20th Annual Environmental Law Forum Recipient of ABA Section of Environment, Energy and Resources 2016 State Bar Program of the Year Award

PBA President Sara A. Austin recently accepted the American Bar Association (ABA) Section of Environment, Energy and Resources 2016 State Bar Program of the Year Award on behalf of the PBA, the PBA Environmental and Energy Law Section and the Pennsylvania Bar Institute (PBI) for their roles in the 20th Annual Environmental Law Forum, held in April 2015.

The award recognizes “the best continuing legal education program or public service project of the year focused on issues in the field of environmental, energy or natural resources law” and was presented during an Aug. 7 ceremony at the ABA Annual Meeting in San Francisco.

“For more than 300 years, Pennsylvania’s vast array of natural resources has been a source of leisure and livelihood for Pennsylvanians, [and] citizens of ‘Penn’s Woods’ have found opportunities for employment and productivity involving the state’s natural resources,” said Austin. “Today we recognize that Pennsylvania’s past progress has come with a price to its environment. And today our lawyers are committed to finding and maintaining that delicate balance between using our natural resources to preserve and create jobs for Pennsylvanians and protecting our precious environment for future generations.”

“The Pennsylvania Environmental Law Forum supports the work of our attorneys in the very complex and significant practice areas of environmental and energy law,” said Austin. “It is a valuable educational resource offering cutting-edge concepts and updates on legal trends and developments in the law. It also provides a unique social setting in which government and private lawyers can get to know each other.”

During the ceremony, Austin also recognized the leadership, scholarship and commitment of former section Chair John W. Carroll of the Harrisburg office of Pepper Hamilton LLP, current Chair Richard H. Friedman of the Harrisburg office of McNees Wallace & Nurick LLC and PBI Program Manager Stacey Thomas, all of whom were instrumental in the forum’s planning and staging.

“The 20th Annual Environmental Law Forum was attended by 381 persons and included 39 CLE courses taught by more than 100 faculty members,” noted Carroll. “The forum continues to be the premier continuing legal education event in the field of environmental law, and much of the credit for its success lies with Stacey Thomas and section volunteers who plan and organize this annual program.”

In conjunction with the forum, PBA section members raised $30,000 in sponsorships, used to fund law-student scholarships to attend the forum as well as a $10,000 summer internship scholarship. The section also hosted a reception for attendees and presented awards for pro bono work in environmental and energy law, the Pennsylvania Lawyers United for Sustainability Award and the annual Environmental Law Achievement Award.

From left: Seth A. Davis, 2016-17 chair, ABA Section of Environment, Energy and Resources; Sara A. Austin, PBA president; and William W. Kinsey, 2015-16 chair, ABA Special Committee on Annual Awards.
PEOPLE IN THE NEWS

Appointed/Elected

On boards and committees of the Supreme Court of Pennsylvania: Bruce L. Castor Jr., Dauphin County, appointed, Criminal Procedural Rules Committee; Kathryn M. Kenyon, Allegheny County, appointed, Disciplinary Board hearing committee; Magisterial District Judge Anthony W. Saveikis, Allegheny County, named chair, Minor Court Rules Committee; and Gretchen L. Kelly, Allegheny County, named vice chair, Pennsylvania Interest on Lawyers’ Trust Accounts Board, with Washington County Judge Katherine B. Ebery appointed.

Zachary M. Rubinhof of the Philadelphia office of Rawle & Henderson LLP, reappointed vice chair, American Bar Association (ABA) Tort Trial and Insurance Practice Section Workers’ Compensation and Employers’ Liability Law Committee.

Mary Ann Plankinton of the West Chester office of Gawthrop Greenwood PC, named to the board, Hope Springs Equestrian Therapy, Chester Springs, “a nonprofit that provides therapeutic horseriding.”

Joseph A. Fitzpatrick Jr. of the Center Valley office of Fitzpatrick Lentz & Bubba PC, named to the board of Team Pennsylvania Foundation, “a public/private partnership that initiates and supports innovative programs to improve Pennsylvania’s competitiveness and economic prosperity.”

Michael E. Peters of the Doylestown office of Eastburn and Gray PC, elected to the board of Bucks Beautiful, which “promote[s] and extend[s] the development of gardens in communities, towns, along roads, business premises and private homes.”

Thomas A. Capehart of the Allentown office of Gross McGinley LLP, appointed chair, East Penn Chamber of Commerce.


The appearance of a product advertisement herein does not constitute an endorsement of the product by the Pennsylvania Bar Association.

J. Stephen Feinour of Nauman Smith Shissler & Hall LLP, Harrisburg, installed as president of the Rotary Club of Harrisburg.

Mary Ann Plankinton

Plankinton

Amy R. Stern of the Lansdale office of Rubin, Glickman, Steinberg & Gifford PC, elected board co-chair, Montgomery County Women’s Center.

Thomas A. Capehart

Capehart

William J. Phelan IV of the Philadelphia office of Cordell & Cordell PC, appointed to the board, Catholic Charities Appeal of Greater Philadelphia.

continued on Page 10
Dickinson Law Professor Katherine C. Pearson Receives Excellence in Elder Law Award

The PBA Elder Law Section presented its Excellence in Elder Law Award to Katherine C. Pearson, professor of law at Penn State Dickinson Law, Carlisle, during the 19th Annual Elder Law Institute July 21 in Lancaster.

The award recognizes Pearson for her “superior professional efforts in the field of elder law, significant contributions to the legal profession, and noteworthy service to the elderly.”

Pearson teaches courses on elder law; wills, trusts and estates; nonprofit organization law; and contract law. For nearly 20 years, her academic focus has been on laws and policies connected to aging. She served for more than 10 years as director of the Penn State Elder Protection Clinic.

Pearson is the author of articles and book chapters on long-term care, financing issues and filial obligations, and is co-author of *The Law of Financial Abuse and Exploitation*.

She has served in positions on national and state organizations, including the National Academy of Elder Law Attorneys. She is a past chair of the PBA Elder Law Section.

In 2013-14, Pearson served as a member of the Pennsylvania Supreme Court Elder Law Task Force.

She is a co-editor and a regular writer for the Elder Law Prof Blog, http://lawprofessors.typepad.com/elder_law.

**Editor’s note:** The dates for the 23rd Annual Estate Law Institute that appeared in the Aug. 8 issue of the *Pennsylvania Bar News* were incorrect. The institute will take place Nov. 8-9 in Philadelphia. Find more information at http://catalog.pbi.org/store/seminar/seminar.php?seminar=74557.

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**DATE & LOCATION**

8:50 am to 4:30 pm; check-in begins at 8:15 am
Lancaster | Fri., Oct. 7, 2016
Lancaster Marriott at Penn Square
25 South Queen St.

**TOPICS**

- Federal Practice
- Introduction to Special Education Law
- New ODR Procedures, Virtual Hearings, Exhibits
- Educating Students With Intellectual Disabilities
- When Is a Violation of FAPE a Procedural Violation?
- Discipline
- Ligonier Decision One Year Later
- Special Ed Compliance Complaints to the PA Department of Education
- Early Intervention and Transition to School Age
- Why Hasn’t This Case Settled?
- Extended School Year
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Your Final Wake-Up Call

As I write this article the baby-boom-generation law-firm partners are marching steadily toward retirement. The amount of law-firm income generated by this group is disproportionately higher than their numbers, which does not bode well for profits-per-partner after their departure.

I first wrote about the necessity of planning for this eventuality in an article titled “Preparing to Say Goodbye to the Baby Boomers” in 2006. You can’t say you weren’t given fair warning. Yet most firms have done nothing. And, as a predictable result, calls related to succession, retirement and firm survival are coming in to the PBA Law Practice Management hotline with increasing frequency.

For many firms it is already too late to alter the chain of events that will unfold. There will be a lot of disruption as firms collapse and attorneys left behind are cast adrift. Are any of the following scenarios playing out at your firm? Are any foreseeable in the not-too-distant future?

- Many of those about to withdraw have unrealistic expectations about buyout. Or worse, your firm defined expectations in a different economy and now can’t get agreement to make changes to take the current marketplace into account.

- Your firm has senior partners who continue to receive significant shares of profits and who refuse to step down. And why should they, other than from a sense of fair play? It is either causing the loss of younger partners who are earning disproportionately less of the profits they create or it is a real threat to the retention of those younger partners.

- A significant number of senior rainmakers are about to retire, and their retirement will leave the firm without sufficient revenue to cover ongoing operational expenses. The partners who will remain are suddenly aware that they may become the “last man standing” and are desperately looking for solutions or escape.

- Your firm lacks a solid “next generation” to retain clients, generate sufficient revenue and perpetuate the firm.

- Your firm’s senior rainmakers are showing no interest in ensuring the transition of clients and referral sources to others in the firm. In fact, as they age they may be becoming even more protective of relationships.

- You are a solo practitioner within five to 10 years of retirement — or fewer — and have no method for determining the value of your firm for eventual sale or creating an exit strategy.

Do you recognize your firm here? If so, let me be clear: There are no magic solutions. I have no trick cards up my sleeve. Nothing will turn you suddenly and effortlessly from your current path to one with a better destination. However, putting your head in the sand only ensures that the situation will play out in the worst possible manner.

If you are a PBA member, pick up the phone or mouse and get in touch with me (800-932-0311, ext. 2228, or lawpractice@pabar.org). There is no cost to you. Put it on your calendar if you’re too busy now. Don’t just hope the situation will go away.

I will let you know the options available to you and help you to explore any that appeal to you.

[T]here is a window of opportunity open right now ... for those who are willing to take a calculated risk.

Before I close I want to offer a thought for those of you who are younger. You are probably not aware that there is a window of opportunity open right now. It’s wide open, in fact, for those who are willing to take a calculated risk. A huge number of small-firm and solo lawyers, especially in smaller communities, have practices begging for a successor. If you would like to have your own firm someday but can’t afford to build a firm from scratch or to buy into one, you have a real opportunity right now.

But the opportunity won’t last forever. I promise you that in another 10 years we will have worked through this transition. Many long-established firms will have vanished. Many attorneys who have spent long careers servicing the clients of others will be in the unenviable position of being forced into early retirement or transitioning to other careers. Pennsylvania is currently outpacing the rest of the nation in the number of mergers of small and midsize firms. For some entrepreneurial attorneys and firms it will be a turning point to a more lucrative and satisfying situation.

For some entrepreneurial attorneys and firms it will be a turning point to a more lucrative and satisfying situation.

Most support staff need not worry. There is a real shortage of experienced staff, and those who are willing to adapt to new environments, procedures and technologies will thrive.

So there you have it. I promise this is your final warning from me.
BANKRUPTCY

BANKRUPTCY COURT — EASTERN DISTRICT

ATTORNEY’S FEES — lender failure to comply with preforeclosure notice requirements — Act 6 — 41 P.S. 403 — Chapter 13 — Nguyen opinion — prediction re Pennsylvania Supreme Court — legislative intent — determination of amount of secured claim — 11 U.S.C. 502 — claim separate from total secured claim — debtor burden of proof — reconsideration — Fed.R.C.P. 59 — objection to proof of claim sustained in part — request of court to determine amount of secured claim

In re Sellers, No. 15-14723 ELF (Aug. 3, 2016) — Debtor in Chapter 13 proceeding not entitled to attorney’s fees based on lender failure to comply with preforeclosure notice requirements of Act 6, 41 P.S. 403.

CIVIL LITIGATION

SUPERIOR COURT

SLIP AND FALL — snow and ice — parking lot — entity hired to clean parking lot — liability of parent corporation — negligent hiring and supervision — Restatement (Second) of Torts 324A — POST-TRIAL MOTIONS — specificity — Pa.R.C.P. 227.1 — removal of compulsory nonsuit — claims consistent with theories at trial — addressed by trial court in Rule 1925 opinion — language of pleadings — no waiver — name of parent corporation on paycheck insufficient to avoid nonsuit. Issues not waived for failure to raise in post-trial motions when allegations of errors raised consistently asserted throughout trial and clearly conveyed to trial court and trial court able to address those issues in Rule 1925 opinion.

NEGLIGENCE — EXPERT TESTIMONY — fungal-related histoplasmosis — exposure to hay dust and farm-related excrement — farm-related chores — failure to show fungus present at location of plaintiff — no soil tests — histoplasmosis at unidentified point — speculation — conjecture — summary judgment for defendant affirmed

Krishack v. Milton Hershey Sch., 2016 PA Super 180 (Aug. 15, 2016) — Summary judgment for defendant affirmed in negligence action asserting plaintiff developed histoplasmosis while doing farm work at school and from exposure to hay dust and farm-related excrement when no evidence fungus responsible for histoplasmosis was ever present at school.

affirmed when parent corporation did not retain control over manner of snow removal by entity hired to do so; name of parent corporation on paycheck insufficient to avoid nonsuit. Issues not waived for failure to raise in post-trial motions when allegations of errors raised consistently asserted throughout trial and clearly conveyed to trial court and trial court able to address those issues in Rule 1925 opinion.

CIVIL PROCEDURE

SUPERIOR COURT

WAIVER — Rule 1925(b) — 87 unnumbered issues — failure to set forth claims in concise manner — conventional breach-of-contract claim — trial court’s refusal to draft opinion — BAD FAITH — dismissal of claims proper — TIMELINESS — STATUTE OF LIMITATIONS — 42 Pa.C.S. 5524(7) — fraud — discovery rule not applicable — alleged fraudulent change to terms of sale — parties not prevented from discovery of fraud action — consolidated appeals — judgment affirmed

Mahonski v. Engel, 2016 PA Super 172 (Aug. 8, 2016) — No error by trial court in finding issues in relatively uncomplicated breach-of-contract case are waived when Rule 1925(b) statement of matters complained of sets forth 87 unnumbered issues for review, causing trial court to refuse to write opinion addressing issues since party acted in bad faith.

CIVIL RIGHTS

THIRD CIRCUIT

EXCESSIVE-FORCE CLAIM — PRISONER — EXHAUSTION OF ADMINISTRATIVE REMEDIES — Prison Litigation Reform Act — attempts to use grievance procedure — pursuit of claim correct at every step — failure to provide response to plaintiff — REMEDIES AVAILABLE — summary judgment for defendant vacated
inferm-assistance-of-counsel hearing reversed

Com. v. Kingston, No. 45 MAP 2015 (Aug. 15, 2016) — Section 906 of Crimes Code, 18 Pa.C.S. 906, bars convictions only for multiple, distinct inchoate crimes, not for two or more counts of same inchoate crime.

CRIMINAL PROCEDURE

SUPERIOR COURT

SPEEDY TRIAL — Pa.R.Crim.P. 600 — remand — defendant incarcerated on other charges — released on bail on current charges — 365 days from date of remand — order granting motion to dismiss vacated

Com. v. Wilson, 2016 PA Super 175 (Aug. 11, 2016) — Order that granted motion to dismiss under Rule 600 vacated since, at time of remand, commonwealth has 365 days to try case when, though defendant is incarcerated, he has been released on bail on current charge.

CRIMINAL INFORMATION — DUI — Section 3802(a)(2) — Vehicle Code — 75 Pa.C.S. 3802(a)(2) — incapability of safe driving — accident causing bodily injury or property damage — specification in information — notice to defendant of increased sentence — Alleyne and Hopkins opinions — no right to jury — Article I, Section 9 — state constitution — minor offense — maximum term of imprisonment six months — judgment of sentence affirmed

Com. v. Langley, 2016 PA Super 179 (Aug. 12, 2016) — Inclusion on criminal information of allegation that defendant involved in accident that caused bodily injury or property damage as part of DUI charge proper since such facts, if proven, would increase prescribed penalty.

EVIDENCE

SUPERIOR COURT

VEHICULAR OFFENSES — FATAL AUTOMOBILE CRASH — EVIDENCE OF PRIOR VEHICULAR CRIMINAL OFFENSE — prior bad act — Pa.R.E. 404(b)(2) — homicide by vehicle — Section 3732 — Vehicle Code — 75 Pa.C.S. 3732 — recklessness — EVIDENCE OF CONSUMPTION OF ALCOHOL — no testimony or observations regarding intoxication — evidence not admissible — anticipated guilty plea to offenses arising from same incident — crim in falsi — issue not ripe — advisory opinion not rendered — interlocutory appeal — en banc court — order precluding evidence of prior conviction reversed — order precluding evidence of alcohol consumption affirmed

Com. v. Suter, 2016 PA Super 168 (July 26, 2016) — Evidence of prior vehicular-criminal offense is admissible in prosecution for offenses arising from fatal traffic accident, but finding evidence of alcohol consumption not admissible when no evidence or suggestion defendant was intoxicated at time of incident.

AGGRAVATED ASSAULT — ENDANGERING WELFARE OF CHILD — INJURY TO CHILD AT DAY CARE — evidence of divorce of defendant two years after incident — testimony of police regarding credibility of defendant — evidence of victim diagnosis of estrpia two years after incident — relevancy — judgment of sentence vacated

Com. v. McClure, 2016 PA Super 171 (Aug. 8, 2016) — Judgment of sentence for aggravated assault and other charges arising out of injuries to infant at child care center run by defendant vacated since reversible error to permit evidence related to divorce of defendant that occurred two years after incident.

FEDERAL CIVIL PROCEDURE

THIRD CIRCUIT

UNSEALING OF DOCUMENTS — sealed as part of prior civil case — confidential settlement agreement — MOOTNESS — documents disseminated in public — attempt to slow dissemination — possible use in litigation — Local Rule 1.5 — prior sealed documents unsealed — INABILITY TO PROVIDE EFFECTIVE RELIEF — order unsealing documents vacated

Constand v. Cosby, No. 15-2797 (Aug. 15, 2016) — Appeal from order unsealing documents that had been part of prior litigation that ended with confidential settlement dismissed as moot when, shortly after documents unsealed, they were publicly and widely disseminated; court lacks ability to provide effective relief despite argument that order would provide ability to slow additional dissemination and possibly affect other civil litigation.

FEDERAL CRIMINAL PROCEDURE

THIRD CIRCUIT


U.S. v. Rengifo, No. 15-1779 (Aug. 5, 2016) — “Term of imprisonment” as used in U.S.S.G. 4A1.2(k) is synonymous with “sentence of imprisonment” for purposes of determining whether career-offender provisions apply.

continued on Page 7
REAL ESTATE 101
Basic tools of the trade

LEARN THE FUNDAMENTALS OF A RESIDENTIAL REAL ESTATE TRANSACTION

- Pre-agreement of sale
- Managing client expectations
- Licensing Act
- Dealing with brokers
- Listing agreement
- Agreement of sale
- Contingency clauses
- Negotiating from buyer/seller perspective
- What to expect during inspection
- Due diligence /sellers disclosure
- The seller’s disclosure statement
- Title insurance
- Buyer’s perspective: final walkthough, title commitment, U&O
- Seller’s perspective: deed
- Lender’s perspective: loan disclosure, loan documents

IMMIGRATION LAW FORUM

LEARN THE LATEST DEVELOPMENTS IN IMMIGRATION LAW
Discover the current developments as well as ongoing substantive aspects of the practice of immigration law.

FIND OUT WHAT IS NEEDED FOR OBTAINING NONIMMIGRANT (TEMPORARY) AND PERMANENT STATUS
Information provided by our panelists will focus on current issues involving H-1B, L-1, TN and other nonimmigrant statuses. They will discuss procedures involved for those presently awaiting entrance to the U.S. Our experienced, knowledgeable practitioners will discuss eligibility and processes involved in obtaining permanent status in the U.S. via family immigration, employment-based immigration, the labor certificate process, and individuals allowed to emigrate based on their outstanding and widely recognized credentials and more.

UNCOVER THE DETAILS OF THE ENFORCEMENT SIDE OF IMMIGRATION LAW
This course features a seasoned panel of immigration law attorneys. Witness first-hand how you can improve your practice to become a pro at representing your clients in issues such as grounds of inadmissibility and removal, possible waivers, procedures involved in removal proceedings and administrative and judicial review as well as possible remedies and defenses.

NEW TO MEDICARE?

ENROLLING IN MEDICARE

EXAMINE WHEN AND HOW TO ENROLL
Often, the hardest and most important decisions regarding the utilization of the Medicare system arise at the point when you become eligible to enter the system. It might appear to be relatively straightforward, but “when to enter Medicare and how to use the Medicare system” is, in fact, complex — and often confusing and frustrating.

EXPLORE HOW MEDICARE WORKS
What are the rules governing enrollment into Medicare and why may individuals wish to delay enrollment? To enroll, you need to know about access to care, benefits and costs. You’ll take a look at the various coverage components of the Medicare system, what each part covers and how they coordinate with each other (and with health coverage components outside the Medicare system), and how to use these components to create an effective individual coverage strategy. Topics include:
- What is Medicare?
- What are the eligibility criteria?
- How and when do I enroll?
- Current parts of the Medicare system

WHO SHOULD ATTEND?
It’s imperative that you understand the options, deadlines and landmines to avoid if you fall into these categories:
- You serve clients who will rely on Medicare for their health care coverage
- You will soon be eligible for Medicare yourself
CIVIL PRACTICE IN THE LEHIGH VALLEY, THE POCONOS AND BEYOND
A basic guide to handling cases in Berks, Carbon, Lehigh, Monroe, Northampton and Pike counties

DO YOUR CASES TAKE YOU ACROSS COUNTY LINES? IF THEY DON'T, WOULDN'T YOU LIKE THEM TO?
Local rules and practices can be different from one county to the next, and not knowing and understanding those nuances can result in a major misfortune for your client. This practice guide is your key to increasing your confidence, your competitive edge, and your caseload!

LEARN HOW TO MOVE YOUR CASE FROM FILING THROUGH TRIAL
Experienced attorneys highlight and compare procedural and tactical methods for practicing within his or her county. This “nuts and bolts” course includes hot tips for navigating through the written and unwritten rules in each county.

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THE INCREASING CRIMINALIZATION OF FEDERAL SECURITIES LAWS
PREPARE FOR GROWING FEDERAL SCRUTINY
There’s been a significant increase in criminal prosecutions of securities cases in recent years. The SEC is giving law enforcement authorities more access to its files, coordinating efforts with criminal investigators on cases ranging from false valuations and hidden fees to insider trading and microcap fraud. This course will examine the increasing trend of the SEC to collaborate with and refer cases to criminal authorities, along with the challenges and dangers this presents for practitioners and their clients.

TOPICS WILL INCLUDE:
- Jurisdictional overlap
- Parallel proceedings
- Multiple representations
- Tactical considerations

3 SUBSTANTIVE CLE CREDITS | 1 ETHICS
DATE & LOCATIONS
9:00 am to 1:15 pm; check-in begins at 8:30 am
Philadelphia | Thu., Sep. 29, 2016
Simulcast | Thu., Sep. 29, 2016
Pittsburgh

5 SUBSTANTIVE CLE CREDITS | 1 ETHICS
DATE & LOCATION
8:30 am to 3:45 pm; check-in begins at 8:00 am
Bethlehem | Tue., Sep. 27, 2016
Best Western Lehigh Valley Hotel and Conference Center
300 Gateway Drive

20TH ANNUAL FAMILY LAW UPDATE
THE MOST SUCCESSFUL LAWYERS IN FAMILY LAW PRACTICE ARE THOSE WHO ARE BEST PREPARED
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The Family Law Update provides fresh perspectives and insightful analysis that enables nearly everyone to take home something they can use to make an immediate impact on their practices.

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Each of our panels includes a sitting judge who offers important insight as to what courts in their area have noted within the twelve months.

3 SUBSTANTIVE CLE CREDITS
DATE & LOCATIONS
8:45 am to 12:00 pm; check-in begins at 8:15 am
Philadelphia | Thu., Oct. 6, 2016
Mechanicsburg | Tue., Oct. 25, 2016
Live Webcast | Tue., Oct. 25, 2016
Go to webcasts.pbi.org to register.
Simulcast | Tue., Oct. 25, 2016

Registration Policy:
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LOCATIONS
☐ Pittsburgh | Thu., Sep. 22, 2016
☐ Mechanicsburg | Fri., Oct. 7, 2016

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LOCATIONS
☐ Pittsburgh | Thu., Sep. 22, 2016
☐ Mechanicsburg | Fri., Oct. 7, 2016

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☐ $115  $90   $165  Judges and judicial law clerks admitted after 1/1/12

LOCATIONS
☐ Simulcast | Fri., Sep. 23, 2016

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**ABOUT THE AUTHORS**

Erin M. Fagnilli, Esq.
Ms. Fagnilli is vice president and counsel in the Pittsburgh, Pennsylvania, office of Chicago Title Insurance Company. She has substantial experience in underwriting commercial transactions, as well as an expansive knowledge of agency underwriting issues. She is a graduate of Duquesne University, summa cum laude, and of Duquesne University School of Law. Prior to being in the title insurance industry, Ms. Fagnilli was in private practice, where she focused on the areas of commercial real estate development, title insurance, general real estate matters, and estate administration. She has lectured for Pennsylvania Land Title Institute and Pennsylvania Bar Institute programs.

Frank Kosir, Jr., Esq.
Mr. Kosir is counsel to Meyer, Unkovic & Scott LLP, and is a member of the firm’s Real Estate and Lending, Litigation and Dispute Resolution, Corporate and Business Law, and Construction Law Groups. He has significant civil litigation and general practice experience in all areas of real property law and, prior to entering the practice of law, acquired extensive experience in all facets of real estate development, sales, construction, and leasing with his family’s home construction company, which has operated for more than 55 years. In his practice, he represents clients in a wide range of matters including commercial and residential real estate tax assessment appeals, commercial and residential sales and leasing, oil and gas lease negotiations, boundary line disputes, title defense, commercial and residential landlord/tenant proceedings, eminent domain proceedings, condemnation and eminent domain creation and amendment, construction disputes, and zoning and land use issues. Mr. Kosir received his undergraduate degree, summa cum laude, from Washington and Jefferson College and his J.D. from Duquesne University School of Law.

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**CONTENTS**

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- The Exclusionary Rule
- Probable Cause
- Search Warrants
- Consent Searches and Seizures
- Plain-View Searches
- Searches Incident to Arrest
- Car Searches
- Investigative Detentions
- Regulatory, Administrative, and Special Needs Searches
- Table of Cases
- Index

**EXPERIENCED AUTHOR**

David Rudovsky, Esq.
Mr. Rudovsky has been a partner in the Philadelphia law firm of Kairys, Rudovsky, Messing & Feinberg, LLP, since its founding in 1971. He specializes in civil rights, civil liberties, and criminal defense litigation. From 1983 to 1987, Mr. Rudovsky was First Assistant Defender at the Defender Association of Philadelphia. He is currently President of the Board of Directors of the Defender Association and Vice President of the Pennsylvania Innocence Project. Since 1987, he has continued in his law practice and, in addition, has been a Senior Fellow at the University of Pennsylvania Law School, where he teaches courses in criminal law, criminal procedure, and evidence. He has argued two civil liberties cases before the U.S. Supreme Court, Forsyth v. Mitchell (governmental wiretapping), and City of Canton v. Harris (municipal liability for failure to properly train police). He has written several books regarding criminal procedure and civil liberties, including Police Misconduct: Law and Litigation. He has also published scholarly articles on governmental immunity and the criminal justice system. In 1986, Mr. Rudovsky received a MacArthur Fellowship for his work in criminal justice and civil liberties.
delay since no government misconduct; court rejects argument that defendant prejudiced by delay because it allowed prosecution to reach plea agreements with co-defendants and turn them against him.

FORFEITURE

COMMONWEALTH COURT

DUAL-PURPOSE ITEMS — TOBACCO ACCESSORIES — USED FOR SMOKING — not-guilty verdict on distribution of drug-paraphernalia charges — Section 13(a)(3) — Drug Act — possible use to ingest cannabis — Controlled Substances Forfeiture Act 42 Pa.C.S. 6801 — limited scope of review — knowledge of seller — no information provided on drug usage — order granting forfeiture petition reversed in part

Com. v. $603.45 U.S. Curr., No. 1382 C.D. 2015 (July 28, 2016) — Dual-purpose items not subject to forfeiture under Controlled Substance Forfeiture Act absent evidence that seller knew items would be used for illegal purposes.

INSURANCE

COMMONWEALTH COURT

CANCELLATION — homeowner’s policy — dog bite — payment of expenses by insurer — substantial change or increase in hazard — Section 5(a)(9) — Unfair Insurance Practices Act — 40 P.S. 1171.5(a)(9) — SUBSTANTIAL EVIDENCE — attack unprovoked — hearsay — statement recorded during investigation — representation by non-attorney — 1 Pa. Code 31.21 — permission by department — collateral estoppel not applicable — sufficiency of cancellation form — order finding no violation affirmed

Skotnicki v. Ins. Dept., No. 156 C.D. 2015 (Aug. 17, 2016) — When testimony that dog of insured bit person who walked up rapidly to begin conversation on public street, substantial evidence supports finding that dog bite unprovoked and no violation of Unfair Insurance Practices Act by canceling policy on such basis due to substantial change or increase in hazard. Representation of party by non-attorney permitted when department expressly permitted person to do so in specific case.

IMPLIES CONSENT

COMMONWEALTH COURT

REASONABLE GROUNDS TO BELIEVE LICENSEE DUI — Section 1547 — Vehicle Code — 75 Pa.C.S. 1547 — disabled vehicle on roadway — no occupant — scratches on passenger side — approach of defendant — glassy eyes — slurred speech — odor of alcohol — admission to driving vehicle — lack of car keys — credibility of officer testimony regarding admission of driving — order sustaining appeal from suspension vacated

SUSPENSION FROM EMERGENCY-SERVICE TOWING ROTATION — adjudication — Section 754 — Local Agency Law — 2 Pa.C.S. 754 — liberty interest — “stigma-plus” test — reputational interest — HEARING AND RIGHT TO APPEAL REQUIRED — order denying appeal reversed


PCRA

SUPREME COURT

REMAND — SPECIFIC INSTRUCTIONS — NEW CLAIMS RAISED BY PETITIONER OUTSIDE REMAND ORDER — amendment of petition not permitted — timeliness — pro se filing — Pa.R.Crim.P. 576(A)(4) — issues raised in initial petition fully addressed — order granting permission to amend petition vacated in part

Com. v. Sepulveda, No. 712 CAP (Aug. 15, 2016) — Following remand from appellate court with specific instructions, PCRA court may not treat new claims raised by petitioner that are outside the scope of remand order as amending first timely PCRA petition.

SUPERIOR COURT

LACK OF FACE-TO-FACE MEETING WITH CLIENT BEFORE TRIAL — first-degree murder — privately retained counsel — inability to proceed on trial date due to personal issues — court-appointed counsel ordered to represent petitioner — prejudice — Pa.R.Crim.P. 907 — denial of petition reversed

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**PUBLIC SCHOOL EMPLOYEES**

**SUPREME COURT**

**AUTHORITY OF SCHOOL REFORM COMMISSION — Distressed School Law — Section 693 — unilateral alteration of terms and conditions of employment — teachers — represented by bargaining unit — statutory construction — plenary review — teacher contracts — order affirmed**

**RELIGION**

**THIRD CIRCUIT**

**ESTABLISHMENT CLAUSE — First Amendment — Section 1983 claim — POSTING 10 COMMANDMENTS IN PUBLIC SCHOOL — nominal damages — injunctive relief — STAND-UP**

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**SEXUAL OFFENDERS**

**SUPREME COURT**

**DURATION OF REGISTRATION REQUIREMENT — TWO OR MORE CONVICTIONS — recidivist philosophy — act required after conviction for first act — pleas to two offenses at same time — two reasonable interpretations of statute — Megan’s Law II — 42 Pa.C.S. 9795.1 — grant of mandamus relief affirmed**

**A.S. v. P.S.P., No. 24 MAP 2014 (Aug. 15, 2016) — Triggering language of two or more convictions in Megan’s Law II, formerly at 42 Pa.C.S. 9795.1, for lifetime registration as sexual offender requires act, conviction and subsequent act, not convictions for two offenses before conviction and sentence on one.**

**COMMONWEALTH COURT**

**MALIGNANT MELANOMA — FIREFIGHTER — Section 108(r) — 77 P.S. 27.1(r) — expert testimony — Sections 301(e) — Act 46 — not occupational disease — question of law — limited review — exposure to known carcinogen — Group I — International Agency for Research on Cancer — methodology — en banc court — order granting benefits vacated**

**City of Phila. v. W.C.A.B., No. 579 C.D. 2015 (Aug. 12, 2016) — To establish that firefighter’s cancer is occupational disease, firefighter must show that he has been diagnosed with type of cancer caused by exposure to known carcinogen recognized as Group I carcinogen; causal relationship between exposure to any Group 1 carcinogen and cancer insufficient. Once firefighter establishes type of cancer is occupational, statutory presumptions in Sec-

**SEARCH AND SEIZURE**

**SUPERIOR COURT**

**TRAFFIC STOP — driver failure to stop in legal parking spot — no occupants in vehicle with valid driver’s license — towing of vehicle is task tied to traffic stop — reasonable-suspicion standard applies — authority to order occupants to exit the vehicle — pat-down — drugs — firearm — totality of behavior — judgment of sentence affirmed**

**Com. v. Palmer, 2016 PA Super 170 (Aug. 4, 2016) — When officers properly stop vehicle for traffic violation, vehicle does not stop in legal parking spot and none of occupants has valid driver’s license, towing of vehicle is task tied to traffic stop, hence officers have authority to order occupants to exit so that vehicle may be towed and reasonable-suspicion standard applies to search of occupants.**

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People to People

If you’re a PBA member and you want the legal community to know about your appointment, promotion, recent speaking event or other law-related news, why not submit your announcement to run as a “People” item?

The most frequent types of “People” announcements we run are for appointments/elections, awards/honors, being published, firm moves and speaking engagements. We run items on recipients of county bar awards, but we do not list county bar appointments. We do not run prospective notices, particularly for speaking or meeting events, as these are subject to change, and we do not include lawyer and law-firm “best of” announcements. Given the PBA’s large member base, we also monitor for how frequently individuals are listed in the column. Photos are welcome, black and white or color. If provided electronically, photos should be high resolution. Most electronic photos we receive are as JPEG files.

The editors reserve the right to reject “People” submissions and to edit for style and length of announcement. Accepted announcements will appear in either the PBAs Pennsylvania Lawyer magazine or Pennsylvania Bar News tabloid, depending on when notices are received in the editorial cycle.

Email “People” column notices to editor@pabar.org or mail to the Pennsylvania Bar Association, Attn. People Column, 100 South St., P.O. Box 186, Harrisburg, Pa. 17108-0186.

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POSITION OPENING

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Court Summaries

Continued from Page 8

tions 301(e) and (f) of act, 77 P.S. 413 and 414, apply.

ZONING AND LAND USE

COMMONWEALTH COURT

DIMENSIONAL VARIANCE — MERGER-OF-LOTS DOCTRINE — no provision in zoning ordinance — construction of single-family residence — limited scope of review — lack of factual findings regarding dimensional variances — order denying variances reversed

Pittsburgh-based Maiello Brungo & Maiello LLP, appointed solicitor, Riverview School District.

**Awards/Honors**

Receiving awards from the ABA: **Judith A. Algeo** of the Doylestown office of Eastburn and Gray, ABA Family Law Section Jean Crowe Award, in recognition of “her dedication to representing and standing up for the underprivileged in Bucks County”; **Roberta D. Liebenberg** of Fine, Kaplan and Black RPC, Philadelphia, Margaret Brent Women Lawyers of Achievement Award, which recognizes “outstanding women lawyers who have achieved professional excellence in their area of specialty and have actively paved the way to success for others.”

**Firm Moves**

Matthew B. Andersen has joined as an associate in the business-law and liquor-law practice groups at the Allentown office of Norris McLaughlin & Marcus PA.

Julia Wu has joined as an associate at Maiello Brungo & Maiello.

**Speaking Out**

From Wisler Pearlstine LLP, Blue Bell: **Joseph M. Bagley** and **James J. Garrity**, co-presenting “Solicitor’s Roundtable: Six Signs That Someone May Be About to Litigate With the Township,” 91st Annual Conference of the Pennsylvania State Association of Township Commissioners, King of Prussia; **Lawrence D. Dodds**, on “Divorced Parents and the IDEA — From Evaluations and IEPs to Field Trips and School Events” at the Pennsylvania Bar Institute’s Snapshots of Special Education program.

**Deaths**

Allegheny County
Frank G. Adams, 52, Jefferson Hills

Chester County
Michael R. Sweeney, 71, West Chester, a former Delaware County family law judge pro tem

Monroe County
Robert G. Williamson Jr.*, 77, East Stroudsburg

Northampton County
3rd U.S. Circuit Court of Appeals Senior Judge Franklin S. Van Antwerpen, 74, Easton

Out of State
Edgar R. Casper*, 88, Tallahassee, Fla.
August C. Damian*, 82, Boca Raton, Fla.

*PBA 50-year member

Cross-Examination of the Defense Expert Neurologist” and “Discovery from Private Individuals in the United States” at the 2016 Annual Convention of the American Association for Justice, Los Angeles.

Jeffrey B. McCarron of the Philadelphia office of Swartz Campbell LLC, recipient of the Pennsylvania Defense Institute’s 2016 Distinguished Defense Counsel Award, which recognizes “a member of the civil-defense bar who best exemplifies the qualities of professionalism, dedication to the practice of law and promotion of the highest ideals of justice in the community.”

Brian M. Sears has joined as an associate at the Philadelphia office of The Chartwell Law Offices LLP.

Joining at offices of Leech Tishman: **Sharon Barney**, State College, as counsel in the family-practice group; **Molly A. Myers**, Pittsburgh, as an associate in the real-estate and corporate-practice groups.

At offices of Tucker Arensberg PC: **Kenneth J. McDermott** has joined the Harrisburg office; **Barry K. Nelson**, Pittsburgh, named to chair the firm’s new medical-marijuana practice group.

**Gallagher**

Jacqueline K. Gallagher of Obermayer Rebmann Maxwell & Hippel LLP, Philadelphia, on evidence-based practices for children with autism at an open house for the Evidence-Based Practice & Innovation Center, Philadelphia.


Nicole J. O’Hara of the Allentown office of Gross McGinley, on intellectual property considerations for artists entering art competitions for commissions, exhibitions and sales, at a program for artists hosted by the Lehigh Valley Arts Council.

2016-17 Bar Leadership Institute Class Attends YLD Summer Meeting/New Admittee Conference in State College

The PBA Bar Leadership Institute (BLI) 2016-17 class participated in the recent YLD Summer Meeting/New Admittee Conference in State College. Pictured are (front row, from left) Sarah L. Quinn, Andrew J. Throckmorton, PBA President Sara A. Austin, Dr. Jennifer K. Wagner, Rachel R. Hadrick, BLI Co-chair Melinda C. Ghilardi and Ashley M. Securda; (back, from left) Diana M. Collins, Edward A. Knafelc, Isaac A. Hof, Peter W. Klein, Denise C. Pekelnicky, Nicole Thurner-Kievit, BLI Co-chair Lisa M. Benzie, Zachary J. Kansler.

Loan Repayment Assistance Program Sets Oct. 17 Deadline

This month the statewide loan repayment assistance program (LRAP) administered by the Pennsylvania Bar Foundation (PBF) and the Pennsylvania Interest on Lawyers’ Trust Accounts Board (IOLTA) begins its seventh year of loan repayment assistance for attorneys employed in IOLTA-funded civil legal services organizations. Eligible attorneys have until Oct. 17, 2016, to submit the online application for loan assistance at www.paioltagrants.org.

The LRAP is a collaboration of the Pennsylvania Bar Foundation, the Pennsylvania Bar Association, the Pennsylvania IOLTA Board and the Supreme Court of Pennsylvania. The 2006 Report and Recommendation of the PBA Task Force on Student Loan Forgiveness and Repayment Assistance advocated for the establishment of a statewide LRAP. The IOLTA Board identified and recommended pro hac vice fees, the admission fee charged to out-of-state attorneys seeking to enter an appearance in a Pennsylvania case, to the Supreme Court of Pennsylvania as the revenue source to support the program. In 2007 the court ordered the establishment of the pro hac vice fee in Pennsylvania and dedicated the revenue to the support of the LRAP. Three years later the court doubled support by increasing the pro hac vice fee from $100 to $200.

In 2015 Chief Justice Thomas G. Saylor and the Pennsylvania Supreme Court reaffirmed the court’s commitment to increasing the pool of attorneys available to provide civil legal services to Pennsylvanians who cannot afford them by increasing Pennsylvania’s pro hac vice fee to $375, an amount still less than that charged by many other states.

The LRAP program provides for one-year loans, payable to qualified attorneys quarterly, with a 12-month employment requirement at an IOLTA-funded organization. Provided that a participating attorney remains in qualified employment and continues to meet the program’s other eligibility requirements, the attorney can apply for and receive up to 10 one-year loans over his/her tenure in qualified employment. The LRAP loans must be used to repay loans incurred for undergraduate and law-school educational costs and are forgiven at the end of each year if the eligibility requirements have been met. The amount of loan repayment assistance provided is determined by the number of eligible applicants and the amount of funding available.

Since its launch in 2010 the LRAP program has awarded more than 540 loans valued at more than $2 million to 191 attorneys employed by 29 IOLTA-funded civil legal services organizations across Pennsylvania.

For more information about the LRAP program visit www.pabarfoundation.org.

Government Lawyer of the Year Award Nominations Sought

The PBA Government Lawyers Committee is seeking nominations for the 2016 Government Lawyer of the Year Award. The award honors a practicing lawyer employed by any branch or level of government who has made a singular achievement that demonstrates an outstanding contribution to a governmental entity serving the citizens of the commonwealth or who has dedicated his or her career to a governmental entity for the benefit of the citizens of the commonwealth. The award will be presented at the PBA Committee/Section Day luncheon at the Red Lion Hotel Harrisonburg East, Harrisonburg, on Nov. 17.

The online nomination form can be found in the Government Lawyers Committee area of the PBA website at www.pabar.org. Nominations are due by Oct. 7.

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Members, Ensure the Accuracy of Your Listing in the 2017 Lawyers Directory & Product Guide — Sept. 16 Deadline

Preparations are underway for the 2017 edition of the Pennsylvania Bar Association Lawyers Directory & Product Guide, which will be available in mid-January. The editors are requesting assistance from all PBA members to ensure the accuracy of the information to be included in the 2017 volume.

Do you have a home office?
In an effort to protect members’ privacy, the directory does not list members at their home addresses unless they have indicated that their office and home addresses are the same. If you work at home but have not designated your home address as your office address for official mail, you should have received a postcard from the PBA asking you to verify that your home and office addresses are the same and that it is acceptable for the PBA to publish your address in the directory. If you have not received the postcard, you should contact Jodi Wilbert at the email address above.

Don’t want to be listed in the directory?
If you do not wish to be listed in the directory, please send your request in writing to Marcy C. Mallory, PBA Communications Director, P.O. Box 186, Harrisburg, Pa. 17108-0186 or via email to marcy.mallory@pabar.org. In order to ensure the authenticity of the requests, phone requests will not be honored.

Have you changed law firms or your address, phone and/or fax numbers?
The PBA Lawyers Directory & Product Guide lists members’ names, office addresses, law firm names, phone numbers and fax numbers. This information will be taken from the PBA’s database on Sept. 16, 2016. If you have moved since January 2016 or if you are planning to move your office and you know your new address and phone and fax numbers, you have until Sept. 16, 2016, to report the change to the PBA. If you do not report the change, your former information will appear in the 2017 edition of the directory. You can change your record by calling Jodi Wilbert at 800-932-0311, ext. 2238, or via email to jodi.wilbert@pabar.org.

Having received the postcard from the PBA asking you to verify that your home and office addresses are the same and that it is acceptable for the PBA to publish your address in the directory. If you have not received the postcard, you should contact Jodi Wilbert at the email address above.

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Making a Difference

The Pennsylvania Bar News column that highlights Pennsylvania attorneys who make a difference in their communities by providing extraordinary pro bono service and/or other community services in the public interest.

Malcolm Murray, Philadelphia

Malcolm Murray is a judicial law clerk with the U.S. District Court for the Eastern District of Pennsylvania in Philadelphia.

Describe your pro bono work.
I have been involved in the PBA/YLD Statewide Mock Trial Competition for the past two years. I assisted with mock trial programs at First Philadelphia Charter School in 2015 and Girard Academy of Music this past year. Generally, I help students with the Rules of Evidence and general trial-practice strategies.

Why do you participate in pro bono?
Public service is my background. Prior to law school I spent a year teaching computer literacy and remedial math classes as an AmeriCorps volunteer, and as an undergraduate student I volunteered at health clinics that were located in impoverished communities.

I was adopted at age 4. Because of my personal background and life experiences I always knew my legal career would be centered around public-service and pro bono work. I have great empathy for the poor, young children from inner-city neighborhoods and people who come from underprivileged backgrounds.

How did you first become involved?
I met attorney Roberta West, formerly the head of Temple-LEAP [Legal Education and Participation Program], shortly after passing the Pennsylvania bar exam in 2014. When I asked her how I could get involved in LEAP and other programs, she introduced me to PBA Pro Bono Coordinator David Trevaskis, who helped me become involved in numerous pro bono service initiatives in Philadelphia. These include an “Introduction to Law” class at the Community College of Philadelphia (CCP), the Wills for Heroes program and the PBA Minority Bar Committee’s Minority Law Day.

Does your pro bono work deal with legal issues different from your regular practice areas? If so, how do you adapt?
Most of my legal education has involved advising and/or preparing judicial opinions for judges. I have worked for four judges, including during law school, in my post-graduate work in the Philadelphia Court of Common Pleas and in my current federal clerkship with the Eastern District of Pennsylvania. Throughout all these experiences I have handled both criminal and civil matters.

My pro bono work deals mostly with criminal law. For instance, our classes at CCP and Minority Law Day have both provided instruction on Fourth Amendment law as it relates to school searches and seizure. Fourth Amendment law is something I handled regularly in the Court of Common Pleas.

What have been the personal rewards?
I am excited when children from disadvantaged communities learn new things through our legal-education programs. Seeing a child who may otherwise have limited opportunities — educational and otherwise — actively engaged in the learning process brings me much hope and personal fulfillment.