Harrisburg lawyer receives committee’s Government Lawyer of the Year Award

Harrisburg lawyer Vincent C. DeLiberato Jr. received the 2008 Government Lawyer of the Year Award from the Pennsylvania Bar Association Government Lawyers Committee.

The award, which was bestowed in October, honors a government lawyer who has made a significant singular contribution or has dedicated his or her career to outstanding service to the profession for the benefit of the public or a government entity.

DeLiberato is the senior drafting attorney for the Pennsylvania Legislative Reference Bureau, a legislative support agency responsible for drafting bills and resolutions and researching legislative matters for lawmakers and their staffs and for government agencies. He has served with the bureau for more than 30 years.

“Vince has long been the backbone of the Legislative Reference Bureau. He is a gifted drafting attorney who has written many of Pennsylvania’s important laws,” said Speaker of the Pennsylvania House of Representatives Keith McCall. “Vince’s genius for crafting complex legislation, coupled with his personal experience working with former Speakers and Majority Leaders (K. Leroy) Irvis, (Matthew J.) Ryan and (James J.) Manderino, makes him an institutional treasure. Moreover, he is a distinguished gentleman who embodies integrity and honor. I am personally delighted to see him receive this recognition and salute his contribution to the commonwealth of Pennsylvania.”

Bob Evangelista, drafting attorney for the bureau, said, “In the realm of legislative drafting, Vince is the quintessential teacher, guide and mentor. There is no one in this commonwealth more qualified to draft major legislation or to supervise the drafting attorneys of the Legislative Reference Bureau. His knowledge and experience are without peer.”

Added Mike Pavlick, also a drafting attorney for the bureau: “Simply put, Vince is our go-to-guy. If you have a difficult problem or a complex question, he is the person everyone turns to because he possesses the

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Weathering the economic storm

By Judith Gilroy, Assistant Counsel, Department of Labor & Industry

With the uncertain state of the economy, everyone has concerns about the future. At its Committee Section Day meeting on April 23, the PBA Government Lawyers Committee sponsored a presentation explaining the effects the economic crisis is having on the State Employees’ Retirement System (SERS), the commonwealth’s Deferred Compensation (457) Program, and the Tuition Account (529) Program.

Joseph Marcucci, deputy chief counsel for SERS, explained that the commonwealth pension system is a defined benefits plan by statute. The amount of benefits an employee receives at retirement is not tied to the results of SERS’ investments. Any shortfall in funds to pay benefits is

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Blanket donations appreciated

The Projects and Outreach Subcommittee collected 22 blankets from Government Lawyer Committee members to benefit Eshenaurs Fuels’ annual blanket drive. For the past 15 years, the Harrisburg company has collected blankets for shelters and agencies throughout the mid-state area.

The following letter was received from Eshenaurs Fuels, thanking the committee for its donation:

On behalf of Eshenaurs Fuels Inc., I want to thank you and the members of the PBA Government Lawyers Committee for your support of “Eshenaurs Great Comfort Drive” by donating 22 blankets. This year we collected and distributed 2,300 blankets to the Bethesda Mission, Goodwill, The Salvation Army and to shelters located within our community!

“On behalf of the women and children in the Shalom House Emergency Homeless Shelter, thank you for the wonderful blankets and children’s quilts. I cannot possibly convey to you how timely and important this gift is. The financial stresses and the cold are taking a difficult situation to a high level of risk. In turn, the women grasp on to anything they can to try and help their circumstance. Right now this means many take their bedding and towels with them when they leave the shelter. They desperately need these items, and we turn to the community for donations to replace what usually would be left behind. Through your donation, many blankets have been replaced and are available to current residents.” – Jacquelyn Morrison, executive director.

Thank you again for your kindness. We truly appreciate your support of our efforts and look forward to your help during this year’s blanket drive.

‘Government Lawyer of the Year’

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knowledge and determination to complete the task correctly and because he is always willing to help. I am lucky to call him a mentor and even luckier to call him a friend.”

John Lavelle, another bureau drafting attorney, said, “One of the best things about working with Vince is listening to him deconstruct a complex legal issue for the Legislature, the Uniform Law Commissioners, the bar association or his fellow faculty members and explain it with precision, insight and simplicity. When he’s finished, invariably the listener walks away with an enhanced understanding of the topic. His ability to teach is simply uncanny and hard-wired into his DNA. And, I feel lucky to have been exposed to it.”

In addition to his service to the state government,
In the spotlight

By Carol Mowery, Assistant Counsel, Department of Labor & Industry

Speaking engagements

Frank C. Kahoe Jr., chief hearing examiner with the Pennsylvania Department of State, was a presenter at an April 14 Pennsylvania Bar Institute program titled “Administrative Due Process: You Can’t Always Get What You Want, But Can You Get What You Need?”

Kahoe made a presentation on administrative due process in professional license disciplinary actions and sat on a panel of administrative law judges.

Gerard M. Mackarevich, deputy chief counsel to the Department of Labor & Industry’s Unemployment Compensation Board of Review (UCBR), recently helped plan and present an update on unemployment compensation law for the Pennsylvania Bar Institute. Mackarevich was master of ceremonies at the half-day continuing education program, and also presented a module on voluntary terminations from employment.

Tracy McCurdy, director of the Department of State’s Bureau of Charitable Organizations, presented a continuing legal education program on June 3 at the annual meeting of the Pennsylvania Bar Association in Pittsburgh. Her program was titled “A Donation is a Terrible Thing to Waste: Fundraising Considerations in Challenging Times.” She spoke about the many challenges faced by nonprofit organizations — especially during these turbulent economic times — and addressed issues faced by nonprofits in the solicitation and safeguarding of charitable donations.

Mary McDaniel, legal counsel to the Ethics Committee of the Pennsylvania State House, participated in a panel discussion on ethics at the 2009 National Conference of State Legislatures annual Legislative Summit in Philadelphia on July 20. The session focused on laws and policies that will positively impact the ethical climate in state legislatures. Other panel participants included Richard “Rick” Gallot Jr., a Louisiana state representative.

Weathering the economic storm

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guaranteed by the commonwealth.

However, the severe downturn in the market has affected SERS as it has almost every investment fund. SERS’ investments lost 28.7 percent in 2008, and the worth of its holdings declined from $35.5 billion to $24 billion. More troublesome for the future is the fact that, in 2012, the commonwealth will have to contribute a significantly increased amount of money to SERS to pay the promised benefits to retirees, even assuming that its investments once again make positive returns. In order to mitigate that increased liability, it appears that the commonwealth will be forced to restructure retirement benefits or funding methods in some way yet to be determined.

Anthony Hines, assistant director of SERS’ office of finance and administration, then spoke about the commonwealth’s voluntary deferred-compensation plan. The plan has approximately 35,000 active members. The deferred-compensation plan suffered a drop in participation levels due to the market losses in 2008. Those who continued to participate increasingly reallocated to safer funds available within the plan.

The final speaker of the meeting was Kathleen McGrath, the state Treasury Department’s director of the Tuition Account Program (TAP). TAP is both tax-advantaged and designed to help savings keep up with inflation in college tuition. The program is also a defined benefit program, with no risk to the investment principal. McGrath stated that the program is currently able to meet its obligations, in spite of the market.

No one can predict what the future holds in this economy. This presentation provided valuable information to government lawyers to consider in their financial planning.
On Jan. 1, Pennsylvania’s new Right-to-Know Law (RTKL) became effective, significantly expanding the public’s access to government records. The new law presumes that all government records are public, unless protected by privilege, statute, regulation, court order, or one of 30 exemptions contained in the law. It also expanded the list of government agencies subject to the RTKL to include the judiciary, the legislature and numerous other quasi-governmental bodies.

However, the most significant change has turned out to be the creation of the Pennsylvania Office of Open Records (OOR). The OOR has the authority to rule upon whether a denial issued by a local or commonwealth agency was proper and has vastly increased the ability of a requester to challenge a denial of access. It has also demonstrated a consistent belief that the RTKL’s exemptions must be strictly construed.

In its first six months of existence, the OOR has heard more than 584 appeals involving everything from requests for 911 transcripts to questions about an individual’s water bill. Among its more notable opinions are its steadfast rejection of a constitutional right to privacy against public disclosure, its holding that the RTKL applies to various non-governmental agencies like volunteer fire companies, and its finding that draft school district budgets are public records.

The OOR’s brief tenure has not been without controversy. Early on, the OOR was criticized for a number of opinions that appeared to expand its jurisdictional mandate to include policing Sunshine Act violations, although more recent cases suggest it has retreated from this position. Also, the General Assembly has vocally challenged the OOR’s position that volunteer fire companies are covered by the new law, leading one Court of Common Pleas judge to overturn an OOR opinion on that subject. All told, more than 40 of the OOR’s opinions are currently being challenged in the courts.

Growing pains are to be expected with a law that so drastically changed 50 years of open records jurisprudence in the commonwealth. Over the next few years, as the appellate courts have a chance to clarify the provisions of the new RTKL, the pace of appeals should lessen. However, the past six months clearly demonstrate that the RTKL cannot be viewed in a vacuum, and any attorney dealing with open records issues must be mindful of the OOR and its opinions.

Editor’s note: This article does not necessarily reflect the views of the Pennsylvania Office of General Counsel or of the commonwealth.

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In the spotlight

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Heather Wier Vaught, deputy counsel to the Illinois Speaker of the House, and Sheryl Allen, a Utah state representative.

Elections/appointments

Gregory S. Gerson, of the firm DiOrio & Sereni, L.L.P., was appointed to the Nether Providence Township Environmental Advisory Committee.

Martin A. Toth, investment counsel with Pennsylvania State Employees’ Retirement System, was recently elected to the Pennsylvania Bar Association Nominating Committee as one of the two PBA committee representatives on the nominating committee for 2009-2010. Toth was also recently elected to a seat on the board of directors of the Northeastern Pennsylvania Philharmonic.

Miscellaneous

Jayne B. Blake, chief counsel of the Pennsylvania Infrastructure Investment Authority, was conferred with a Master of Laws degree in taxation and a certification in employee benefits from Georgetown University School of Law at the convocation on May 17 in Washington, D.C.

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Do you have ‘In the spotlight’ news?

Send your news of recent appointments, honors, speaking engagements — and family news — to Carol Mowery at camowery@state.pa.us, or submit your news via a quick click on the “Newsletters” page of the Government Lawyers Committee Web site at www.pabar.org/public/committees/govtlaw/pubs/newsletters.asp.
Subcommittee leads book drive for at-risk children

Thousands of at-risk children in Pennsylvania received free books this summer, thanks to a project coordinated by the Projects and Outreach Subcommittee. Volunteers worked with the Pennsylvania Bar Institute, the Pennsylvania Department of Education and state employees to collect new and gently-used books for children, from birth to third grade.

Book collection boxes were placed in the office buildings of numerous state agencies. Then, on June 11, about 6,000 donated children’s books were sorted, boxed and labeled for mailing to the Family Literacy Programs overseen by the state Department of Education. Commonwealth agency employees and members of The Youth of Camp Hill UMC helped prepare the books for mailing.

More than 60 percent of children living in poverty have no books in their homes. Books donated to state Department of Education’s Family Literacy Programs ensure at-risk children have direct access to books during the summer break from school. The program has been ongoing for the past three years.

Pictured among the thousands of books is Stephanie Latimore, who initiated PBI and PBA’s involvement in the book collection program three years ago.

PBA midyear Meeting 2010

· January 20-24 · Atlantis Paradise Island, Bahamas

Watch for more information.