well. But given the fierce breakfast/lunch competition close by (Middle Child, Green Eggs) only time will tell if Winkel makes its mark.

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Samuel Cohen, shareholder at Marshall Dennehey Warner Coleman & Goggin, has been appointed to serve on the Special Olympics Pennsylvania executive advisory board for a three-year term.

Lloyd Freeman, partner at Archer Law, was named a recipient of the Philadelphia Business Journal’s 2019 Minority Business Leader Award.

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