

# Briefs

■ IN-HOUSE ■ MERGER ■ ACCESS ■ CORPORATE ■ STRESS ■ IN MEMORIAM ■

## Economy shifts affect law firm merger pace and geographic focus

While overall law firm mergers are outpacing 2007 this year, the volatility of the economy has resulted in sharp surges and declines of merger activity in 2008, says Altman Weil MergerLine.

Second-quarter mergers totaled 26 – a marked increase over last year’s second-quarter activity of 17 – but quarter three saw a sharp downturn to 14 deals, which is slightly lower than the third quarter of 2007 at 17.

“The volatile economy may have a short-term negative impact on deal-making, causing some law firms to hunker down. But cash-strong, well-capitalized firms will use the economic challenges faced by others as an opportunity to grow market share through acquisition,” said Ward Bower, a principal of Altman Weil.

Geographic distribution of the merger activity reveals that one-third of the mergers are regional Southern deals, which could be reflective of the growth of business activity in that region.

Charlotte, N.C., has been a particular hotspot this year: the second-quarter combination of K&L Gates with local firm Kennedy Covington Lobbell & Hickman and McGuire Woods’ first-quarter acquisition of Helms Mulliss & Wicker were the two biggest deals in their respective quarters.

“The number of mergers in the southern United States may reflect industry migration and growth in the Sun Belt, which in turn increases the need for law firms to expand their practice scope and geographic reach,” Bower said.

## LAW DEPARTMENTS TO DECREASE OUTSIDE COUNSEL USE IN 2008

Law department staffing increases and expanded in-house capabilities will draw more legal work in-house this year, according to a recent survey of chief legal officers by Altman Weil. The 2008 Chief Legal Officer Survey revealed that 49 percent of CLOs will hire additional staff this year, and 26 percent indicated they will decrease use of outside counsel.

“It’s interesting that in this economy, with many CEOs reportedly planning layoffs, chief legal officers are planning to hire more lawyers,” said Altman Weil principal Daniel J. DiLucchio. “This reflects the pressure law departments are under to control costs and to do more work in-house where they are paying ‘wholesale’ instead of retail for legal services.”

Not unexpectedly, then, CLOs reported that cost control was a primary focus in their staffing strategy and their top concern over the next few years. Law department expenditure reports showed that although “mega” law firms (with more than 750 attorneys) only received about 20 percent of outsourced work, that work accounted for 37 percent of outside counsel expenses.

“Corporations are likely to put ‘bet-the-business’ matters that are not price-sensitive into the hands of those firms,” DiLucchio said. “This is important because it means that a CLO’s ability to negotiate fees and control costs is really limited to less than two-thirds of a law department’s outsourced work.”





## Quick access to valued information can save you time and money

So it's no surprise that thousands of attorneys and support personnel rely on one source for the most accurate information on the metro-area legal community – the Philadelphia Bar Association's *Legal Directory*.

The local legal scene is in continuous flux — lawyers enter the market or move to new jobs; firms open or merge; new judges join the bench; and law-related organizations choose a fresh slate of officers.

Only *The Legal Directory* undertakes a massive database update every year to capture these changes and make sure you have current and comprehensive information at your fingertips, in print and online.

The annual update is now underway. If you have not been contacted, please call 443-909-7843. Update information will be sent to your attention. The response deadline is Monday, Jan. 12.

*The Legal Directory 2009* offers much more than firm and attorney listings. It also provides a one-stop resource for a wide range of useful information:

- Bar Association bylaws, contacts and committees;
- facts on federal, state and county courts and government agencies;
- index of judges with phone numbers and addresses;
- special section devoted to corporate counsel;
- alternative dispute resolution resources;
- a business-to-business supplier section tailored to the legal community.

Every copy of *The Legal Directory 2009* includes complimentary access to The Legal Directory Online (good through March 31, 2010). Online updates are made throughout the year at [www.thelegaldirectory.org](http://www.thelegaldirectory.org), so you're sure the most recent information available is only a mouse-click away!

Hard-copy editions of *The Legal Directory 2009* will be available in early April. But you can order now at the discounted pre-publication price of \$59.95 (plus shipping and tax)! Don't be confused by imitators – this is the only official publication of the Philadelphia Bar Association.

Questions about *The Legal Directory 2009* or the annual update process? Please email [legaldirectory@mediatwo.com](mailto:legaldirectory@mediatwo.com) or call 443-909-7843.

### IN MEMORIAM

September to December, 2008

**HENRY J. COSTA JR.**

Sept. 13, 2008, age 58

**THOMAS C. DICK**

Nov. 8, 2008, age 80

**J. TANEY WILLCOX**

Sept. 16, 2008, age 81

**THE HON. PETER B. SCUDERI**

Nov. 13, 2008, age 80

**CRAIG M. SHARPE**

Sept. 18, 2008, age 90

**DONALD A. PURDY**

Dec. 1, 2008

**SUSAN C. TOBEY**

Sept. 24, 2008, age 57

Please send In Memoriam notices to  
[tplmag@philabar.org](mailto:tplmag@philabar.org).

Have you considered a contribution to the Philadelphia Bar Foundation  
in memory of a deceased colleague?  
For information, please call Gene Sirni,  
Executive Director, at 215-238-6334.

## Firms begin responding to demand for less job stress

As hiring and retention among law firms remains competitive, less job stress and work-life balance top the list of items that attorneys are looking for at work, according to a new survey conducted by staffing firm Robert Half Legal. These factors could have a negative affect on firm's bottom line when considering the cost of replacing talented attorneys and low job satisfaction.

"Job-related stress and work/life balance issues can lead to employee dissatisfaction and staff turnover, which may decrease a firm's productivity and directly impact its ability to remain competitive," said Executive Director Charles Volkert of Robert Half Legal. "If these issues are left unaddressed, an organization's key talent may feel the pull of new opportunities or opt out of the profession entirely."

Thirty-one percent of respondents indicated decreased job stress was one aspect of their jobs they would change, and another 30 percent selected more personal time as their top priority. Compensation received the lowest response at 2 percent.

In response to these indicators, some firms have started to implement more progressive hiring and retention policies, according to a white paper titled "Best Practices for Recruiting, Developing and Retaining Top Legal Talent" published by Robert Half Legal.

A host of factors, including low law school enrollment, increased lateral hiring, and the impending retirements of baby boomers, leave firms with few options but to employ new strategies for retaining top talent.

Flexible schedules, telecommuting and job sharing arrangements can maintain a high-performing staff. Lawyers also identified advancement opportunities, training, mentoring and leadership training as incentives that would boost attorney retention and motivation.

"Despite a cautious economy, demand for attorneys, paralegals and legal secretaries with the most sought-after practice area expertise is outpacing the current supply," Volkert said. "Law firms and legal departments are implementing policy changes to bolster recruiting efforts, limit staff attrition and grow their business in an increasingly competitive landscape."

## SECURITIES LAW PREDICTED AS "PRACTICE OF THE DECADE"

Attorneys in a recent survey predicted corporate and securities law will be the "practice of the decade" due to expected increases in corporate and financial regulation. Twenty-four percent of the respondents said this practice area would offer the most employment opportunities in the next 10 years. Twenty-one percent of responses went to litigation, ranking it the second most likely to generate job growth in the next decade.

"A heightened focus on regulatory compliance issues should ensure that corporate and securities law will remain a top practice area in the future," said Robert Half Legal Executive Director Charles Volkert. "Litigation also is expected to produce a significant volume of casework and intensify demand for legal professionals with relevant experience."

Intellectual property, international law and environmental law closely followed in the rankings. The survey, conducted by a research firm for staffing company Robert Half Legal, polled 300 attorneys in large law firms throughout the United States and Canada.

## Upon Further Review

Linking Lawyers to Legal News and Analysis



PHILADELPHIA  
BAR ASSOCIATION

Check out *Upon Further Review*, a new web publication written by lawyers, for lawyers that is provided free of charge by the Philadelphia Bar Association. *Upon Further Review* provides articles, analysis, opinion and commentary on legal issues of relevance for lawyers practicing in the five-county region. Not only will stories be updated regularly, but *Upon Further Review* provides daily RSS feeds from key local and national media outlets to keep lawyers informed. We'd love to get your feedback!

<http://uponfurtherreview.philadelphiabar.org/>



# SUMMIT

Court Reporting, Inc.

Certified Court Reporters and Videographers

[www.summitreporting.com](http://www.summitreporting.com)

State-of-the-art HD Videoconference Suites

Video Depositions • Trial Playbacks • Trial Presentations

Certified LiveNote Trainers & Reporters on Staff

Realtime Reporters • PA, NJ & Nationwide Certified Reporters

Compressed Transcripts • E-Transcript Delivery

Free & Secure Online Scheduling, Calendar & Repository

Monthly Contests & Promos for Schedulers

**Serving Philadelphia, Southeastern PA, New Jersey,  
and all of your worldwide needs 24/7**

Philadelphia Region

**215.985.2400**

New Jersey Region

**609.567.3315**

Worldwide

**800.447.8648**

**\*\*\* New Philadelphia Address \*\*\***

1500 Walnut Street  
Suite 1610

Philadelphia, PA 19102

[info@summitreporting.com](mailto:info@summitreporting.com)

Principal Contact: Yvette Samuel

[www.summitreporting.com](http://www.summitreporting.com)

# The Art of Closing

## Has “Law & Order” Changed the Jury’s Anticipation and Perception?

When I contemplated my first closing to a jury, I thought that closings had to cover all the issues in my client’s favor and attack the other side’s case. With the sustained popularity of shows like “Law & Order,” however, it seems less has become more when it comes to persuading a jury. In fact, the widespread popularity of these shows may in fact mean that real-life juries expect all closings to be short – and if an attorney exceeds a five-minute limit, he or she must be trying to obfuscate.

While many of the characteristics of a “Law & Order” closing can be effective, five minutes is not usually long enough to tell a complicated story or summarize the facts for a number of claims in a civil case. It’s a conundrum of expectation vs. reality, and one that attorneys should be aware of when constructing closings.

Unlike most civil cases, which have more than one disputed issue or fact, “Law & Order” closings are extremely focused and often deal with only one issue. A focused five-minute closing may be effective under certain circumstances. Attorneys should prepare closings to be as simple as possible. Cover the bases that need to be covered. Avoid going into unnecessary detail. A focused closing has the power to etch the merits of the client’s position onto the jurors’ minds.

“Law & Order” closings lack legalese, which is a good thing. Lawyers should not confuse the jury with obscure legal terms, even if the law for years has talked about a particular situation in that manner. The lawyers’ verbal arsenal should include analogies and key words that elicit strong mental and emotional images for the jury.

Actor Sam Waterston portrays Executive A.D.A. Jack McCoy, whose closings do exactly that. It is more persuasive to talk to the jury in the language that it understands than in language that only the other lawyers and judge comprehend.

McCoy never looks at notes during his closing. I like notes, however, and think



© NBC Photo by Nicole Rivelli

they are necessary and important to ensure critical points are covered. Jurors, however, may look with a certain disdain on lawyers who are too dependent on notes. Minimize use of notes in closing. Sneak a peak if needed, but never read a closing.

McCoy is permitted to roam the courtroom and get close to the jury. This type of roaming may be effective, but in reality, many judges require lawyers to stand in front of a podium or to keep one hand on the podium throughout the closing. If you are restricted in roaming, make sure to use movement for emphasis and effect. The jury will expect it.

The closings featured in “Law & Order” are soliloquies addressing the moral issue developed throughout the show’s preceding 50 minutes. Unfortunately, most civil cases do not present the great moral issues of our time. Still, lawyers should keep the moral high ground in sight during any closing – as they may present issues of moral concern about honoring contracts or providing an injured person with the compensation he or she deserves.

Finally, “Law & Order” closings never use props – no exhibits, no chalkboards, no pictures, no video – nothing but the naked power of the dramatically delivered words. I firmly believe that props can help make a point with power and clarity. The jury, however, may view too many props as a cover. Your words still need to make the critical point. Make sure that props are necessary to help the jury understand the points that words describe and that they are necessary to your case.

While they may not be realistic, “Law & Order” closings can help attorneys present a persuasive point. The art of the closing must keep pace with the current culture to communicate the message that our client should win the case. “Law & Order” is part of that culture, so go ahead and take a lesson from the closings. ■

*David A. Gradwohl (dgradwohl@foxrothschild.com) is a partner in Fox Rothschild LLP’s Litigation Department.*

# 20 years. 150 experts. 30,000 cases.

## Electrical

*Registered Professional  
Electrical Engineers*

- Shocks and electrocutions
- Power lines and facilities, utility poles
- Product failures and evaluation
- Machine controls, interlocks
- Automotive electrical failures
- Electrical explosions and fires
- Electrical construction: means, methods, equipment

## Robson Forensic

Engineers, Architects, Scientists & Fire Investigators

800-813-6736 [www.robsonforensic.com](http://www.robsonforensic.com)

## Human Factors

*PhD Human Factors/Ergonomics and Biomechanical experts, Members of the Human Factors and Ergonomics Society, Transportation Research Board, and the American Society of Safety Engineers*

- Obviousness/openness of hazard
- Machine/equipment controls and displays
- Visibility and alarm loudness
- Driver emergency response and reaction
- Warning and instruction adequacy

## Robson Forensic

Engineers, Architects, Scientists & Fire Investigators

800-813-6736 [www.robsonforensic.com](http://www.robsonforensic.com)

## Trucks and Buses

*Truck and Bus Engineers and Designers, Crash Reconstruction Experts, Professional Drivers*

- Crash reconstruction
- Vehicle design, maintenance and operation
- Driver actions
- DOT/FMCSR compliance
- CDL driver hiring, retention, training
- Cargo loading, forklift and dock safety

## Robson Forensic

Engineers, Architects, Scientists & Fire Investigators

800-813-6736 [www.robsonforensic.com](http://www.robsonforensic.com)

## Industrial

*Engineers who have worked in manufacturing, Professional Engineers, Industrial Engineers, Workplace Safety experts, Human Factors and Biomechanical experts*

- Machine guarding and protection
- Evaluation of machinery and systems for defects, dangers, productivity, quality
- Evaluation of employer actions, including Worker's Compensation and Intentional Tort
- Fires, fire modeling, combustion and pressure explosions
- Risk perception
- Accident reconstruction
- Ergonomic task analysis

## Robson Forensic

Engineers, Architects, Scientists & Fire Investigators

800-813-6736 [www.robsonforensic.com](http://www.robsonforensic.com)

## Premises Liability

*Licensed architects and engineers, experienced construction and facility experts, certified slip testers, nearly 6,000 premises liability cases*

- Building codes and standards
- Maintenance Standard of Care
- Retail and commercial facilities
- Stair, ramp and walkway design
- Parking lots
- Playgrounds
- Snow and ice control
- Slip resistance
- Human factors of balance, perception and anticipation
- Safety and security

## Robson Forensic

Engineers, Architects, Scientists & Fire Investigators

800-813-6736 [www.robsonforensic.com](http://www.robsonforensic.com)

## Sports and Recreation

*Sports facility and equipment design experts, facility operators, trainers, instructors, and coaches; environmental health, safety and accident reconstruction experts; certified by National Recreation and Park Association*

- Playground and recreation equipment: defects, age suitability, supervision, audits and maintenance
- Injury reconstruction and evaluation
- Amusement rides and midway games, stability and injury causation
- Evaluation of sports equipment, instruction, operation, and maintenance procedures

## Robson Forensic

Engineers, Architects, Scientists & Fire Investigators

800-813-6736 [www.robsonforensic.com](http://www.robsonforensic.com)

# Student Loan Debt and Public Service

## Is Relief Finally on the Horizon?

For more than two decades, young lawyers desiring to pursue careers in public service have faced daunting financial obstacles. The problem grows more severe with each passing year as tuition expenses continue to rise sharply and law students must finance a higher percentage of the cost of their legal education. Meaningful help may have finally arrived in the form of recent federal legislation establishing loan forgiveness and repayment assistance for many public service lawyers. But to fulfill the promise of this legislation the organized bar must step up in a large way to lobby for ample congressional appropriations sorely needed to fund these programs. The bar must also recognize that this federal legislation is not a panacea. In order to fill large gaps in current loan repayment programs, it is imperative that the bar work closely with a range of interested partners in Pennsylvania to establish a statewide student loan repayment assistance program.

Studies conducted by the organized bar and public interest organizations have documented that most law students heavily finance the cost of their legal education, with average debt burdens approaching \$100,000 and many students incurring much higher loan obligations. At the same time, public interest salaries have remained relatively static and quite low, while salaries of first year associates at large private firms have kept pace with ballooning tuition costs. According to Equal Justice Works, starting public interest salaries increased by 37 percent from 1991 to 2001, while starting salaries in private firms increased by more than 80 percent during that same period. A 2003 report by the ABA noted that the median starting salary for a public interest attorney was \$36,000, while the median salary for those entering private practice was \$90,000.

In 2003, 66 percent of law students surveyed by the American Bar Association said that educational debt prevented them from even considering a career in public interest law. The Pennsylvania Bar Association's Task Force on Student Loan Forgiveness and Repayment Assistance surveyed more

than 600 students attending Pennsylvania law schools in 2006 and found that nearly 95 percent were financing their legal education and had incurred an average student debt burden of more than \$98,000.

The prospect of paying off a mortgage-sized educational debt on low public interest salaries has had a profound deterring effect on students pursuing careers as legal aid lawyers, public defenders, and government prosecutors. Many who do work in public service jobs report that they find it increasingly difficult to make ends meet, with some even taking on second and third jobs to support their public interest careers. Many law schools, bar foundations, public service employers and private foundations have established modest student loan repayment assistance programs to try to ease this financial burden and thereby encourage public service employment. Most Philadelphia area law schools provide some degree of loan repayment assistance to their graduates entering public interest employment. The Allegheny County Bar Association, in partnership with the Allegheny County Bar

Foundation, established an independent loan repayment assistance program in 2005 that funds loan repayment for up to ten attorneys practicing in public interest each year. The Philadelphia Bar Foundation administers the Shuster Fellowships, annual grants given to experienced public service

The prospect of paying off a mortgage-sized educational debt on low public interest salaries has had a profound deterring effect on students pursuing careers as legal aid lawyers, public defenders and government prosecutors.

lawyers working for a Bar Foundation grantee. The Independence Foundation's Public Interest Law Fellowships not only fund the employment of new attorneys in Philadelphia area public interest organizations, but these fellowships also provide up to \$10,000 per year in loan repayment support.

Former U.S. labor secretary Robert Reich characterized the problem of staggering student loan debt on public service lawyers as "bad for them, and...bad for the country."

These are all essential steps toward making gains on this difficult problem, but the truth is that staggering student loan debt will continue to deter many from entering public service and will place unreasonable financial demands on those who do until comprehensive loan forgiveness and repayment assistance reform is implemented at both the federal and state levels.

It appears, finally, that meaningful relief may be within reach.

On Sept. 27, 2007, President Bush signed into law the College Cost Reduction and Access Act. A wide-ranging act that increases funding for Pell Grants, cuts some federal student loan interest rates, and closes profitable loopholes for lenders, the College Cost Reduction Act also provides important benefits for public interest attorneys. Currently, borrowers may lower their monthly standard repayment costs by taking advantage of the Income Contingency Repayment (ICR) option that caps monthly payments for eligible borrowers repaying Federal Direct Loans at 20 percent of the difference between the borrower's adjusted gross income and 100 percent of the federal poverty guidelines. After 25 years of making such minimum payments, a borrower's remaining debt is forgiven.

The College Cost Reduction Act expands forgiveness and repayment options in two important ways. First, for attorneys working full-time in qualifying public interest employment after Oct. 1, 2007, Federal Direct Loans will be forgiven after only 10 years (120 payments) of monthly loan payments made while in qualifying employment. These payments do not need to be consecutive, but there is no partial loan forgiveness for less than 10 years of public service employment.

Second, the Act offers a more generous repayment option to eligible borrowers by introducing the Income-Based Repayment (IBR) option as an alternative to the ICR. The main difference between these two options is that IBR caps monthly payments at 15 percent of the difference between Adjusted Gross Income and 150 percent of the Federal Poverty Guidelines, resulting in significantly lower monthly payments for borrowers. An average borrower incurring \$100,000 of student loan debt at the standard 6.8 percent interest rate and earning \$40,000 annually is required to pay \$1,155 each month toward repayment under the standard agreement. Under the ICR option, the same borrower's monthly loan payments are reduced to \$496.50 and under IBR they are reduced even more to \$309 per month.

However, IBR will not become available until July 1, 2009 and will cover only Direct Federal Loans, although borrowers will have the ability to consolidate certain other educational loans to include more loan indebtedness. Payments made after Oct. 1, 2007 under the ICR option will be credited toward 10-year forgiveness, but prior pay-

ments will not qualify and not all loans will be eligible. Commercial loans, for example, are not eligible under either ICR or IBR. Some lawyers who graduated in years past may find that newer repayment options favor graduating law students whose loans are more likely to be of the type eligible for forgiveness and repayment assistance.

In 2008, Congress took another major step forward when it enacted the Higher Education Reauthorization and College Opportunity Act. This legislation provides for loan repayment assistance for full-time prosecutors and public defenders, allowing up to \$10,000 per year of repayment assistance and a maximum lifetime benefit of \$60,000.

To be eligible, attorneys must sign an agreement to remain in their public service positions for at least three years. The Act authorizes \$25 million for this program in 2009, with similar levels of authorized funding for the next five years, but Congress has yet to appropriate any funds to pay for this program.

The Higher Education Reauthorization Act also provides repayment assistance to "civil legal assistance attorneys," though on a less generous scale. Full-time lawyers employed by nonprofit organizations providing civil legal services to low-income individuals without fee are eligible for up to \$6,000 of loan repayment assistance per year, with a maximum lifetime benefit of \$40,000. The Act au-

thorizes \$10 million for this program, with similar levels of authorized funding for future years, but once again Congress has not yet appropriated funds to pay for this program.

Some public service lawyers may be entitled to still additional assistance under the Higher Education Reauthorization Act. A separate provision provides for \$2,000 per year of loan repayment assistance for individuals working in "an area of national need," which can include civil legal assistance attorneys, prosecutors and public defenders. In addition, the Act provides for forgiveness of Perkins loans over a five-year period of work in several qualifying fields, that may include some federal defenders and lawyers working for nonprofit child or family services agencies that assist low-income, high-risk children.

There have also been important tax developments in 2008. Accord-



ing to an Internal Revenue Service ruling issued on June 20, 2008, loan forgiveness provided by law schools as part of a carefully structured loan repayment program intended to encourage public service employment is excepted from the general rule that cancellation or discharge of indebtedness is taxable to the borrower as gross income. This revenue ruling held that law school LRAP loans are "student loans" and thus excepted from gross income under Section 108(f)(1) of the Internal Revenue Code. Recent announcements by the U.S. Treasury Department appear to confirm that Public Service Loan Forgiveness under the College Cost Reduction and Access Act will also be treated as non-taxable for similar reasons.

Clearly, these are all important steps toward making a career in public service possible for today's law students and recent graduates. These gains will not be realized, however, unless Congress does more than simply authorize funding. It is critical for Congress to move quickly to actually appropriate funding for these new programs. In difficult economic times, this may not happen unless the organized bar, law enforcement and the public interest community mobilize to lobby Congress to provide adequate funding as one of its top priorities. At the same time, it is important that these new programs act in concert with, and not as a replacement of, existing LRAP programs. To this end, efforts must be accelerated to enact a statewide student loan repayment assistance program, as advocated by the Pennsylvania and Philadelphia Bar Associations. A statewide program will make it possible to fill in large gaps created by existing programs so that public service opportunities are truly possible

for lawyers in every corner of this Commonwealth. Hopefully, the Supreme Court of Pennsylvania will lend its leadership, influence, and support to this noble cause.

It is also clear that student loan financing has become a much more complex subject than ever before. Skilled technical assistance must be available to law students and recent graduates so that individualized financial determinations may be made successfully under these programs. Law schools and bar associations can work together to provide this helpful assistance.

Undoubtedly, there will also be a need to address many unanswered questions in the current legislation. But, the tide is beginning to turn. These long-awaited advances will only be realized with concerted advocacy and continued support at all levels. The legal profession owes no less to the next generation of lawyers wanting to dedicate their careers to public service and to those who now toil in the vineyards of public service at considerable financial sacrifice. ■

---

*Louis S. Rulli (lrulli@law.upenn.edu) is a Practice Professor of Law and the Director of Clinical Programs at the University of Pennsylvania Law School. He served as co-chair of the Pennsylvania Bar Association's Task Force on Student Loan Forgiveness and Repayment Assistance. Eric Foley is a member of the Class of 2009 and a Public Interest Scholar at the University of Pennsylvania Law School. He plans to begin a career as a Public Defender in the Gulf South after completing a federal clerkship in the chambers of Chief Judge Jose Fusté of the U.S. District Court for the District of Puerto Rico.*



Duane Morris is proud to congratulate its  
**Chief Diversity Officer Nolan N. Atkinson, Jr.**  
on receiving the inaugural Philadelphia Bar Association  
**Chancellor's Diversity Award**

---

Duane Morris LLP, a full-service law firm of more than 650 attorneys, offers innovative solutions across diverse industries in the United States and internationally to address the legal and business challenges of today's evolving global markets.

---

*For more information about Duane Morris' diversity program, please contact:*

**Nolan N. Atkinson, Jr., Partner and Chief Diversity Officer**  
Duane Morris LLP | 30 South 17th Street | Philadelphia, PA 19103  
P: 215.979.1920 | F: 215.689.0855 | [nnatkinson@duanemorris.com](mailto:nnatkinson@duanemorris.com)

Duane Morris – Firm and Affiliate Offices | New York | London | Singapore | Los Angeles | Chicago | Houston | Hanoi | Philadelphia | San Diego | San Francisco | Baltimore | Boston | Washington, D.C.  
Las Vegas | Atlanta | Miami | Pittsburgh | Newark | Boca Raton | Wilmington | Princeton | Lake Tahoe | Ho Chi Minh City | Duane Morris LLP – A Delaware limited liability partnership

[ [www.duanemorris.com](http://www.duanemorris.com) ]

# LAST CHANCE TO UPDATE YOUR LISTING IN THE LEGAL DIRECTORY 2009!

More than 25,000 lawyers, legal support staff, court and government officials use The Legal Directory and have access to your listing.

A display ad in The Legal Directory 2009 is your most effective source for reaching the Philadelphia area's legal community with your marketing message.

For rates & more information, please contact Howard Hyatt, 410-902-5797 or [howard.hyatt@mediatwo.com](mailto:howard.hyatt@mediatwo.com).

- *Make sure your listing is accurate and complete.*

## QUESTIONS?

Please contact us at 443-909-7843 or [legaldirectory@mediatwo.com](mailto:legaldirectory@mediatwo.com).



PHILADELPHIA  
BAR ASSOCIATION

- *Make sure your listing stands out with cost-effective, visibility-enhancing upgrades!*

## PRINT UPGRADES

- **Additional Areas of Concentration** ..... \$45
  - > Extra AOC in your listing.
  - > Your name listed under each AOC in the AOC Index.
  - > All index entries in bold.
  - > Firm name (if applicable) and office phone number included in each index listing.
- **Bold Listing in Master Index** ..... \$45
  - > Index entry, including attorney name and page number, in bold.
  - > Firm name (if applicable) and office phone number included.

## ONLINE UPGRADES

- **Link to Web Site** ..... \$95
- **Bold Listing** ..... \$45
- **Expanded Listing** ..... \$45
  - > Accessible by clicking profile icon next to listing.
  - > Includes education, bar admissions, honors & awards, memberships and outside activities for attorneys and "About the Firm" description, year established, firm size and representative clients for firms.

UPDATE DEADLINE IS  
**JANUARY 12!**

The Legal Directory • c/o Media Two  
1014 West 36th Street • Baltimore, MD 21211



# Healthy Defense

## The Use Of Pharmacy Records When Defending a Case

When I first began to practice law I had an arbitration case where I represented the defendant. I remember nothing about that case except that when it was over, one of the panel members took me aside and told me to make sure that I always read the medical records thoroughly. I was never certain as to what he saw that I didn't see or what led him to give me that advice, but it was advice that I took to heart. Since then, I have made certain to closely read every medical record that I subpoena, and I also learned that some records that are not always sought can be particularly helpful when defending a case: the plaintiff's pharmacy records. Defense practitioners sometimes forget to subpoena these records, but they can be invaluable to the defense of your case.

Whether you are practicing personal injury defense or workers' compensation defense, it is axiomatic that you subpoena all of the plaintiff's medical records. Your first discovery request should include a request for the name and address of all pharmacies that the plaintiff has used during the last five years. Most people are creatures of habit and tend to use one pharmacy for all of their prescriptions. That pharmacy is usually close to home or to work. Because our society is a mobile one with people moving and changing jobs frequently, there may be several pharmacies that an individual has used. By obtaining the names and addresses of all of the pharmacies used by the plaintiff in the last five years, the defense attorney can be assured of obtaining a significant amount of information about the plaintiff — and some of it may be information that the plaintiff did not give you or expect you to get.

When you receive the pharmacy records you will be surprised at the amount of information that they give you. Besides basic identifying information such as the plaintiff's name and address, you will also learn prior addresses and other addresses where the plaintiff may currently be staying. You will also get telephone numbers including both landlines and cell phone numbers. People tend to want the pharmacist to be able to reach them if there is a problem with their medication, and they will generally give the pharmacy the most accurate contact information. This information may be very helpful to you when doing surveillance.

Pharmacy records are a snapshot of the plaintiff's overall health. They let you see what medications the plaintiff is taking as well as those that he has taken; the amount of medications prescribed; the frequency of refills; and perhaps most important of all, they will provide you with the names of all providers who have prescribed medication to the plaintiff. All of this information gives you a better understanding of the plaintiff and his medical condition. You can compare this information to the information that the plaintiff gives you when testifying at deposition or at trial.

The list of medications that a person takes or has taken lets you know if the person has any systemic conditions such as hypertension or diabetes. You may also learn if the plaintiff has more serious problems such as cancer or heart disease. You will certainly see what medication the plaintiff is taking as the result of your injury or accident, and that will help you to assess the severity of the work accident or injury and evaluate the economic damages of your case.

These records may also help you to attack the plaintiff's credibility. The plaintiff

may have denied any earlier orthopedic problems, but this may be disputed by the pharmacy records that show that the plaintiff has a long-standing history of taking nonsteroidal anti-inflammatory medication. This suggests a pre-existing condition of arthritis. If the medication that the plaintiff is taking now is no different from the medication that he was taking five years before your injury or accident occurred, that information will obviously help your case. Conversely, if the plaintiff was not taking any prescriptions before the injury occurred and is now taking pain medication, your case may be weakened. What is important is that the pharmacy records give you this information.

Knowing the quantity of medication that the plaintiff is being prescribed is also useful information. If the plaintiff is receiving large amounts of narcotic medication, it may suggest that the plaintiff is becoming drug dependent and/or that the plaintiff may be selling some of his prescriptions. This may not be information that you act on, but it may be important for you to know. The amount of medication prescribed also lets you know if the plaintiff has any chronic conditions or if he is just taking medication for an acute event.

The most important information that you may get from the pharmacy records are the names of all providers who have prescribed medication to the plaintiff. During discovery you will have asked the plaintiff who his treating doctor is, and where that doctor is located. You may only get the names of those providers with whom the plaintiff is treating for this injury. From reviewing the pharmacy records you will learn the identities of all providers, including nurse practitioners and physician's assistants, who may have prescribed medication to the plaintiff. Most people have one physician who is the



central repository of all of their medical information. Even if the plaintiff doesn't give you that information, the pharmacy records will. By learning who that doctor is, you will be able to subpoena those records and from those records learn about other providers as well as reports of past and present diagnostic studies. This all becomes important as you obtain actual films or arthroscopic photographs and have your expert determine if the findings are long-standing or represent an acute finding. You may also learn that the plaintiff's primary care doctor has completed forms for Social Security or for a short-term or long-term disability carrier and be

able to obtain those records as well. Piecing all of this information together puts you and your client in a better position to accurately evaluate your case.

The pharmacy records also provide you with information about the plaintiff's private health insurance. These records tell you who the plaintiff's primary health insurance carrier is and gives you the necessary identifying information so that you can subpoena that carrier's information and learn even more about your plaintiff. You may also obtain the identifying information about previous health insurance carriers that may also be helpful to your case.

By simply remembering to always learn the name of the plaintiff's pharmacy so that you can subpoena those records, you guarantee that you will learn a significant amount of medical information about the plaintiff. This increases the likelihood of winning your case or at the very least mitigating the plaintiff's damages. ■

*Niki T. Ingram, (ntingram@mdwgc.com) a member of the editorial board of The Philadelphia Lawyer, is a partner in the workers' compensation practice at the law firm of Marshall, Dennehy, Warner, Coleman & Goggin.*

# JAMS, The Resolution Experts



**HON. EDWARD G. "PETE" BIESTER, JR. (RET.)**

*Judge of the Court of Common Pleas, Bucks County, Pennsylvania*



**HON. JAMES R. MELINSON (RET.)**

*Chief Magistrate Judge of the United States District Court, Eastern District of Pennsylvania*

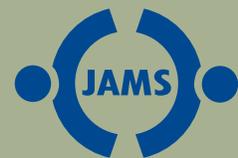


**HON. DIANE M. WELSH (RET.)**

*Magistrate Judge of the United States District Court, Eastern District of Pennsylvania*

**Mediators  
Arbitrators  
Special Masters**

**200 Full-Time  
Neutrals  
Resolution Centers  
Nationwide**



THE RESOLUTION EXPERTS®

**PHILADELPHIA  
RESOLUTION CENTER**  
Bell Atlantic Tower  
1717 Arch St. • Suite 4010  
Philadelphia, PA 19103

**215.246.9494**  
[www.jamsadr.com](http://www.jamsadr.com)