Call to Action: Support Expansion of Protections Under Pa. 'Hate Crimes' Law

By Chancellor Deborah R. Gross

We are at a turning point in our nation’s future. We need to look inward and decide whether we can sit back and watch events as they occur or whether we should speak out and take action. I believe as lawyers, we have a duty to choose the latter. While speaking out has the potential for discord, we nevertheless should be able to hear opposing viewpoints and disagree in a civilized fashion. Equally important, if not more so, is the need for us to take action.

One such action is to call on our legislators to enact legislation promoting equality and codifying the illegality of hate. The Philadelphia Bar Association has a long-standing history of support for the protection and equal treatment under the law for all citizens issuing many such resolutions. In Pennsylvania, while we have a “hate crimes bill,” it is limited in scope to protection from discrimination based on race, color, religion or national origin. Unlike the federal hate crimes law and those enacted in all other Northeastern states, we do not provide protection for “ancestry, mental or physical disability, sexual orientation, gender or gender identity.” It is time we insist that our state legislators provide such protection. We are activating the Philadelphia Bar Association’s Legislative Action Center and encourage you to take action.

Proposed amendments to Pennsylvania’s current law have been languishing since 2009. At the same time, there has been an explosive rise in the number of hate groups and hate crimes in our Commonwealth. According to the Southern Poverty Law Center, Pennsylvania has the fifth largest number of “hate groups” of any state in the U.S. There are approximately 40 such groups in Pennsylvania. A 2015 FBI report states that approximately 20 percent of hate crimes across the country are related to sexual orientation and gender identity. The U.S. Justice Department notes that hate crimes can trigger community conflict, civil disturbances, property destruction and physical violence.

The Philadelphia Bar Association’s Legislative Action Center makes it easy for you to send a letter to or contact your state legislators urging them to enact legislation. Visit PhiladelphiaBar.org, type in “Legislative Action Center,” and click on the “Action Alert.” You will be provided with a draft letter that you can use or edit to send to your state legislators. You are encouraged to direct your friends, colleagues, clients and family members to our website to do the same.

On my part as Chancellor, I am reaching out to the leaders of other bar associations, universities, businesses and medical institutions throughout the region with this same open call to action. Hateful actions, intolerance, bigotry and racism are wrong. We must unite together to send a strong message to help stop the hate.
Thank you all so much for the overwhelming support that you have given me over the months since my announcement of my candidacy. It is a pleasure to have had a chance to speak to you about my plans to expand upon the great accomplishments of the Philadelphia Bar Association. I am invigorated by your ideas and suggestions concerning the issues that are important to all of us. Our conversations demonstrate how much all of us care about the Association, the city in which we live and practice, and the needs of our community.

As we move forward, we will certainly face continued challenges, but we are also presented with great opportunities. I believe that we have the opportunity to respond with creative solutions to the challenges before us.

We have the opportunity to create a truly active, inclusive, and diverse Association. I believe that we can seize this opportunity to the benefit of all.

We face the challenge of providing a legal and professional environment that encourages continued economic development benefitting everyone. I plan to create a productive dialogue and partnership with local government that will make our efforts successful. I further believe that we can partner with the corporate and educational communities to ensure that our efforts succeed.

We have the opportunity to strengthen the fabric of our daily lives by taking innovative action to assure positive change in the way in which we provide legal services to those who need it the most. I am confident that we can, and will, meet this challenge.

I look forward to the opportunity to lead the Philadelphia Bar Association to meet the needs of the profession of the future. I am confident that we will be successful.
As we prepare to enter autumn, the Philadelphia Bar Association is gearing up to host a number of upcoming events, programs, forums and beyond. Before I share some of those highlights with you, I first want to mention a change in how some of our signature events will be branded moving forward.

Traditionally, as most of you know, Chancellor’s Forums have been free programs to Association members and members of the community. In recent years, we began charging a nominal fee for non-members to attend these Forums. Some of these special events have included candidates’ forums, while others have been substantive and informative programming for members. We have received tremendous responses from these various forums and have decided to offer Chancellor’s Forums as only open to our members, an exclusive benefit for your membership and free of charge. They will conclude with an opportunity for networking and discussion.

We will be distinguishing now between Chancellor’s Forums and Community Forums. Community Forums will be focused on topics which can benefit not only our members, but also are important to educate the community as to the importance of lawyers and the rule of law. We recognize that a large part of why we exist is to support our community. Therefore, the Philadelphia Bar Association is gearing up to host a number of upcoming events, programs, forums and beyond. Before I share some of those highlights with you, I first want to mention a change in how some of our signature events will be branded moving forward.

Traditionally, as most of you know, Chancellor’s Forums have been free programs to Association members and members of the community. In recent years, we began charging a nominal fee for non-members to attend these Forums. Some of these special events have included candidates’ forums, while others have been substantive and informative programming for members. We have received tremendous responses from these various forums and have decided to offer Chancellor’s Forums as only open to our members, an exclusive benefit for your membership and free of charge. They will conclude with an opportunity for networking and discussion.

We will be distinguishing now between Chancellor’s Forums and Community Forums. Community Forums will be focused on topics which can benefit not only our members, but also are important to educate the community as to the importance of lawyers and the rule of law. We recognize that a large part of why we exist is to support our community. Therefore, the numerous candidates forums for judicial office, or elected office, which we will continue to host should remain open to non-members, preferably as free educational programming, as members of our community-at-large oftentimes look to us as a resource and source of information.

We hope this differentiation should help us better serve our members as well as members of the community.

Some of the highlights from our line-up of Bar-wide programming for the fall include:

- **Sept. 19** – Chancellor’s Forum featuring Attorney General Josh Shapiro
- **Sept. 26** – Community Forum featuring District Attorney Candidates Beth Grossman and Larry Krasner
- **Oct. 13-14** – Bench-Bar & Annual Conference at Borgata
- **Oct. 30** – Appellate Court Candidates Forum
- **Oct. 17, 26, 31** – Philadelphia Bar Association Election Forums
- **Nov. 4** – Philadelphia Bar Foundation Annual Benefit

Additionally, I encourage you to visit our website and/or the calendar on Page 24 to learn more about the many different meetings, events and CLE courses that our Sections, Division & Committees are planning for the fall. To register and for more information, please visit PhiladelphiaBar.org. I look forward to hopefully seeing you this fall.

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

---

**Tell Us What You Think!**

The Philadelphia Bar Reporter welcomes letters to the editors for publication. Letters should be typed. There is no word limit, but editors reserve the right to condense for clarity, style and space considerations. Letters must be signed to verify authorship, and space considerations. Letters should be typed. There comes letters to the editors for publication. 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. Telephone: (215) 557-2359 or e-mail dchal@al.com.

---

**NATIONAL COUNCIL OF BAR PRESIDENTS ANNUAL MEETING**

Chancellor Deborah R. Gross (right) and Lynn M. Kelly, executive director, City Bar Justice Center, New York City Bar Association, presented on “Metropolitan Bar Issues - Pro Bono in Today’s World – Are You Nimble Enough?” at the 2017 National Council of Bar Presidents Annual Meeting at the Westin New York at Times Square in New York City on Aug. 11.
Developing a Prosperous Law Practice While Navigating Ethical Concerns
Thu., 9/7/17 - 12:30 - 1:30 p.m. (1 ETH)
Hosted by the Young Lawyers Division
In this lunchtime CLE program, presenters will highlight the current ethical issues growing a law practice presents. Hear practical guidance regarding marketing, advertising and developing business within the ethical rules (204 Pa. Code Rules 7.1, 7.2, 7.3); identifying what gets in the way of a competent professional frame of mind (204 Pa. Code Rule 1.1); using effective communication techniques for attracting and retaining clients (204 Pa. Code Rule 1.4); and much more.

Immigration Status and the Injured Worker
Fri., 9/8/17 - 12:30 - 1:30 p.m. (1 SUB)
Hosted by the Workers' Compensation Section
In this current atmosphere of intense focus on all things immigration, claimant and defense panelists will discuss the current impact that immigration status has on the injured worker. From Reinforced Earth Co. v. W.C.A.B. (Astudillo), through Ortiz v. W.C.A.B. (Raoul Rodriguez d/b/a Rodriguez Gen. Contr. and U.E.G.F.B.) to Kennett Square Specialties v. W.C.A.B. (Cruz) and beyond, the panel will host a lively discussion as to the rights and remedies available to undocumented immigrants injured on the job, as well as the pitfalls which face them, their attorneys and former employers.

Tax Accounting for Real Estate
Mon., 9/11/17 - 12:30 - 2:30 p.m. (2 SUB)
Hosted by the Tax Section
The Internal Revenue Code has a variety of special accounting rules that apply to businesses that own or deal in real estate and which influence timing for recognition of income and expense items. In this advanced 2-hour CLE course, panelists review both the key rules and the most recent developments in this area. The course will also highlight coverage of the basic requirements for methods of accounting under the code, as well as, standards governing the timing when businesses can recoup costs for tax purposes, including capitalization requirements under section 263A, and the economic performance requirements of section 461(h) in the context of real estate businesses.

VIDEO ENCORE: Ethics & Malpractice Avoidance
Wed., 9/13/17 - 12 - 2 p.m. (2 ETH)
This 2-hour video-encore CLE program will provide guidance to lawyers regarding how to protect themselves and minimize their chances of being sued for malpractice or being subject to other ethical issues. This program is applicable to attorneys in all practice areas and provides simple tips, pointers and advice on how to avoid common malpractice pitfalls.

Minimize Tax and Liability Exposure by Choosing the Right Entity (LLC, Sole Proprietorship, etc.) for your Practice
Thu., 9/14/17 - 4 - 6 p.m. (2 SUB)
Happy Hour CLE program hosted by the Solo, Small & Mid-Size Firm Management Committee
This CLE will explore tax, liability and other practical business issues faced by solo, small and mid-size firms when selecting an entity.

Settlement Conferences Before United States Magistrate Judges
Fri., 9/29/17 - 12 - 1 p.m. (1 SUB)
Hosted by the Labor & Employment Law and Federal Courts Committees
Our distinguished panel of United States Magistrate Judges of the Eastern District of Pennsylvania will share their insights on presiding over settlement conferences involving labor and employment cases. They will provide “best practices” for practitioners to achieve a successful outcome. The judges will also address ethical issues that may arise during settlement conferences.
I do not have the luxury of writing these columns for immediate publication, and so I often write about topics that could be stale by the time they are ultimately published three (ish) weeks later. However, the increasing prevalence of bigotry and ignorance in our country is something that is not going away. It is deeply disturbing to see that we may be markedly headed in the other direction, with acts of intolerance seemingly growing as the days, weeks and months go by since last November’s election.

As an American Jew, my feelings on the events that took place in Charlottesville, Va. last month, as well as the ensuing acceptance/defense by some white supremacists essentially “protesting” what they perceived to be a threat to their own supposed white supremacy, encompass outrage, disgust and general sadness. However, I wonder what I can do, and what we, as lawyers, can do. Condemnation of those espousing hate and intolerance, as well as those who draw moral equivalency between them and those who choose to stand up to hate and intolerance, is a good first step, but it is not enough unless it is accompanied by meaningful action to try and effectuate positive change.

In the past, I have written in this space about how the Philadelphia Bar Association and the Young Lawyer Division have acted to fight for the Association’s values, many of which have seemingly been under attack of late. The current situation, however, does not necessarily implicate our legal skills and abilities so much as they invoke our moral and arguably ethical responsibilities to do what is right. The preamble to the Pennsylvania Rules of Professional Conduct states that a lawyer is “a public citizen having a special responsibility for the quality of justice.” Equating Nazi bigots with people who would aim to protest and push back against their message, in my opinion, is an affront to the very notions of what is right and just.

As young lawyers, we must continue in our efforts to combat hatred and bigotry wherever and whenever they arise, ensuring the quality of justice as per our ethical charge. We should get involved in politics, be it running for office ourselves or supporting the next generation of government leaders as they run themselves. We should be present in schools - as the YLD is each year - so that we can help educate future generations to ensure as much as we can that they value and practice tolerance and kindness, and develop an appreciation for justice.

The YLD and the Association will continue to fight for justice for those who are subject to hatred and discrimination. Already, through the leadership of our Chancellor, the Association is in the process of renewing lobbying efforts to call on our legislature to strengthen Pennsylvania’s hate-crimes law. Expect to see more efforts of this nature going forward as well. While it is unfortunate that it often requires deplorable conduct like that which we saw in Charlottesville (and its aftermath) to effect meaningful change, we must nevertheless take it as an opportunity to do so, and hope that we come out stronger, kinder and more dedicated to the ideals of justice and equality than before.

Doing this is consistent with our ethical obligations as attorneys, as well as the values and ideals spelled out in the Association’s mission. As young lawyers, we must do all that we can to serve these ends.

Matthew S. Olesh (molesh@chamberlainlaw.com), senior counsel at Chamberlain, Hrdlicka, White, Williams & Aughtry, is chair of the Young Lawyers Division.
**JULY 26, 2017 NATURALIZATION CEREMONY AT PENNSBURY MANOR**


**AUG. 16, 2017 NATURALIZATION CEREMONY**

Left: Philadelphia Bar Association Secretary Marc J. Zucker (right) with Hon. Luis Felipe Restrepo, U.S. Court of Appeals for the Third Circuit (left), and Hon. Jeffrey L. Schmehl, U.S. District Court for the Eastern District of Pennsylvania, at the naturalization ceremony sponsored by the Philadelphia Bar Association at the U.S. Courthouse on Aug. 16. Right: Eighty-one people from 40 countries became U.S. citizens at the ceremony.

---

**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.

**COLLECTIONS & ENFORCEMENT OF JUDGMENTS**

Drew Salaman
30 year lecturer/course planner
Pennsylvania Bar Institute
“He wrote the book”
Contingent Fees Available
Salaman Grayson, P.C.
The Judgment Doctor™

100 South Broad Street
Philadelphia, PA 19110
(215) 568-7575
drew@salamangrayson.com

**COUNTY CRIMINAL DEFENSE LAWYER**

Send me your County criminal cases.
I pay referral fees.

Delco, Montco, Chester, and Phila.
Felony, Misdemeanor, DUI’s
In practice since 1991 and hundreds of trials

THE DATNER FIRM
ROBERT F. DATNER
Great results for your clients

610-394-3000, 267-455-5777
Call anytime.

**AIR CRASH LITIGATION**

The Wolk Law Firm
(215) 545-4220

- Our practice is limited to aircraft accident litigation for plaintiffs.
- We are Airline Transport and Type Rated jet pilots.
- We are Flight Instructors.
- We are aviation legal writers and lecturers with nationwide litigation experience.

www.airlaw.com

**ADR**

Bucks County Mediation and Arbitration Center
Barbara N. Lyons, Esq.

Arbitration Mediation Case Evaluation
215-340-7655 bcmac.org

**ASBESTOS CASES**

- MESOTHELIOMA
- LUNG CANCER
- LARYNX CANCER
- ASBESTOSIS
- COLON AND ESOPHAGEAL CANCER

Contact Edward M. Nass at:
215.546.8200 or via email
EMNASS@NCBLAWFIRM.COM

Three decades experience handling over 3,500 asbestos injury claims.
Much Anticipated Protz Decision Comes Down

By Francis X. Wickersham

On June 20, the Supreme Court of Pennsylvania issued its highly anticipated decision in the case of Protz v. WCAB (Derry Area School District). By way of background, the Pennsylvania Workers’ Compensation Act Section 306(a.2) provided that an employee could be required to submit to a medical exam (Impairment Rating Evaluation) to determine the percentage of impairment at the expiration of 104 weeks of total disability compensation. The impairment rating evaluation was used as a mechanism for adjusting the status of workers’ compensation benefits between total and partial disability. The claimant’s benefit status is to be determined pursuant to the most recent edition of the “AMA Guides to the Evaluation of Permanent Impairment.”

In Protz, not only did the court affirm the Commonwealth Court’s holding as unconstitutional the act’s mandate requiring physicians to use the most recent edition of the “AMA Guides to the Evaluation of Permanent Impairment” in performing IREs, the court found all of Section 306(a.2) to lack any constitutional validity and struck it from the act in its entirety. The court also concluded that the Commonwealth Court’s interpretation of Section 306(a.2) as allowing for IREs to be performed using the fourth edition of the AMA guides was wrong and contrary to the General Assembly’s intent. According to the court, it was obvious that the General Assembly’s use of the words “the most recent edition” meant the IRE physician was to use the edition of the guides that was most recent at the time of the examination, not the edition (fourth) in place at the time Section 306(a.2) was passed.

Ultimately, the court found that Section 306(a.2) violated the non-delegation doctrine of the U.S. Constitution because it gave the AMA “unfettered discretion” over Pennsylvania’s impairment rating methodology. It described the authority delegated to theAMA in Section 306(a.2) as “broad and unbridled.” It found that the General Assembly failed to provide any parameters for the AMA’s authority, giving it unrestricted control over the impairment rating process. Additionally, the court emphasized that the legislature did not include any procedural mechanisms in Section 306 (a.2) considered essential to protect against “administrative arbitrariness and caprice.” In short, the court determined that the General Assembly unconstitutionally delegated lawmaking authority to the AMA.

Practically speaking, this case will impact how workers’ compensation matters are handled once the claim has been accepted. Now the carrier must utilize other avenues to limit the claimant’s benefits from total to partial disability.

Francis X. Wickersham (fwickersham@mdwcg.com) is a shareholder at Marshall, Dennehey, Warner, Coleman & Goggin.
The Access to Justice Benefit, the Philadelphia Bar Foundation’s biggest annual charity event, is all about helping folks struggling with poverty, abuse and discrimination to have access to the full range of legal services they need. The generous support received through sponsorships and ticket sales provide vital funding for the Foundation’s grants and technical assistance to the dozens of legal-aid nonprofit organizations that depend on these resources.

This year, the benefit will be Saturday, Nov. 4 at the Mütter Museum, conveniently located at 19 S. 22 St. in Philadelphia.

This year the benefit will feature the work of the 38 legal aid nonprofits supported by the Foundation. Our grants and other programs assist a range of nonprofit legal aid organizations that collectively cover the entire spectrum of legal issues: from health to housing, from court reform to education, from employment to consumer fraud, from juvenile justice to elder justice, and from women’s rights to the rights of people with disabilities, immigrants, and veterans.

Your participation in the benefit allows the Foundation to strengthen the legal aid and pro bono systems and raise public support through unrestricted grants, training programs, fellowships and awards. Philanthropic commitments from law firms, businesses, and individuals have allowed the Foundation to provide more than $3 million in grants and other assistance in the last five years.

In these ways, the Foundation is the embodiment of the Philadelphia legal community’s commitment to the fundamental principle of equal access to justice for all. We engage thousands of attorneys, law firms, corporate legal departments, vendors and other businesses as donors, event sponsors and in multi-year giving programs. The Foundation is in a unique position with the ability to identify sector-wide needs and marshal the resources to address issues in effective and timely ways.

Your attendance at the benefit makes all this possible, and this year is more important than ever. Many legal aid organizations in our community are experiencing urgent increases in client demand for their services and potentially facing significant cuts in their federal and state funding. They need an immediate infusion of resources due to these special, unexpected circumstances.

We are honored and proud to announce that the Honorable Louis H. Pollak Champion of the Public Interest Award will be presented to Richard C. Glazer of Cozen O’Connor and the Pennsylvania Innocence Project. His lifetime commitment to supporting programs and causes that advance the public interest, as well as his ground-breaking work on behalf of the innocence community, make his recognition with the Pollak Award particularly fitting.

The Philadelphia Bar Foundation Award will be presented to Ayodele “Ayo” Gansallo. She is a senior staff attorney at HIAS Pennsylvania who has devoted her career to representing victims of persecution, abuse and discrimination who are seeking asylum in the U.S. Gansallo was selected to receive this year’s award in recognition of her years of tireless service on behalf of some of the most vulnerable members of our population – immigrants and refugees.

The Foundation’s Pro Bono Award will honor Drinker Biddle & Reath LLP. Drinker Biddle was selected to receive the Pro Bono Award for its thousands of hours of pro bono service and investment from its attorneys in providing direct service through legal aid agencies.

The Mütter Museum is a beautiful and unique venue for the benefit. The museum’s special collections will also be open to those attending the Benefit. Enjoying international popularity, the museum has been featured on countless TV programs and specials and is the subject of two bestselling books. Docents will be on hand to explain the beautifully preserved collections of anatomical specimens, models and medical instruments.

The Big House Band is back by popular demand. Voted one of Philadelphia’s top-five party bands for more than eight consecutive years, the Big House Band features Jimi Milligan and Danica Shirey from NBC’s “The Voice.” The band plays everything with class and style, from Sinatra, soul, funk and Motown, to rock, pop and current hits.

Catering by Design will once again serve up the Philadelphia’s best event experience combining gourmet food and drink, immersive design and gracious hospitality. Enjoy a custom menu inspired by dishes and flavors from all over the globe.

The most important aspect of the benefit is the opportunity for the entire legal community to come together in support of the mission of the Foundation. This event is the highlight of the year, where law firm and business leaders come to demonstrate their commitment to equal justice for all.

Thank you for your support. You can register your sponsorship or obtain tickets through our secure website at www.philabarfoundation.org/events/2017-access-justice-benefit.

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

---

## Bar Foundation

### 2017 Foundation Benefit, Uniting for Legal Aid

**By Thomas A. Brophy**

The access to justice benefit, the Philadelphia Bar Foundation’s biggest annual charity event, is all about helping folks struggling with poverty, abuse and discrimination to have access to the full range of legal services they need. The generous support received through sponsorships and ticket sales provide vital funding for the Foundation’s grants and technical assistance to the dozens of legal-aid nonprofit organizations that depend on these resources.

This year, the benefit will be Saturday, Nov. 4 at the Mütter Museum, conveniently located at 19 S. 22 St. in Philadelphia.

This year the benefit will feature the work of the 38 legal aid nonprofits supported by the Foundation. Our grants and other programs assist a range of nonprofit legal aid organizations that collectively cover the entire spectrum of legal issues: from health to housing, from court reform to education, from employment to consumer fraud, from juvenile justice to elder justice, and from women’s rights to the rights of people with disabilities, immigrants, and veterans.

Your participation in the benefit allows the Foundation to strengthen the legal aid and pro bono systems and raise public support through unrestricted grants, training programs, fellowships and awards. Philanthropic commitments from law firms, businesses, and individuals have allowed the Foundation to provide more than $3 million in grants and other assistance in the last five years.

In these ways, the Foundation is the embodiment of the Philadelphia legal community’s commitment to the fundamental principle of equal access to justice for all. We engage thousands of attorneys, law firms, corporate legal departments, vendors and other businesses as donors, event sponsors and in multi-year giving programs. The Foundation is in a unique position with the ability to identify sector-wide needs and marshal the resources to address issues in effective and timely ways.

Your attendance at the benefit makes all this possible, and this year is more important than ever. Many legal aid organizations in our community are experiencing urgent increases in client demand for their services and potentially facing significant cuts in their federal and state funding. They need an immediate infusion of resources due to these special, unexpected circumstances.

We are honored and proud to announce that the Honorable Louis H. Pollak Champion of the Public Interest Award will be presented to Richard C. Glazer of Cozen O’Connor and the Pennsylvania Innocence Project. His lifetime commitment to supporting programs and causes that advance the public interest, as well as his ground-breaking work on behalf of the innocence community, make his recognition with the Pollak Award particularly fitting.

The Philadelphia Bar Foundation Award will be presented to Ayodele “Ayo” Gansallo. She is a senior staff attorney at HIAS Pennsylvania who has devoted her career to representing victims of persecution, abuse and discrimination who are seeking asylum in the U.S. Gansallo was selected to receive this year’s award in recognition of her years of tireless service on behalf of some of the most vulnerable members of our population – immigrants and refugees.

The Foundation’s Pro Bono Award will honor Drinker Biddle & Reath LLP. Drinker Biddle was selected to receive the Pro Bono Award for its thousands of hours of pro bono service and investment from its attorneys in providing direct service through legal aid agencies.

The Mütter Museum is a beautiful and unique venue for the benefit. The museum’s special collections will also be open to those attending the Benefit. Enjoying international popularity, the museum has been featured on countless TV programs and specials and is the subject of two bestselling books. Docents will be on hand to explain the beautifully preserved collections of anatomical specimens, models and medical instruments.

The Big House Band is back by popular demand. Voted one of Philadelphia’s top-five party bands for more than eight consecutive years, the Big House Band features Jimi Milligan and Danica Shirey from NBC’s “The Voice.” The band plays everything with class and style, from Sinatra, soul, funk and Motown, to rock, pop and current hits.

Catering by Design will once again serve up the Philadelphia’s best event experience combining gourmet food and drink, immersive design and gracious hospitality. Enjoy a custom menu inspired by dishes and flavors from all over the globe.

The most important aspect of the benefit is the opportunity for the entire legal community to come together in support of the mission of the Foundation. This event is the highlight of the year, where law firm and business leaders come to demonstrate their commitment to equal justice for all.

Thank you for your support. You can register your sponsorship or obtain tickets through our secure website at www.philabarfoundation.org/events/2017-access-justice-benefit.

---

## Board Elections

**continued from page 1**

Secretary, Marc J. Zucker 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. 13 for the Dec. 5, 2017 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 for 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 Dawn Petit, meetings coordinator, at dpetit@philabarfoundation.org for additional information. Signatures, along with a resume, and written authorization should be submitted to Association Secretary Marc J. Zucker, c/o Dawn Petit, Philadelphia Bar Association, 1101 Market St., 11th Floor, Philadelphia, Pa. 19107, no later than 5 p.m., Friday, October 13, 2017. 

---

## One loan. One payment. Multiple benefits.

**Refinance & consolidate your student loans into one monthly payment.**

**RATES AS LOW AS 2.64% APR**

**VISIT ARDENTCU.ORG**

*APR = Annual Percentage Rate. Details Apply.*
Determining, Valuing Claims of Emotional Distress

By Annie K. Kernicky

The number of harassment lawsuits where plaintiffs allege emotional distress is trending upward. How a plaintiff in this type of lawsuit proves emotional-distress damages and how an employer defends against these damages are hot topics in employment litigation. The Labor & Employment Law Committee hosted a Philadelphia Bar Association CLE program titled “Emotional Damages in Harassment Cases” on July 28. Panelists David M. Koller, Koller Law, LLC; Marjorie N. Kaye Jr., principal at Jackson Lewis P.C., and Julie P. Koller Ph.D., clinical psychologist at the University of Pennsylvania; discussed the plaintiff and defense perspectives and specifically addressed using experts to prove and defend emotional-distress damages claims.

Koller began by sharing his initial thoughts as a plaintiff-side employment lawyer, and said that while there is typically some sort of emotional distress because of discrimination, he can only count a handful of times that he has retained a forensic psychologist to prove damages. Kaye said that the biggest burden for a plaintiff is proving causation, and even quantitative evidence of a decline in quality of life will not establish causation between a discriminatory action and the alleged emotional distress.

Dr. Koller, a clinical psychologist, said that her role in the forensic context as an expert is to objectively look at all the data and put the pieces of the puzzle together into an integrated report. She also said that many factors contribute to a psychological disorder and that data shows that certain populations are more vulnerable to psychological distress and functional impairment after a perceived discriminatory action.

In terms of how to value a “garden variety” emotional distress case, Kaye talked about the importance of the need for objective facts supported with documentation – like sleeplessness, stress, depression, loss of self-esteem, and more – but warned that if the plaintiff is not getting assistance for his or her emotional problems, then he or she may have a mitigation issue. She said that, to the extent there is a reluctance or refusal to get help, this can undercut an argument that a plaintiff has valuable distress that should be compensated.

Koller said that he agreed that it is hard to value emotional distress damages, but that value may be established by testimony and is often tied to the economic harm to a plaintiff.

Dr. Koller said that if a plaintiff is not using an expert, it is good practice to ask the plaintiff specific and detailed questions about his or her symptoms, such as when was the onset, the frequency and nature of symptoms; and to then ask the same questions again a short time later. The purpose of this is to see if the client provides the same information to support his or her claims, she said. In doing so, Kaye added, “your results are the same questions asked again.”

Addressing Discrimination in Disability Housing

By Pamela Thurmond

There has been a focus on the challenges faced by individuals with disabilities in obtaining and maintaining housing, the legal framework for any discrimination challenge and those who represent housing providers and disabled individuals. The Legal Rights of Persons With Disabilities Committee presented a Philadelphia Bar Association CLE program titled “Disability Discrimination in Housing,” featuring Patricia McGarvey Knebels, trial attorney with the Office of the Regional Counsel, Region III, U.S. Department of Housing and Urban Development, on Aug. 8.

While disability has been a protected class under the Fair Housing Act since 1988 and under Section 504 of the Rehabilitation Act since 1973, McGarvey Knebels, in her shared war stories, still described a learning curve as to what it means to provide “an equal opportunity for people with disabilities in housing.” At heart, these laws are focused on removing barriers for disabled individuals to access amenities in housing.

McGarvey Knebels discussed the different types of disability discrimination including different treatment based upon one’s actual or perceived disability, the refusal to permit a reasonable modification or accommodation and the failure to meet design and construction requirements. The most significant of these is the refusal to permit a reasonable modification or accommodation. McGarvey Knebels said that for HUD-based housing it is the responsibility of the landlord to pay for the accommodation. However, when the landlord is a private entity, it is the responsibility of the disabled individual to pay for the accommodation.

As a lawyer, McGarvey Knebels described cases that are typically heard in court and the process of working with experts to support evidence.

“With a case like this, you have to bring an expert in, and that is where things get expensive. You also need to understand that you may not have all the facts at the beginning.”

Continued on page 17
Fall for Bench-Bar

Cornucopia of Courses
Earn Up to 9 CLE Credits

Treats & Seasonal Offerings
Oktoberfest Celebration

Harvest Your Potential
Invest in Your Future

Reap the Benefits
Network with Colleagues & Judges

PHILABENCHBAR.COM

VERITEXT
LEGAL SOLUTIONS

KOLINS SECURITY GROUP

ABC RAIL BONDS
877-PAST-BAIL

Bella print + design

LAWPAY

mell consulting

Robson Forensic

THRIVEST

OCTOBER 13-14, 2017
BORGATA | ATLANTIC CITY

PHILADELPHIA BAR ASSOCIATION
FRIDAY, OCT. 13
10-11:30 a.m.
Passport to Retirement
1.5 Substantive CLE Credits
Presented by BPU Investments

Strategies for Combating Implicit Bias
1 Ethics/0.5 Substantive CLE Credits
Presented by the Diversity in the Profession Committee

Preparation and Planning: Effectively Representing and Guiding Clients Through the Changing Landscape of Immigration and Family Law. What YOU Need to Know!
1.5 Substantive CLE Credits
Presented by the Young Lawyers Division and the American Immigration Lawyers Association

Business Divorce - Get the Clients, Not the Goldfish!
1.5 Substantive CLE Credits
Presented by the Business Litigation Committee of the Business Law Section

1-2 p.m.

The Relationship Blueprint: Consistent Communications to Ethically Develop a Prosperous Practice
1 Ethics CLE Credit
Presented by the The Barristers’ Association of Philadelphia and City Policy Committee

Charitable Giving Techniques: Doing Well By Doing Good
1 Substantive CLE Credit
Presented by the Philadelphia Bar Foundation and Probate & Trust Law Section

Researching Experts
1 Substantive CLE Credit
Presented by LexisNexis

The Implications of Cross-Border Discovery on Cybersecurity and Privacy Compliance
1 Ethics CLE Credit

2:15-3:15 p.m.

Conflicts In and Around the Orphans’ Court – A View From the Bench and From the Trenches
1 Ethics CLE Credit
Presented by the Probate & Trust Law Section

Protection for Reproductive Rights: Trends In Legislation and Judicial Rulings
1 Substantive CLE Credit
Presented by the Women in the Profession, Women’s Rights and Labor & Employment Committees

Avoiding That “Big Little Lie” Navigating Fee Mists...”. When Making Getting Paid a Reality
1 Ethics CLE Credit
Presented by the Solo, Small & Mid-Size Firm Management Committee

3:30-5 p.m.

WTF! My Loved One Just Got Arrested! What Do I Do Now?
1.5 Substantive CLE Credits
Presented by the Criminal Justice Section with ABC BAIL BONDS

Fundamental Legal Aspects of Franchising
1.5 Substantive CLE Credits
Presented by the Franchise Law Committee of the Business Law Section

Good Parents Gone Bad – Use of Self-Help in Custody Cases
1.5 Substantive CLE Credits
Presented by the Family Law Section

Gideon and Access to Justice Task Force
5-6 p.m.

Plenary CLE - LOCKING UP ONE’S OWN: Crime and Punishment in Black America
1 Substantive CLE Credit
Featured Speaker: James Forman Jr., Yale Law School

SATURDAY, OCT. 14
8:30-9:30 a.m.

Courts Under Fire: Grits and Gripes
1 Substantive CLE Credit
Presented by the First Judicial District

9:45-10:45 a.m.

Ring My Bell – A Practitioner’s Guide to Representing Clients Who Suffer Concussions!
1 Substantive CLE Credit
Presented by the Workers’ Compensation Section

Emerging Ethical Issues in Renewable Energy
1 Ethics CLE Credit
Presented by the Professional Responsibility and Environmental Law and Energy Committees

Hoarding Intervention and Response: Strategic Approaches to Safeguard Clients
1 Substantive CLE Credit
Presented by the Elder Law and Guardianship Committee of the Probate & Trust Law Section

Important Legal Issues Arising at Philadelphia Compulsory Arbitrations and Continuing through the Appeal - for Arbitrators and Litigants
1 Substantive CLE Credit
Presented by the State Civil Litigation Section

Using Themes Throughout Your Case - Opening, Direct, Cross and Closing
1 Substantive CLE Credit
Featured Speaker: Robert J. Mongeluzzi, founder, Saltz Mongeluzzi Barrett & Bendesky PC

Tax Implications of Medical Marijuana Industry in Pa.

By Brian Cullin

Pennsylvania’s budding medical marijuana industry presents new opportunities, but also unique risks, complex tax and compliance issues, and weighty ethical considerations for attorneys and clients. Add in recent tough talk on increased federal marijuana enforcement, and an already uncertain industry landscape becomes even more fraught. These issues were tackled at a Philadelphia Bar Association CLE titled “Medical Marijuana: Business and Tax Issues for Growers, Processors, and Dispensaries” hosted by the Tax Section and the Medical Marijuana and Hemp Committee on Aug. 9. Panelists were Jennifer E. Benda, partner at Fox Rothschild LLP; Adam S. Fayne, partner at Aronstein & Lehr LLP; and Justin Moriconi, co-chair of the Medical Marijuana and Hemp Committee.

“This whole industry is like the Wild West,” said Fayne. The 29 states where medical marijuana is legal under state law present a patchwork of differing regulatory and licensing requirements. “Every state is a little different. Nothing is identical,” he said, and Moriconi added that New Jersey employs “a completely different regulatory schematic set up” than Pennsylvania. Benda talked about the importance of how a state licenses its medical marijuana industry as a crucial consideration when structuring a business. The panelists discussed the importance of informing clients of the industry’s risks early on. For instance, although federal law currently defunds the Department of Justice from prosecuting medical marijuana cases where legal under state law, the provision is set to expire in September 2017. Additionally, certain trusty business moves – such as filing for bankruptcy - are not available to medical marijuana businesses.

Like their industry clients, attorneys face potentially serious risks for working with businesses that are still illegal under federal law. While recent changes to the Pennsylvania Rules of Professional Conduct offer cover to attorneys representing medical marijuana clients, a potential, if small, risk of criminal prosecution remains.

A closely scrutinized, cash-based business like medical marijuana also exposes clients to rigorous reporting requirements. Receipt of more than $10,000 in cash from a source - a common occurrence for medical marijuana businesses - requires filing a detailed IRS form within 15 days. Benda said that clients should put internal controls and procedures in place to track cash receipts, collect payment information, and file the form in a timely manner.

Tax consequences and strategies for operating in the industry were also discussed. Federal law bars businesses that traffic in marijuana from taking ordinary business expense deductions. “This is a big hurdle in the industry,” said Fayne. The definition of “trafficking” is key. It is generally limited to direct sales to retail customers, which hits dispensaries particularly hard. One strategy used by dispensaries is pushing as many expenses as possible up to suppliers to reduce dispensaries’ otherwise disallowed business expenses. Dispensaries also commonly develop non-marijuana business lines, such as marijuana accessory sales, to capture some business-expense deductions. However, well-kept books and records and actual revenues from the non-marijuana business lines are necessary to successfully allocate expenses.

In this fluid environment, one thing is certain moving forward. Trailblazing attorneys will play a critical role in the medical marijuana industry’s coming of age.

Jennifer E. Benda (left to right), Adam S. Fayne and Justin Moriconi at the Philadelphia Bar Association CLE on Aug. 9.

Taking Steps to Remove Stereotypes, Bias in Courtroom

By Enrique Marquez

If you have not been subject to a stereotype at one point or another, perhaps you have observed the practice or indulged in a stereotype yourself in judging a situation. There is a chance that we have all been guilty of it at some point. Call it an evolutionary proclivity or otherwise, stereotyping has very little utility these days and causes an immense amount of damage. Nowhere is this more the case than in juries. The Justinian Society of Philadelphia hosted a Philadelphia Bar Association CLE program titled “Examining ‘Ugly Prey:’ Constructed and Communicated Stereotypes and the Impact of Bias on Juries” on Aug. 9. The program featured Emilie Le Beau Lucchesi Ph.D., who discussed this topic in her book titled “Ugly Prey: An Innocent Woman and the Death Sentence That Scandalized Jazz Age Chicago.”

Everyone forms a part of the court of public opinion, but consider how detrimental that can be for our city’s criminal juries. In an age where instant access is only a matter of where you will obtain the information, it becomes important to question not only the source of the information, but the information itself. We all watch the news, we all get updates on our iPhone as soon as a story hits and we all are instantly influenced by the information we absorb.

Dr. Lucchesi documented this in her book about Sabella Nitti, an Italian immigrant who was arrested for the murder of her husband. Nitti was arrested despite the lack of any evidence. However, because she was considered “ugly” (as well as being an immigrant) she was portrayed as a hideous and unhinged woman. She was convicted of murder, but got the chance to appeal her decision. To help humanize her image, Nitti’s attorney made the decision to have her undergo a makeover. After a transformation, a more refined Nitti received a favorable decision from the appellate court. The court ordered a new trial.

This begs the question “Why is an ‘ugly’ person guilty, and why is a more refined person innocent?” These statements continued on page 18

Jennifer E. Benda (left to right), Adam S. Fayne and Justin Moriconi at the Philadelphia Bar Association CLE on Aug. 9.
Monitoring Opioid Treatment in Workers' Comp. Claims

By Regina M. Parker

Due to the widespread use of opioids among injured workers, many states including Pennsylvania are assisting doctors and pharmacists in addressing the overprescription and overuse of the painkillers. The Workers' Compensation Section hosted a Philadelphia Bar Association CLE program titled “Opioids and Overuse in the Workers’ Compensation Section” on Aug. 10. The panel included Brian Lee Mayhugh Ph.D.; Frank N. Ciprero, attorney at Pond Lehocky Stern Giordano; and Danielle DeRosa, attorney at Dickie, McCamey & Chilcote, P.C. and cochair, Workers’ Compensation Section.

The U.S. is the highest consumer of opiates, consuming 99 percent of all hydrocodone produced. The rate of prescriptions per 100 people in Pennsylvania is between 82 and 95 annually and half of the overdoses in the U.S. are on prescription drugs. Of those prescription drugs, the overwhelming number are opiates. The number grows when you compare it to heroin and cocaine additions. As we implement safety measures to address the opioid epidemic, Dr. Mayhugh told attendees that we are faced with certain consequences. Some states have adopted very rigorous prescription-monitoring programs that have caused patients to travel to states with less stringent programs.

Dr. Mayhugh said that we need to educate and be aware of the potential dangers of pain medications while preserving the role played by opioids in the healing process.

During long-term use, patients tend to develop physical dependence, leading to a vicious cycle of addiction, Dr. Mayhugh said. The focus should be on helping injured workers cognitively and altering the way they feel about themselves, their family and social issues.

While safety measures are needed, Ciprero said that regulations should not be adopted that are aimed at taking away the injured worker’s right to seek or the provider’s right to offer treatment. There is a perception that every injured worker taking opioids is overusing, but many injured workers are benefitting from prescribed opioids and are in comprehensive supervised programs.

Prescription opioid drug abuse and dependency often delay an injured worker’s return to work and ultimately cause a significant increase in medical exposure, DeRosa said. She said that if an injured worker becomes dependent on prescription pain killers, in time the medical portion of the claim often become the largest.

Update on the Fluidity of Healthcare in the U.S.

By Thomas E. Rogers

The Affordable Care Act was launched in 2013, providing health coverage to 20 million Americans who were not already insured. However, in 2017, Congress unsuccessfully repealed the ACA when it failed to garner votes for the American Health Care Act, which would have dialed back ACA benefits. The Philadelphia Bar Association CLE titled “American Health Care Act Update: Staying Current,” to illuminate some of the changes that the AHCA would have made, on Aug. 10, with video encore presentations on Aug. 18 and Aug. 28. Panelists were Laval Miller-Wilson, executive director of the Pennsylvania Health Law Project; and Brian McLaughlin, small business practice leader, Benefit Solutions Group, and Peg Sciortino, manager, Medicare Department, Southeast PA, USI Affinity. This program was free for Association members in good standing.

Wilson said that there are three key components to the ACA. The act levels the playing field by prohibiting discrimination based on preexisting conditions, prevents people from purchasing insurance only when they need it and makes health insurance affordable through government subsidies based on income. For example, the ACA introduced the individual mandate, health insurance market places and the Medicaid expansion. All three contributed to the increase in Americans covered. However, a few of the roll-backs that would have been effectuated by the AHCA include allowing insurers to scale back health conditions that must be covered, eliminating the tax penalty imposed by the individual mandate and scaling back subsidies under the ACA.

Perhaps the biggest changes that the AHCA would have made would have been to the Medicaid program. The federally funded expansion would be eliminated by 2020, even though the majority (32) of the states have enacted their own exchanges. The federal marketplace covers people in the remainder. In addition, unrelated to the ACA, the AHCA would have given states fixed per-capita block-grants that would replace the current need-based state-by-state system of federal funding.

In terms of group insurance coverage, McLaughlin discussed the future of health plans under the ACA. Preferred provider organizations, commonly known as “PPOs,” may soon be a thing of the past. To manage their costs, insurers are creating tiered plans that will include the “in-network” benefits of a PPO, but create cost levels depending on the provider a customer chooses. Hypothetically, according to McLaughlin, visiting a tier-one hospital would incur a $150 copay, a tier-two hospital would incur a $1,500 copay and a tier-three hospital would incur a $3,500 copay.

Sciortino discussed the basics of Medicare, including enrollment, costs and changes. A significant change will be the phasing out of Plan F, a “Medigap” plan. Medigap plans cover costs not covered with Medicare Parts A and B. Parts A and B cover hospital visits and visits to the doctor, respectively. As Plan F is phased out, Sciortino recommended signing up for Medicare Plan G. Virtually identical, Plan G requires a $183 Plan B deductible, but is significantly less costly than Plan F.
Face your addiction today.

Caron’s innovative program is uniquely designed for and by legal professionals to address the specific pressures and stresses of the legal world. Our expert clinical team will treat you with privacy, discretion and personalized care as you gain the tools you need to take control of your addiction and get your life and career back on track.

You don’t have to do this alone. Start now by calling 800-854-6023 or visiting Caron.org/TakeControl
What Your Estate, Trust Plans Say About Your Legacy

By Mary E. Ashenbrenner

Estate and trust plans provide the tools to help influence behavior, preserve and protect financial security, and perpetuate a legacy for generations. But how can you be confident the planning strategies used in estate and trust planning documents accurately capture the client’s legacy goals? For this month’s interview, I sat down with Mark Bradford, regional director for Wealth Strategy, PNC Wealth Management*, to discuss the importance of the conversation.

Mary Ashenbrenner (MA): How can estate planners make sure that the plans they are developing for their clients accurately reflect their long-term wishes?

Mark Bradford (MB): In our opinion, it starts with a conversation. Estate plans too often only address the tangible or quantifiable parts of a client’s desired legacy. We believe a legacy conversation is a crucial prelude to crafting and updating estate plans. Legacy planning provides the framework, while the estate and trust planning provides the practical implementation.

MA: What comprises an effective legacy conversation?

MB: There are three themes that comprise the legacy journey that families hope to reflect in their estate plans: beliefs, values and relationships.

Beliefs are often born of an emotional connection to wealth and how money influences decisions in life, career, and family relationships. Understanding those beliefs and their inherent connection to wealth may provide some clarity on the client’s wealth-transfer goals and the constraints placed on the wealth’s use and distribution.

Values are the actions behind one’s beliefs. They are often shaped by how wealth was created, which can run the gamut from a rags-to-riches story filled with hard work, discipline and sacrifice to a fortunate event. By knowing the family’s values, we may identify biases toward wealth and its potential to help or do harm.

We believe gaining a historical perspective on your family’s relationships is as important as the current state of the family’s financial affairs. We think how individuals and generations view and assimilate wealth in their daily lives can be understood by looking back and seeing the path each person took in his or her journey.

MA: What is the advantage of having that legacy conversation upfront, as opposed to after the death of the family leader?

MB: We often encounter families who have developed complex arrangements to restrict, control and otherwise limit access to wealth. This is largely due to their prior experiences with how wealth was transferred to them or their assessment of current family dynamics and ability, or lack thereof, to manage wealth. This can cause permanent, sometimes irreparable, divisions among family members. While it is challenging to confront issues in the present, there is some comfort in discussing decisions directly with the decision maker. Communications after the fact are often misconstrued, especially when delivered over multiple generations, and often result in fewer options for the survivors.

MA: How does the fiduciary or executor appointment play a role?

MB: Specific appointments, legal structure, and the current and ultimate distribution should reflect the clients’ intentions and what is important to their family. Objective, but not impersonal, corporate fiduciary appointments can help maintain adherence to the trust instrument and provide asset management. This can help prevent family discord when it may not be prudent to place individual family members in a position of authority.

MA: Do you have specific advice for entrepreneurial clients when it comes to leaving the business behind?

MB: Whether they are the founders or in successive leadership roles, the entrepreneurs’ experience with risk, volatility, management challenges and interpretation of successes and failures generally color their view on how a family business affects the business of a family. In a business-ownership situation, we have found that the coordinated use of trusts and business entities may be used to spark entrepreneurial spirit in the family. Initial gifts of cash, securities or interests in ongoing business concerns can often be put into family trusts which, in turn, own or fund family investment entities, including limited liability companies. Those LLCs are then used as vehicles to help teach successive generations the importance of continuing with entrepreneurial business ideas begun by the family patriarch or matriarch.

MA: What is the key takeaway regarding legacy planning with clients?

MB: Generally, we believe estate and trust plans will be perceived as intended if the family’s core beliefs are at the forefront of the conversation. Then, by addressing family values and relationships, current and future generations are more likely to accept the estate plan, even though it may not provide equal distribution in all circumstances.

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

The material presented in this article is of a general nature and does not constitute the provision by PNC Financial Services Group, Inc. ("PNC") or its affiliates of investment, legal, tax, or accounting advice to any person, or a recommendation to buy or sell any security or adopt any investment strategy. Opinions expressed herein are subject to change without notice. The information was obtained from sources deemed reliable. Such information is not guaranteed as to its accuracy. You should seek the advice of an investment professional to tailor a financial plan to your particular needs. For more information, please contact PNC at 1-888-762-0226.

PNC uses the marketing names PNC Wealth Management® and Hawthorn, PNC Family Wealth® to provide investment, wealth management, and fiduciary services through its subsidiary, PNC Bank, National Association ("PNC Bank"), which is a Member FDIC, and to provide specific fiduciary and agency services through its subsidiary, PNC Delaware Trust Company or PNC Ohio Trust Company. PNC also uses the marketing names PNC Institutional Asset ManagementSM, PNC Retirement SolutionsSM, Vested Interests® and PNC Institutional Advisory SolutionsSM for the various discretionary and non-discretionary institutional investment activities conducted through PNC Bank and through PNC’s subsidiary PNC Capital Advisors, LLC, a registered investment adviser ("PNC Capital Advisors"), Standalone custody, escrow, and directed trustee services; FDIC-insured banking products and services; and lending of funds are also provided through PNC Bank. Securities products, brokerage services, and managed account advisory services are offered by PNC Investments LLC, a registered broker-dealer and a registered investment adviser and member of FINRA and SIPC. Insurance products may be provided through PNC Insurance Services, LLC, a licensed insurance agency affiliate of PNC, or through licensed insurance agencies that are not affiliated with PNC; in either case a licensed insurance affiliate may receive compensation if you choose to purchase insurance through these programs. A decision to purchase insurance will not affect the cost or availability of other products or services from PNC or its affiliates. PNC does not provide legal, tax, or accounting advice unless, with respect to tax advice, PNC Bank has entered into a written tax services agreement. PNC does not provide services in any jurisdiction in which it is not authorized to conduct business. PNC Bank is not registered as a municipal advisor under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act"). Investment management and related products and services provided to a "municipal entity" or "obligated person" regarding "proceeds of municipal securities" (as such terms are defined in the Act) will be provided by PNC Capital Advisors. PNC Wealth Management, “Hawthorn, PNC Family Wealth,” and “Vested Interests” are registered service marks and “PNC Institutional Asset Management,” “PNC Retirement Solutions,” and “PNC Institutional Advisory Solutions” are service marks of The PNC Financial Services Group, Inc., Investments: Not FDIC Insured. No Bank Guarantee. May Lose Value.
Pro Bono Representation: Give Back and Get Coverage

If you are an attorney who wants to give back to your community by providing pro bono legal representation to those who need it most, those services are critical, no matter what your reason.

Perhaps you did not know that providing pro bono work could entitle you to free malpractice insurance. According to the American Bar Association, free malpractice insurance is one of the top three reasons why attorneys – particularly solo practitioners – provide pro bono representation.

Different Coverage for Different Types of Attorneys

Mid- to Large-Sized Firms. If you are employed in a law firm, many firms have internal policies on what type of pro bono representation is allowed, and also the process for accepting these cases. Basically, your pro bono client will be considered just another client of the firm, albeit a non-paying one.

Most mid-sized and large firms purchase lawyers' professional liability (LPL) insurance for their attorneys, so if you are an employee acting in the scope of your employer's pro bono coverage, then the odds are good that your pro bono work will be covered under your firm’s policy. To receive coverage, you likely will need to be performing pro bono work:

- On behalf of your firm;
- Using the firm’s letterhead in all communications; and/or
- Signing all pleadings in the firm’s name.

Small Firms/Solo Practitioners. If you work in a small firm or are a solo practitioner, it is less likely that internal pro bono policies will be in writing, so extra diligence on your part will be required whenever engaging in pro bono activities. If you are a solo practitioner doing pro bono work as a contract attorney for another firm, you will need to confirm that you are covered under the LPL policy of the firm that is hiring you.

Governmental Agencies. Most government agencies do not provide any coverage for attorneys who provide representation outside the scope of their employment, and some agencies expressly prohibit pro bono work, or might allow it with pre-approval. Your first step should be to check to see if your agency has an internal policy allowing pro bono work and a program allowing you to purchase a malpractice policy to cover yourself.

In-House Counsel. If an in-house lawyer wants to do pro bono work, they should ensure that there is an employed lawyer malpractice policy in place at their company. There are also resources available to in-house attorneys who wish to engage in pro bono representation, such as Corporate Pro Bono.

Retired/Inactive Lawyers. Some jurisdictions allow retired or inactive lawyers to provide pro bono services. If you are interested in providing this valuable service, check with your specific state's rules and whether tail coverage might be an option for you.

For more information about defending malpractice allegations, contact Rich Balasa, senior professional liability consultant at USI Affinity, today at (800) 265-2876 x 11444.

For more information about insurance, visit the Philadelphia Bar Association Insurance Exchange at www.usiaffinity.com/PhiladelphiaBar. For Lawyers’ Professional Liability and other business coverage, you can continue to visit the regular Philadelphia Bar Association Insurance Services Program websites at www.mybarinsurance.com/PhiladelphiaBar.

If you’d like to talk to someone about insurance and benefits options for Philadelphia Bar Association members, call USI Affinity Benefit Specialists at 1-855-675-0267.

For over 75 years, the divisions of USI Affinity have developed, marketed and administered insurance and financial programs that offer affinity clients and their members unique advantages in coverage, price and service. As the endorsed broker of the Philadelphia Bar Association and more than 30 other state and local bar associations and with more than 30,000 attorneys insured, USI Affinity has the experience and the knowledge to navigate the marketplace and design the most comprehensive and innovative insurance and benefits packages to fit a firm’s individual needs.

 Taiwanese Street Food in Unlikely Setting

By James Zwolak

Although, technically I work west of Broad Street in the brutalist masterpiece Municipal Services Building, I rarely venture west of Broad for lunch. I do not want to overhear two “millennial bros” planning their perfect “$5 martinis, then babes – or maybe even a brawd” evening at Center City Sips, or listen to their Sweetgreen noshing ex-girlfriends commiserating about their testing procedure specification reports due to “Miserable Partner X” by close-of-business Friday.

My resistance notwithstanding, I dutifully trudged to the “Arbitration Center block” of JFK Boulevard to Bao•logy, the new Taiwanese street-food emporium launched by co-owners Judy Ni and Andy Tessier. Ni and Tessier formerly ran the house at the well-loved B.Y.O.B. The Farm and Fisherman, and they clearly believe they have a solid business plan in mind – that fresh, local ingredients and a hygienic, Honeycomb-style fast-casual vibe – seemingly the only growth sector in Philly’s restaurant landscape - will intrigue the masses.

Bao•logy looks like a mini-Apple Store with dim sum. An overly obliging, well-scrubbed millennial directs you to Bao•logy’s bank of iPads (hard to find on your own in that 200-square-foot dining space), where you then order from primarily three types of appetizers. While the Guo Tie (or as my teens have called them since childhood, dumplings) stuffed with free-range Lancaster chicken and garlic chives was solid, the pot stickers with Berkshire pork, wild caught shrimp and spinach were much tastier. As with all three core menu items, there is also a seasonal veggie option. My dining companion “KG” – who was raised on this stuff in Los Angeles – was unimpressed.

The Gua Bao, or steamed buns (again, not a rarity in these parts anymore), were more interesting. The Taiwanese crispy fried chicken (Lancaster free-range, naturally) bao with lemon aioli and fried Thai basil was something I had never tried before. It was very crunchy, and the aioli/basil combo kicked it. This was my “fave” by far. The slow cooked short rib bao with garlic aioli, pickled cucumbers and fried shallots was also very tasty, and the pork belly bao with togarashi aioli (my favorite brand of aioli since third grade, or so), pickled daikon radishes and peanut powder had a funky sweet and sour kick. You cannot go wrong with any of them. KG did not complain either.

Bao•logy’s signature dish – IMHO (“in my humble opinion”) – was the waen bing, or Taiwanese burrito. A thin flour wrapper – somehow made super crispy – contains cabbage, chives and carrots, and is then filled with your choice of crispy beef, spiced bean curd, seared wild caught shrimp or shredded pork, and infused with savoury hoisin sauce. All of them were unlike anything I had ever tried and were basically the same price per order (from $3.50-$4.25) as the baos and dumplings, but so much better. Even hard-to-please KG said, “They kicked butt.”

I did not try the artisanal Taiwanese sarsaparilla or apple soda drinks, or the cucumber or veggie salads. Bao•logy is a nice affordable-ethnic addition to the west of Broad Street, north of Market Street dead zone of lunch spots, but I will take my beloved Chinatown any day.

James Zwolak (James.Zwolak@phila.gov) is a divisional deputy city solicitor at the City of Philadelphia Law Department.

LEGAL ADVISORY UPDATE FROM USI AFFINITY

Pro Bono Representation: Give Back and Get Coverage

If you are an attorney who wants to give back to your community by providing pro bono legal representation to those who need it most, those services are critical, no matter what your reason.

Perhaps you did not know that providing pro bono work could entitle you to free malpractice insurance. According to the American Bar Association, free malpractice insurance is one of the top three reasons why attorneys - particularly solo practitioners – provide pro bono representation.

Different Coverage for Different Types of Attorneys

Mid- to Large-Sized Firms. If you are employed in a law firm, many firms have internal policies on what type of pro bono representation is allowed, and also the process for accepting these cases. Basically, your pro bono client will be considered just another client of the firm, albeit a non-paying one.

Most mid-sized and large firms purchase lawyers’ professional liability (LPL) insurance for their attorneys, so if you are an employee acting in the scope of your employer’s pro bono coverage, then the odds are good that your pro bono work will be covered under your firm’s policy. To receive coverage, you likely will need to be performing pro bono work:

- On behalf of your firm;
- Using the firm’s letterhead in all communications; and/or
- Signing all pleadings in the firm’s name.

Small Firms/Solo Practitioners. If you work in a small firm or are a solo practitioner, it is less likely that internal pro bono policies will be in writing, so extra diligence on your part will be required whenever engaging in pro bono activities. If you are a solo practitioner doing pro bono work as a contract attorney for another firm, you will need to confirm that you are covered under the LPL policy of the firm that is hiring you.

Governmental Agencies. Most government agencies do not provide any coverage for attorneys who provide representation outside the scope of their employment, and some agencies expressly prohibit pro bono work, or might allow it with pre-approval. Your first step should be to check to see if your agency has an internal policy allowing pro bono work and a program allowing you to purchase a malpractice policy to cover yourself.

In-House Counsel. If an in-house lawyer wants to do pro bono work, they should ensure that there is an employed lawyer malpractice policy in place at their company. There are also resources available to in-house attorneys who wish to engage in pro bono representation, such as Corporate Pro Bono.

Retired/Inactive Lawyers. Some jurisdictions allow retired or inactive attorneys to provide pro bono services. If you are interested in providing this valuable service, check with your specific state’s rules and whether tail coverage might be an option for you.

For more information about defending malpractice allegations, contact Rich Balasa, senior professional liability consultant at USI Affinity, today at (800) 265-2876 x 11444.

For more information about insurance, visit the Philadelphia Bar Association Insurance Exchange at www.usiaffinity.com/PhiladelphiaBar. For Lawyers’ Professional Liability and other business coverage, you can continue to visit the regular Philadelphia Bar Association Insurance Services Program website at www.mybarinsurance.com/PhiladelphiaBar.

If you’d like to talk to someone about insurance and benefits options for Philadelphia Bar Association members, call USI Affinity Benefit Specialists at 1-855-675-0267.

For over 75 years, the divisions of USI Affinity have developed, marketed and administered insurance and financial programs that offer affinity clients and their members unique advantages in coverage, price and service. As the endorsed broker of the Philadelphia Bar Association and more than 30 other state and local bar associations and with more than 30,000 attorneys insured, USI Affinity has the experience and the knowledge to navigate the marketplace and design the most comprehensive and innovative insurance and benefits packages to fit a firm’s individual needs.
Peirce College Launches Professor Edwin B. Miller Memorial Scholarship

For the Philadelphia-area legal community, Peirce College and Professor Ed Miller went hand-in-hand. As the head of the college’s Legal Studies programs for 16 years before his passing in December 2016, his dedication to the industry and to helping his students reach their fullest potential was legendary.

Now, that spirit will live on in the form of the Professor Edwin B. Miller Memorial Scholarship. Retired Peirce professor Glenn Barnes, Dr. Ruth Shaber, founder and president of the Tara Health Foundation; and current Peirce professors Cynthia Gentile and Ivy Kempf have pledged a 4-to-1 match, up to $160,000, for every dollar given to the scholarship through Dec. 31, 2017.

Professor Miller, formerly of Havertford, Pa., was a practicing attorney before he became a professor in 1997. Barnes and Peirce were first introduced by Ed Miller at the Bar Association of the Philadelphia Region in 1990.

Barnes, a professor from 2003-16, said he is making this gift to continue Professor Miller’s legacy of supporting his students. Time and time again, Barnes witnessed how impactful scholarships were on Peirce students, so it seemed like the right way to honor his memory.

“Whenever I saw a student receive a scholarship, they experienced such joy with the realization that they were going to be able to accomplish their academic and career goals with at least some of the financial burden relieved,” said Barnes. “Most Peirce students are not only working, but they also have families and many are single parents. Being able to take some of that financial pressure off their shoulders as they complete their degrees is a tremendous honor for both the student and the college.”

Peirce will award the scholarship annually to students majoring in Paralegal Studies, Legal Studies in Business or Criminal Justice Studies, who demonstrate a financial need and who embody the virtues of commitment, scholarship and compassion that were emblematic of Professor Miller’s work.

For more information, visit peirce.edu/edwinmillerscholarship.

Emotional Damage

continued from page 9

her job as an objective forensic expert, during initial document review she looks for inconsistencies between a plaintiff’s report and medical history, and/or if the symptoms reported are atypical. She said it is also important to look at the plaintiff’s full medical history and to assess all available sources of information. A history of trauma, for example, could indicate the person is more susceptible to emotional distress.

Annie K. Kernicky (Annie.Kernicky@faster-greenberg.com), associate at FasterGreenberg, is an associate editor of the Philadelphia Bar Reporter.

Housing

continued from page 9

the accommodation. The key elements of a reasonable accommodation are a person with a disability, a need for an accommodation that is reasonable and a nexus between the disability and the accommodation.

There are no magic words for requests for reasonable accommodations according to McGarvey Knebels, and oral requests, while not recommended for documentation purposes, count. Housing providers can ask for a note from a doctor, but cannot ask for the person’s medical records or diagnosis and should not make the person with a disability jump through hoops. Generally, housing providers should not look beyond a medical note stating that a person with a disability needs this accommodation to ameliorate the effects of the disability. Ultimately, all decisions are made on a case-by-case basis. Most importantly, the speaker stressed the need for an interactive process between the housing provider and the person with a disability and/or their advocate.

McGarvey Knebels also discussed the differences between assistance animals and service dogs. Service dogs have specialized training, whereas assistance animals do not and are generally not allowed in places of public accommodation. Assistance animals sometimes present challenges for housing providers as the presence of animals in a building may give rise to a competing disability claim from someone with a severe allergy. She talked about the importance of an honest dialogue between and among the housing provider and the persons with competing interests to see what creative solutions can be reached.

Pamela Tourmond (Pamela.Tourmond@phila.gov) is a deputy city solicitor at the City of Philadelphia Law Department.
reotypes are perpetually reinforced and often incorporated by media affirmations of the employer pre-screening panel physicians. The expert should also address a conservative approach to opioid use. In many instances, the employer can require the injured worker to treat with panel physicians. They should be well versed in the CDCs treatment guidelines and take a conservative approach to opioids.

After the 90-day period has expired, DeRosa said attendees should take advantage of the Utilization Review process to prevent unreasonable and unnecessary opioid use. In many instances, the employer may want to retain an expert to conduct a medical records review to address if or how the medications are being inappropriately abused. The expert should also address a weaning schedule versus attempting to force the injured worker to quit cold-turkey.

Enrique Marquez (Enrique.Marquez@philad.org), assistant city solicitor at the City of Philadelphia Law Department, is an associate editor of the Philadelphia Bar Reporter.
Megan Spitz, partner at Blank Rome LLP, has been named to the board of directors of the Support Center for Child Advocates.

Hon. Lori A. Dumas, Philadelphia Court of Common Pleas, has been elected to the board of directors of the Support Center for Child Advocates.

Lorena E. Ahumada, of counsel to Kleinbard PLLC, was appointed by Mayor Kenney to the board of directors of the Defender Association of Philadelphia.

Leslie E. John, partner at Ballard Spahr LLP, has been selected for the 2017 edition of “Top 250 Women in Litigation,” published by Benchmark Litigation.

Marc Weingarten, partner at Locks Law Firm, was elected to two leadership positions at the American Association for Justice at its Annual Convention in Boston.

Jennifer Platzkere Snyder, partner at Dilworth Paxson LLP, has been appointed as employer co-chair of the Committee on Practice and Procedure Under the National Labor Relations Act, a long-standing committee of the American Bar Association’s Section of Labor and Employment Law.

Jim Sullivan, member at Caven O’Connor, has been confirmed as a commissioner of the U.S. Occupational Safety and Health Review Commission.

Lorena E. Ahumada, of counsel to Kleinbard PLLC, was appointed by Mayor Kenney to the board of directors of the Defender Association of Philadelphia.

Kimberly Rice, president/chief strategist of KLA Marketing Associates and founder of the Women in the Law Rainmaker Forum, recently presented a program titled “Create the Career of Your Dreams by Charting Your Own Course” to executive women at the SharpHeels Career Summit held at the Palomar Hotel in Philadelphia.

Deborah Epstein Henry, founder of Flex-Time Lawyers LLC, was elected as a member of the board of directors of the Forum of Executive Women.

“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.

Get the support needed to grow your firm with our six, fully serviced office facilities, strategically located throughout the Delaware Valley.

Our private and virtual office solutions include access to:

- Fully furnished offices
- Arbitration and deposition rooms
- An experienced support team including:
  - IT Professionals
  - Reception Services
  - Paralegals
  - Bookkeepers
  - Legal Secretaries

Let American Executive Centers handle the office details so you can focus on practicing law.

Get 1 month free* when you sign up for a private or virtual office at any one of our six locations.

VISIT AmericanExecutiveCenters.com/Legal
CALL (866) 978-7500

Bala Cynwyd | Malvern | Marlton | Philadelphia | Plymouth Meeting | Radnor
Philadelphia’s Employment Lawyers

FOR MORE THAN 30 YEARS, Sidney L. Gold & Associates, P.C. has dedicated its practice to the field of employment law and civil rights litigation. The firm’s attorneys take great pride in serving as both aggressive and compassionate advocates for victims of unlawful discrimination and harassment. As a result, the Martindale-Hubbell® Bar Register has certified Sidney L. Gold & Associates as a pre-eminent law firm in the field of labor and employment law. More than 4,500 lawyers throughout Pennsylvania and New Jersey look to Sidney L. Gold & Associates to refer their clients.

With a team approach, the firm’s attorneys represent clients in all aspects of employment law litigation, including all forms of workplace discrimination, sexual harassment, wrongful termination, retaliation, whistleblower, employment contract, wage and hour, and Family and Medical Leave Act claims. A boutique practice with a small-firm atmosphere, Sidney L. Gold & Associates provides personal attention to its clients, who, at the same time, benefit from the experience and expertise of the entire team.

Sidney L. Gold & Associates is proud of its skilled attorneys and is honored by the recognition Super Lawyers® has bestowed upon this year’s recipients.

SIDNEY L. GOLD & ASSOCIATES, P.C.
1835 Market St., Suite 515
Philadelphia, PA 19103
PH: (215) 569-1999 • FX: (215) 569-3870
www.discrimlaw.net