PBA’s Government Lawyers Committee and Pro Bono Office Team with the Pennsylvania Coalition Against Domestic Violence for PFA Training

By Shawn W. Weis, Assistant Counsel, PENNVEST, Pennsylvania Infrastructure Investment Authority

On April 19, 28 attorneys from the Governor’s Office of General Counsel and the Office of Attorney General gathered at the offices of the Pennsylvania Coalition Against Domestic Violence for a six-hour CLE, “Tools & Tips for Pro Bono Attorneys: The PFA Case.” The CLE was provided at no cost to the participants, who in turn agreed to take one pro bono PFA case on behalf of a victim of domestic violence in the next 12 months in the county of their choice.

Dauphin County District Attorney Ed Marsico opened the training with inspiring remarks encouraging the participants to actively pursue pro bono opportunities and advocate on behalf of victims of crime.

Trainers from the Legal Department of the Pennsylvania Coalition Against Domestic Violence — Senior Attorneys Kathy Weaver Morrison and Laurie Baughman — presented information on the characteristics of domestic violence, the elements of Pennsylvania’s Protection From Abuse Act, and practical tips for representing victims of domestic violence before the Court of Common Pleas. Representatives of the Dauphin County YWCA’s Legal Clinic joined the trainers for information about Central Pennsylvania PFA Practice and Procedure and how the pro bono system works in Dauphin County. PBA Government Lawyers Committee Co-Vice Chair (now Committee Co-Chair) Steve Turner provided insights on the responsibilities of a pro bono attorney in the representation of a domestic violence victim and shared his enthusiasm and experiences in representing countless victims before the Dauphin County Court of Common Pleas. The day was rounded out by a session on the ethical implications of pro bono representation and working with domestic violence victims. PBA Pro Bono Coordinator David Trevaskis provided great insight into the unique ethical issues that arise in handling a domestic violence case and stimulated thoughtful discussion among the participants.

Barbara Adams, general counsel to Gov. Ed Rendell, and Tom Corbett, Pennsylvania’s attorney general, endorsed this event and encouraged the attorneys within their respective offices to participate in the program. As a result, attorneys from the Office of Attorney General, Governor’s Office of General Counsel, PennDOT, Pennsylvania Department of Education, Department of Health, Department of Military and Veterans Affairs, Department of State, Department of Labor and Industry, Department of Public Welfare, Office of Inspector General, Department of Environmental Protection, Pennsylvania Lawyers Fund for Client Security, and Department of Agriculture, all participated in the training.

Each year, approximately 40,000 Protection From Abuse Orders are filed in the commonwealth.

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You are a silent bunch! We must be doing this correctly since we have not heard any suggestions or thoughts for changing the newsletter since our last publication. So, as the old adage goes, “If it ain’t broke, don’t fix it.”

We are excited to continue presenting our Committee’s newsletter in an electronic format. This allows you to easily send the newsletter to those persons whom we may have missed and allows the newsletter to be posted on the Pennsylvania Bar Association’s Web site. We hope you like it as much as we do.

This edition of the newsletter features two articles from law school interns: Adam Buchanan and Barbara Seaton. Adam interned in the House of Representatives this summer with Speaker of the House of Representatives Dennis O’Brien’s office. His experiences were vastly different from Barbara’s experiences in the Governor’s Office of General Counsel. Needless to say, each came away from their internships with new views on what the practice of law for government attorneys is really like. We think you will really enjoy their stories.

Please take a few minutes to also review the news from the various subcommittee reports. Many people are working behind the scenes to continue the good work of our Committee. We encourage you to become more involved so that our Committee will thrive and grow.

As always, we welcome your ideas for topics of interest pertaining to your practice so that we all can learn and develop from your experiences. Please send them to either of the editors: Linda Laub at llaub@state.pa.us or Mary McDaniel at mmcdaniel@speakerobrien.com.

Enjoy!
Membership

The Membership Subcommittee is reviewing the Government Lawyer of the Year Award program to be sure that it effectively accomplishes the committee’s objectives. A survey has been electronically distributed to all PBA Government Lawyers for your input on important issues related to the program. The survey can be found at www.pabar.org/polls/governmentlawyer/lawyeroftheyear.asp. Responses are due by September 4. We look forward to reviewing your comments.

If you have other ideas or suggestions that would assist in advancing the mission of the Membership Subcommittee please contact co-chairs Tracy McCurdy (tmccurdy@state.pa.us) or Vicci Madden (vmadden@state.pa.us).

Projects and Outreach

The Projects and Outreach Subcommittee held a wrap-up meeting for the ’06-’07 fiscal year on May 17. The 20-member subcommittee had a busy and successful year. The subcommittee, in cooperation with the PBA Pro Bono Office and the Pennsylvania Coalition Against Domestic Violence, offered a free six-credit CLE course entitled “Tools & Tips for Pro Bono Attorneys: The PFA Case,” on April 19. (See story on Page 1.)

The subcommittee launched its book drive to benefit the Department of Education’s Family Literacy Program, collecting thousands of books for children in need across the commonwealth and establishing a liaison in many of the commonwealth’s agencies to continue book donations throughout the year. (See Page 4.)

On Aug. 9, the Projects and Outreach Subcommittee of the Government Lawyers Committee hosted a reception for interns placed with the state during the summer. During the reception, members of the Committee and interns had the opportunity to discuss the internship experience and future plans. In addition, those attending participated in a collection of school supplies for children at the Interfaith Shelter for Homeless Families in Harrisburg. Members generously donated three boxes full of backpacks, notebooks, crayons, markers, pencils, paper and more. As a result, the children at the shelter will have necessary supplies for the start of the school year.

If you have any suggestions for new outreach projects, please contact co-chairs Shawn Weis (sveis@state.pa.us) or Stephanie Latimore (slatimore@palrb.us). ■

Secretary of the Commonwealth Addresses Committee Meeting at Seven Springs Resort

By Tracy McCurdy, Assistant Counsel, Department of State, Office of General Counsel

Pedro A. Cortes, secretary of the commonwealth, was the featured speaker during the Government Lawyers Committee meeting held during the August Committee/Section Day at Seven Springs Mountain Resort in Champion. The Secretary presented a motivational message reflecting on his own inspiring journey and shared his thoughts on giving back to others through public service.

Throughout his message he thanked the “angels” who have motivated him throughout his life — from his modest beginnings in Puerto Rico to his education on the mainland to his career in public service leading to his current position as secretary of the commonwealth. Among the “angels” he thanked were his mother and his wife, both of whom were influential in his life pursuits. In the same breath, he acknowledged his own responsibilities to be an “angel” for others. He was forthcoming about his journey and was strong in his belief that we all have an obligation to share our good fortune with others, whether it is through employment in public service or by helping to provide access to justice for those who can not afford it. His message, imparted with feeling, conviction and humor, was certainly well-received by the audience.

PBA Administrative Law Section Explores ‘What the Government Knows’

By Jonathan W. Kunkel, Assistant Counsel, Department of Corrections, Office of General Counsel

The Administrative Law Section of the PBA sponsored a four-credit continuing legal education program in April entitled “Finding Out What the Government Knows and has in its Archives.” The program featured faculty from the House of Representatives, various commonwealth agencies, newspaper organizations and from private practice. The program reviewed and provided tips on discovery practice in Pennsylvania and administrative proceedings under the General Rules of Administrative Practice and Procedure, in addition to other agency rules. There were over 70 attendees, whose feedback was “uniformly good,” according to Section Chair Dennis Whitaker. ■
Making a Difference: Book Drive for Family Literacy

By Mike Sobkowski, Adult Education Advisor, Department of Education, Commonwealth of Pennsylvania

Last fall, the Pennsylvania Bar Institute and the PBA Government Lawyers Committee initiated a wonderful collaboration with the Department of Education on a children’s book drive to benefit at-risk children in Even Start and Act 143 state-funded family literacy programs across the state.

The family literacy programs are designed to break the intergenerational cycle of illiteracy and poverty by educating parents of their role as their children’s first and most important teacher and by engaging parents and children in language-rich literacy activities that will instill and reinforce the love of reading and learning as a family.

In the past 10 months, over 3,000 new and gently-used children’s books have been collected at Health and Welfare, Labor and Industry, Corrections, State, Probation and Parole, the Turnpike Commission, the Capitol Complex and the Pennsylvania Bar Institute. These books have been distributed to 59 family literacy programs.

Many thanks go out to all who have volunteered to organize drives in their offices and a special thanks to every individual that contributed children’s books. There is a sad statistic regarding families living in poverty — 61 percent of their children have no books in their homes! Through our collective efforts on this project, we are making a difference by helping more families build a literacy-rich environment in their homes and exposing more at-risk children to the written word and the joy of reading. With your continued support, we hope to see this collaboration continue and grow.

For more information about family literacy in Pennsylvania or the book drive, contact Mike Sobkowski at (717) 787-6344, msobkowski@state.pa.us or go to the PA Family Literacy Web site at www.pafamilyliteracy.org.

PBA’s Government Lawyers Committee and Pro Bono Office Team with the Pennsylvania Coalition Against Domestic Violence for PFA Training

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Ellen Kramer Adler, director of the PCADV Legal Department and course planner, noted, “It’s always exciting to work with attorneys who are willing to take time from their busy careers to dedicate themselves to representing victims of domestic violence. Their service is critical to the safety and future of countless victims and their children who seek protection through the courts to escape their batterers. We applaud their commitment and look forwarding to working with each of them in the course of the next year.”

“Unfortunately, approximately 80 percent of persons seeking a Protection Order are unrepresented by legal counsel.”

Each year, approximately 40,000 Protection From Abuse Orders are filed in the commonwealth. Pennsylvania’s Protection from Abuse Act, as amended in November 2005, can provide these individuals with a protection order for up to 36 months, in addition to exclusive possession of their residence, support, child custody, reimbursement for losses incurred as the result of the abuse and can also order the perpetrator to relinquish all guns, ammunition and other weapons to the custody of the sheriff. “Unfortunately,” notes Adler, “approximately 80 percent of persons seeking a Protection Order are unrepresented by legal counsel. This partnership between our Coalition, the Pennsylvania Bar Association, the Office of General Counsel and the Office of Attorney General will make certain that fewer victims will have to seek protection through the courts without the benefit of legal representation.”

Thanks to several local corporate sponsors, including Delta Dental, Weis Markets, Dunkin’ Donuts, Bob’s Bagels, The Pennsylvania Bakery and Giant Foods, PBA Government Lawyers Committee members were able to secure materials, breakfast and lunch for participants.

For more information about domestic violence and how you can get involved in the representation of victims of domestic violence, please contact the Pennsylvania Coalition Against Domestic Violence Legal Department at (888) 235-3425 or visit their Web site at www.pcadv.org.
Retirement Planning is for Everyone

By Judy Gilroy, Assistant Counsel, Department of Labor & Industry, Office of General Counsel

No matter how long you have been a government lawyer, it is never too early to learn about the benefits of your retirement plan. On April 17, the Professional Development Subcommittee presented a lunch and learn program with Joseph Marcucci, deputy chief counsel to the Pennsylvania State Employees Retirement System (SERS), on that topic.

SERS ... is probably the most lucrative state employee retirement system in the nation.

SERS, which covers almost all of the commonwealth attorneys under the Governor’s jurisdiction, is probably the most lucrative state employee retirement system in the nation, according to Marcucci. SERS is a defined benefit plan, which means that the contributions increase significantly with the number of years worked. It is currently 2.5 percent of an employee’s final average salary multiplied by the number of years worked, with penalty provisions for retirement under age 60.

Marcucci also discussed some things that employees should take into account before making decisions affecting their pensions. Those things include the tax consequences of various retirement options, the effects of divorce on one’s benefits, and the pension consequences for those who leave the SERS and then wish to return to state service.

It pays for government lawyers to become familiar with their pension plans, whether it is SERS or another plan. Marcucci’s presentation was an enlightening introduction to the subject.


By Mary E. McDaniel, Chief Counsel to Speaker of the House of Representatives Dennis O’Brien

This case examined the attorney-client privilege as it applies to Nationwide’s corporate attorneys. In this case, Nationwide was suing its former agents for accessing and disseminating their confidential client information database. The attorney-client document in question was drafted by a corporate attorney and sent to various Nationwide executives and other corporate attorneys. The memo stressed the need for the company to manage defections by their insurance agents and it also discussed the attorney’s opinion regarding the likely outcome of current and pending litigation. The court held this memo was not protected under the attorney-client privilege since it contained no confidential client information. The court stressed that documents sent from an attorney to the client must contain and reveal confidential communications in order to fit within the attorney-client privilege. Since this memo contained no such information it was deemed discoverable by opposing counsel.

Nevertheless, the court also stressed several times that Nationwide failed to assert any alternative privileges. Although not specifically stated by the court, the inference is that some other privilege might have protected the memo. My guess is that the attorney work-product doctrine might have saved the day. The attorney work-product privilege is set out in Pa.R.Civ.P. 4003.3.

... it probably would have been protected as attorney work-product.

The underlying purpose of the attorney work-product doctrine is to shield the mental processes of an attorney, providing a privileged area within which an attorney can analyze and prepare the client’s legal strategy without fear of discovery by the opposing counsel. Since the Nationwide memo contained the attorney’s opinions on litigation and possible outcomes, it probably would have been protected as attorney work-product.
OGC Interns: A View from the Inside

By Adam D. Buchanan, Summer Law Clerk for Speaker of the House of Representatives Dennis O’Brien

For the first time in Pennsylvania history, our General Assembly, with a Democratic majority, elected a Republican speaker. As Rep. Dennis O’Brien was sworn in as Speaker of the House, he stated his primary goal would focus on making it easier for all citizens to care for and provide for their families. It is because of these grassroots efforts that I began my summer internship with the Speaker’s office.

My internship began in late May. From the start, I was assigned to handle various tasks for the Speaker, including researching the status of current legislation and the impact of such legislation on current acts and statutes. This information was then in turn relayed to concerned constituents. Addressing the issues of the people was the primary focus of my research for the Speaker.

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In addition, I assisted in several programs highlighted by the Speaker’s office under the direction of the Director of Special Projects, Jeanne Schmedlen. Together we organized the Speaker’s Golden Apple Awards, which recognize innovative academic programs in public schools across the commonwealth. While this program was not directly related to the legislative process, it provided me with a clearer insight of the collaboration between our legislative body and the educational arena as it adheres to the “No Child Left Behind” Act.

Attending informational sessions played an important role, as well. The Capital Breakfast Series provided “America’s Perfect Storm: Three Forces Changing Our Nation’s Future.” This presentation, sponsored by the Education Policy and Leadership Center, provided data and statistics regarding powerful socioeconomic forces that are changing our country’s future. Keeping abreast of our changing society is necessary to better meet the needs of the people.

Assisting the Speaker’s office with foreign delegations was also part of the internship. Delegations from Indonesia and Hong Kong visited the Capitol to get a better understanding of our legislative and judicial systems, as well as tour the facilities. It was stimulating to be immersed in their cultures and customs. Being a part of the foreign delegations provided the opportunity to expand my horizons both educationally and socially.

As an intern, I also witnessed the massive undertaking of the House as the citizens of Pennsylvania awaited a state budget. The give and take from both parties to come together for resolution was impressive. It was during this time that I learned the value of teamwork, as well as the power of persuasion — two ideals necessary in the field of law.

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The words “Let’s ask ‘Legal!” overload the staff attorneys working through the routine legal tasks in a busy agency, but they bring new challenges to a legal intern. Situated just below the lowest rung on the career ladder, the intern can be asked to research and draft a legal opinion on just about any topic. Questions come from the agency’s head, from other attorneys and from the agency’s field employees. Many require extensive searches through the agency’s enabling legislation, its regulations and the case law. Other questions raise constitutional issues or concern legal topics that are well outside the agency’s comfort zone. Often there is nothing directly on-point and no one in the chief counsel’s office can provide any guidance — the question comes to the legal intern precisely because no one knows the answer.

For the legal intern, any question is equally foreign at first. As time passes, it becomes easier to “get a foot in the door” — to locate a case, a footnote or an annotation that provides a starting place for research. Something pulled for an earlier memo points in a helpful direction. An opinion from a law school casebook comes to mind and provides a lead. The general organization of the enabling legislation begins to take shape. And eventually there are fewer re-writes and sometimes a little praise.

My experience during the past 10 months with the chief counsel’s office of the Pennsylvania Board of Probation and Parole has been a fantastic opportunity to hone my researching and writing skills. I have had the opportunity to track down issues that are specific to the agency as well as issues that could easily have cropped up in any other agency’s legal department or in a private law practice.

I am not your typical law student. I returned to school with an MBA and 20-plus years of experience working with, teaching and writing for other “techies” — I was the proverbial computer jockey. I left that life because I want to make a difference in the world, however small. I am in law school because I would rather be a struggling lawyer than a successful IT professional.

“I left that life because I want to make a difference in the world…”

Last summer, I worked as the legal intern in the Prothonotary’s office at the Commonwealth Court. While under the care of those amazing attorneys, I was invited to share in the daily legal and social discussions with some of the most intelligent and knowledgeable attorneys and jurists in the commonwealth. They hand-fed me on nuggets of law and priceless wisdom. And perhaps they prepared me for what was next — struggling on my own for a satisfactory answer to one perplexing question after another.

I’ll finish school after one more semester — the course work will be over, but the learning will go on. I’m not sure where my new legal career will take me or what I’ll be doing. I’m searching for that place where I can make even the smallest difference. I think that I will be better prepared to meet that challenge because of what I’ve learned as a legal intern.

OGC Interns: Another View from the Inside

By Barbara Seaton, attending Widener University
School of Law

OGC Interns: A View from the Inside

By Adam D. Buchanan

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“... working on Capitol Hill was a bit like reverse engineering.”

To this law student, working on Capitol Hill was a bit like reverse engineering. Being exposed to the discussions and debates that go into making laws gave me a better appreciation and a deeper understanding of our legal processes. As my internship ended, I came away with an amazing grasp of what our state was built upon. As history would have it, this was truly an impressive experience to witness firsthand. I thank Speaker O’Brien and Jeanne Schmedlen for an extraordinary summer.