

LAWYERS JOURNAL

ACBA celebrates Diamond and Golden membership milestones

By Drew Hardman

The Allegheny County Bar Association honored a group of longtime practitioners celebrating their 50 and 60-year membership milestones during the annual Diamond and Golden Ceremony, held on November 30 at the Duquesne Club.

Following an introduction by ACBA President Kimberly A. Brown, the bar association presented a total of 33 honorees with a framed certificate recognizing their years of service in the law profession. Honorees joined the ACBA in 1949 or 1959, and many continue the practice of law today.

"While the practice of law has changed in many respects over the last 50 and 60 years, the commitment to professionalism has remained in Allegheny County," Brown said. "The lawyers who we are honoring passed along timeless values of scholarship, mentorship, and service to the indigent, to the community, and to the bar."

"We are grateful for their leadership and for their service," Brown added.

This year's ceremony featured reflections from 50-year practitioners Samuel L. Douglass and Stephen W. Graffam.

Other honorees included 60-year practitioners Herbert Blumenfeld, C. Hardesty, Robert Kline, William Latimer, J. Robert Maxwell, John McCue, Judd Poffinberger, Jr., and Andrew Weil, as well as 50-year practitioners Vincent Crisanti, William Deitch, William Engel, Jon Friedman, C. Donald Gates, Stanley Greenfield, Stephen Harris, Thomas Hough, William Krayer, Victor Lynch, Michael Lyons, Stanley Makoroff, Robert



PHOTO BY DREW HARDMAN

Diamond and Golden practitioners were given recognition for their years of practice and contributions to the bar and the community at a reception at the Duquesne Club November 30.

McCartney, Robert Medonis, Sanford Middleman, Regis Murrin, Seymour Schafer, Donald Shaffer, Thomas Snyder, Charles Stoops, Roy Walters, John White, and William White.

50-year practitioner Samuel Douglass began by reviewing the evolution of Pittsburgh, from a major industrial hub to a "quiet university town." He addressed the various changes in the practice of the law since his admission to the bar in 1959. He reported that the greatest change "is that there are so many more lawyers per-capita today, so the practice of law is not as gentlemanly." Other notable changes included the increasing fluidity of the workplace, as well as technological advances.

"There's a huge difference in the way work is performed and how you communicate with clients," Douglass said.

A graduate of Mt. Union College and the University of Pittsburgh School of Law, Douglass spent 40 years with the firm of Rose Schmidt Hasley & DiSalle P.C., where he practiced primarily mineral and real estate law. In 2003, he joined Pittsburgh-based firm Rothman Gordon as a partner in the Real Estate Department.

Douglass remains an active attorney and attributes his career longevity to new innovations in the profession.

"There are always new things to keep your attention and to keep your mind going—new twists and turns, new adventures," Douglass said.

Douglass spends most of his time in mineral law, specifically the production of natural gas from the Marcellus Shale formation, which he called "one of the best things to happen to our state."

"It's going to brighten Pennsylvania lives and the economy for years to come," Douglass noted.

In 2008, he reviewed Marcellus Shale as part of a panel of experts with the

Pennsylvania Bar Institute at conferences in Pittsburgh and Philadelphia.

Douglass is one of the founders and the first president of the Energy & Mineral Law Foundation, where he currently serves as a trustee. He also serves on the Board of the Horticultural Society of Western Pennsylvania. He is active in the ACBA Real Property Section, and is a member of the PBA and the ABA.

Outside of the office, Douglass enjoys spending time with his family, including his wife Judith, four children, and seven grandchildren.

"I spend time with my family as much as anything," he said. "There always seems to be something to do."

According to Douglass, there is no set formula to follow to ensure a successful career in the practice of law.

"I think the only rule you can follow is to do your best," he added.

50-year practitioner Stephen Graffam also offered some advice for young attorneys.

"The most important thing is to work hard," Graffam said.

Graffam discussed his reasons for entering the practice of law, focusing on what he enjoys most about the profession—the friendships and professional relationships he formed throughout his career.

"For me, it's about the other attorneys," Graffam noted. "I just always enjoy their company. When you have to wait three or four hours for something to happen in court, you're lucky because you've got great company."

Graffam graduated from Allegheny College in 1953, before attending the University of Pennsylvania Law School. Following a three-year tour in the U.S. Marine Corps, Graffam began his law career in Pittsburgh with White & Jones. In 1970, Graffam left to form Grogan Graffam & McGinley. Graffam

transitioned to "Of Counsel" status with Grogan & Graffam, P.C. in 1999, and is currently semi-retired.

While he focuses primarily on general practice, Graffam fondly recalls nearly forty years of experience in maritime law.

"I thoroughly enjoyed my time as a maritime lawyer," Graffam said. "Very few people realize it, but there weren't many people in that area of law at the time. For most of the big cases, I worked with the same 10 or 15 guys. It was a very friendly situation."

Another highlight of Graffam's career is his role as solicitor of the Pleasant Hills Authority—a position he has held since 1962.

"Most people don't have clients for 50 years," Graffam said. "I think that's an accomplishment."

Graffam is a member of the ACBA Lawyer Insurance Committee, as well as the Academy of Trial Lawyers of Allegheny County and the Southeastern Admiralty Law Institute. He serves as proctor of the Maritime Law Association of the United States, and is a member of the ABA and PBA.

Graffam's extensive community service resume includes seven years as president of the Historical Society of Western Pennsylvania (1990-1996), trustee of Allegheny College since 1982, and board member and past chairman of the D.T. Watson Rehabilitation Hospital.

Graffam enjoys spending time with his wife Carolyn, and his three children and two grandchildren. His hobbies include reading, traveling, and playing golf.

Graffam closed the evening by thanking his fellow honorees for the past 50 years of fellowship.

"I would like to thank you all for the enrichment of my life in practicing law together," he said. ■

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GENDER BIAS DUTY OFFICERS

If you have observed or experienced any form of gender bias, you may contact one of the following members of the Gender Bias Subcommittee of the Women in the Law Division. The duty officers will keep your report confidential and will discuss with you actions available through the subcommittee.

Kimberly Brown412-394-2323
Rhoda Neft.....412-261-2753
Susan Seitz412-544-7882

ETHICS HOTLINE

The ACBA Professional Ethics Committee "Ethics Hotline" makes available Committee Members to answer ethical questions by telephone on a daily basis.

December

Andrea Geraghty412-232-7070
Michael M. Lyons412-392-2070
Martin W. Sheerer412-781-3100

January

Thomas Hollander412-922-8499
James R. Schadel.....412-765-3399
Richard E. Shenkan.....412-716-5800

THE FULL TEXT AND/OR HEADNOTES FOR THE CASES BELOW APPEAR IN THE ONLINE, SEARCHABLE PLJ OPINIONS LOCATED AT WWW.ACBA.ORG.

Commonwealth of Pennsylvania v. James Edward Cole, Jr., O'Toole, J.Page 497
Post-Conviction Relief Act—Plea Agreement

1. Defendant was juvenile when he participated in rape and assault with two accomplices. Defendant entered into agreement to cooperate with prosecution and testify against accomplices. As part of agreement, Commonwealth would recommend transfer of Defendant's trial to juvenile Court. No discussion was had regarding court approval of the agreement or impact of court rejection of agreement.

2. Two judges rejected transfer to juvenile court as being inappropriate given acts of defendant in participating in crime. Juvenile court rejected transfer as defendant was fast approaching 21 years of age and could not be assisted by services offered to juvenile.

(William F. Barker)

Rusheen Pettitt for the Commonwealth.
Scott Rudolf for Defendant.

No. CC200209417. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.

Roth Cash Register Company, Inc. v. Micros Systems, Inc., Frontier Business Technologies, Inc., Micros Fidelio Direct North Central, Inc., Mark Gillie and Larry Lange

Shenango Systems Solutions, Inc. v. Micros Systems, Inc., Frontier Business Technologies, Inc., Micros Fidelio Direct North Central, Inc. and Mark Gillie, Friedman, J.Page 498
Coordinate Jurisdiction Rule—Gist of the Action Doctrine

1. Defendant, Micros Systems makes point of sale computer systems. Plaintiffs were distributors and serviced systems made by Defendant. Contract with plaintiffs included exclusive territory. Contract automatically renewed unless termination notice was given three months prior to expiration of current term.

2. Defendant Micros breached contract by authorizing another dealer (Frontier) to sell in the exclusive territory of plaintiffs.

3. Plaintiffs previously won awards on breach of contract in arbitration. Claims in this action were in tort. Initial trial court's grant of summary judgment based on contract award was overturned by Superior Court. Superior Court applied coordinate jurisdiction rule to determine "that which has been in arbitration shall remain in arbitration." Thus, claims in tort were allowed to go to trial despite defendants' claim of *res judicata*.

4. Trial revealed tortious activities separate from contract as prior to trial all actions were being lumped together as sole acts of Micros.

5. Jury awarded damages against defendant Frontier for tortious interference with current or prospective contractual relations with customers.

6. Frontier appealed damage rule using gist of action doctrine to claim that the gist of the action is a breach of contract. Court rejected this argument as court was bound by Superior Court's ruling.

(William F. Barker)

Richard B. Sandow for Roth Cash Register Company, Inc.
Richard G. Lewis for Shenango Systems Solutions, Inc.
Robert L. Byer for Frontier Business Technologies, Inc., and Mark Gillie and Larry Lange.

Eleanor Roy Barrett and *Thomas J. Farnan* for Micros Systems and Micros Fidelio Direct North Central, Inc.

No. GD 00-10961 and GD 00-18464. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.

Stephen Blazczak and Fiona Blazczak v. Township of West Deer, O'Reilly, J.Page 504
Zoning Regulations—Non-Conforming Use Predates Zoning Ordinances—Variance by Estoppel

1. Appellant property owners appealed Zoning Hearing Board rulings of two violations of the local municipal zoning code.

2. The first alleged violation, the operation of a mechanical garage, is not supported by substantial evidence. Therefore, the decision of the local municipal Zoning Hearing Board is overruled and the appeal of the property owners is sustained.

3. The second alleged violation, the operation of a fuel oil delivery service, predates the local municipal ordinance which prohibits such activity. This non-conforming use of the property was known to the Township for many years, and created a variance by estoppel. Therefore, the decision of the local municipal Zoning Hearing Board is overruled and the appeal of the property owners is sustained.

(Robert A. Crisanti)

Michael J. Yurcheshen for Plaintiffs.

Peter G. Nychis for Defendant.

No. SA-05-705 and SA-05-985. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.

In re: Petition to Change Boundary Lines of Lot and Block No. 1572-N-192, O'Reilly, J.Page 507
Change of Township Boundary Lines

1. Petition was necessitated so that property owner could keep employment in adjoining township. The township boundary line was a road dividing owner's property on which owner had built new residence in township adjoining township of employment.

2. Initially all parties were in agreement to allow a referendum on transfer of lot from one township to other.

3. After agreement was entered into, Elizabeth Township demanded completion of transfer by June knowing that referendum could only first appear on ballot in November.

4. Appeal of agreement by Elizabeth Township removed lower court's ability to modify agreement. Court only retained right to preserve status quo which it elected to do.

(William F. Barker)

Petitioners *pro se*.

Gretchen K. Love for Elizabeth Township.

Bernard M. Schneider for Forward Township.

No. GD 09-7147. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.

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From the ACBA

PRESIDENT'S MESSAGE

ACBA makes a difference locally and nationally

By Kimberly A. Brown

It should not have surprised me, but it did in that "wow, isn't that great" with a smile on your face sort of way. The news reached me in an e-mail forwarded by Tom Loftus, the ACBA Director of Marketing and Media Relations, which said;

To Whom It May Concern:

I was surfing for information regarding bullying that I could use with my preK-second grade students and I ran across your website. I'm wondering if I would be able to obtain a copy of *That is No Joke!*

I am licensed by the State of Wisconsin as a School Counselor, and I am employed at Lac du Flambeau Public School, in Lac du Flambeau, Wis. We are a public school, but we are on an Indian Reservation. We have a 97 percent Native American population in our school.

I would like to use the information during my guidance time in the classrooms, as a supplement to other activities we do. I believe it would be beneficial to our students.

I'm looking forward to hearing from you.

For the past several years, ACBA members have presented the "This is a Joke—Making Fun of Others is Not!" program to area students in kindergarten through fifth grade. Tom Loftus created the program and wrote the companion book, *That is No Joke!*, a copy of

which is given out to students who attend the program. The book also is made available by the ACBA to area schools and organizations. The Allegheny County Children's Court, Richman Elementary, St. Bernard School, Barrett Elementary, Mt. Lebanon Montessori, and the Hampton Township School Districts are among those who have used the book in educational programs that teach children

why bullying or making fun of others is wrong and that our differences are to be respected and valued.

I knew about the school program and read the book when it was published. I also was aware that the ACBA won a national award for *That is No Joke!*. What I did not appreciate until that e-mail (the one that brought a smile to my face) was the impact that it (and the ACBA)

was making, literally across the country. It wasn't just the children on the Wisconsin reservation that were being helped. I later learned that children in New York City; Erie, Pa.; Sharpsburg, Ga.; Charleston, S.C.; Houston, Texas; Cross Lane, W.Va.; Phoenix, Ariz.; Canada; and even China have requested the ACBA's book as part of their school's educational programs. The need for education on these issues is apparent from the messages received by the ACBA:

◆◆◆ We have many challenging students...many of whom come from bad environments. Our children are dealing with adult issues at the elementary school age. As a result we have started a school-wide positive behavioral program, and I think that the "This is a Joke" program will be a wonderful way to reinforce positive behaviors. We have

had many issues with bullying, name calling, and harassment in our building which houses approximately 320 students. There are also continued issues with truancies. Please send me more information on your program.

◆◆◆ My 12-year-old son has said (on numerous occasions) that one of his best friends makes fun of



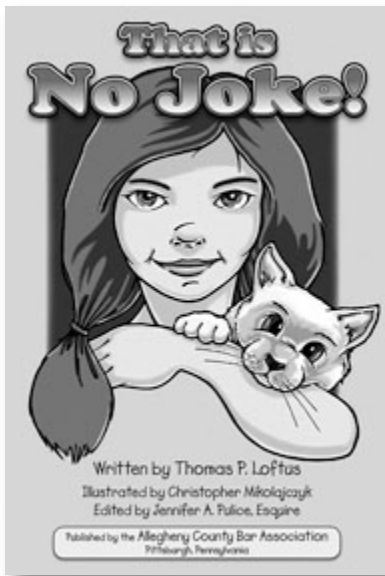
him all the time (at school and on the bus, particularly). I found a link to this book and thought it might help.

◆◆◆ I am a third grade teacher, and I have a deaf child in my classroom that is constantly bullied and made fun of. I went to the Internet and typed in "being made fun of" and your book popped up! Would it be pos-

sible for me to have a copy of this?

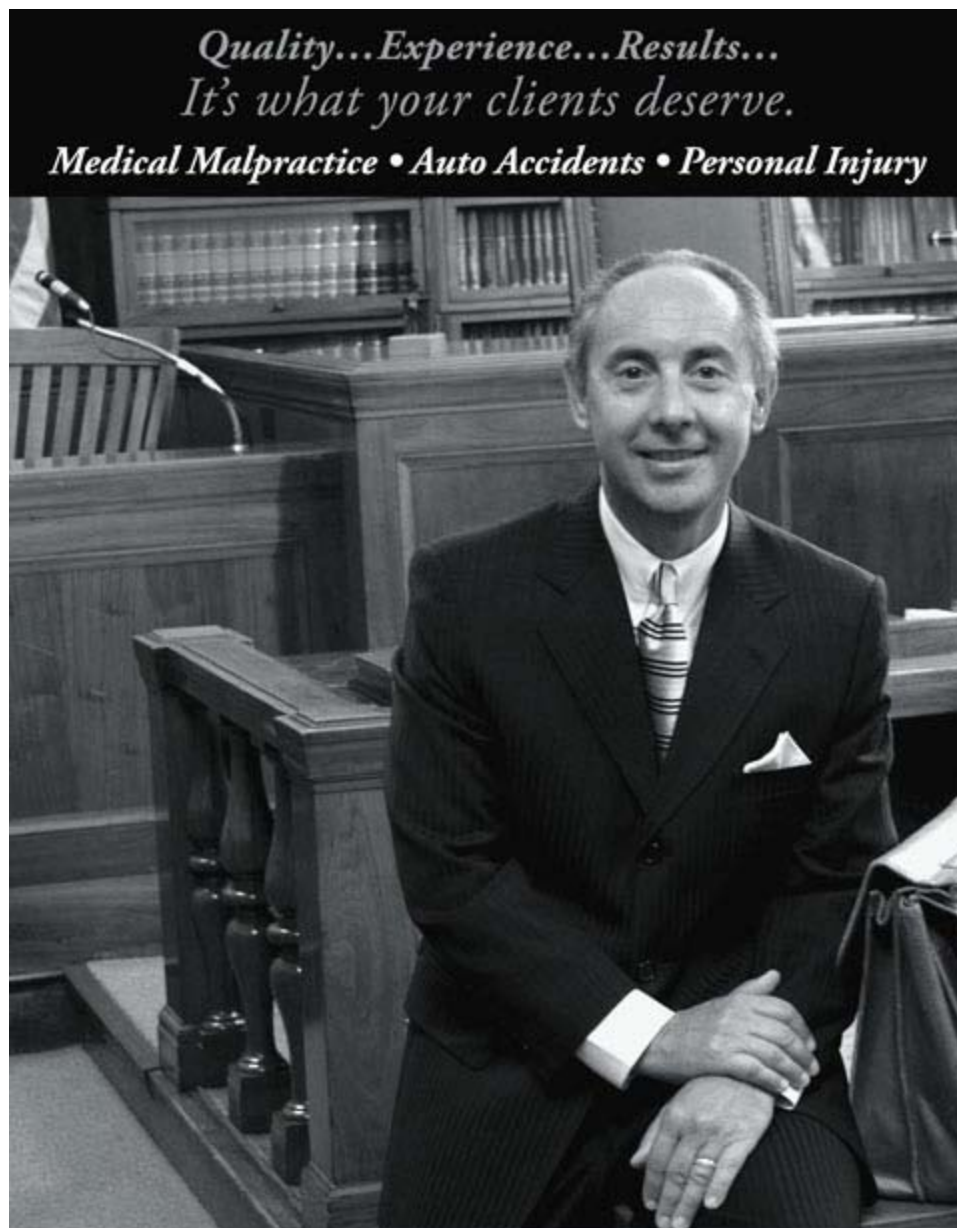
◆◆◆ The response to the ACBA's program and *That is No Joke!* has been universally positive, and as a result, several other bar associations are starting their own similar educational programs.

Your bar association is making a difference in the lives of children across the county. Knowing the extensive community service work that ACBA members perform and the stellar national reputation of our organization, this should have come as no surprise to me. Still, that e-mail did remind me why I am so proud to be a part of the ACBA. I hope that sharing this news does the same for you. ■



DO YOU HAVE ANY JURY VERDICTS TO REPORT?

If so, please forward the following information: Court; Case Number; Jury Verdict; Date of Verdict; Judge; Plaintiff's Attorney; Defendant's Attorney; Type of Case; Experts; and Remarks to: Jennifer Pulice, ACBA, 400 Koppers Building, 436 Seventh Avenue, Pittsburgh, PA 15219



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Juvenile Law Committee a source of information, education, and camaraderie

By Tracy Carbasho

The ACBA Juvenile Law Committee prides itself on sponsoring educational programs, publishing noteworthy court opinions, and honoring individuals for their contributions to this area of law.

"The Committee's primary purpose is to serve as a conduit of information about the court and the law, and then bring this information to the bar at large and to the community, when possible," said Kathryn Miehl, who has chaired the Committee since 2006. "This has been especially important during the past three years when the Pennsylvania Rules of Procedure in Juvenile Court were developed and promulgated, when the appeals process regarding children's cases was fast-tracked, and when the e-filing system and videoconferencing were instituted. Now, the Unified Family Court structure has created new local rules and procedures which must be adhered to by all of those practicing in Juvenile Court."

Miehl, who serves as a staff attorney at the Allegheny County Bar Foundation's Juvenile Court Project, said the Committee accomplishes its mission of serving as a conduit of valuable information by holding continuing legal education programs, submitting court opinions along with comments to the ACBA for publication, and presenting the annual Juvenile Law Award.

"We want members of the ACBA to

know that we are an invaluable source of information and camaraderie—especially now, when the adult family and Juvenile Courts are in the process of being unified and much of the operation has been and will continue to be updated through computer and video technology," she said. "Our most immediate topics have been the unified court, changes in the juvenile rules for both delinquency and dependency, the consolidation of termination of parental rights and goal-change hearings, changes in the rules of appellate procedure, representation for juveniles who are defendants in PFA proceedings, visitation for incarcerated parents, national adoption month, and the Juvenile Law Award for 2010."

The 2008 winner of the Juvenile Law Award was Eli Zlokas, and the 2009 recipient was Judith Patterson. The award is intended to honor "a person or entity exemplifying extraordinary dedication, effort, commitment, leadership, time, and professionalism toward the fair, efficient, collegial, and safe operation of Juvenile and Children's Court."

Jeff Pollock, a sole practitioner, has chaired the Juvenile Law Award Subcommittee for the past four years and has been a member of the Committee for six years. He stressed the importance of recognizing individuals for their contributions to the challenging practice of juvenile law.

"Juvenile Court is a unique and demanding arena that requires pre-

pared and knowledgeable lawyers who understand both delinquency and dependency issues and can navigate that special area of the court," said Pollock, who practices primarily in the fields of family law and criminal defense. "It's important for our Committee to promote awareness of Juvenile Court as its own entity separate from other divisions, although now with the unified court, that is likely to change. Juvenile Court has its own need for mastery and concentration of practice so that KidsVoice lawyers, parent advocates, and solicitors are appreciated by their peers."

Miehl commended Pollock for his work in seeking nominations each year, establishing timelines for voting, and spearheading planning efforts for the awards reception at the Rivers Club. Pollock is also a member of the Opinions Subcommittee and was chosen to chair an ad hoc guardianship task force.

Miehl said Jennifer Staley, who chairs the CLE Subcommittee, has worked tirelessly to produce excellent, informative, and thought-provoking programs.

"The Committee's biggest objectives are to ensure that the bar is aware of issues that face practitioners in the Juvenile Court system and to bring awareness to the rest of the bar about this specific area of law," said Staley, a supervisor and program/policy coordinator at KidsVoice. "The ACBA should know that this is a great Committee of dedicated lawyers who provide services to our most vulnerable citizens—children."

Mary K. McDonald chairs the Opinions Subcommittee, remaining in constant contact with the judges, disseminating opinions to members for comments, guiding the members who volunteer to write capsules and comments, and then submitting the opinions for publication in a timely manner. She was also commended by Miehl for her hard work.

McDonald, a partner at McCarthy McDonald Schulberg & Joy, has a long tenure with the Committee. She became a member in 1980 and has served as both the Committee vice chair and chair.

"The Committee has achieved many accomplishments over the years from drafting the first procedures to be used in Juvenile Court thanks to the work of Carol McCarthy, to bringing the realization to members of the bar and the public that Juvenile Court is an equal branch with the other divisions, and being supportive of efforts to have a uniform application of rules of procedure," said McDonald. "The Committee has also

encouraged attorneys who are active in Juvenile Court to join the ACBA."

McDonald stressed that Juvenile Court is the first, and perhaps the last, interaction that many families will have with the judicial system.

"Therefore, it is important for the level of professionalism to remain as high as it is currently and to have exceptional judges who are committed to the families," she said.

McDonald has chaired the Opinions Subcommittee for the past four years. The first opinions were published in the *Pittsburgh Legal Journal* in 2004, when Miehl chaired the Opinions Subcommittee.

"The opinions have continued to be a great source of information for our members and the other lawyers in the ACBA who may not have been aware of the issues in Juvenile Court," said Miehl. "I believe the published opinions have fostered better communication and discussion between the members and the judges."

The Committee also fosters enhanced communication and awareness by holding one or two CLE programs each year, as well as a one-hour Sound Off with the Judges event at the ACBA's annual Bench-Bar Conference. A day-long CLE, entitled "Educational Issues from Enrollment to Disputes," was held in September. The CLE addressed the rights of children in foster care, including those in special education and those with disciplinary problems.

The Committee meets at noon on the third Tuesday of each month in the fifth floor Judicial Conference Room of the Family Court Building. Members are asked to serve on at least one Subcommittee and to attend the meetings on a regular basis.

Guest speakers are occasionally invited to the monthly meetings. Lorrie Albert, Director of the Allegheny County Bar Foundation, will give a presentation on pro bono opportunities at the January meeting.

Miehl, who also chairs the Community Service Subcommittee, is confident the Committee's good work will continue into the new year. She hopes that more community service work will be completed.

"New Committee members are always welcome, especially those with great ideas for CLEs and community projects," she said. "I want to thank the members, attorneys, judges, hearing officers, court administration, and staff for their tireless efforts and commitment to Juvenile Court and to the Committee." ■



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Netbooks offer a lightweight and wireless computer option

By Alicia A. Slade

Netbooks are small, lightweight notebooks that are designed to be used for wireless access via the Internet or a network. They are between a smartphone and a notebook computer in size, weight, and capability. The word netbook has been around for over ten years and is a general term, similar to the word laptop or notebook. The first netbooks were released in the late 1990s; however, sales were extremely poor since there was not a demand for a small, notebook-like technology device during that time period. Also, most homes and businesses had just begun to install Internet access and use e-mail. The demand at that time was for notebook computers with bigger and better features; full-sized keyboards, larger screens, built-in CD-ROMs, and more.

Now ten years later, there is a demand for such a device, because we e-mail, text, blog, chat, and instant message for immediate communication with one another. We post pictures, messages, and other personal information to Facebook, MySpace, LinkedIn, Classmates, and other social websites, and we use Internet-capable PCs, netbooks, and smartphones to accomplish this easily. Wherever we go, we can access the Internet. There is wireless Internet access in hotels, doctors' offices, and coffee shops. We also use the Internet to remotely access our office network or PCs so that we can do office work at home or elsewhere. We have become a society crazed and obsessed for instantaneous communication and access. Hardware manufacturers are capitalizing on this market and are heavily marketing their different models of netbooks: HP, Dell, Toshiba, Acer, and Samsung, are just a few of the manufacturers of these devices. Wireless companies such as AT&T and Verizon, are also selling netbooks. According to recent sales figures of netbooks, the number of units sold has tripled for each of the past two

years and is expected to continue to do so throughout the next several years.

Netbooks are no more than an inch thick and weigh less than three pounds. The screen size is typically between eight to 10.1 inches, but not much larger since there are size limitations due to licensing agreements with Microsoft. Plus, larger screens add additional weight to the device. In order for hardware manufacturers' devices to qualify for inexpensive versions of Microsoft Windows XP and Microsoft Windows 7 operating systems, they must adhere to certain restrictions for the screen size, processor speed, storage size, and amount of RAM. This is crucial for keeping the cost of a netbook low, between \$300 and \$600.

Netbooks have lower end processor chips, such as the Intel Atom chip. They do not have the latest and greatest processor chip from Intel powering them like a PC or notebook computer. It is not necessary, since the typical use is for wireless access to the Internet. Also, many netbooks do not have a hard disk drive like a PC, but instead have a solid storage device, similar to a flash drive. A standard configuration has a three cell lithium battery (three hours) or can be configured with a six cell lithium battery (four hours) or a nine cell lithium battery (six hours). Netbooks come standard with wireless Internet access since that is their main use. They also often have web cameras built into them.

Netbooks are not a replacement for your computer that runs all of your software applications at the office. Instead, they are a supplemental device, similar to your smartphone, for surfing the Internet, e-mailing, chatting, and performing other basic functions like word processing or remote connection to the office. They are a wonderful technology device and fill a need in a time when everyone wants instant access to everything. ■

Alicia A. Slade is a technology consultant and the President of Plummer Slade, Inc.

FMLA amended to expand leave for military family members

By Maria Greco Danaher

On Oct. 28, 2009, President Obama signed the National Defense Authorization Act (NDAA), which includes provisions that expand the military leave entitlements of the Family and Medical Leave Act (FMLA) by expanding both the "qualifying exigency" leave and military caregiver leave that became effective in January 2008.

Prior to these new amendments, an eligible employee whose spouse, son, daughter, or parent was on active duty or called to active duty in support of a contingency operation as a member of the National Guard or Reserves was entitled to "qualifying exigency" leave. The new law extends qualifying exigency leave to an eligible employee whose spouse, son, daughter, or parent is a member of any branch of the military, including the National Guard or Reserves, and who was deployed or called to active duty in a foreign country. In addition to extending qualifying exigency leave to eligible family members of a member of any branch of the Armed Forces, the new law eliminates the requirement that the active duty be in support of a contingency operation.

The new law did not change the length of leave entitlement under the FMLA. A covered employer still must allow an eligible employee up to a total of 12 workweeks of unpaid leave during the normal 12-month period established by the employer for FMLA leave. The reasons for which an eligible employee can take qualifying exigency leave also are unchanged. Such leave still can be taken for short-notice deployment, military events, and related activities such as official ceremonies, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities to address other events which arise out of the covered military member's active

duty or call to active duty status.

The new amendments expand military caregiver leave in two ways. First, the new law extends military caregiver leave to eligible family members of veterans who were members of any branch of the military at any time within five years of receiving the medical treatment that triggers the need for military caregiver leave. Therefore, employees who are family members of a current service member or veteran undergoing medical treatment, recuperation, or therapy for a serious injury or illness incurred in the line of duty may take up to six months of caregiver leave, so long as the veteran was a member of the military within five years of receiving such treatment. Employers do not have the option of using the typical FMLA calendar-year method for military caregiver leave. The 12-month period begins when the employee begins using caregiver leave.

Second, the new amendment expands the definition of a "serious injury or illness" for purposes of determining eligibility for military caregiver leave. It has been expanded to include the aggravation of existing or pre-existing injuries to an active duty service member in the Armed Forces. Thus, employees may now take military caregiver leave for a family member whose pre-existing injury or illness was aggravated while on active duty. For veterans, the definition allows the leave whether the injury or illness manifested itself before or after the Armed Forces member became a veteran.

The NDAA did not specify the date on which these amendments to the family military leave entitlements become effective. Thus, the presumption is that these changes took effect when President Obama signed the NDAA on October 28. It is anticipated that the U.S. Department of Labor will issue guidance to address those changes in the near future. ■

Summary of ACBA Board of Governors actions

The following is a summary of the actions taken by the ACBA Board of Governors on November 3, 2009:

- Approved the formation of an ad hoc committee to investigate and develop a model code of professionalism for the bar association. ■

Summary of ACBF Board of Trustees actions

The following is a summary of the actions taken by the ACBF Board of Trustees on September 2, 2009:

- Approved 2009/2010 officers and board members.
- Approved distribution of proceeds from 2009 ACBA Golf Tournament.
- Approved distribution of funds to 2009/2010 grant recipients. ■

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W. Edward Sell American Inn of Court receives 2009 Circle of Excellence Award



PHOTO BY A. PAUL HERRERA PHOTOGRAPHY

The W. Edward Sell American Inn of Court received a 2009 Circle of Excellence Award from the American Inns of Court at its Celebration of Excellence event in Washington, D.C. on Oct. 17, 2009 at the Supreme Court of the United States. Hon. Joy Flowers Conti, the Inn's counselor and BG David P. Carey, USA (Retired), the Executive Director of The American Inns of Court, hold the certificate recognizing the inn as a 2009 Circle of Excellence award winner. During the awards presentation, which occurred after dinner in the Supreme Court's Great Hall, Judge Conti was recognized for receiving The American Inns of Court Professionalism Award for the Third Circuit.

Members of The W. Edward Sell American Inn of Court who were present for the dinner and awards presentation include (from left to right) Jordan Segall, Joanna C. Serago, Mary Kate Coleman, Kathleen M. Charlton, Joseph V. Charlton, Cheryl Esposito Kaufman (President of The W. Edward Sell American Inn of Court), Carey, Judge Conti, Bradley J. Kitlowski, Beckie Kane, Matthew Fergus, Charles A. DeMonaco, Andrew Horowitz, and Daniel J. Ligman.

Law firm website basics: from design to content

By Debra Regan

Having a website for your law firm should be a fundamental building block of your business development efforts, regardless of the size of your firm. You need a professionally designed website that is built properly so the search engines can find you. Fresh content is a must for establishing an effective web presence and to help you get noticed by prospective clients and the search engines. The following are ten tips for creating and maintaining a strong website that work for your firm.

Don't think small just because your firm is. A professionally designed website will give your practice a leg up on the competition. According to a 2008 Harris Interactive study, 32 percent of solo attorneys and 20 percent of firms with two-to-five attorneys did not even have a website, let alone one that exemplifies the quality and user-friendliness of a professionally developed site. This is your opportunity to separate yourself from the "little guys!"

Research web designers' work. It's so simple to visit sites by a potential designer. Check navigation, layout, content flow, and first impression. Ask what per-

centage of the site was designed by the client and how much control the designer had in developing the end product. A designer's length of time in business suggests a proven track record, which may come with a higher price tag.

Make your site search-engine friendly. Besides people, the search engine crawlers will also visit your site and spider the pages to add them to their indexes. Make it easy for them to understand your site structure by including a site map XML file. Be sure you have described each page using title tags and keyword/description meta tags. This is a simple way to let the search engines know what each page is about.

Content is king! Nowhere is this statement more critical than when writing for the web. A poorly written website equals few leads and little ROI. Hire a good writer with a sense for web copy who can also communicate what you'd like said about your firm. Online content is the most widely used form of media during the legal research process, according to a 2009 survey by the Consumer Attorneys of California (CAOC).

Speak to your audience. Remember, potential clients did not attend law

school, so don't confuse them with legal jargon. Posting content in plain language and using keywords related to your area of practice will make a website more memorable and help increase search engine rankings.

Showcase legal expertise. Highlight partners' expertise including Martindale-Hubbell Peer Review ratings, certifications, credentials, and degrees. Always communicate the fact that you are familiar with local court procedures. Showcase specific areas of practice. Where possible, add online testimonials from happy clients that focus on their positive assessments of your ability to listen, to communicate, and to guide them through difficult times.

Online video offers a glimpse into your personality. A sure-fire way to generate more leads is to add a video "welcome" to your website. When people can actually listen to lawyers' speaking about their passion for the practice of law, it helps form a lasting impression. Lawyers' websites have a 60 percent higher click-thru rate from directories when they contain an online video, according to recent LexisNexis analysis.

Keep it easy for people to reach you. Your phone number, and preferably a

toll-free phone number, should be prominent on the home page and above the fold so viewers don't have to scroll down to find contact information. You should also include a simple e-mail form for prospective clients to fill out in case it is not convenient to make a phone call.

Encourage interaction. Consider adding links to published articles or invitations to attend a community event and meet law firm partners. Ask people to sign your guest book or register for your newsletter. This way you collect names to build a database which can be used in future lead generation. When you give people a reason to return to your site, you engage them.

Keep it fresh! Just because your site is off and running doesn't mean your work is done. Search engines look for sites with frequently updated content, so keep the articles and news updates coming. Posting online press releases is a great way to maximize brand presence on both search engines and in major news outlets, such as Google News. While weekly updates are ideal, monthly updates are sufficient to keep your site search-engine relevant. ■

Debra Regan is vice president at LexisNexis.



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Termination for poor performance discussed prior to FMLA leave does not support claim

By Maria Greco Danaher

The Family and Medical Leave Act prohibits employers from discriminating against employees who have taken leave under that Act. However, the Seventh U.S. Circuit Court of Appeals has affirmed summary judgment in favor of an employer who terminated an individual for excessive absenteeism and performance issues that developed prior to that employee's request for FMLA leave, even though her termination occurred during that protected leave. *Long v. Teachers' Retirement System of Illinois*, Seventh Cir., No. 08-3094, Oct. 23, 2009.

Julie Stephens Long was employed by the Teachers' Retirement System of the State of Illinois (TRS) from 1985 until her termination in 2006. Starting in 2000, Long worked in TRS' payroll department, where she had responsibilities that included enrolling members in an electronic fund transfer (EFT) program, entering information into a database, and verifying bank routing and account numbers. She reported directly to TRS' Payroll Insurance Manager (Branham). While Long's initial performance in Payroll was good, both her absences and her work errors increased over time. In June of 2005, Long missed 25 percent of her scheduled work days; this rose to 40 percent during the following month. In addition, Long failed to train employees from other departments on

the EFT process, in spite of multiple directives from Branham to do so.

On July 26, 2005, Branham met with Long to inform her that because of her frequent absences, he planned to withdraw his nomination of her for a promotion. In September, Branham traced several errors in the EFT system to Long. He then met with Long to discuss her errors, her failure to conduct the requested training sessions, and the effect of her increased absences on co-worker morale. He summarized those issues in a memo dated September 20, 2005.

On September 26, Long applied for FMLA leave for medial epicondylitis ("tennis elbow"). After the leave was granted, Long informed TRS that her September absences were related to that condition. She then modified her leave request to ask for intermittent leave for treatment of ovarian cysts. She took six days off in October and eight days in November under that leave. However, she also was absent on nine days in December 2005 and five in January 2006 for non-FMLA reasons. Branham's frustration with Long increased to the point where he met with TRS' HR manager (Larkin) and a Deputy Director of its Benefits Department (Sherman) and recommended that Long be fired. Larkin then undertook a full review of Long's performance evaluations, co-worker and TRS member complaints, and comments from both Branham and Sherman, and

then recommended to TRS' Executive Director (Bauman) that Long's employment be terminated. Bauman had no knowledge of Long's FMLA leave when he made the final decision to fire her.

Long filed suit against TRS, claiming violation of the FMLA. While TRS did not dispute the fact that Long engaged in protected activity when she took the FMLA leave, it argued that its decision to fire her was based on a number of factors, and not on any retaliatory animus. The district court granted summary judgment in favor of TRS, and decision was upheld by the Seventh Circuit on appeal.

Long's lawsuit centered around the claim that Branham was angry about her absences, and that he unduly influenced the decision to fire her on that basis. However, the Court noted that Long had not applied for leave prior to the documented disciplinary meeting with Branham on September 20, and that Branham already had documented the fact that Long's absences were negatively affecting the performance of her group prior to Long's request for leave. Therefore, any comments by Branham regarding Long's pre-FMLA leave absences could not be used as evidence of FMLA retaliation on Branham's part. Further, the Court pointed to Larkin's independent investigation, in which she reviewed not only Branham's comments, but information from others as well. The decision to fire Long ultimately was made by Bauman,

who relied on multiple sources of information, and was unaware of Long's FMLA leave.

The critical issues in this matter are ones of which employers should be aware: (1) Branham's documentation of his September meeting with Long showed that there were performance concerns prior to Long's request for FMLA leave; (2) the multiple sources of information used in the termination investigation supported TRS' argument that Branham's concerns about Long were not the sole basis for TRS' decision; and (3) the independent deliberation of the ultimate decision-maker was evidence that Branham was not the deciding factor in the adverse action against Long. Companies that follow this model of "documentation/multiple sources of information/independent decision-making" are far more likely to be successful in avoiding liability under the FMLA. ■

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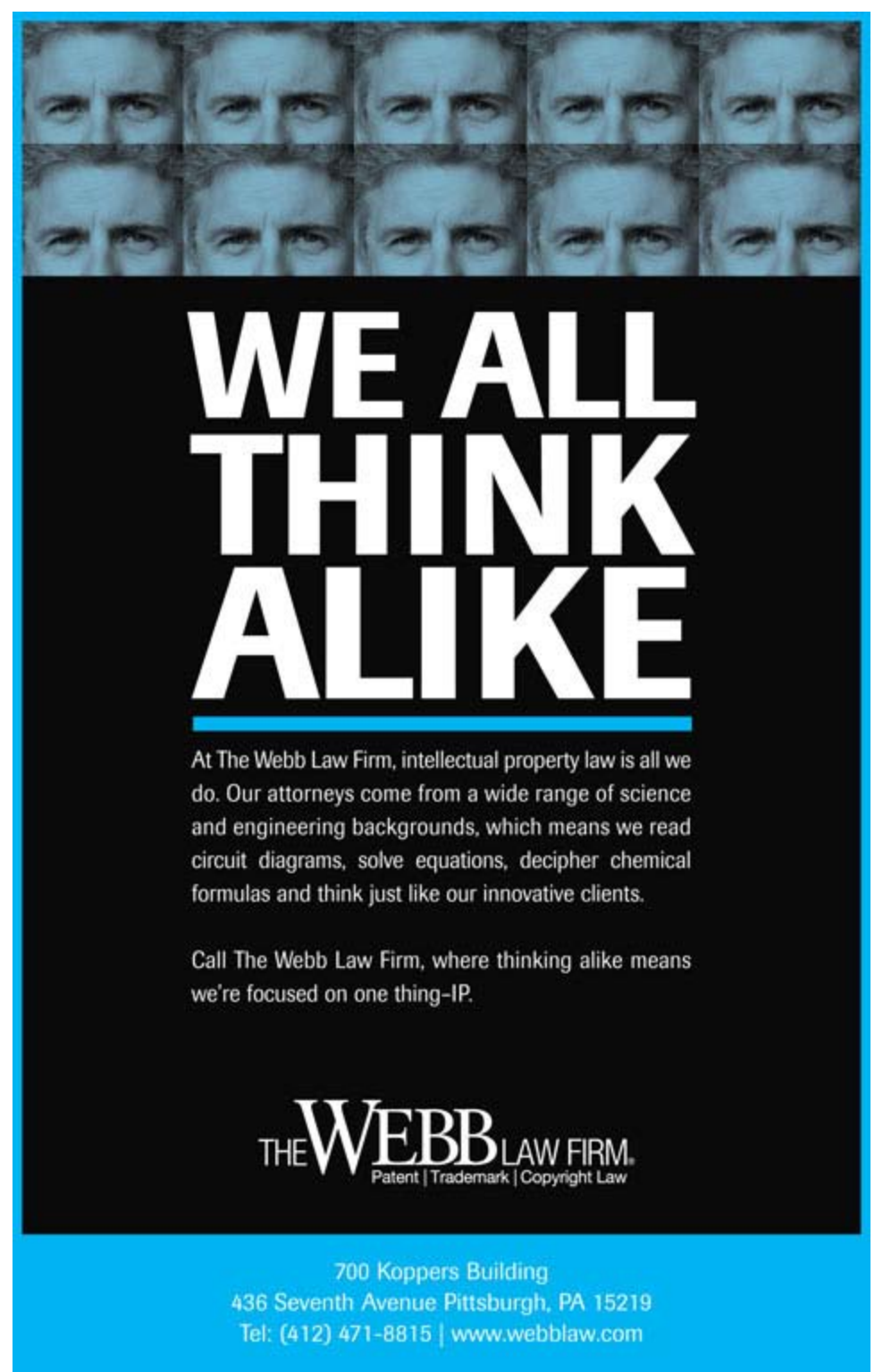
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Live from the Practising Law Institute: Twelfth Annual Real Estate Tax Forum

Overview of the tax laws pertaining to real estate ownership and investment, and a detailed analysis of the most sophisticated and creative tax planning techniques available, and much more!

Credits: 9.5 substantive • **When:** Simulcast - Thursday and Friday, January 7-8, 2010; 9:00 a.m. to 5:00 p.m.; check-in begins at 8:30 a.m., both days • **Where:** PBI Professional Development Center, Heinz 57 Ctr., 7th Fl. • **Tuition (includes course book and lunch on Thurs.):** \$1,595. Register with PBI.

Hot Topics in Oil and Gas Law

This seminar brings together the hottest topics in this new and developing area of the law and will provide you with an update for use in your practice.

Credits: 4 substantive • **When:** Simulcast - Tuesday, January 12, 2010; 9:00 a.m. to 1:15 p.m.; check-in begins at 8:30 a.m. • **Where:** PBI Professional Development Center, Heinz 57 Ctr., 7th Fl. • **Tuition (includes course book):** *Early Registration Discount - Member-Pa., or any co. bar assn: \$219; Mem-

ber admitted after 1/1/06: \$199; Nonmember: \$249; Paralegals attending with an attorney: \$99; Paralegals attending alone: \$129; Judges & judicial law clerks: \$110; Judges & judicial law clerks admitted after 1/1/06: \$100. *Standard Registration - Member-Pa., or any co. bar assn: \$244; Member admitted after 1/1/06: \$224; Nonmember: \$264; Paralegals attending with an attorney: \$124; Paralegals attending alone: \$154; Judges & judicial law clerks: \$135; Judges & judicial law clerks admitted after 1/1/06: \$125. *Registrations received more than 2 days before the presentation qualify for the Early Registration Discount. Register with PBI.

Live from Practising Law Institute: REIT and Real Estate M&A Restructurings and Recapitalizations 2010

Primer on the new structures, legal frameworks and dynamics of the current environment. Explores legal and financial strategies for restructuring and recapitalizing REITs and REOCs.

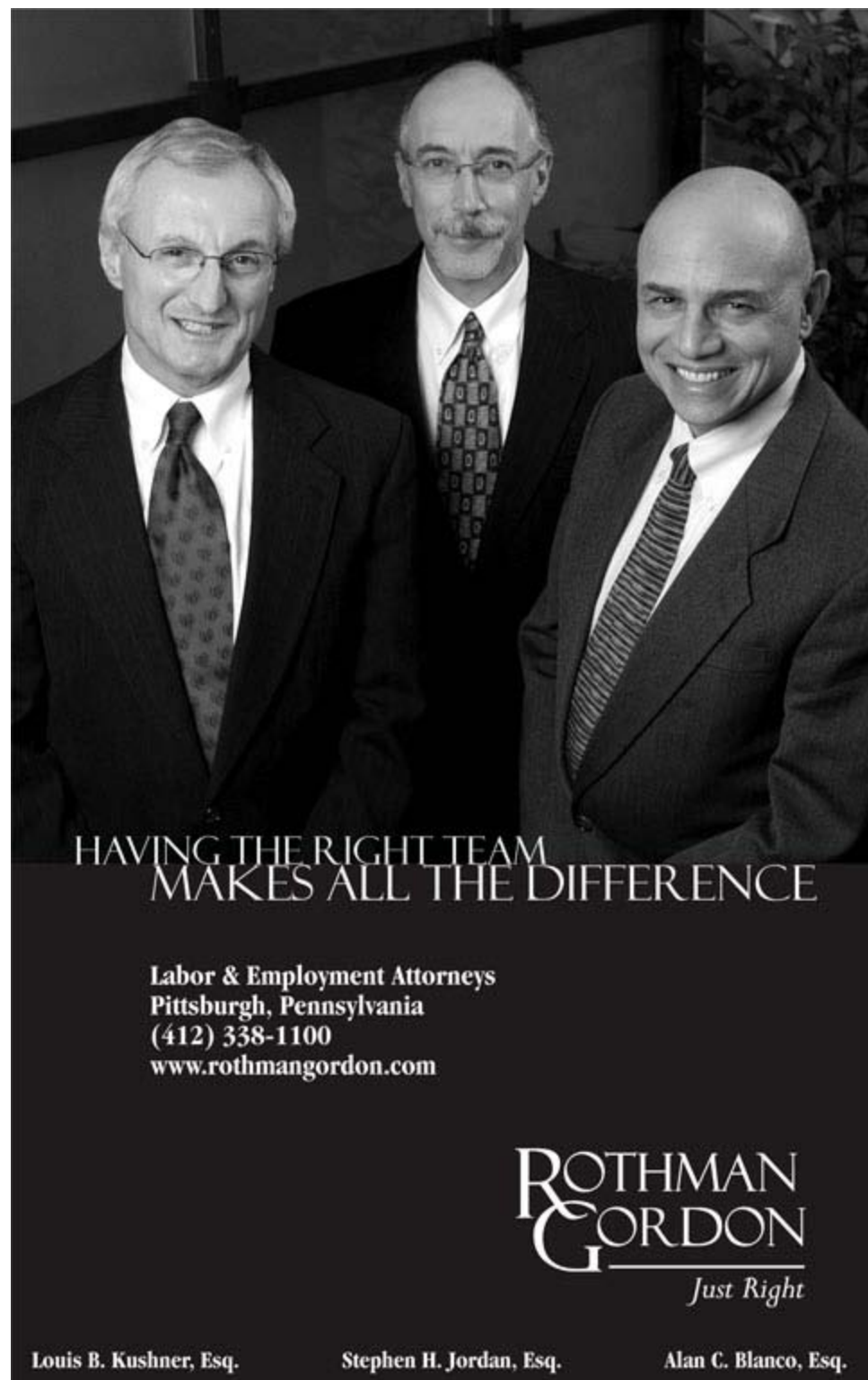
Credits: 6 substantive • **When:** Simulcast - Thursday, January 14, 2010; 9:00 a.m. to 4:45 p.m., check-in begins at 8:30 a.m. • **Where:** PBI Professional Development Center, Heinz 57 Ctr., 7th Fl. • **Tuition (includes course book and lunch):** \$1,495. Register with PBI.

SOCIAL SECURITY

Using the Electronic Processes Needed to Effectively Represent Claimants in Social Security Disability Claims

Discussion and demonstration via PowerPoint, how representatives can file disability claims/appeals online as well as utilize Electronic Records Express at the hearing office level.

Credits: 3 substantive • **When:** Fri., December 18, 2009; 1:00 p.m. to 4:15 p.m., check-in and lunch begin at 12:30 p.m. • **Where:** PBI Professional Development Conference Center, Heinz 57 Ctr., 339 Sixth Ave., 7th Fl. • **Tuition (includes course book and lunch):** *Early Registration Discount - Member-Pa., or any co. bar assn: \$189; Member admitted after 1/1/05: \$169; Nonmember: \$209; Paralegals attending with an attorney: \$99; Paralegals attending alone: \$129; Judges & judicial law clerks: \$95; Judges & judicial law clerks admitted after 1/1/05: \$85. *Standard Registration - Member-Pa., or any co. bar assn: \$214; Member admitted after 1/1/05: \$194; Nonmember: \$234; Paralegals attending with an attorney: \$124; Paralegals attending alone: \$154; Judges & judicial law clerks: \$120; Judges & judicial law clerks admitted after 1/1/05: \$110. *Registrations received more than 2 days before the presentation qualify for the Early Registration Discount. Register with PBI.



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Bar Briefs

News and Notes



Joan Ellenbogen

Joan Ellenbogen, CPA, managing partner at CrawfordEllenbogen, has been elected to a two-year term on the board of directors of the International Network of Accountants & Auditors.

Jeanine L. DeBor, Director of Law Alumni Relations at Duquesne University, was elected to the board of SharpVisions, a non-profit organization that customizes support for people with challenging disabilities.



David A. Gurwin

David A. Gurwin, a shareholder in the Corporate Finance & Technology Section of Buchanan Ingersoll & Rooney and Chair of the firm's Technology Transactions Group and its Entertainment and Media Law Group, was recently elected to serve as Chair of the MIT Enterprise Forum of Pittsburgh (also known as the Enterprise Forum Pittsburgh).

Anna Bamonte Torrance of Houston Harbaugh was recently appointed to serve as a member of the Board of Directors for SharpVisions, Inc., a non-

profit organization that supports people whose disabilities and other difficult life circumstances combine to make it nearly impossible to be served by traditional approaches and methods.

Cohen & Grigsby is pleased to announce that Charles R. Brodbeck was recently elected chairman of the Phipps Conservatory and Botanical Gardens Board of Trustees. Brodbeck is a director in the firm's Public Finance Group.

Dickie, McCamey & Chilcote, P.C. is pleased to announce that Andrew G. Kimball and Nancy R. Winschel were elected into the Academy of Trial Lawyers of Allegheny County. Kimball is Co-Chair of the Food and Beverage Industry Practice Group and also concentrates on the defense of medical malpractice claims. Winschel is the Chair of the Product Liability Practice Group and concentrates her practice in civil litigation defense.



Andrew G. Kimball



Nancy R. Winschel

People on the Move

Flaherty Fardo, LLC is pleased to announce that Jennifer P. Jara has



Jennifer P. Jara

joined the firm as an associate. Her practice will include general litigation involving personal injury, business litigation, tax appeals, and family law.

Trial Advocate Resolution Services, LLC (TARS) has announced that Jay H. Feldstein has joined its mediation and arbitration staff.



Jay H. Feldstein

Edgar Snyder & Associates is pleased to announce that Lawrence Gurrera II has joined the Personal Injury Department in the firm's Pittsburgh office.



Mark J. Goldberg

Goldberg, Gruener, Gentile, Horoho & Avalli, P.C. has announced that one of its original founders, Mark J. Goldberg, has decided to retire from the firm and will join a private mediation firm, Scanlon ADR Services.

Leech Tishman Fuscaldo & Lampl,

LLC welcomes several new attorneys to the firm. Megan Baloh is a member of the corporate, estate planning and administration, and taxation practice groups. Jonathan Croner is of counsel to the firm and works primarily with the corporate and real estate practice groups, with an emphasis on environmental issues. Jared Roach is a member of the bankruptcy & creditors' right practice group. Steven Walton is a member of the corporate, employment, and immigration practice groups.

Changes in Status

Stanley Fudor is suspended for a period of one year and one day from the practice of law in the United States District Court for the Western District of Pennsylvania. ■

All submissions for "Bar Briefs" or "In Memoriam" should be sent to the attention of David Blaner, ACBA Executive Director, 400 Koppers Building, 436 Seventh Ave., Pittsburgh, Pa., 15219, or e-mailed to dblaner@acba.org.

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- Member - Academy of Trial Lawyers of Allegheny County
- Approved Mediator - U.S. District Court, Western District of PA



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