

## Elder Law Section Seeks to Expand Support to More Practitioners

One Bucks County attorney sees the benefits of practicing elder law and serving as a legal representative for families of special needs' children.

The two practices can be mutually inclusive.

Why? Just ask Elder Law Section Chair Richard L. Newman, Doylestown.

"I can't tell you it was a specific incident that made me go into special-needs planning," Newman said. "It was reading about it and just learning about it, and seeing how it helps people, that made me feel like I should really do this."

He began both types of practice more than 16 years ago.

Newman, 60, who has been practicing in Doylestown about eight years, received his bachelor's degree in history from Temple University in 1983 and his Juris Doctor degree, also from Temple, in 1986.

As an elder law attorney for more

than 16 years, Newman discovered that "these families that have children with special needs are so overwhelmed with so much going on in their lives," he said. "There's a lot of things they don't know about. This ability to set up a special needs trust is one of them."

The similarities revolve around the benefits of Medicaid programs for those who qualify.

### Similar Need

As with elder clients, there is a similar need for families who have special-needs children, according to Newman. Those children are oftentimes reliant on supplemental security income and Medicaid to help them with their living and medical expenses.

Medicaid, Newman said, is simply a shorthand term for medical assistance for those who need it.

For Newman, 25% of his clients are special needs and the remaining percentage are seniors and their families.

"There's a pretty large percentage of folks who practice elder law who also practice special-needs planning," Newman said. "And I think it all stems from the fact that as an elder law attorney, we are concerned about helping clients qualify for public benefits."

The biggest similarity is that a client has to be Medicaid-eligible to qualify for either of those programs.

For aging parents who have adult children under the age of 65, according to Newman, this planning would ensure that funds would be available to be used for these adult children, even if the parents needed long-term care in a skilled nursing facility that accepts Medicaid.

The Pennsylvania Department of Human Services Home- and Community-Based Services Waiver Program for adults allows seniors to remain in, and receive care from, children and home care agencies in-home.

The waiver programs for Home- and Community-Based Services is a totally separate waiver program than the one for children with special needs.

For special needs, in most cases, adult children who have intellectual disabilities, such as autism, in order to be eligible for those waiver benefits, can only have a limited number of assets, similar to the senior waiver program.

"So, we help families set up special needs trusts to allow them to fund the trusts so that the trust monies can pay for things that they might need that aren't covered by those benefits," Newman said. "It's the same mindset. We help seniors as elder law attorneys to qualify for Medicaid and protect their assets, so that that they can get Medicaid to pay for their long-term care. We work with these governmental programs and



Richard L. Newman

help our clients remain eligible for them.

"Most of us practice in this field in the same way," he said. "Anything that we can do to help them, taking at least one thing off their plates. It's not just the work for attorneys' fees. You really feel good about it. You really do."

### Minefields

However, Newman's experience with clients often involves some starkly educational experiences involving asset strategy. And there are minefields when it comes to working out long-term care and asset protection.

"The whole field of transferring assets to children is a huge minefield, and it's something we have to guide our clients with so that they do it correctly, if it's something they can do at all," Newman said.

Unfortunately, if assets are improperly transferred, Newman has to "tell them you are exposing your children to

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# When it Comes to Joining PBA Committees, Just Say 'Yes!'

About 25 years ago, Arthur J. Schwab (now Judge Schwab) called and asked me if I would join the council of the PBA Civil Litigation Section. I said, "yes."

Soon, I was attending the section's council meetings, working with trial lawyers from across the commonwealth and learning about new Rules of Civil Procedure, changes in the law and recommendations to improve our civil justice system. The next thing I knew, I was helping to plan the annual Civil Litigation Section Retreat.

Within a few years, I became chair of the section and found myself at the center of a successful PBA effort to defeat proposed legislation designed to punish lawyers who litigate difficult cases. In addition, I had an opportunity to testify before the House and Senate Judiciary committees on legislation concerning joint and several liability. All of it was an eye-opening and a very worthwhile experience.

After completing my term as chair of the Civil Litigation Section, the late James R. Schadel called and asked if I would join the PBA Professional Liability Committee. I said, "yes."

By becoming active in the committee, I quickly learned far more about the practice of law than I might have ever learned by handling a few professional liability cases. This committee immersed me in the law of lawyering, allowed me to become acquainted with more lawyers from across the state and provided an outlet for my artistic impulses by writing, producing and acting in many of the video vignettes that were used for the PBA Avoiding Legal Malpractice programs.

I have derived great satisfaction from my involvement in the Civil Litigation Section and the Professional Liability Committee. I believe that my efforts made a difference, that my work was having an impact and that the section and the committee were providing an important service and benefit to our profession. My involvement in the section and the committee led to other asks, additional PBA appointments, service on the board and leadership at the highest level.

I have exploited my PBA membership. You can,



Jay N. Silberblatt

too. Join a PBA committee. Whatever your practice area, special interest or passion, there is a corresponding PBA committee. There are lawyers (and legislators and justices) out there who need your help and input. There is legislation to review and CLE programs to plan. There is a need for your advocacy on behalf of our profession.

I am asking you to join a PBA committee. I am asking you to exploit your PBA membership. I am asking you to just say, "yes."

*Jay N. Silberblatt*  
*PBA president-elect*

## PBA Committees

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To study questions and problems affecting rural and agricultural interests in Pennsylvania and monitor and/or make recommendations concerning proposals for legislation or regulations relating to

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# PBA Announces Proposed Bylaw Amendments

Pursuant to Article XII, Section 1202, of the Pennsylvania Bar Association Bylaws, this communication is to serve as notice of a proposed Bylaws amendment. Included here is a summary of the changes to be effected by the proposed amendment, which will be submitted to the House of Delegates for consideration at its May 13 meeting.

The Membership Development Committee recommends creating a new class of membership for a Retired/Emeritus Member as defined here:

*Retired/Emeritus Member: A member of the Bar of this Commonwealth who is listed as (i) retired status or (ii) emeritus status with the Disciplinary Board of the Supreme Court of Pennsylvania. Retired/Emeritus Members shall have the right to vote and to hold office.*

Pursuant to the Disciplinary Board of the Supreme Court of Pennsylvania, the statuses identified are defined as follows:

- **Retired:** Status of an attorney who is a member of the Pennsylvania bar and who voluntarily ceases to practice law or hold themselves out as authorized to practice law in Pennsylvania. An attorney whose status is Retired is prohibited from practicing law in Pennsylvania.
- **Emeritus** (limited scope of practice): Status of an attorney who is a member of the Pennsylvania bar, but is authorized solely to provide pro bono legal services under the auspices of an eligible legal aid organization and without charge or an expectation of fee by the attorney. To maintain this status, the attorney must register annually. See Pa.R.D.E. 403.

If approved, the Retired/Emeritus Member will be implemented beginning with the 2023 association dues year. The Membership Development Committee's full report can be made available to any member upon request by contacting the PBA Member Service Center at 800-932-0311.

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Text to be added is underlined.

The Minority Bar Committee (MBC) and the Commission on Women in the Profession (WIP) recommend that the PBA Board of Governors amend the Bylaws of the PBA to require the President to consult with the Presidential officers and to consider the recommendations from the MBC and WIP when making the Minority and Women Governor appointments.

Section 907. Minority and Woman Governor:

(e) Each appointment by the President shall be approved by a majority vote of the Board of Governors. The President of the Association, prior to appointing the Woman Governor or the Minority Governor, shall: (1) invite, in writing to the Board of Governors, the Minority Bar Committee and the Women in Profession Commission, at least thirty days prior to the Annual Meeting, recommendations for such appointments; and (2) consult with the other Presidential officers and consider the recommendations submitted by the Board, the Minority Bar Committee and the Women in the Profession Commission in making the Minority and Woman Governor appointments.

This amendment requires the President, in addition to the Board, to seek recommendations for these appointments from the MBC and the WIP and to consult with the other Presidential officers and consider the recommendations of the MBC and WIP in appointing the Minority and Woman Governor. This requirement will assure that the mission and best interests of all members of the PBA are considered in these appointments.

If approved, the Bylaws requirement will be implemented for the appointment of the open minority governor seat in 2023. ⚖️



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# Ethical, Risk Management Considerations for Expert Retention, Communication

By Paul C. Troy and Andrew M. Lamberton

These days, most cases require expert support to either pursue or defend, as do many nonlitigation matters, whether it be a physician in support of a certificate of merit and proving medical malpractice, a geneticist to counter the district attorney's DNA evidence or an actuary to divvy up a pension in an equitable distribution.

Retaining and working with such experts carries certain ethical obligations and considerations, which most practitioners abide by without giving it much thought. With this column, we want to bring those thoughts to the forefront for a few minutes and give some tips, reminders and maybe even new information to keep in mind when engaging with experts.

We owe a big thank you to our partner, James G. Schu Jr., for inspiring and assisting with this article. In addition to defending lawyers, Jim is the current chair of the Young Professionals Committee of the Professional Liability Defense Federation. He also presents risk management CLEs, including a recent one on the ethics of lawyers working with experts.

## Expert Retention

Retaining an expert starts with the client agreeing to do so. This consideration may have been covered in the retention agreement. In fact, it's a worthwhile thought to include a sentence or two in the agreement about the potential or likely need for expert retention and the terms between attorney and client for retaining and paying an expert.

For instance, that sentence could be

a general explanation of the need for experts in most matters, that additional fees will be associated with expert retention and whether the attorney will foot the bill to be reimbursed with any recovery or that the client will pay expert invoices directly.

The Pennsylvania Rules of Professional Conduct suggest the following: "Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation." Pa. R.P.C. 2.1, cmt. [4]. So, if a lawyer thinks an expert is needed, he or she should recommend one to his client.

From a risk-management perspective, our advice is straightforward: Help the client make an informed decision. Explain in simple terms why an expert is needed, the potential consequences of not retaining an expert and the anticipated cost. The expert can help estimate the costs with a fee schedule and time estimates for each stage of his or her assistance. A follow-up written explanation to the client will add a layer of protection if the client later challenges part or even all of the expert's fee. Delineation of the expert's rates or attachment of the fee schedule should eliminate any ambiguity on the terms of retention. Having the client sign the letter is an option, but we wouldn't consider it a necessity.

## Communicating with Experts

For about eight years now, Rule 4003.5 of the Pennsylvania Rules of Civil Procedure has prohibited discovery of communication between an attorney and an expert. Specifically, "[a] party may not discover the communications between another

party's attorney and any expert . . . except in circumstances that would warrant the disclosure of privileged communications under Pennsylvania law." Pa. R.C.P. No. 4003.5(a)(4). The Federal Rules likewise protect such communication. (See Fed. R. Civ. P. 26(b)(3)(C).) But, ethically, what non-discoverable conversations and correspondence can an attorney have with an expert or, more importantly, should not have?

The Pennsylvania Rules of Professional Conduct provide some general guidance applicable to experts. Rule 1.6 prohibits lawyers from disclosing "information relating to representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation . . ." Pa. R.P.C. 1.6(a). In other words, the lawyer must maintain the attorney-client privilege.

Some may think a limited disclosure to an expert is implied as authorized to carry out the representation. And they may be right. But why not avoid the ambiguity and explain that attorney-client information may be disclosed to an expert in the representation agreement or in the letter confirming the client agreed to retain the expert? We think it's a good idea.

The ethical obligation of truthfulness can also play a role in expert communications. Lawyers are prohibited from "(a) mak[ing] a false statement of material fact or law to a third person; or (b) fail[ing] to disclose a material fact to a third person when disclosure is necessary to avoid aiding and abetting a criminal or

fraudulent act by a client, unless the disclosure is prohibited by Rule 1.6 [Confidentiality of Information]." Pa. R.P.C. 4.1. Part (a) is straightforward: Don't lie to an expert to get a better opinion. Part (b) seemingly protects a lawyer from a disciplinary action for not disclosing a material fact to an expert, but it's not good risk management. What happens when that material fact comes out on cross-examination and the expert admits his opinion was flawed or at least loses some credibility? Remember that the common denominator to every legal malpractice claim is an unhappy client. Don't let such a scenario create one.

## Compensating Experts

It's common knowledge that nearly every expert is being paid for the time incurred reviewing matters, drafting

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Andrew M. Lamberton is a partner and trial attorney at Kane Pugh Knoell Troy & Kramer LLP. [alamberton@kane-pugh.com](mailto:alamberton@kane-pugh.com)



Paul C. Troy is a partner at Kane Pugh Knoell Troy & Kramer LLP, focusing his practice on trial advocacy. He is chair of the Pennsylvania Bar Insurance Fund and Trust Fund. [ptroy@kanepugh.com](mailto:ptroy@kanepugh.com)



# Court Summaries

By Timothy L. Clawges

## ADMINISTRATIVE LAW

### Commonwealth Court

**APPEARANCE AT ADMINISTRATIVE HEARING** — Child Protective Services Law — school employees — enforcement of subpoenas — collateral order — Pa.R.A.P. 313 — Health Insurance Portability and Accountability Act (HIPAA) — Family Education Rights and Privacy Act — 20 U.S.C. 1232(g) — alleged abuse of student by teacher — privilege — jurisdiction — Section 35.142(a) — General Rules of Administrative Practice and Procedure (GRAPP) — 1 Pa. Code 35.142(a) — due process — overbreadth of subpoenas — grant of motion to enforce subpoenas without ruling on objections to subpoenas or motion for protective order — order directing appearance at administrative hearing vacated

*In re App. of S.H.*, No. 896 C.D. 2020 (March 4, 2022) — Enforcement of subpoenas to appear at administrative hearing is governed by Section 35.142(a) of GRAPP, 1 Pa. Code 35.142(a); absence of specific procedure in Child Protective Services Law for enforcement of administrative subpoenas does not mean subpoenas issued for proceedings under that law cannot be enforced; order directing appearance at administrative hearing vacated when court granted motion to enforce subpoenas but failed to rule on objections to subpoenas, resulting in denial of due process.

## CIVIL LITIGATION

### Superior Court

**NEGLIGENCE — BREACH OF DUTY OF CARE** — action against college — sports team — student struck by drunk driver — walking to practice — absence of sidewalk

— settlement with other defendants — order not ending litigation or disposing of entire case — appeal from order granting judgment on pleadings — restatement (second) of Torts 323 — agreement requiring college follow safety practices at facility — parking lot usually provided — coaches who instructed students re conduct along roadway — intentional misrepresentation — elements of cause of action — conduct of leading members during runs along roadway — members sent on unsupervised runs on roadway — order granting motion for judgment on pleadings reversed

*Baumbach v. Lafayette Coll.*, 2022 PA Super 40 (March 4, 2022) — Judgment on pleadings for college and related defendants reversed in action arising from serious injuries when student athlete struck by drunken driver while walking from practice on stretch of roadway that had no shoulder to reach remote parking lot where student athletes parked since college had duty to athletes when its affirmative actions included entering into management agreement requiring that college follow safety practices at practice facility, providing parking lot for team members to park personal vehicles and hiring coaches who instructed students re conduct along roadway where plaintiff was injured; prima facie case that team members justifiably relied on representations re safety of specific roadway when coach knew there were prior fatal pedestrian-involved accidents on that portion of roadway and coach led team members on runs along that roadway, subsequently sending them on unsupervised runs along that roadway and encouraged members to park in remote parking lot that required members to use said roadway.

## CIVIL PROCEDURE

### Superior Court

**INTERVENTION** — workers' compensation carrier — damages sought to satisfy statutory lien for compensation paid on behalf of employer — PRAECIPE FOR WRIT OF SUMMONS — complaint not filed — lack of factual averments — collateral order — Pa.R.A.P. 313(b) — Pa.R.Civ.P. 2327 — no private right of action — Section 319 — Workers' Compensation Act — 77 P.S. 671 — appeal quashed

*Loftus v. Decker*, 2022 PA Super 44 (March 10, 2022) — Workers' compensation carrier has no right to intervene in action by claimant to recover for damages from third party since Section 319 of Workers' Compensation Act, 77 P.S. 671, does not give carrier direct or indirect right to take any action against third party tortfeasor, but provides that only employee can bring or decide to seek damages against tortfeasor.

### Commonwealth Court

**CLASS CERTIFICATION** — Pa.R.Civ.P. 1702 — license to carry firearms — disclosure of status by sending postcards through USPS — approval — renewal — denial — revocation — confidentiality — Section 6111(i) — UFA 18 Pa.C.S. 6111(i) — collateral order — Pa.R.A.P. 313 — NUMEROSITY — typicality — commonality — adequacy of representation — fair and efficient method of adjudication — denial of motion for class certification reversed

*Doe v. Franklin Cty.*, No. 96 C.D. 2021 (March 4, 2022) — Denial of class certification reversed in action asserting disclosure of status of license to carry firearms by sending postcards through USPS to notify licensees of actions with their license, finding numerosity requirement met when thousands of postcards were mailed during five-year period to putative class members.

## CIVIL RIGHTS

### Third Circuit

**PRISONER** — wrongly branded as sex offender — increased risk of assault — no assault on prisoner occurred — ID card and T-shirt mislabeling prisoner as sex offender — de novo review — no deprivation of basic human need — Eighth Amendment — damages not available under *Bivens* — monetary damages sought — order dismissing complaint affirmed

*Dongarra v. Smith*, No. 20-2872 (March 1, 2022) — Order dismissing claim that prison officer placed prisoner at increased risk of assault by wrongly branding him as sex offender affirmed when prisoner was not assaulted.

## CRIMINAL PROCEDURE

### Superior Court

**THIRD-PARTY GUILT EVIDENCE** — homicide — convictions of another person for aggravated assault — Pa.R.E. 404(b) — no evidence provided re circumstances of convictions — no attempt to show such crimes similar to murder — danger of confusion — harmless error — thorough cross-examination of other person re details of statement to police and probationary status — overwhelming evidence showing defendant committed murder — SPEEDY TRIAL — Pa.R.Crim.P. 600 — due diligence — judicial delay — judgment of sentence affirmed

*Com. v. Herring*, 2022 PA Super 41 (March 7, 2022) — Court did not err by refusing to admit evidence of two prior convictions of another person for aggravated assault to cast doubt on guilt, but defendant did not provide detail about the convictions or attempt to argue how such crimes were sufficiently similar to murder to merit admission.

**WEIGHT OF EVIDENCE** — rape of child — unlawful restraint of minor — indecent assault — corruption of minors — unlawful contact with

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**minor — credibility — sentencing — consecutive sentencing on multiple counts — no concise statement of matters complained of — commonwealth objection — no jurisdiction to evaluate discretionary aspects of sentencing claims — mandatory minimum sentence — due process — rational basis — parole process for sex offenders — requirement of acceptance of responsibility — no constitutionally protected liberty interest in parole — EXPERT TESTIMONY — signatory to two reports generated after forensic interview of victim — 42 Pa.C.S. 5920 — specialized knowledge — assistance in understanding the dynamics of sexual violence — explanation for failure to disclose information — failure to award credit for time served — judgment of sentence vacated**

*Com. v. Fuentes*, 2022 PA Super 43 (March 9, 2022) — Judgment of sentence vacated for numerous sexual offenses due to failure to award credit for time spent in pretrial incarceration, but finding convictions were not against the weight of the evidence, the sentence involving mandatory minimum was not a violation of due process, allowing witness to testify to the dynamics of sexual violence and explain why the victim would not disclose things in first interview that she disclosed in second was not rendered inadmissible simply because the witness was signatory to reports generated after first and second forensic interviews.

## MORTGAGE FORECLOSURE

### Superior Court

**OPTIONS — REVERSE MORTGAGE — terms of mortgage — default upon death of mortgagor — payment of 95% of appraised value offered to prevent foreclosure — ob-**

**jections at trial — failure to preserve issue — Pa.R.Civ.P. 227.1 — U.S. Department of Housing and Urban Development (HUD) regulations — 24 C.F.R. 206.1 et seq. — HUD Handbook 4330.1 — affirmative defense established — judgment for estate against lender affirmed**

*Bank of America v. Scott*, 2022 PA Super 39 (March 3, 2022) — Estate of mortgagor established affirmative defense against foreclosure when lender failed to comply with HUD regulations at 24 C.F.R. 206.125(a)(2) and HUD Handbook 4330.1 by refusing to accept payoff in amount of 95% of appraised value of property before foreclosure sale.

**TIMELINESS — multiple parcels — one parcel with residence — two vacant parcels — vacant parcels erroneously in description of mortgage — other parcel not mentioned — reformation of instrument — alleged mutual mistake in mortgage — limited standard of review — Pa.R.Civ.P. 3132 and 3135 — petition filed more than two years after deed delivered — denial of petition to set aside sheriff sale affirmed**

*LSF8 v. Petrosky*, 2022 PA Super 45 (March 14, 2022) — Petition to set aside sheriff sale is untimely when filed more than two years and nine months after delivery of deed; possibility that description of land in mortgage might not be what parties intended is not basis for exception to timeliness requirement when lack of fraud or authority for the sale, since any mutual mistake in description of property did not deprive sheriff of authority to conduct sale.

## MUNICIPAL LAW

### Commonwealth Court

**AUTHORITY OF MUNICIPALITY — power to dissolve authority — Section 5622(a) — Municipality Authorities Act (MAA) — 53 Pa.C.S. 5622(a) — authority entered into contract to sell assets to private third party — Section 5607(d)(4) — 53 Pa.C.S. 5607(d)(4) — obligations of contract not fully performed — contract subject to condition subsequent — denial of mandamus relief for county reversed**

*City of Delaware v. Delaware Cty. Reg. Water Qual. Control Auth.*, No. 148 C.D. 2021 (March 3, 2022) — County retains statutory authority to dissolve or obtain municipal authority it had created or assets of such authority under Section 5622(a) of MAA, 53 Pa.C.S. 5622(a), notwithstanding authority exercise of power under Sections 5607(d)(4) and (13) of MAA, 53 Pa.C.S. 5607(d)(4) and (13), when obligations of contract entered into by authority to sell assets to private party have not been fully performed, contract is subject to condition subsequent and municipality arguably did not assume obligations of contract by ordinance; hence, arguably cannot fulfill obligations.

## PROFESSIONS

### Commonwealth Court

**HAIR BRAIDING — Beauty Culture Law — 63 P.S. 507 et seq. — standing — braiding not for compensation — plan to open own shop — Pa.R.Civ.P. 1032 — facial substantive due-process challenge — Article I, Section 1 — scope and standard of review — equal protection — preliminary objections sustained in part**

*Diop v. Bur. of Prof. and Occ. Aff.*, No. 363 M.D. 2020 (March 3, 2022) — Person who does not braid hair for compensation but hopes to open her own braiding shop lacks standing to assert Beauty Culture Law, which requires license to engage in commercial practice of natural hair braiding, is unconstitutional; petitioners have failed to demonstrate law clearly violates Pennsylvania Constitution.

## PUBLIC EMPLOYEES

### Commonwealth Court

**POLICE OFFICER — dispute under collective bargaining agreement (CBA) — payments for health insurance premiums — retiree — applicability of grievance procedure limited to employees — language of CBA — exhaustion of administrative remedies — subject-matter jurisdiction — dismissal of complaint affirmed**

*Edgell v. City of Aliquippa*, No. 860 C.D. 2020 (March 4, 2022) — Dismissal of complaint involving dispute re payment of health insurance premiums for individuals who retire during CBA term on grounds that court lacked subject-matter jurisdiction affirmed since CBA specifically addresses retirement benefits and refers to retirees, provides for health benefits that do not begin until after employee retires and provides that retirees may contest determinations on payments through grievance and arbitration provisions of CBA.

## SENTENCING

### Superior Court

**VEHICLE CODE SUMMARY — driving under suspension/driving under the influence (DUS/DUI)-related — second offense — Section 1543(b)(1)(ii) — Vehicle Code — 75 Pa.C.S. 1543(b)(1)(ii) — lack of maximum term of incarceration — vagueness — *Com. v. Eid* — conviction and fine affirmed — house arrest portion of sentence vacated — matter remanded**

*Com. v. Jackson*, 2022 PA Super 42 (March 8, 2022) — Panel opinion by Olson affirming the conviction and fine portion of sentence imposed for second conviction for DUA/ DUI-related, 75 Pa.C.S. 1543(b)(1)(ii), but vacating sentence on the basis that section is unconstitutionally vague and inoperable, citing *Com. v. Eid*.

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Timothy L. Clawges is counsel to the Pennsylvania House of Representatives Judiciary Committee. He also writes case digests for the PBA Criminal Justice Section Newsletter.

# Elder Law Section Seeks to Expand Support to More Practitioners

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your nursing home bill.”

The biggest challenge is transferring the house to the child.

“It’s a question that just about everyone who practices elder law gets,” Newman said. “Someone may have heard that’s the thing to do, to protect their house, so they come to me and say, ‘I heard that transferring the house to my child or my children for \$1 is the greatest thing since sliced bread.’ And I have to tell them, advise them, that that actually may be the worst thing you could do.”

In Pennsylvania, he said, there exists the Filial Responsibility Law.

“That basically says that children

of indigent parents are responsible for their parents’ bills,” Newman said. “And people who have transferred houses to children are worst-case scenario, they are exposing their children to their nursing home bill. So, we have to strongly advise them against that.”

Newman recounted an experience of asset transfers that created real problems for one family.

“A couple of years ago, I met with a prospective client who told me that they were advised by their accountant or financial adviser they could give away \$13,000 or \$14,000 a year,” he said. “The parents had been giving all of their children

\$13,000 or \$14,000 a year for five to ten years, and that resulted in about \$100,000 of gifting. I had to tell them that’s the IRS rules, not Medicaid’s rules. And because the children spent down all the gifts, I said, ‘I can’t help you. You’re on the hook and you are in trouble. And I can’t help you, I’m sorry. But it’s a shame you didn’t come to me before.’”

The gifting process, Newman said, creates a period of ineligibility, when Medicaid would have otherwise paid for the care, but for the gifting.

“That’s when the nursing home can go after the children’s assets,” he said.

“You have to weigh that, the good vs.

the bad,” he said. “You have to look at the big picture and make sure the planning is done correctly.”

## Powers of Attorney

Challenges abound when it comes to child caregivers assuming the role of a parent in order to make critical life decisions for their own parents.

*continued on page 8*



## Court Summaries

*continued from page 6*

## ZONING AND LAND USE

### Commonwealth Court

**SPECIAL EXCEPTION — food court — abandoned warehouse — use as parking for food trucks — nearby parcel — hardship — parking and access issues addressed — SUBSTANTIAL EVIDENCE — consolidated cases — limited standard of review — order reversing grant of special exception reversed**

*Czachowski v. Zon. Bd. of Adj. of City of Pgh.*, No. 1344 C.D. 2020 (March 2, 2022) — Since substantial evidence supports grant of special exception to allow development of food court in abandoned warehouse, development of nearby parcel as off-site parking and petitioner established hardship, court erred in reversing grant; court also erred by imposing requirements not contained in zoning code on alternative parking plan. ⚖️

## Foundation Seeks Board Leader

The Pennsylvania Bar Foundation Nominating Committee has a vacancy for a board position to serve. The position is eligible to serve one three-year term. However, a second three-year term is eligible if eligible

and nominated.

Those interested should contact April Murphy, foundation administrator, at [info@pabarfoundation.org](mailto:info@pabarfoundation.org). ⚖️

## Ethical, Risk Management Considerations for Expert Retention, Communication

*continued from page 4*

reports and preparing for and providing testimony. The Rules of Professional Conduct expressly permit such compensation along with travel and other expenses the expert may incur. (See Pa. R.P.C. 3.4(b)(3).) However, the same Rule prohibits lawyers from agreeing to compensate any witness, including an expert, “contingent upon the content of the witness’ testimony or the outcome of the case . . .” Pa. R.P.C. 3.4(b) & cmt. [3] (“it is improper to pay an expert witness a contingent fee.”). This prohibition makes a lot of sense and helps protect attorneys from walking into a malpractice claim.

For instance, picture this cross-examination:

Q: How much are you being compensated to testify today?

A: It depends.

Q: It depends? On what?

A: On how much Mr. Smith recovers. I get paid five percent.

Yikes! The expert just lost any semblance of objectivity and the client, perhaps learning of the contingent fee for the first time, just found a new target if the award is too low or nonexistent. The new target? You guessed it: his lawyer.

If you have any questions about these topics, or suggestions for other topics, please just let us know. We received a good number of emails about last month’s article about a fee collection case. Your feedback is greatly appreciated, and we always prefer writing about your interests. ⚖️

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# Elder Law Section Seeks to Expand Support to More Practitioners

*continued from page 7*

That includes taking on the legal role of estate executor and agents in a power of attorney.

The very idea is frightening to some of Newman's clients.

"One of the first reactions we get is, 'Oh my goodness, how can I do this? It's so involved. I never thought it would be this involved,'" Newman said. "Questions we get would be along the lines of 'How I do pay the inheritance tax? How do we pay the expenses for the estate? What do I need to do to protect myself as the executor?'"

Newman said there are two different types of powers of attorney, although they can be combined: There's the financial power of attorney and medical power of attorney.

"When children are acting on behalf as agents, they are generally working with me to further their parents' interest in protecting their parents' assets," Newman said. "That's what (the children) discuss with me as their agents. The parents don't want to lose everything if their parents are going into a nursing home. What can we do on their behalf in furthering that goal?"

Caregiving for a child or a senior can be a full-time job, Newman said. It's very demanding, especially depending on the condition, both physically and mentally, of the parents.

"It's scary, it's overwhelming," Newman said. "It's always a good idea for them to get as much help as they can, not just from people who practice elder law, but also from various support groups such as the Alzheimer's Association or Dementia Society.

"You don't realize how tough it is until you start doing it. There's a reason they call folks my age (60) the 'sandwich generation,' because they're worried about raising and helping their children out, and now they have to worry about their parents as well. Knowing what my clients are going through, it's really very onerous for them."

## Accomplishments

In the nine months Newman has been section chair, what accomplishments has he seen?

"One of the things we are doing in our section, which I am really happy

about, is that we are collaborating with other PBA sections, such as PBA Real Property, Probate and Trust Law," he said.

"We're also trying to do more with the PBA Diversity, Equity and Inclusion Team. I think that's something that's really important because there is a real underrepresentation of attorneys of color or attorneys in the LGBTQ+ community who practice elder law. We're trying to spread the word so that those attorneys can find out more about our section and hopefully pick up an interest in practicing elder law and special needs planning. That's something that is really important to us."

The section and its 549 members are "working with the public interest attorneys, people who are in the community legal services or senior law center, the nonprofits, working with them, getting them more involved in our section is important to us," Newman said.

The section has established a scholarship program that was proposed by Newman's predecessor, Immediate Past Chair Alissa E. Halperin, Halperin Butera Consulting, Phoenixville, to help public-interest attorneys attend the annual Elder Law Institute in July to learn better ways to help represent their clients.

This year, the event is partially in-person and virtual.

The section sponsors the institute every year, and this year's event is July 21-22. The first day of the program is a hybrid event for those who want to go in person at the PBI learning center in Philadelphia. The sessions on July 22 are all virtual.

"There are people who really want to go back in-person," Newman said. "I think that is going to be increasingly the case, hopefully. But there are still people who are cautious, who don't want to rush things, and folks like me, who realize I meet with seniors all the time. I don't want to take too many chances with getting them sick."

For those interested in this field of practice, Newman highly recommends the Elder Law Institute.

"That's how I got started, 16+ years ago, and it's a great way to learn about elder law," he said. "They have programs, they have sessions for beginners all the way through intermediate and advanced

practitioners."

The Elder Law Institute could be a sign of how gradually the old "normal" could return for the PBA.

"If things keep moving like they have been, hopefully events will come closer and closer to in-person," Newman said. "But I could not make any kind of accurate prediction when that could be.

"We're trying to take everything into account. Last year it was all virtual. This year we are trying to get back to whatever that 'normal' is going to be, one step at a time."

## Expanding the Circle

Pamela Walz, the section's chair-elect, is trying to work with the Minority Bar Committee to "spread the word through that section, to learn more about elder law," Newman said.

"We are continuing a program that we started shortly after the pandemic began, having virtual roundtable discussions that are open to all members of our section," he said. The program is scheduled monthly.

The Elder Law Section worked with the Solo and Small Firm Section to have a seminar about how to practice law from

anywhere, "which became a reality when COVID-19 hit," Newman said.

Part 2 of that roundtable discussion occurred last month. The next roundtable is scheduled May 4.

The spring newsletter is scheduled to be released this month.

"For those who are curious, check out the roundtable discussions," Newman said. "You don't have to be an experienced elder law practitioner to really get something out of it."

The section publishes the quarterly *Elder Law Section Newsletter*. The spring issue is scheduled to be released this month.

Newman's mission as Elder Law Section chair, he said, is to "make the services and benefits that we provide for our section members something that is helpful to all of them, that they feel they are getting their money's worth, by being a part of our section, by the roundtable discussions, the ELI, the newsletters, staying on top of legislation that may impact our clients.

"Those are things that we have felt and continue to feel are beneficial to our section members. Also, to work more to get people, attorneys of color and attorneys in the LGBTQ+ community, <sup>41</sup>

## Nominations Open for PBA Excellence in Elder Law Award

PBA's Elder Law Section requests nominations for the 2022 Excellence in Elder Law Award, which will be presented at the 2022 Elder Law Institute, July 21-22, in Philadelphia.

Nominations are due by Friday, June 24.

The purpose of the Excellence in Elder Law Award is to honor an individual who has made superior efforts in the field of elder law, made significant contributions to the elder law bar, and who has made noteworthy service to the elderly.

The award committee will consider the following criteria in making the selection:

- Superior professional efforts in the field of elder law.
- Significant contributions to the elder law bar, including educational efforts to improve the ability of attorneys

to represent clients in elder law matters.

- Noteworthy service to the elderly.

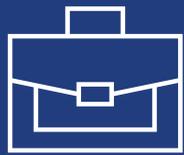
### Requirements:

- The nominated individual must be an attorney in good standing and a member of the PBA.
- The nominated individual must devote a significant portion of their professional time to the practice of elder law or education in the field of elder law.

Access the nomination form at <https://www.pabar.org/public/sections/eld18/pdf/Excellence-Elder-Law-Award-Nomination.pdf>.

Complete the nomination form and email it to Dionysios C. Pappas, chair of the Award Committee, [dpappas@lawvp.com](mailto:dpappas@lawvp.com), no later than June 24. <sup>41</sup>

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## Lost and Found

Lost will: **Faith R Boddy** Middletown, Del.; Died 6/12/2019. Looking for original or copy of a will or codicil. Please contact Hope Boddy, 302-853-9324, or [hopeboddy318@gmail.com](mailto:hopeboddy318@gmail.com).

## Position Openings

### LAW CLERK POSITION —

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# When it Comes to Joining PBA Committees, Just Say ‘Yes!’

*continued from page 2*

such interests.

## **Alternative Dispute Resolution**

To address current issues of mediation, arbitration and other alternative dispute resolution processes, including mediation and arbitration of private and court-connected ADR programs. The committee conducts professional education programs, recommends standards of practice for neutrals and proposes and monitors legislation regarding alternative dispute resolution.

## **Animal Law**

To promote the particular interests of lawyers practicing in the area of animal law; promote the study and understanding of laws, regulations and court decisions dealing with animals; and educate the legal community and the public as to the needs to address various animal-related issues.

## **Appellate Advocacy**

To promote communication and cooperation between lawyers who practice before the state and federal appellate courts and members of the judiciary, and provide the opportunity to identify and address the means to achieving quality practice in all manner of appeals. The committee offers focused educational programs, fosters dialogue between the bench and the bar, explores means and methods to improve and advance the appellate process and may review and make recommendations concerning the rules of procedure that affect the appellate process.

## **Bylaws**

To propose suggested changes in the bylaws and review comments on changes suggested by other entities within the PBA.

## **Charitable Organizations**

To deal with matters of concern to lawyers who are employed by or who

represent charitable organizations, public-sector lawyers whose work involves charitable organizations and lawyers who serve as directors, officers or volunteers of charitable organizations. The committee offers educational programs relating to the laws governing charitable and other nonprofit organizations.

## **Children’s Rights**

To study questions and problems that affect children and to monitor and/or make recommendations concerning legislation relating to their interests. The committee develops programs for the legal profession to promote more effective advocacy on behalf of children in trial and appellate courts and implements such public education campaigns as are deemed appropriate.

## **Civil and Equal Rights**

To promote and defend civil rights and responsibilities, fair treatment and equal opportunity for all individuals and the avoidance and elimination of wrongful discrimination and unfair bias by (a) monitoring actual and proposed legislation, litigation, rules of conduct and procedures and other relevant developments; (b) educating the legal community and the public; and (c) making proposals and recommendations to advance and effect the goals of the committee.

## **Civility in the Profession**

To instill, promote and enhance professionalism and civility within the legal profession by encouraging discussion about the importance of professionalism and civility among the members of the bar, the judiciary and the public. The committee’s activities shall include planning and presenting continuing legal education and other programs and initiatives to promote courtesy and respect for other participants in the judicial system and commitment to

the PBA Working Rules of Professionalism and the Pennsylvania Code of Civility.

## **Collaborative Law**

To address current issues regarding the collaborative law dispute resolution process; educate attorneys and the public about the collaborative law dispute resolution process; recommend standards of practice for attorneys using the collaborative law dispute resolution process; and monitor, propose and/or support legislation or rules of court that further the development of the collaborative law dispute resolution process.

## **Community and Public Relations**

To formulate and implement plans for improving the image of lawyers in Pennsylvania through client and public relations, including specific methods to improve client relations; to publicize the positive contributions of lawyers to society; to educate the public about lawyers, the law and legal institutions in an effort to improve and develop good public relations for lawyers; and to address unwarranted criticism of lawyers or of the legal system.

## **Corrections System**

To study the corrections system in Pennsylvania and make recommendations for its improvement.

## **Cybersecurity and Data Privacy**

To analyze cybersecurity issues and educate PBA members about legal, regulatory and industry standards that preserve the confidentiality or protected information. The committee will advocate for best practices and legal and regulatory requirements that address data privacy concerns; for best practices to prevent, detect and mitigate data breaches; and for unified standards.

## **Disability Services**

To institute statewide programs to educate both lawyers and the public on issues regarding the legal

rights of the disabled. The committee studies and makes recommendations concerning all legislation or rule-making pertaining to mentally disabled and physically handicapped persons.

## **Federal Practice**

To promote communication and cooperation between lawyers who practice in federal courts and members of the federal judiciary, and provide an opportunity to identify and address the differences between the local district court rules and orders of court that affect practice of law in the eastern, middle and western districts. The committee shall enhance knowledge and professional capabilities of lawyers who practice law in the U.S. district courts in Pennsylvania, and shall promote the welfare of attorneys and judges employed by the government of the United States. The committee may review and make recommendations concerning federal legislation and proposed changes to the Federal Rules of Civil Procedure, Criminal Procedure and Bankruptcy Procedure and the Federal District Court Rules.

## **Gaming Law**

To review, study and make recommendations concerning legislative proposals in the area of gaming law; promote the understanding of laws, regulations and court decisions in the gaming area; and develop materials and educational programs of interest to the gaming practitioner to promote improvements and professionalism in the field of gaming law.

## **Government Lawyers**

To deal with matters of interest and concern to government-employed lawyers and provide services and programs directed to assist members to achieve their career goals. The committee conducts its activities with the objectives of educating lawyers on the valuable

opportunities and experience available through government service and educating the public on the important and unique role served by government lawyers.

#### **Health Care Law**

To review, study and make recommendations concerning legislative proposals for reform in the health care system and address ethical considerations as related to the medical and legal professions. The committee proposes additional recommendations relating to litigation involving medical and hospital practices.

#### **Immigration Law**

To provide a forum to address issues in the area of immigration law; monitor and make recommendations concerning legislation in this area; and promote the understanding of immigration-related laws, regulations and court decisions.

#### **In-House Counsel**

To deal with matters of concern to lawyers engaged as in-house corporate counsel and to plan and implement educational programs in areas of particular interest to in-house corporate counsel.

#### **Insurance Staff Attorney**

To promote the interests of staff counsel, foster quality professional conduct and provide appropriate service to its members in cooperation with the PBA.

#### **Judicial Administration**

To review, study and make recommendations concerning legislative issues regarding the operation, procedure and reform of the state and federal court systems. The committee also develops and recommends measures seeking to improve the administration of the courts and addresses issues of court reform consistent with established PBA policy.

#### **Large Law Firm**

To study and make recommendation regarding membership development and retention of attorneys in large firms in Pennsylvania. The committee shall develop programs

and services to enhance the value of PBA membership for this group of attorneys. A large law firm is generally defined as a firm of 50 or more attorneys.

#### **Law-Related Education**

To oversee the PBA's programs that educate young persons about the rule of law, the history and workings of our form of government, and the peaceful resolution of disputes.

#### **Lawyers' Assistance**

To develop programs to assist impaired lawyers, their law partners, clients and families.

#### **Legal Academics**

To provide the opportunity for those in the law school community to study matters relating to the common goal of maintaining the high standards and quality education of future lawyers. The committee is composed of active PBA members engaged in the education of law students as law school faculty and administration.

#### **Legal Career Transitions**

To serve as a resource and assist lawyers through the changes and practice progressions associated

with transitioning into, within and beyond the profession.

#### **Legal Services for Exceptional Children**

To develop programs designed to educate members of the legal profession on current legislation and/or regulations affecting exceptional children and their families. The committee studies, reviews and makes recommendations concerning legislation or regulations affecting exceptional children and their families.

#### **Legal Services to the Public**

To provide assistance in the creation of programs designed to provide for the delivery of legal services to indigent persons within the commonwealth. The committee monitors and makes recommendations concerning all legislation regarding unmet legal needs and pro bono service.

#### **LGBTQ+ Rights**

To study matters pertaining to the recognition and protection of the legal rights of the lesbian, gay, bisexual, transgender and queer (LGBTQ+) community. The committee will

monitor and make recommendations on issues and developments in the law impacting LGBTQ+ people in the public and the legal profession.

#### **Medical Marijuana and Hemp Law**

To keep members of the bar apprised of developments within the field of medical cannabis and hemp law by fostering communications and facilitating continuing education programs in the areas of client representation, industry developments and ethical and other issues of concern to members. It monitors legislative developments and/or makes recommendations concerning legislation and regulations affecting such interests.

#### **Membership Development**

To develop and implement programs to increase the association's membership base and to retain current members. The committee also evaluates, develops and implements new programs and services designed to enhance the overall value of a PBA membership and to generate new revenue for the association.

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# When it Comes to Joining PBA Committees, Just Say ‘Yes!’

*continued from page 11*

## **Military and Veterans’ Affairs**

To study and make recommendations, provide educational programming and coordinate statewide efforts on legal matters affecting active, reserve and National Guard military service members, retirees, veterans and their families.

## **Minority Bar**

To develop programs to promote the issues and concerns of minority attorneys and to study, review and make recommendations concerning all legislation impacting minority citizens in the commonwealth. The committee seeks to encourage more participation in the PBA by members of the minority legal community.

## **Plain English**

To reward and encourage efforts to improve access to the law by demystifying its language, enabling lawyers to better counsel clients and increase respect for the legal profession by promoting the importance of clear articulation in all forms of correspondence, including electronic media.

## **Professional Liability**

To monitor and make recommendations concerning lawyers’ liability case law and related statutes and administrative developments, including lawyers’ liability insurance coverage and market coverage and the market, the formation and operation of any PBA-related lawyer liability insurer and sponsored or endorsed lawyers’ liability insurance programs. It conducts legal malpractice avoidance and loss prevention programs.

## **Quality of Life/Balance**

To identify issues in the changing legal marketplace that adversely affect the lawyer’s ability to balance his/her professional and personal life. The committee identifies solutions to improve the quality of life of lawyers and develops ways to disseminate those solutions and recommendations.

## **Senior Lawyers**

To serve as the voice of the senior lawyers within the association and to enact services, programs and activities for members to enhance their continued careers and quality of life. The committee serves the interests and needs of the profession and the public by sharing the accumulated knowledge and experience of its members. PBA members aged 60 and older qualify for membership.

## **Shale Energy Law**

To keep members of the bar apprised of developments within the field of shale energy law by fostering communications and facilitating education for both attorneys through CLE programming and the public through participation in community programs. The committee also monitors legislative developments and/or makes recommendations concerning legislation and regulations affecting such interests.

## **Statutory Law**

To assist any entity of state government and of the PBA regarding bill draftsmanship and codification. The committee reviews legislation or other proposals to improve Pennsylvania’s legislative process and the public’s participation therein.

## **Unauthorized Practice of Law**

To investigate all complaints against any person not authorized to practice law who is alleged to be performing acts or services constituting the practice of law, to take informal action as necessary against the unauthorized practice of law, to punish or prevent the unauthorized practice of law and to coordinate its activities with those of similar county bar association committees.

## **Women in the Profession**

To assess the current status of women in the legal profession and identify barriers that prevent them from full participation in the work, responsibilities and rewards of the

profession, to make recommendations to the PBA Board of Governors and House of Delegates for action to solve problems the committee identifies and to develop educational programs to address discrimina-

tion against women lawyers and the unique problems they encounter in pursuing their professional careers.

To join a committee, go to <https://www.pabar.org/site/For-Lawyers/Committees-Commissions>. 

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## **PBA WIP Highlights Women Justices/Judges of Pennsylvania Appellate Courts**

In recognition of the declaration of March as Women’s History Month, the PBA Commission on Women in the Profession (WIP) began recognizing all women justices/judges who sat and who are sitting on Pennsylvania appellate courts.

The first women highlighted by the WIP were Juanita Kidd Stout, the first woman of color Pennsylvania justice; Phyllis Beck and Alice Dubow, the first mother and daughter to serve on

the Superior Court; and Genevieve Blatt, the first woman on the Pennsylvania Commonwealth Court.

The information was compiled by Dr. Joel Fishman.

Additional women justice/judges of the appellate courts will be highlighted in the months ahead on the WIP webpage: <https://www.pabar.org/site/For-Lawyers/Committees-Commissions/Women-in-the-Profession-Commission>. 

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## **Public Utility Law Section Seeks Nominations**

The Public Utility Law Section of the Pennsylvania Bar Association is seeking nominations for its annual Christianson Award.

This award will be presented to an individual, or on behalf of an individual, at the 2022 Public Utility Bench Bar Conference on May 20. Nomination deadline is April 8.

The recipient of the Christianson Award will be an individual who has made an outstanding contribution in the area of public utility law in the commonwealth of Pennsylvania. Nominees must satisfy the following criteria:

The honoree is to be an individual who has made an outstanding contribution to the development, improvement or furtherance of the profession of public utility law in Pennsylvania.

The award may be given for some past or current activity by the honoree, or for the life’s work of the honoree.

The Section Council will solicit nominations from the membership with an explanation of the basis for honoring the nominated on an annual basis.

The award will be presented in conjunction with a bar association, educational or other event generally attended by members of the section.

For the nomination form, visit <https://www.pabar.org/public/sections/pub12/awards/2022ChristiansonAwardNominatingForm.pdf>.

Email or fax nomination forms to Pamela Kance at [pam.kance@pabar.org](mailto:pam.kance@pabar.org). For questions or additional information, contact Kance at 800-932-0311, ext. 2243. 

# PBA Honors County Bar Association Executive Directors

The PBA Conference of County Bar Leaders (CCBL) has honored all Pennsylvania county bar executive directors with Arthur J. Birdsall Awards.

The awards recognize the exceptional efforts taken by county bar leaders to keep their association members informed, safe and active during the pandemic. The awards were presented during the 56<sup>th</sup> Annual Seminar of the Conference of County Bar Leaders Feb. 24-26 in Lancaster.

Many county bar association executive directors quickly expanded their technological skills so their members could hold meetings and programs virtually, thereby staying engaged and informed during the pandemic. Many developed new wellness programming designed to maintain social connections that were stressed, especially during the early months of the pandemic.

The Birdsall Award is given to a county bar executive who demonstrates professional excellence, who is committed to the success of his or her bar association and who significantly enhances the stature of that bar association. It is named in honor of Arthur J. Birdsall, PBA's county bar services director, who retired after nearly 40 years of support to local bar associations.

This is the first time in the history of the Birdsall Awards that there have been multiple award winners in a single year.

Award winners include the following bar association executive directors:

B. Bohleke, Adams County  
Dave A. Blaner, Allegheny County  
Suellen Verlihay, Beaver County  
Kori Walter, Berks County  
Greg Nardi, Bucks County  
Janis Hackett, Butler County  
Robin Mitchell Hagins, Cambria



The PBA Conference of County Bar Leaders (CCBL) has honored all Pennsylvania county bar executive directors with Arthur J. Birdsall Awards. Seated, from left, Victoria A. Connor, York County; Kathleen D. Wilkinson, PBA president; and MariAnn Hathaway, 2022 CCBL president. Middle row, from left, Mary Beth Leeson, Northampton County; Suellen Verlihay, Beaver County; Janis Hackett, Butler County; Kathy Sabol, Washington County; Julie S. Kresge, Erie County; Michele Frey, Lycoming County; Lisa Driendl-Miller, Lancaster County; and Shelly Sydnor, Cumberland County. Back, from left, David A. Blaner, Allegheny County; Kori Walter, Berks County; Matthew Holliday, Chester County; and Harvey Hurdle Jr., Philadelphia.

County  
Sheri Ryan, Carbon County  
Ken Stanton, Centre County  
Matt Holliday, Chester County  
Shelly Sydnor, Cumberland County  
Patrice Merzanis, Dauphin County  
Bill Baldwin, Delaware County  
Julie S. Kresge, Erie County  
Garnet Gordon, Fayette County  
Amelia Ambrose, Franklin County  
Lisa Driendl-Miller, Lancaster  
Lee Ann Munley, Lackawanna  
JoEllen Thomas, Lawrence County  
Linda Kerkeslager, Lebanon County  
Ray Bridgeman, Lehigh County  
Michele Frey, Lycoming Law  
Association  
Debby Arner, Mercer County  
Denise Vicario, Montgomery  
Mary Beth Leeson, Northampton  
County  
Debra Moyer, Northumberland  
County  
Harvey Hurdle Jr., Philadelphia  
Charlotte Green, Schuylkill County

Alahna O'Brien, Westmoreland  
Kathy Sabol, Washington County  
Joe Burke, Wilkes-Barre Law and

Library Association  
Victoria Connor, York County. ⚖️

## Collaborative Law Training Set for May

The PBA Collaborative Law Committee will present a virtual program, "Online Basic Interdisciplinary Training in Collaborative Law," from 12:30 to 4 p.m. May 17 to 19 and May 23 to 25.

Cost is \$600 for 18 CLE credits. Participants are expected to attend all sessions to receive the credits.

Collaborative law focuses on resolving disputes by removing the disputed matter from the courtroom setting and treating the process as a way to solve the problem without going to court. Both parties retain separate attorneys whose job it is to help them settle the dispute. The goal is to provide a basic

training for collaborative law practitioners. The collaborative law team can include professionals in law, finance and mental health.

This basic training will be presented by the coordinating committee, using materials from the International Association of Collaborative Practitioners and other sources. The panels will consist of collaborative practitioners: financial experts, attorneys and mental health professionals.

For more information, contact Susan Wolf at [susan.wolf@pabar.org](mailto:susan.wolf@pabar.org). To register, visit [www.bit.ly/PBACol-lab](http://www.bit.ly/PBACol-lab). ⚖️

# Harriet Tubman Museum Program Draws Attendees



Cynthia Mullock, left, founding executive director of the Harriet Tubman Museum, Cape May, N.J., provided a two-hour CLE live web-cast presentation about the museum on March 11. Mullock joined PBA President Kathleen D. Wilkinson, right, and the PBA Minority Bar Committee, the Commission on Women in the Profession and the Diversity, Equity and Inclusion (DEI) Team in the program. Mullock guided the museum from a local preservation project to a nationally recognized museum in Cape May, where Tubman lived. The museum is recognized by the *Smithsonian* magazine as one of the “10 Most Anticipated Museums in the World” for 2020. Phil Yoon, chair of the PBA DEI Team, and Tony Cox, co-chair of the Minority Bar Committee, co-moderated the well-attended event.

## Local Bar Associations Receive Awards at Conference

The PBA presented County Bar Recognition Awards to 23 local bar associations during the in-person 56<sup>th</sup> Annual Seminar of the Conference of County Bar Leaders on Feb. 25 in Lancaster.

The awards, which are noncompetitive in nature, annually recognize bar associations throughout Pennsylvania for projects that improve the legal profession, justice system and community.

“PBA is honored to highlight the numerous local bar association projects and programs aimed at improving communities and the legal profession,” said PBA President Kathleen D. Wilkinson. “We commend the many dedicated volunteers who serve as an inspiration for others to participate in future endeavors that can benefit Pennsylvania residents.”

The following county bar associations received awards for notable

projects and programs:

**Allegheny County Bar Association:** Law Day Videos and Speaker Series Project

**Beaver County Bar Association:** Charitable Donations, Children and Youth Holiday Drive, Appellate Advocacy Program

**Berks County Bar Association:** DACA Status Renewal Project

**Bucks County Bar Association:** Wellness Program, Veterans’ Treatment Program

**Chester County Bar Association:** DeafCan!

**Cumberland County Bar Association:** Adopt-A-Family, Adulting!?, Law Day

**Dauphin County Bar Association:** Virtual Bench Bar

**Delaware County Bar Association:** 1724 Courthouse Committee, Guy G. deFuria Inn of Court

**Erie County Bar Association:**

Erie County Pardon Project, LRIS Task Force

**Franklin County Bar Association:** Law Day Presentation for 8<sup>th</sup> Graders

**Lackawanna Bar Association:** Courthouse History and Preservation

**Lancaster Bar Association:** First Golf Outing, Diversity Committee Revitalized

**Lycoming Law Association:** Angel Tree Holiday Toy Drive, Lycoming Law Association Foundation, Project Linus

**Monroe County Bar Association:** Law Day Race, Wills for Heroes

**Montgomery Bar Association:** Diversity Network Initiative, Law Day and Naturalization Ceremony, Member-Wellness Initiatives

**Northampton County Bar Association:** Health and Wellness

Committee

**Philadelphia Bar Association:** Eviction Diversion Program

**Schuylkill County Bar Association:** Judicial Testimonial

**Union Snyder County Bar Association:** Evictions Emerging from Lockdown

**Washington County Bar Association:** Expungement Clinic, “Thanks a Latte!”

**Westmoreland Bar Association:** Distance Learner Provider, G-Fund Grant, Mother’s Day Clothing Drive

**Wilkes-Barre Law & Library Association:** Civil Litigation Update and Women of the U.S. Supreme Court, Trial of *Commonwealth v. S. Claus* CLE, Workers’ Compensation Office Adjudication

**York County Bar Association:** Impact Grants, Legal Aid and Scholarships; Judicial Voter Education; PFA Day. ⚖️

## Esteemed Jurists, Attorneys Address Critical Issues at PBA's First International Women's Program

On March 8, PBA President Kathleen D. Wilkinson welcomed the panel of esteemed jurists and lawyers to the PBA's first International Women's Day, a program co-sponsored by the PBA Commission on Women in the Profession and the Minority Bar Committee.

Wilkinson stated that the PBA was marking this global day of recognition to spotlight the many achievements of women and to raise awareness and encourage others to advocate for gender equality.

This day of recognition dates back to the early 1900s, when 15,000 women flooded the streets of New York City to march for better working conditions, pay and voting rights.

The first National Women's Day was conducted in 1909 and spread to several different countries around the world, with the goal of educating and empowering all women. This year's theme was #BreakTheBias, and addressed the topics of eliminating

bias, stereotypes and discrimination, and how to create gender quality in workplaces and communities.

Wilkinson's quote for the day was by world-esteemed tennis player Serena Williams: "Every woman's success should be an inspiration to another. We're strongest when we cheer each other on."

The speakers included Pennsylvania Supreme Court Justice Sallie Updyke Mundy; President Judge Emeritus of the Supreme Court of Pennsylvania Susan Peikes Gantman; Allegheny County Court of Common Pleas President Judge Kim Berkeley Clark; retired Montgomery County Court of Common Pleas Judge Cheryl L. Austin; Aurora Austriaco, past president, National Conference of Bar Presidents, and past president of the Chicago Bar Association; and Jeralyn Lawrence, president-elect, New Jersey State Bar Association, and president, New Jersey Chapter AAML. The program was moderated by Jennifer S. Coat-



PBA's first International Women's Day program was co-sponsored by the PBA Commission on Women in the Profession and the Minority Bar Committee.

sworth and Stephanie F. Latimore, co-chairs of the PBA Commission on Women in the Profession.

The panelists discussed career paths and obstacles they overcame, thoughts on gender parity, what advice they would give to themselves

and to others and what they learned during the pandemic.

PBA members can view the program online at any time: <https://www.pabar.org/video/2022/WIP-IntlWomensDayProg3822.mp4>.

## Mandelbaum to Receive PBA Environmental and Energy Law Section Lifetime Achievement Award

David G. Mandelbaum, shareholder at Greenberg Traurig, Philadelphia, will be honored with the 2022 PBA Environmental and Energy Law Section Lifetime Achievement Award during the Environmental Law Forum, April 13, at Harrisburg Hilton & Towers.



David G. Mandelbaum

The award honors contributions made to the section and general efforts that enhance the development, improvement and furtherance of the practice of environ-

mental law that benefit the community or represent outstanding personal achievement.

At Greenberg Traurig, Mandelbaum's practice focuses on environmental litigation; federal regulatory and administrative law; renewable energy; trial practice; and environmental, social and governance issues.

During his 39-year career, Mandelbaum has tried or served as lead counsel for numerous large cases, including *United States v. Atlas Minerals*, the first multigenerator Superfund contribution case to go to trial in 1993. His other cases have addressed a variety of environmental protection issues, including groundwater and soil contamination; air pollution permits; and oil, gas and mineral rights disputes.

Mandelbaum's accolades include being named Lawyer of the Year for

environmental law and litigation in *The Best Lawyers in America*, Energy and Environmental Trailblazer in National Law Journal and expert in energy and environmental law in *Euromoney's Expert Guide to the World's Leading Experts in Environmental Law*.

An adjunct law professor, Mandelbaum teaches oil and gas law, environmental law and Superfund litigation at Temple University Beasley School of Law in Philadelphia and environmental litigation at Suffolk University Law School in Boston.

Named a Fellow of the American College of Environmental Lawyers in 2020, Mandelbaum's professional affiliations include serving as vice chair, Pennsylvania Statewide Water Resources Committee; member, Delaware Valley Regional Planning Commission; chair, Special Committee on Smart Growth and Urban

Policy, American Bar Association; member, Environmental Law Section, Boston Bar Association; and member, Environmental and Land Use Section, Florida Bar Association.

Within PBA, Mandelbaum has served as chair, Environmental and Energy Law Section, and mentor for attorneys volunteering for the section's pro bono program.

Mandelbaum graduated with a bachelor's degree from Harvard College and with a Juris Doctor degree from Harvard Law School.

The Environmental Law Forum will feature updates on energy, conventional land developments, environmental litigation, changing laws, developing legislation, new technologies and more. For additional information, visit <https://www.pbi.org/Meetings/Meeting.aspx?ID=39684>.

# PBA President's Statement on Ukraine: Ways to Help, Call for Action

PBA President Kathleen D. Wilkinson has issued the following statement requesting that members offer their assistance to the people of Ukraine:

“As the days of Vladimir Putin's directed Russian attacks on Ukraine have turned into weeks, many of us are continuing to search for ways we might help those trapped in or attempting to escape the ravages of war. The death toll continues to rise, and

among those killed are innocent children and elders. Three million people have left Ukraine, most of whom are mothers and children.

“The Pennsylvania Bar Association, including its Immigration Law Committee, its Civil and Equal Rights Committee and its Legal Services to the Public Committee, among others, have long advocated for civil rights and for providing pro bono legal assistance to those in need. Pennsylvania is home to more than 122,000 Ukrainians and Ukrainian-

Americans. Pennsylvania has the second highest number of Ukrainian residents among the 50 states. Pennsylvania also has deep commercial relationships with Ukraine. Many Pennsylvania lawyers and paralegals have Ukrainian heritage.

“I am encouraging PBA members to consider demonstrating their concern and support for the people of Ukraine by serving as volunteers for a new pro bono effort. U.S. Department of Homeland Security Secretary Alejandro Mayorkas has officially designated Ukraine for Temporary Protected Status (TPS). TPS is a form of immigration relief offered to foreign nationals in the United States whose home countries are considered unsafe.

“The Pennsylvania Bar Association Immigration Law Committee is preparing to present a training session on Temporary Protected Status so that Pennsylvania lawyers can be called into action should

Ukrainian immigrants need help upon their arrival to our commonwealth. The training session will be completed via Zoom. The date and time for the session will be announced soon. If you are interested in participating in this future training, please contact David Trevaskis, PBA pro bono coordinator. Send an email to [david.trevaskis@pabar.org](mailto:david.trevaskis@pabar.org) with the text, ‘Ukrainian TPS,’ in the subject line. You will be contacted with more information when it is available.

“If you are unable to give of your time to help and you have not already done so, please consider offering your financial support to these organizations or to others providing aid to Ukrainians:

- UNICEF ([unicefusa.org](http://unicefusa.org))
- Doctors Without Borders ([DoctorsWithoutBorders.org](http://DoctorsWithoutBorders.org))
- American Red Cross ([RedCross.org](http://RedCross.org))
- Global Giving ([globalgiving.org](http://globalgiving.org))
- Cooperation for American Remittances to Europe (CARE) ([care-international.org](http://care-international.org))

“The PBA is committed to the rule of law, to basic human and civil rights and to the independent sovereignty of Ukraine. Now is the time to demonstrate support through action, by volunteering to offer pro bono legal service and/or supporting the organizations that are directly aiding Ukrainians. Thank you for your consideration of these efforts.” 



## Upcoming Events

Unless otherwise noted, find more information in the PBA Events Calendar at [www.pabar.org](http://www.pabar.org) or call the PBA Member Services Center at 800-932-0311.

April 11	PBA Civil Litigation Section Philadelphia Regional Dinner
April 13-14	Environmental Law Forum
April 29-May 1	PBA Civil Litigation Section Retreat
May 11-13	PBA Annual Meeting
May 11	PBA Women in the Profession Commission Annual Conference
	PBA Board of Governors Meeting
May 12	PBA Committee/Section Day
May 13	PBA House of Delegates Meeting

Please check the PBA website ([www.pabar.org](http://www.pabar.org)) and PBI website ([www.pbi.org](http://www.pbi.org)) frequently for updates.

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