

LAWYERS JOURNAL

Dietrich to be presented with Carol Los Mansmann Helping Hand Award



Danielle Dietrich

By Shelly Anderson

The crossover between the work Danielle Dietrich does in her “day job” and what she has done in her “extracurricular” work with the ACBA and the Women in the Law Division is no accident. Dietrich is the first Chief Diversity Officer at Strassburger McKenna Gutnick & Gefsky and focuses her practice heavily on women and diverse-owned businesses, health care and elder law. “The Women in the Law Division was really what got me involved in a lot of those issues, and then the intersectionality with diversity in all

Continued on page 11

Bench-Bar is BACK!

By Jay A. Blechman

Stay positive! Stay optimistic! Roll with it. How many times have we told ourselves those things over the last couple years? How often have you missed being with your colleagues and friends...even those who you find to be challenging? How often have you wanted to hang out, in person with people and stop the hibernation? Well, we are BACK! We are back to a live, in-person Bench-Bar Conference at Seven Springs for 2022! I am very excited to Chair the Bench-Bar Committee this year. I have had the privilege of working with talented staff members of the Allegheny County Bar Association, such as David Blaner and Christina Daub. I have worked with an excellent Committee, including the Vice Chair Joe Froetschel, prior Chair Tony Thompson and numerous other attorneys and judges, to assure a great experience will be had by all. The Bench-Bar Conference is the shining star event of the year for our organization and is noted as an outstanding event by envious Metropolitan Bars around the country. This is an event where members of the Bench and Bar get together to mix and mingle better than at any event presented



Jay A. Blechman
Bench-Bar Committee Chair

by other Metropolitan Bars in the nation. We get together for fun, but meaningful, exchanges of ideas, networking and, of course, the accumulation of additional CLE credits! There will be sports, hospitality rooms, poolside receptions and networking opportunities from Thursday, June 16, 2022, through the morning of Saturday, June 18, 2022. Over the course of my career, I cannot count the number of times that I have been to the Bench-Bar Conference

ACBA ANNUAL BENCHBAR CONFERENCE

(because if I did you might learn that it has been more times than the number of years that some of the ACBA members have been on the planet), but I can tell you that a karaoke night with judges and lawyers can certainly leave you ready to practice in person in the courtroom again. You may never see these people you are with in quite the same light, but that is the idea. Bench-Bar is an opportunity to meet with judges and colleagues in this kind of informal setting which ultimately creates a better environment for the practice of law in our county. Practitioners have an opportunity to meet and speak with members of the Bench, as we as colleagues, and get informal insights from them... between songs while eating snacks! When I was a young practitioner, I attended a “Breakfast with the Judges” at which I sat with two distinguished

Continued on page 11

Allegheny County Bar Association receives award from Pennsylvania Bar Association

By Kate Sherman and Jeff Gingerich

The Pennsylvania Bar Association (PBA) presented a County Bar Recognition Award to the Allegheny County Bar Association during the 56th Annual Seminar of the Conference of County Bar Leaders on Feb. 25 in Lancaster. Recognized for its Law Day videos and speaker series project, the Allegheny County Bar Association (ACBA) is one of 23 local bar associations in Pennsylvania honored this year for sponsoring projects that improve the legal profession, justice system or community. The awards are presented annually by the PBA. “PBA is honored to highlight the numerous local bar association projects and programs aimed at improving communities and the legal profession,” said PBA President Kathleen D. Wilkinson. “We commend the many dedicated volunteers who serve as an inspiration for others to participate in future endeavors that can benefit Pennsylvania residents.” The Allegheny County Bar Association Law Day Committee developed five online videos about legal topics to share with Pittsburgh high school students. Committee members recruited presenters to speak to classes about equal protection under the law, free speech in school, incarcerated individuals’ rights, LGBTQIA+ students’ rights/protections and voter suppression. The Conference of County Bar Leaders, whose membership includes



SUBMITTED PHOTO

The Pennsylvania Bar Association (PBA) presented a County Bar Recognition Award to the Allegheny County Bar Association during the 56th Annual Seminar of the Conference of County Bar Leaders on Feb. 25 in Lancaster. Pictured left to right are President of the PBA Conference of County Bar Leaders MariAnn Hathaway, ACBA Executive Director David Blaner, ACBA President Joe Williams, ACBA President-Elect Erica L. Laughlin and President of the PBA Kathleen Wilkinson.

leaders from county bar associations throughout the state and from the PBA, organizes a yearly educational conference focusing on the exchange of innovative bar association projects and ideas, and on the development of mutually beneficial relationships among bar leaders that improve the legal profession.

Founded in 1895, the Pennsylvania Bar Association strives to promote justice, professional excellence and respect for the law; improve public understanding of the legal system; facilitate access of legal services; and serve the lawyer members of the state’s largest organized bar association. ■

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ACBA.org/member-center/gender-bias-hotline
If you have observed or experienced any form of gender bias in your role as an attorney or law student intern, you may contact any one of the following members of the Gender Bias Subcommittee of the Women in the Law Division on a daily basis. The duty officers will keep your report confidential and will discuss with you actions available through the subcommittee.

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

Commonwealth of Pennsylvania v. Ferdinand Fitzgerald, Todd, J.Page 45
Commonwealth Appeal—Proffered Evidence

No error to not allow the proffered evidence.

Commonwealth of Pennsylvania v. Richard Bone, Rangos, J.Page 47
Criminal Appeal—PCRA—Timeliness Exceptions

Appellant's PCRA petition was not timely filed and no exception to the timeliness requirement applied where appellant did not establish new facts by listing proposed character witnesses who were available to him at trial. Accordingly, PCRA counsel had no obligation to address individual issues raised by appellant in counsel's “no merit” letter as the court has no power to address the merits of an untimely petition. Additionally, the court did not err by failing to serve appellant with an Order stating its intent to dismiss twenty days in advance of dismissal when a copy was mailed to his appointed counsel of record.

Commonwealth of Pennsylvania v. Jawan Johnson*, Todd, J.Page 48
Criminal Appeal

The sentence in this case was neither excessive, unreasonable or the result of an abuse of discretion.

**This opinion was redacted by the ACBA staff. It is the express policy of the Pittsburgh Legal Journal not to publish the names of juveniles in cases involving sexual or physical abuse and names of sexual assault victims or relatives whose names could be used to identify such victims.*

The Allegheny County Bar Foundation wishes to thank our Endowment Committee for helping us reach the finish line!

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Frank M. Moore, Esq.
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Part 3: A look at COVID response in Pittsburgh law firms

By Zandy Dudiak

The COVID-19 pandemic hasn't been all bad for the legal profession.

The *Lawyers Journal* talked with three representatives from different size firms with offices in downtown Pittsburgh to get a perspective on how the pandemic has changed the way they operate today. While recruiting and pandemic fatigue remain as challenges, the ability of colleagues to work and meet remotely has saved firms, attorneys and clients time and money since Gov. Tom Wolf ordered a shutdown of businesses and courts on March 19, 2020.

Those interviewed are Sandra Fantini, legal administrator, Papernick & Gefsky, a small firm with eight attorneys; Mark Hill, COO, Houston Harbaugh P.C., a medium-sized firm with 37 lawyers; and Kathy Sullivan, CHRO, Clark Hill, a large international commercial law firm, with 27 offices and 1,200 colleagues.

LJ: Looking on the positive side, what was one good thing that changed in your firm because of COVID?

Kathy: I do think the pandemic has presented some opportunities. Lawyers have been doing things the same way for 100 years. We have had to reimagine how we work. Lawyers have adapted very well to technological changes. Those previously resistant have been forced by necessity to be resilient.

Mark: The pandemic forced us to get out of our comfort zone regarding technology and the reliance on paper. We found that we can work remotely and be just as effective and responsive to clients, if not more so. We also

found that we can work with digital files as opposed to paper files. While that last part is not true for everyone, we are seeing more paperless files being opened.

Sandra: We found that our flexibility made for efficiently handling client cases remotely. We have been about 80% paperless in our office for the past 10 years, and because of that working remotely was easy and required only technology changes.

LJ: Did the shutdowns or the pandemic itself create any delays in court cases or increases in pandemic-related cases?

Kathy: Our practices have been very busy. Transactions have been at a high volume, and there has been new work because of the pandemic related to the CARES Act, PPP loans and other pandemic-related implications.

Sandra: I don't think COVID caused any transactions to "blow up." We have had to delay a closing or have cases delayed because of hospitalizations, client exposure or COVID infection. Litigation in the courts has been postponed or delayed because of a party having COVID. But it hasn't been crippling. One issue we had was that Philadelphia was behind in recording deed and mortgage transactions. We had postponed some appeals, postponed cases and had some delays in recordings in some areas, but now everything seems to be back on schedule.

LJ: Have recruiting and retention strategies changed in law firms at all?

Kathy: It was a challenging market going into the pandemic. At this point, some people are "rethinking" their

lives. Some have opted to retire. It's a challenge replacing them. We are interviewing remotely to hire new lawyers. We have open positions and a lot of opportunities. Legal practice support is also changing and may continue to be remote. Not necessarily from home but maybe not in the same location. Being open to innovative ways of working will be key.

Mark: The biggest work challenge created by the pandemic in my opinion is recruiting. I am not sure where everyone went, but I know there aren't many people out there looking for legal jobs. We continue to use the traditional recruiting methods to attract talent, but we are also trying to think outside of the box. We have also spent a lot more time creating retention plans. We try to stay up on the latest articles regarding recruiting to better understand what current job seekers find as important must-haves in a potential employer.

Sandra: Employment is the biggest post-COVID challenge. That's the struggle right now for all of us. I don't know where everybody went. We've been trying to hire someone since August. I think what COVID did for a whole generation of people was open them to examining their quality of life. We have been trying to hire someone since summer of 2021 and have found few candidates in the marketplace. Of those interviewed, about 90 percent volunteered that they were vaccinated. The vaccination didn't impact my decision on hiring them or not.

LJ: Do you feel comfortable with where everything is now?

Kathy: It's a new normal. Pandemic fatigue is a real thing. The pandemic


is dragging on and causing people to have fatigue with Zoom meetings and the lack of interpersonal contact. We must find a way past this. The COVID-19 pandemic is very real. We did lose a few employees to COVID. It really has had an impact on everyone's overall well-being.

Mark: I believe we are as comfortable as we can be. We often ask our staff and attorneys during individual and group meetings via Zoom if they feel safe being at the firm and if there is anything we could be doing better regarding our COVID-19 protocols. To date, everyone has said they feel safe and are appreciative of the communication of the firm's management team.

Sandra: Everyone in the firm was eager to get back. We were always flexible before COVID, but we have fine-tuned remote working so that it's easier and we are prepared for another shutdown wave, should that happen. We've weathered it, adjusted to the new routine and we're doing well. This was an unknown that hit all of us. It's required patience and flexibility. It's brought mental health to the forefront. Unfortunately, people were already worried about different things. This really pushed a lot of people. The pandemic is not going away, but together we will get through it. ■

Read all three parts of this article and more at [ACBA.org/member-center/practice-management-center](https://www.acba.org/member-center/practice-management-center).

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Donetta Ambrose retires as Senior Judge

By Zandy Dudiak

“The charges against Michael Travaglia and John Lesko are not difficult to understand. The crime with which they are charged is simple – Thou shall not kill.”

Those words were from the opening statement made by then-Westmoreland County Assistant District Attorney Donetta Ambrose in the 1981 trial of Travaglia and Lesko, who murdered a rookie Apollo policeman and three others in the eight-day “Kill for Thrill” murder spree. While the case is one of the most notorious crimes in Pennsylvania history, her role in prosecuting the case is not the reason colleagues in the legal realm will remember her.

Although Ambrose officially retired from the federal bench on Nov. 10, 2010, she continued to carry a caseload as a Senior Judge for the U.S. District Court for Western District of Pennsylvania until Feb. 1, when she finally put down the gavel.

“Her legacy will really be focused on her leadership and innovation,” said District Court Chief Judge Mark Hornak. “Her leadership was embodied by her inclusiveness. She was a judge who could administrate effectively and efficiently.”

In her time as Chief Judge in the Western District from 2002 to 2009, Ambrose moved the district court to state-of-the-art electronic case filing. The Federal Judicial Conference repeatedly engaged her to teach what is known as “Baby Judges School,” the training for newly confirmed federal district court judges, a role for which she was well suited, Hornak said.



Hon. Donetta Ambrose

“In the 203-year history of the court, Donetta Ambrose was unique in that she had a combination of judicial excellence, thoughtful innovation and fundamental humanity,” Hornak said.

As a judge, Ambrose “drew out the best in everyone around her,” Hornak said. Ambrose helped create the Alternative Dispute Resolution program to resolve civil cases and expanded the role of U.S. Magistrate Judges in Pittsburgh to take on additional responsibilities. She also served on the U.S. Judicial Panel on Multidistrict Litigation, which works to consolidate high stakes civil actions pending in different federal districts throughout the country before a single judge.

Knowing the court had several vacancies, Ambrose chose to continue serving as a Senior Judge into this year. Six new judges have filled those slots, and that helped her make the

decision to step down, along with the pandemic, her family responsibilities and her age.

“The court was no longer in need,” she said. “We have all these new judges who are enthusiastic. It was a great ride. Everything has a time. Somehow, I knew it was time.”

Growing up as the daughter of a millworker at Aluminum Co. of America (ALCOA) and a homemaker, there wasn’t any thought of one day becoming a lawyer or judge, she said. Her rise through the legal system came about in part because of those who recognized her great respect for the profession and the rule of law.

A 1967 graduate of Duquesne University, Ambrose was one of only four women to graduate from Duquesne Law School’s Class of 1970. Pennsylvania Supreme Court Justice Louis Manderino chose her to be his clerk and she served in that post for two years.

She moved on to handle civil rights litigation for the state attorney general’s office. She joined the Westmoreland County District Attorney’s office as a part-time prosecutor as she and her late husband, Ray, also an attorney, began raising their family.

In 1981, at the urging of sitting Judge Gilfert Mihalich, she ran for the all-male Westmoreland County Common Pleas Court. Though not endorsed by the Democratic committee, she received support from women – from garden club members to high school friends to the faculty at Seton Hill College – and was elected to fill one of three vacancies.

Ambrose remained there until 1993, when she was appointed to the U.S. District Court by President Bill Clinton after being nominated by U.S. Senators Harris Wofford and Arlen Specter.

“That was the greatest honor of my life,” Ambrose said.

She cited many people who helped her advance her career, especially in the rise from attorney to judge at a time when there were not as many women in the profession. She served on committees and joined organizations that professionally and generally promoted women.

“What stands out to me most is the professionalism of the lawyers I’ve worked with,” she said. “I will miss the camaraderie and the excellent lawyers and judges.”

Among the federal court cases she left unfinished is the Tree of Life synagogue massacre.

COVID-19 also played a part in her decision to leave the bench, even though she held proceedings at home via Zoom, because she is immunocompromised.

Since retiring, she’s been running her 11-year-old grandson to swim practice and spending time with him. She now has time for friends, walks and reorganizing her home office. “I’ve done a lot of shredding,” she laughed.

After residing in the Arnold/New Kensington/Lower Burrell area, she moved to an Oakmont condominium four years ago to be near her son’s family.

“Having a condo has been more liberating than not working,” she said. “I loved working. The full effect of the burden of working has not left yet, though I never felt it was a burden.” ■

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An easier method to reduce your unpaid bills

By Keith Cameron

The Omnipresent Unpaid Bill

Annually, many firms’ unpaid client bills accumulate to the point that their Executive Committee calls for an all-out, concentrated effort to collect those bills. When this happens, wouldn’t you rather be doing something other than contacting all your clients with overdue bills? Having been in the middle of assisting many such efforts over the years, I think most attorneys would prefer to forego the angst of a “bills blitz.” In this article, I will describe a different, simpler method, which firms have adopted to better match their personality.

Every law firm Executive Committee wishes its client bills were all paid within 45 days and at the full amount, but I know of no firm where that occurs. That said, there are always unpaid bills. “Unpaid bills” for this article refers to bills which have not been fully paid within 45 days after the bill is sent to the client. For most firms, about 10-15% of their clients regularly and promptly pay their bills within a month and without questions. Also, a large percentage of firms’ bills (up to 50%) will be a small dollar amount (less than \$1,000) and not worth the collection effort other than to send reminder statements. Of the



Keith Cameron

remaining 35% of firms’ bills (unpaid bills) most will eventually be paid in whole or in part, but months, or years, after the legal work was completed, and some will never be paid. Unpaid bills accumulate quickly if not regularly addressed; they are always there, but you can significantly reduce them by taking strategic actions to collect. This is true no matter the tactic: Contact by the billing attorney, contact by staff, reminder statements, etc. The most effective method for collecting your unpaid bills is to employ a full- or part-time staff person dedicated to that task. Unfortunately, for many firms that is not a viable option. There is an

Accounts Receivable - Spotlight Report									
Last updated: 2/14/22									
ACCOUNTS RECEIVABLE									
Client (Client Number)	Billing Attorney	Total	1-60 days	2-6 months	6 months to 1 year	Older than 1 year	Change Since Previous Report	Explanation and Next Steps	Conclusion
XYZ (7890)	RRR	\$ 45,800	\$ -	\$ 10,000	\$ 35,800	\$ -	Write-down of \$5,000		
ABC (1234)	BBB	\$ 37,400	\$ 5,000	\$ 20,000	\$ 10,000	\$ 2,400	Receipts of \$9,500		
Total		\$ 83,200	\$ 5,000	\$ 30,000	\$ 45,800	\$ 2,400			
NOTE: Possible conclusions = Payment; Write-off; Future payment date; No collection likely in next 6 months; or some combination.									
REMOVED FROM LAST WEEK'S LIST:									

effective alternative, however, which some firms have embraced.

Slow and Steady Wins the Race

Firms have used the following method to reduce their unpaid bills gradually but consistently:

- Add the collection of unpaid bills as a standing agenda item to your regular Executive Committee meetings: Accounts Receivable – Spotlight Report (or similar title you prefer). Refer to the sample report form above.
- Select 2-3 clients that have a large amount of unpaid bills (at least \$10,000), at least a portion of which is over 45 days old.
- Include the key information on each client as displayed in the sample report.
- Have a committee member follow up with each billing attorney whose clients are listed to get information on the status of the unpaid bill, including

why it is unpaid and the next steps to collect. Have someone revise the report with the updated information prior to the meeting.

- Present the report at every committee meeting and discuss (for approximately 10-15 minutes) each listed client’s collection-related status and the planned next steps for reaching a conclusion (see bottom of the sample report for possible conclusions). Remember to mention the positive developments, not just the issues. Keep the client on the list until one of the conclusions has been decided. Push for conclusions – no client should be on the list longer than three weeks.
- When a client is removed, add another so there are always two to three on the list.
- Monitor to ensure the billing attorneys and their clients comply

Continued on page 11


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Commute-worthy or just commodity? Three things your employees want from the office now

By Dan Adamski Sr.

From the onset of the pandemic, the legal industry showed notable agility as many firms and legal departments transitioned to remote work. Yet, since 2016, law firms have dominated new leasing in downtown Pittsburgh, responsible for 580,000 s.f. (36.4%) of total new leasing, signifying an inevitable return.

Today, attorneys want the freedom to work both in the office and remotely depending on what best suits their schedule. As the concept of hybrid work becomes a norm, many law firms see the need to acquiesce to remain competitive for new talent.

While most firms will adopt some form of hybrid work to accommodate their employee's demand for flexibility, ongoing remote work has been linked to weaker culture, diminished mentorship and collaboration opportunities for junior attorneys, and feelings of burnout.

What does this mean for law firms?

Firms must conduct stronger placemaking; establishing the office as a commute-worthy experience versus a standard commodity where work gets done.

Older generations are retiring, and younger employees are in the driver's seat when it comes to choosing their workplace. Remote work has added to employee turnover, increasing distance

between colleagues, and dissolving the sense of belonging.

Due to the increased emphasis on recruitment and retention during this heightened war for talent, having a workplace that is commute-worthy is paramount. The desire for a compelling work environment, combined with tenant favorable market conditions, have motivated Pittsburgh law firms to create dynamic workspaces that will increase their ability to attract talent. And, if there were ever a time to act, that time is now.

So, what do employees want from the office now?

In short, the same lifestyle conveniences as home. As firms re-evaluate their setup and office functionality, consider these three factors.

1. Seamless technology

A technologically smoother environment is going to be a selling point to entice workers back into the office. The rising requirement for fast internet continues to be a challenge as most of the underlying infrastructure remains the same as pre-pandemic.

As workers return, they're expecting the same efficiency and speed as their home internet and technology that can ensure a smooth experience for a hybrid workforce.

Meeting spaces that are outfitted with high-quality screens and audio technology make it easier and more

enjoyable to collaborate with remote employees or clients.

2. Services focused on health, wellness, and convenience

A recent Workforce Barometer survey from JLL found that health and quality of life are among the top priorities for office workers today.

Studies show that improved ventilation and air quality, access to natural light and outdoor space, and healthier dining options drive productivity.

Taking it a step further, the pandemic uncovered the need for modern conveniences to match the lifestyle conveniences at home and enhance health and safety. Accessibility to touchless technology, operable windows, and onsite services like daycare or clinics can increase feelings of comfort and wellness at work.

3. Spaces that inspire and facilitate problem-solving

The workplace itself has an important role in encouraging community and boosting energy levels.

Workplace design that emphasizes collaborative space can nurture communal energy when fewer employees are in. And, on the contrary, designating quieter focus areas or phone booth style rooms can enable much-needed deep thinking to solve complex problems or projects.

Offices that are kitted with a variety of space types with a clear purpose

will win over employees looking to break up the monotony of remote work.

It would be difficult to argue that the office is dead, especially for legal professionals. The profession itself is often driven by mentorship and training, and face time with more senior personnel is key to the growth and development of younger lawyers looking to grow within the industry. ■

Dan Adamski Sr. is Managing Director, JLL. JLL (NYSE: JLL) is a leading professional services firm that specializes in real estate and investment management. JLL shapes the future of real estate for a better world by using the most advanced technology to create rewarding opportunities, amazing spaces and sustainable real estate solutions.


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Choosing the right time to mediate

By Howie Schulberg

In case you have not heard, there is a proposal circulating to make mediation “mandatory” before commencement of trials in Allegheny County. The purpose of this article is not to go into details about that proposal. The short version is that the proposal requires all cases to be mediated at least 45 days prior to the scheduled trial date. There are exceptions. And that is all I will say about that. You can find more information about this at vimeo.com/667928739/5de45f04d5. For those practicing in the U.S. District Court for the Western District of Pennsylvania, you know there is, and has been, a mandatory Alternative Dispute Resolution (ADR) program for close to 20 years. It is an early ADR program with minimal opt-out provisions.

In either case (and in quite a few other jurisdictions), it is not always the parties’ choice about whether they want to voluntarily engage in ADR, and sometimes you don’t have a choice about the timing. In those cases, you want to make the most of it by doing what is necessary to get the case ready for mediation. In Allegheny County, considering the stage at which it is proposed that mediation will occur, it’s likely that most discovery has been completed. But if you need some further information, request that the other party or parties provide that information. Or broach the subject with the mediator to see if they can help get what you need to engage in settlement discussions more effectively.



Howie Schulberg

In federal court, at your initial conference with the mediator, bring up the subject and enlist the mediator in trying to get you some informal discovery responses. As the mediator, we want to help and make sure the parties have the necessary information to have a fruitful dialog.

If the parties have agreed to mediate outside of some mandatory program, then it is likely that information has been exchanged or there is not much of a dispute on some of the issues in the case; liability or damages or some portion of those elements is obvious.

However, even in those cases there can be subtleties. Do you have a full understanding of what the other side is looking to accomplish through mediation? Just because someone mentioned mediation does not signify a meeting of the minds on the outlook for the case. You may want to probe

the other parties to see what they have in mind. Not to suggest bad motives, but there can be reasons other than resolution which drive the request to mediate. It could be that a party wants to try and get a better handle on the strengths/weaknesses of your case or even their own. Perhaps discovery has left some questions unanswered or at least open to interpretation. Delaying tactics can also be a motivating factor.

I have mediated cases where one party refuses to make a move unless the other side can provide them with some substantive reason for doing so. I normally ask the recalcitrant party what information they think they need that has not already been provided. Depending on the procedural posture it is likely that someone is trying to get a better understanding of their opponent’s case, which is not always a bad thing. Other times one party is not quite ready but offers up mediation as a way to mollify the court. This can be tougher to recognize in advance of a mediation.

So, when is the best time to mediate a case? Is it before suit is filed, once discovery is complete, prior to or after dispositive motions or anytime thereafter? As with most answers in the law, it all depends. There are advantages and disadvantages to whatever time the parties choose to mediate their dispute. The biggest advantage to “early mediation” is that the parties have not expended a significant amount of time, emotional energy or legal expense on the matter. The Western District has chosen an early timeframe with some of those

very factors as the basis for early ADR. Twenty years into the federal court’s program the point has been made that it is very effective, in most cases, to use the initial stages of litigation as a means for the parties to take stock and discuss settlement.

The argument most commonly advanced in opposition to early mediation is that the parties do not have all the relevant facts to accurately assess their risk and potential exposure. It has been said that 85 to 90% of all facts can be ascertained by incurring only about 10% of the expected legal fees through trial. In my opinion, mediating a case after some initial exchange of information has been provided is usually the best time since the parties can better assess their potential risk and exposure, without becoming too heavily invested in the litigation. At that stage the parties have also seen some of what lies ahead if the litigation continues.

There are, however, disputes where a party needs a ruling from the court before it can mediate a case, such as a difficult civil rights case against a municipal body. Proving the benefits of mediation to a governing body may take a court ruling on certain matters. In those instances, a case probably should not be mediated until after all dispositive motions have been ruled upon.

This is not suggested to be an exhaustive resource on the subject of the best time to mediate but to give you food for thought on the various

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Maggie Prescott presented with YLD Outstanding Young Lawyer Award

By Zandy Dudiak

Maggie Prescott uses her legal skills to help survivors of domestic violence by day, and volunteers tirelessly with ACBA and ACBF committees and projects after the workday is done.

Her community involvement and philanthropic efforts have not gone unnoticed by her peers.

The ACBA Young Lawyers Division (YLD) presented Prescott with the 2022 Outstanding Young Lawyer Award, given annually to an ACBA member who has been practicing law for ten years or less and has distinguished himself or herself through service to the bar association, involvement in the community and excellence in the profession. Prescott said she was honored – and surprised – when the award was announced at the YLD Annual Meeting.

“Her full-time job is helping one of the most vulnerable populations,” said Lacey Ecker, who met Prescott while volunteering with the YLD Public Service Committee. Ecker nominated Prescott for the award, which she had received in 2021, because Prescott is “involved, dedicated and hardworking.”

A graduate of Carnegie Mellon University, Prescott joined the staff of the Women’s Center & Shelter of Greater Pittsburgh in 2013 after graduating from the University of Pittsburgh School of Law.

“I first began working with domestic violence survivors on their family law cases as a certified legal intern at Neighborhood Legal Services during law school,” she said. “The experience provided me with insight into domestic



SUBMITTED PHOTO

Maggie Prescott (left) was presented with the YLD Outstanding Young Lawyer Award by YLD Chair Asra Hashmi at the YLD Annual Meeting on Feb. 22.

violence survivors’ many complex challenges and needs, and it motivated me to devote my skills and career to assisting survivors obtain safety, resources and dignity.”

Prescott started as a staff attorney, working specifically with victims of intimate partner violence and sexual violence. She was promoted to senior staff attorney in 2019 and assumed a new role as chief of mission integration this year.

“I received a 2021 PBA Pro Bono Award for my work with low-income victims of intimate partner violence

on their family law legal matters,” Prescott said. “Working for the Women’s Center & Shelter of Greater Pittsburgh allows me to connect our clients with the full range of supportive services, such as housing, counseling, legal advocacy, relocation, and more.”

Prescott started her involvement with the ACBA and ACBF by joining the YLD’s Bar Leadership Initiative. In the years since, she has served on many committees, helped with fundraisers, organized events and participated in volunteer programs. At present, Prescott serves on the

ACBA Judiciary Committee. She serves on the Family Law Section Council, is co-chair of the Court Relations Committee and a member of the Children’s Issues Committee. A trustee of the ACBF, she co-chairs its Loans and Scholarships Committee.

“The ACBA and YLD provide so many opportunities for lawyers to give back to the community,” she said.

She has served on the YLD council and as the division’s treasurer. Currently, she is a member of the YLD’s Ad Hoc Anti-Racism Committee and a member of the Children’s Issues Committee.

“I co-chaired YLD’s Public Service Committee and organized and participated in many volunteer programs,” Prescott said. “I am a proud alumni/chair of YLD’s Children’s Gift Drive and Holiday Party, and matched generous lawyers and law firms to provide personalized gifts to hundreds of underprivileged children.”

She also co-chaired Strike Out Hunger, an anti-hunger fundraising initiative that benefits ACBF’s Attorneys Against Hunger campaign, and co-facilitated YLD’s “Night with the Author” event featuring Damon Young and his experiences as a Black man in Pittsburgh. She volunteered as a witness for Wills for Heroes, which provides free estate planning drafting and execution to first responders.

“I have also volunteered for the Military and Veteran Project (MVP) by packing supplies and thank you letters to be mailed to deployed servicepeople,” she said. “I even

Continued on page 11



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Superior Court reviews discoverability of mental health records

By Brad E. Haas

The Superior Court of Pennsylvania recently analyzed two cases related to the disclosure of a plaintiff's mental health records in the context of personal injury litigation. Specifically, the court discussed when and how certain allegations within a complaint or deposition testimony could require such disclosure.

In sum, the Superior Court held that a personal injury lawsuit alleging some emotional or mental harm, in and of itself, is insufficient to waive the statutory psychiatrist/psychologist-patient privilege or the protections of the Pennsylvania Mental Health Procedures Act, which precludes the disclosure of certain mental health records. See *Boyle v. Main Line Health, Inc.*, 2022 Pa. Super. Unpub. LEXIS 71 (Jan. 10, 2022) (non-precedential decision); *Tavella Zirilli v. Ratner Companies, L.C.*, 2021 Pa. Super. 240 (Dec. 8, 2021).

Both the Boyle and Tavella opinions began with a discussion of the 2010 case of *Gormley v. Edgar*, 995 A.2d 1197 (Pa. Super. 2010). In *Gormley*, the Superior Court determined that when a plaintiff directly places their mental condition at issue in a lawsuit, they waive any statutory privileges related to the disclosure of mental health records, making them subject to disclosure. Conversely, the court held that general assertions of mental issues alone are insufficient to place a party's mental condition at issue.

While *Gormley* laid out a general framework of review, the intricacies of mental health allegations and the



Brad E. Haas

potential discoverability of such allegations were further expanded upon in the Boyle and Tavella opinions.

In Boyle, the plaintiffs brought suit on behalf of their minor son for injuries which occurred during his birth. The amended complaint sought damages based on professional negligence for the minor's injuries, as well as for past and future "emotional pain and suffering" and a loss of consortium claim on behalf of Mr. Boyle. During discovery, the defendants served subpoenas on two of Mr. Boyle's psychiatrists. The plaintiffs objected, arguing the records contained privileged mental health information. The trial court ruled that Mr. Boyle waived any privilege related to the mental health records by placing his mental and emotional health at issue. The trial court based its decision on two allegations. The first, from the amended complaint was an allegation

that Mr. Boyle would in the future suffer from emotional pain and mental distress associated with parenting his son who suffered permanent injuries. The second was from the deposition of Mr. Boyle where he testified to feeling anxious, frightened and confused in the delivery room.

On appeal the plaintiffs argued they did not allege Mr. Boyle suffered any mental injury, severe emotional trauma requiring treatment, or any specific psychiatric/psychological condition, as would be required to waive the mental health records privileges. Instead, they argued the allegations were general assertions of emotional and mental pain. The Superior Court agreed with the plaintiffs and reversed the trial court. In doing so, they distinguished *Gormley* on the basis that the plaintiff in that case specifically alleged she suffered from anxiety, a recognized mental condition, as a result of an accident. As such, the Superior Court appeared to differentiate between a plaintiff alleging to have experienced anxiety during an incident as opposed to a plaintiff specifically claiming an incident factually caused anxiety or some other specific mental health disorder.

The Tavella court dealt with a different situation involving a similar analysis under *Gormley*. In Tavella, the plaintiff filed a negligence action, claiming personal injuries after receiving a hair color treatment. The injuries included chemical burns and scarring to the scalp, which spread to the plaintiff's neck, face, arms, and chest. The plaintiff also alleged the hair color treatment caused

headaches, neuropathy, mental anguish and emotional distress. Initial discovery included medical records from the plaintiff's primary care physician. These records revealed the physician observed pre-accident issues to the plaintiff's skin, as well as a mental health condition that affected the skin. An IME doctor also concluded that the plaintiff's mental health conditions might have affected her skin, scalp, and hair before the incident. Based on this information, the defendants sought discovery of all of the plaintiff's mental health records.

On appeal, the defendants argued that the plaintiff had placed her mental and physical health at issue by filing a personal injury action claiming her skin condition was caused by the hair color treatment. The defendants further argued that evidence of the plaintiff's mental health diagnoses were directly relevant to the source of the skin and scalp issues and contained potentially exculpatory evidence to suggest the skin color treatment was not a substantial factor in causing her alleged injuries.

The Superior Court held that, while the plaintiff's general averments in her complaint of loss of life's pleasures, mental anguish, and emotional distress did not result in a waiver, the nature of the injuries alleged and the investigation thereof did require the disclosure of the mental health records. The court recognized that although the complaint did not raise allegations of mental injuries as a result of the hair color treatment, the

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DANIELLE DIETRICH
continued from front page

forms,” Dietrich said. “That led to working with some women-owned businesses, which led to working with diverse-owned businesses.” Dietrich is a former WLD Chair and an ACBA Board of Governors member.

For all of the work she has done in so many capacities, Dietrich is the recipient of the 2022 Carol Los Mansmann Helping Hand Award, which is presented annually to an individual who embodies Judge Mansmann’s values and dedication to advancing and improving women lawyers’ roles in the legal profession. Mansmann was a United States Circuit Judge for the United States Court of Appeals for the Third Circuit and a United States District Judge for the United States District Court for the Western District of Pennsylvania.

“She’s an example of what WLD women can be, which is being a total package, excelling in many areas and having this village of other women who support you,” said Allegheny County Court of Common Pleas Judge Nicola Henry-Taylor, a past Mansmann Award winner who nominated Dietrich this year.

Current WLD Chair Julie Vanneman agreed.

“She’s been a consistent contributor for many years in a number of ways, including in the WLD, but also in the Bar Association more generally,” Vanneman said. “She stays involved. She continues to contribute. She continues to serve as a mentor. She just keeps plugging at it day after day.”

“She is a member of the ACBA Board of Governors. Previously it was not the case that women were the majority of governors on the board, but it is now. She was one of the women who spear-headed that change. I think that’s also an important contribution.”

While the Mansmann Award could be likened to a lifetime achievement honor, sometimes one accomplishment also stands out. That is the case with Dietrich.

That would be the way, as WLD chair, she handled a 2016 situation involving lewd emails that were deemed to be offensive to women, and that led to Pennsylvania Supreme Court Justice J. Michael Eakin leaving that post.

“She handled it with the utmost grace,” Henry-Taylor said. “Very strong. But also, respectful and smart. I think the test of true leaders is when you have a situation like that and how they work their way through it. I think she handled it with splendor and represented our women. She coalesced the younger women and the more senior or seasoned women. She was a great leader in making sure that everyone had a seat at the table.”

Vanneman pointed out that during that time Dietrich was “passionate

and eloquent in the opposition to what was going on” both publicly and behind the scenes and worked to properly express the outrage of women over the content of the emails.

Dietrich said she simply recognized the situation and her responsibility.

“I feel like that was a little bit of a pivot point for the WLD as well as the Bar Association in general,” she said. “It was where we really started to take a stance on these things and speak out publicly. It needed to be done. That was my role. I’ve always been someone who asks the tough questions and says what everybody else is thinking but maybe won’t say it out loud – which is a blessing and a curse.”

The Mansmann Award honor would seem to indicate it is the former, that Dietrich’s work and willingness to speak out and act is a blessing.

The award will be presented at the WLD Annual Meeting which will be held on Tuesday, May 3, 2022, at the Rivers Club. Visit [ACBA.org/calendar](https://www.acba.org/calendar) to register and for additional information about this event. ■

BENCH-BAR IS BACK!
continued from front page

members of the Superior Court. I received first-hand insights into the judges’ views of oral argument versus simple admission of written briefs. Another time, a friend and I teased a judge candidate, another colleague, who was trying to make a good impression on that persons’ large law firm partners at a dinner table with whom this person (now a judge) was sitting. Apparently, distracting that candidate with juvenile antics was not as endearing as we thought at the time. It was, though, a memorable Bench-Bar moment for those involved (and you know who you are!). Then there were the in-pool chats with judges from other divisions, where we became good friends, and the early Women in the Law vignettes where lifetime relationships were forged. There were always the Thursday night barbecues where we would sit with people whom we had not seen in quite some time, or still others with whom we would find common ground over a libation...or two.

At Bench-Bar, we hold a series of serious events, as well, including substantive CLE programs, with both plenary and break-out sessions. On Friday, at lunch, there is the passing of the gavel for both the ACBA and the ACBF. Then each year, at that same lunch, the Amram Award is announced to an unsuspecting awardee who personifies professional excellence, who demonstrates a substantial commitment to the Bench-Bar Conference and provides outstanding service to the community. It is a highlight in the category of serious moments at Bench-Bar.

All the events at the Bench-Bar, formal or informal, provide opportunities to network, socialize, and learn about how others practice law, or rule from their position on the bench.

Whatever your interest, the Bench-Bar has something to offer for you, some story to tell...or memory to form. Please come and join me there. Come up and say hello, even if we have never met before...especially if we have never met before. The event is about relationships, as is the practice of law. I look forward to seeing you all there! ■

LAW PRACTICE MANAGEMENT
continued from page 5

with their commitments to resolve the unpaid bills.

That’s the whole process! A few related observations and suggestions follow:

1. There are two keys to the effectiveness of this method: a) the focus is on only a small number of clients at any one time, and you have all the information you need to progress with each situation. With only one client, it’s easier to get a billing attorney to commit to remedial steps and then to hold that attorney accountable for follow through; and b) you are continually reducing the unpaid bills.

2. Most accounting systems have a standard report for listing the Aged Accounts Receivable by client, which can help you identify candidates for your Spotlight Report.

3. Don’t list clients which have uncollectible bills, such as those which have been unpaid longer than a year. You may want to deal with such complicated situations differently.

4. The discussion should move quickly because there are only two to three clients. Adding this agenda item should not interfere negatively with other committee matters or take over the meeting.

5. The accountability which accompanies this process may inspire some billing attorneys to resolve their unpaid bills to avoid being on the “Spotlight Report.”

6. Remember that gradual and steady progress with unpaid bills is superior to no progress.

Conclusion

This simple method to collect more of your unpaid bills, and to collect sooner, has been effective for some firms which previously followed no systematic collection process. Compare it to your current collection process to see if it could benefit your firm. If you use the method, maintain a list of the resulting collections and write-downs. Twice a year, compare whether your 15 minutes a week of meeting time is producing satisfactory results. ■

RIGHT TIME TO MEDIATE
continued from page 8

reasons why you might want to consider mediating at a particular moment in time. ■

Howard J. Schulberg, Esq. has provided mediation and arbitration services for over 25 years to attorneys who represent parties in negligence, product liability, medical malpractice, civil rights and other matters before the courts. Schulberg has over 40 years of litigation experience that not only gives him a solid base of knowledge but allows him to connect with the parties in a real world setting. In 2021, Schulberg pivoted his focus entirely to ADR with the launch of Schulberg Mediation.

MAGGIE PRESCOTT
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acted as Mama Bear once in The Three Bears v. Gold E. Locks in the Fairy Tale Mock Trial for children.”

Prescott was YLD liaison to the Board of Trustees in 2019-2021. She

was a Young Lawyers Fellow, Class of 2019.

Prescott calls on her peers to volunteer to help people who cannot afford legal help.

“There is a significant need for free civil legal representation in family law matters for domestic violence victims, and I would love to see more attorneys lend their expertise and time to helping vulnerable people navigate complex legal systems,” she said. ■

MENTAL HEALTH RECORDS
continued from page 10

defenses to liability were connected to the plaintiff’s mental health to such an extent that necessitated disclosure.

The court stated the plaintiff “knew or should have known that by commencing suit and alleging Ms. Tavella-Zirilli’s injuries were caused by Appellees negligence in coloring and treating her hair, they were placing any condition that affects the skin, scalp, or hair at issue as to causation.” However, the court limited its holding and determined that, despite evidence that a mental condition may be relevant to liability, the plaintiff had not waived all protections against disclosure due to the fact that she was not alleging the incident caused a specific mental condition. In doing so, the court stated, “What is relevant are records showing a treatment provider believes Ms. Tavella-Zirilli has skin, scalp, or hair injuries caused by her mental health and when those injuries occurred, not Ms. Tavella-Zirilli’s innermost thoughts about her mental health, regardless of whether those communications are about her skin, scalp, or hair.” As such, the court allowed for the discovery of the plaintiff’s mental health records containing information related to causation but required redaction of any unrelated communications between the plaintiff and her mental health providers.

These two cases are instructive in several respects. First, pursuant to both Gormley and Boyle, if a plaintiff alleges an accident caused a specific mental condition, such as anxiety, mental health records will likely be discoverable. If, however, the allegations are general emotional trauma or if a plaintiff merely alleges experiencing anxiety at some point, the records will likely not be discoverable. The Tavella holding demonstrates that the door to discoverability of mental health records can be opened not only by a plaintiff’s allegations, but also by potential causation defenses. Additionally, it can be expected that even in situations where mental health records discovery is permitted, courts will generally still require some level of redaction. Based upon these cases, a detailed analysis of a plaintiff’s complaint, testimony, and potential defenses is critical in order to demonstrate the need for mental health records that could contain valuable information for defendants. ■

Brad E. Haas is an associate in the Casualty Department in the Pittsburgh office of Marshall Dennehey Warner Coleman & Goggin. He concentrates his practice on the defense of companies and individuals in a wide array of civil litigation matters involving personal injury claims. He has successfully litigated cases involving automobile and trucking liability, premises liability, property damage, insurance coverage/bad faith litigation, and general liability matters. He may be reached at behaas@mdwcg.com.

If you have an idea for a substantive law article or would be interested in authoring one, please email Jennifer Pulice at jpulice@acba.org.

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Black History Month Celebration

During the virtual 18th Annual Black History Month Celebration on Feb. 24, the Homer S. Brown Division (HSBD) presented its Spirit Award to Harold Hayes, longtime KDKA-TV personality, and its Young Leader Award to ACBA member Morgan Bonekovic. These awards are presented to those who have exhibited leadership qualities and a commitment to the promotion of equality and the advancement of justice among the African American community.

The event ended with a Q&A moderated by HSBD Chair Morgan Moody with the two award winners that covered topics such as what Hayes and Bonekovic are most proud of in their careers and advice they would give to young lawyers and aspiring journalists today.

Among those in attendance were HSBD Past-Chair Regina Wilson and Cindy Chung – who discussed her role as newly appointed U.S. Attorney and her goals for community partnerships and the importance of fair and justice law.





Left to Right: **Christiana Chmielewski, J.D. AVP, Personal Trust Officer;**
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In Memoriam

Harry J. Gruener



Harry J. Gruener, age 77 of Ohio Twp., formerly of Ross Twp., passed away on Friday, March 11, 2022. Beloved husband for 54 years of Christine (Larson). Loving father of Gretchen Busquets (Miguel) and Rachel Kress (Paul). Proud Papa of Marisa and Talia Busquets, Catie and Jay Kress. Also survived by loving friends, relatives, colleagues, students, an infinite number of golf clubs and a pristine 1961 red Corvette convertible. He was a lifelong Pittsburgh resident born and raised in West View and a graduate of North Hills High School. He went on to earn both his BA and JD degrees from the University of Pittsburgh. He began his legal career as a civil trial lawyer in both state and federal courts but ultimately found his niche in Family Law and exclusively concentrated his practice on helping families for over 24 years. His passion for the law, his sharp intellect and his quick wit made him

an influential presence in the western Pennsylvania legal community. He was a founding member of one of the premier family law firms in the region and was listed in the Best Lawyers in America for 20 straight years as well as being named a Pennsylvania Super Lawyer for 2005-2012. He was a fellow of the American Academy of Matrimonial Lawyers and served as president of the Pennsylvania Chapter in 2000 and 2001. He was a member and former chairperson of both the Pennsylvania Bar Association Family Section and Allegheny County Bar Association. Harry also helped shape the landscape of divorce law in the state as a key member of the advisory committee responsible for guiding the 2005 legislative amendments to Pennsylvania Divorce Code. He found his true calling when he returned to his beloved University of Pittsburgh School of Law to teach a new generation of lawyers. He first joined the faculty as an adjunct professor and ultimately as a full-time Clinical Associate Professor of Law. He established the Family Law Legal Clinic and Associate Director of Family Law Curriculum. Harry's

classes were extremely popular, even though he always took attendance at his 8 a.m. lectures. He received the Excellence in Teaching Award from the graduating law school classes in 2005 and 2012, one of the few professors to win this distinguished award in multiple years. In 2009, Harry was awarded the School of Law Distinguished Alumni Award for his outstanding achievements. He was also awarded the Chancellor's Distinguished Public Service Award in 2013 for the work his Family Law Clinic did with scores of indigent citizens of Allegheny County dealing with varied legal issues in the Family Court. He will be fondly remembered as a dynamic, humorous and motivational teacher who mentored countless young attorneys.

Paul H. Titus



Paul H. Titus, late of Pittsburgh, Pa., passed away on February 19, 2022, in his home. He was born on October 14, 1934, in Bradford, Pa. Growing up around the Bradford area during the Great Depression, the Titus family home was an open haven for the homeless to stay. This early act of kindness was formative in his lifelong desire to help others. A later high school trip to Florida was where he was first exposed to systemic issues such as racism, another instance that fueled his passion for justice and equality. He graduated

from St. Bonaventure University, and went on to have a long and distinguished career practicing law. He was a champion of the underdog and the oppressed; dedicating his life in service of those who needed legal counsel the most. He was known for his pro bono work, something that was incredibly important to him, and was a way he gave back to his local community. He was a compassionate and gentle man who was well known for his successful career, but also beloved by friends and family for his good humor and gentle spirit. While practicing law, he was professional and stoic, but loved ones knew a well-intentioned prankster. As a high schooler he once called the local newspaper and the Pittsburgh Observatory with friends and did impressions of famous celebrities of the time. Their clever hoax about "red balls of fire in the sky" even got them written up in the local paper. Paul was multifaceted and loved to laugh as much as he loved to advocate for others. His children remember a caring and loving father who entertained them with endless creative stories. A favorite of theirs was about "Rumble Gimble," a version of groundhog Punxsutawney Phil who lived in Pennsylvania, and whose antics depended on their imagination and Paul's clever storytelling. Paul is survived by his wife, Bonnie; his children, Ann, Bill (Marsha), and John; his grandchildren, Emily and Paul; and his sister, Margaret. He was preceded in death by his parents, Bill and Genevieve; and his siblings, Joseph, John and Ann. ■

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