Playing Offense and Defense
By Fredrick Cabell Jr.

Things are heating up in the General Assembly, and the PBA has a full plate. This is the fastest in my career I have seen a General Assembly get moving. The issues being addressed are not just the low-hanging fruit that passes with unanimous votes in both chambers, but include some controversial topics. I anticipate the session days in June — which will have passed by the time you read this, and which I will report on in the next issue — to be quite busy.

The PBA Legislative Relations Department classifies the bills we are addressing in two distinct categories: offense and defense. Offense are bills that the PBA supports. Most of the time, these are bills PBA initiates. We draft the bill, we pursue a prime sponsor and we develop the strategy to get it to the governor’s desk and get it signed. As you can imagine, while these projects have their ups and downs, these are the ones that give us the greatest satisfaction because we are getting something done that comes from our members, something that will benefit our members and something that makes for better law benefiting everyone!

Defense is different. When we are on defense we are trying to stop something or amend it. In a perfect world, defense would not be necessary because the Legislature would always be mindful of the PBAs’ concerns. Well, maybe it wouldn’t be such a perfect world, because I would be out of a job.

With those definitions in mind, here is a quick rundown of what we have cooking right now. Tune-in next issue to see where things end up.

Offense

Family Law Arbitration Act (House Bill 1366) — A few years back, the PBA helped to pass into law the Revised Uniform Arbitration Act, which made many worthwhile changes and additions to existing arbitration law. One of those changes was to eliminate common law arbitration rules. A good thing in general, but not so good for family law, as it was the very limited tool they had to arbitrate matters. The Family Law Arbitration Act (FLAA) would permit the voluntary arbitration of issues that would arise under the Pennsylvania’s domestic relations statute, including the arbitration of child custody and child support issues. The FLAA is especially timely as COVID-19-related shutdowns have caused severe delays in the courts, especially in counties with a high number of unrepresented litigants.

Funding for public defenders (no bill yet; possible amendment to fiscal code) — Anyone who has studied Pennsylvania’s criminal justice system knows that in many areas of the state, the public defenders system is overwhelmed and struggling to provide the services guaranteed by the constitution. Addressing that funding is a complex subject because Pennsylvania is one of the few states that provides no funding at the state level and because public defenders are appointed by the county commissioners, a power not likely to be given up anytime soon. Nonetheless, the PBA has been working on an idea that would assist counties with regard to criminal appeals that could provide financial assistance without altering the existing system. Further, the Wolf Administration has taken an interest, and we are building, with other organizations, bipartisan support for the issue.

Updates to the Business Corporation Law (introduction pending) — After a multiyear study and drafting process, the PBA Business Law Section’s Title 15 Committee has completed draft legislation that would significantly modernize the Business Corporation Law, as well as amend related provisions of Title 15 of the Pennsylvania Consolidated Statutes. The language of the legislation, which will surely be more than a few hundred pages, would incorporate changes based on updates to the Delaware General Corporation Law and the Model Business Corporation Act, recommendations by the Pennsylvania Department of State Bureau of Corporations and Charitable Organizations and revisions based upon the Pennsylvania Supreme Court’s adoption of certain portions of the American Law Institute Principles of Corporate Governance. A few notable changes to current law would include replacing the decennial filing system with an annual filing system, revising the emergency authority of corporations and the codification of the business judgment rule.
Defense

Election of appellate judges by geographic districts (House Bill 38) — In the March/April 2021 issue of the magazine, I wrote an extensive column explaining why the PBA opposes this bill and why the PBA supports, and has supported for a very long time, the merit selection of judges. HB 38 is still in play and we continue to lobby in opposition.

Funding for the judicial system (appropriations bill, no number yet) — Why defense and not offense? Maybe this is a bit of both, but since funding for the judiciary has been, in essence, cut for five years in a row, it feels more like defense. There is a lot surrounding this issue this session, not the least of which involves the adequate funding of the Common Pleas Case Management System (CPCMS), the criminal court records system used by all 67 counties and provided thereto at no cost. The existing fund to provide for this system has been raided over the last few legislative sessions to spend on matters not related to the courts. This must stop happening or the system will be shut down this summer, according to the Administrative Office of Pennsylvania Courts.

Arbitration in COVID-19 personal injury cases (House Bill 605) — The PBA is a “big tent” organization. We represent every type of lawyer under the sun, thus there are some issues we do not weigh in on because different sides of the profession might disagree on the best way to shape the law. But when the Civil Litigation Section Council reviewed the original version of HB 605 and became unanimously apoplectic, we knew the PBA would have to intervene. Boiled down, HB 605 would require the same type of arbitration that exists in most counties for small dollar disputes (typically $50,000 or less) to be applied to all COVID-19 personal injury cases without a dollar limit and maintaining de novo review. Attorneys much better informed than me tell me that this would create a lot of unnecessary expense. We are working on making changes that will either eliminate the arbitration provision or render it more in line with the appropriate usage of this type of arbitration.

Kayden’s Law (Senate Bill 78) — Kayden’s Law is legislation that originally sought to make substantial amendments to Pennsylvania’s Custody Act in matters where there are allegations of abuse or domestic violence. The legislation arose out of a horrifically tragic situation in Bucks County involving child custody. After proposed amendments, the bill would, among other things, require a presumption of supervised custody when there are allegations of abuse toward a child, other party or household member and add simple assault to the list of criminal convictions under Section 5329 that prevent a party from having custody until the court determines that party does not pose a risk of harm to the child. The PBA opposes this legislation for many reasons, but particularly because of the inevitable, unintended consequences that would result from the bill’s passage, including the disruption of parent-child relationships due to supervised custody presumptions, which are hard, if not impossible, to overcome, especially for parents with limited financial resources.

Now you are up-to-date, and we will report back in September.

Ashley Murphy, PBA legislative counsel, and Logan Stover, PBA legislative coordinator, contributed to this article. ☑

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