

LAWYERS JOURNAL

Live, from Bench-Bar...It's Sharon Geller!

By Ron Cichowicz

There's no law that says you can't have a good laugh while learning something new at the Allegheny County Bar Association Bench-Bar Conference.

Those attending this year's conference, June 13-15 at the Seven Springs Mountain Resort, can do both by joining Keynote Speaker Sharon Geller Friday morning for her CLE program, "Improv for Lawyers: A Funny Thing Happened on the Way to Arbitration-Great Communication Techniques for Lawyers."

Geller, a comedic actress who has appeared on Saturday Night Live four times, spent 10 years in the corporate world before launching her career as a comedic actress. In 2007, she won the Manhattan Monologue Slam for presenting the best comedic monologue in New York City. Geller is currently featured in a national TV commercial for Colonial Penn Life Insurance, is a spokeswoman on QVC and has been performing since 2012 in the national touring company of the off-Broadway hit, "Old Jews Telling Jokes."

Geller has been teaching Improv for Lawyers, a course she created at the Thomas R. Kline School of Law at Drexel University in Philadelphia, since 2009.

Geller credits creation of the course to the observations of an expert in trial advocacy who was taking her comedy improv class at the Walnut Street Theatre in Philadelphia and said these skills were parallel to good communications skills for lawyers.

"There is a showmanship quality to being a lawyer," Geller said. "Anyone who practices any kind of law can benefit from thinking on their feet and becoming a better listener."

Intrigued by this idea, Geller created a CLE that uses the same improv games people like Tina Fey and Amy



Sharon Geller

Poehler learned during their time with Second City in Chicago, the famous improv group. A fun and engaging workshop, the session will teach lawyers how to ask questions to get the answers they want, how to argue either side and the four basic elements in any interaction.

"Lawyers impress me as to how creative they are," said Geller. "Sometimes I find more creativity in lawyers than in my acting students who are studying the craft of acting."

Mary Ann Fiorilli, ACBA Director of Membership, Events & CLE, said the decision to invite Geller to Bench-Bar was an easy one.

"During the initial Bench-Bar committee meeting for 2024, ideas were being exchanged as to who would be an impactful speaker for this particular program," said Fiorilli. "With it being the 60th Anniversary of the Bench-Bar, we wanted this program to be fun and engaging but still offer the substantive material needed for the credit."

"A few of the committee members had attended other conferences where Sharon was the speaker and each of them raved about her program. So, we decided to reach out."

Fiorilli said that in addition to Geller being warm, funny, easy to work with and engaging, her program is geared toward attorneys. Geller presents the program to the ABA, legal conferences and individual law firms around the country.

"She's been performing it for many years with much success," Fiorilli said. "It's the perfect combination and we knew with this being a very special celebratory year, she was who we needed."

The CLE will help lawyers enhance their legal skills by learning effective communications techniques that help individuals to think outside the box in the moment and to handle the unexpected.

The program will provide a series of fun, entertaining and interactive improv exercises to show attendees

how to: develop creative problem-solving; be engaging, persuasive and credible; appear confident and trustworthy; improve body language; interpret non-verbal language; tell when someone is lying; be a team player; and listen better and think more quickly on their feet.

Geller notes that 94 percent of all communication is non-verbal which leads to the question: What signals are you sending to your clients and colleagues?

"This is about learning to listen better to what clients and coworkers are saying," Geller said. "These are valuable skills. I'm teaching great communications skills that can help anyone at work or in life."

Geller said that when someone employs humor and laughter, defenses immediately come down. Regarding those who might be hesitant to employ the techniques she shares, Geller advised that individuals shouldn't be afraid to make mistakes.

"No one ever left a presentation and said that guy or gal was so great, he made no mistakes," she said. "People say, 'That speaker was so good because they really connected with the audience and I felt like they were talking to me.'"

"I try to get others to stretch their comfort zones. Mistakes will happen but improv teaches you to go with the flow. Improv also makes you feel more confident." ■

YLD Chair Project: Suits for (Law) Suits

By Zandy Dudiak

When deciding on an event to hold for the YLD Chair Project during her term as chair, Tara Sease came up with an idea that combines her two passions – fashion and the law.

The end result is Suits for (Law) Suits, an event that will combine a fashion show and pop-up boutique with plenty of chances for attendees to mingle and socialize. About 150 to 175 people are expected at the event, which takes place from 5:30 to 8:30 p.m. Wednesday, April 17 at the Westin Pittsburgh. The cost is \$35 for ACBA members, \$20 for guests and \$15 for law students.

Sease was inspired, in part, by the fact that attorneys were wearing suit tops for Zoom calls during COVID – and pajama bottoms that no one could see on screen. The post-COVID era provides an opportunity for attendees to update their wardrobes to include coordinated tops – and bottoms.

"As attorneys, we go to a lot of conferences and retreats," Sease said. "Even at our annual ACBA Bench-Bar Conference, the dress is resort casual."

The fashion show apparel will range from resort casual to business professional for both men and women, she said. The runway models include a diverse group of attorneys, judges and law students from both Duquesne and Pitt. Co-emcees will keep the show moving and a panel of attorneys and judges will comment on the models' attire.

Mention law and fashion in the same sentence and one might think of



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- Food, Beverages and Networking
- Donate Gently-Used Clothing for Charity

Elle Woods showing up in a pink suit for court in the movie "Legally Blonde."

"I think there's a place where you could wear a pink suit," Sease said. "You could probably find some event in the legal world to wear that."

The pop-up vendors might not have pink suits for sale, but they will be featuring attorney attire for all occasions. Vendors will offer attendees specials that may include discounts or raffles, as well as the ability to purchase their products.

So far, the list of vendors includes David Alan Clothing, a local suiting company that creates suits for

professional wrestler and actor John Cena; customized suits by Tom James Company; and Heinz Healy Men's Apparel. Among the boutiques are Fresh Nostalgia, a women's clothing store; Boutique La Passerelle, which features European fashions with a Pittsburgh flare; Old Flame Mending, a tailoring company; and Jenni G Jewelry, which specializes in permanent jewelry.

As a public service, attendees are asked to bring gently worn clothes to the event, which will be donated to local charities that have closets for professional dress. For more and to register, visit [ACBA.org/calendar](https://www.acba.org/calendar). ■

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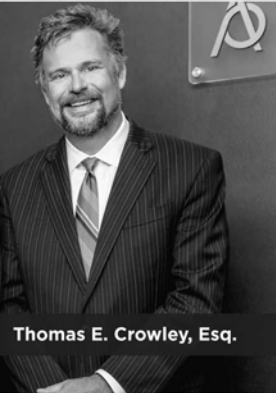

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Pooled employer plans, the next frontier for improving participant outcomes

By Craig Greenwald

A giant step forward

The 401(k) plan has become the dominant source of retirement savings for most Americans. That said, a 401(k) plan was not originally designed to be the primary retirement tool. As the dominant vehicle for retirement savings today, it has fallen short due to limited employee participation, stock market volatility, and longer lifespans. Over the years, changes in the regulations for 401(k) plans allowed for several improvements, including default contribution levels as well as automatic escalation features. While this provided some positive enhancements for participants, more is needed to improve employee participation levels and to simplify procedures for employers to offer these types of plans. In December 2019, the Setting Every Community Up for Retirement Enhancement (SECURE) Act was signed into law. It provided several enhancements to 401(k) plans, including introduction of the pooled employer plan (PEP), which paved the way for employers to have access to scale and efficiencies when offering a defined contribution plan.

What is a PEP?

A pooled employer plan (PEP) is a defined contribution retirement plan that allows unrelated employers to participate through a pooled arrangement in a single consolidated plan. A PEP must designate a pooled plan provider (PPP) responsible for the performance of all administrative duties, providing for a substantial reduction in the administrative burden and fiduciary risks for adopting employers. As PEPs reflect the pooling of assets, this may also provide for overall lower costs to both participants and employers. Importantly, PEPs can also provide improved retirement outcomes for participants with access to financial wellness tools and participant communications from established recordkeeping providers. In addition to the PPP, there are several other service providers, including the investment manager and the record-keeper. When individual employers are considering joining a PEP, the various service providers in a particular PEP can be thought of as a “bundled arrangement,” which is what allows for the potential economies of scale pricing as well as overall administrative simplicity. While PEPs offer many advantages to individual plan sponsors, they do have some limitations regarding

overall control and flexibility given the nature of a bundled arrangement. Note that PEPs are not a new concept; they’re an evolution of the multiple employer plan (MEP). PEPs represent a significant leap forward in opportunities for plan sponsors. PEPs eliminated the requirement for participating employers to have some level of connectivity, such as common industry or geography, and are therefore proving to be a very attractive option to consider by many employers.

Why an Employer Should Consider a PEP

Simplicity – A pooled plan arrangement solution is designed to make retirement plan business simpler for clients.

Fiduciary outsourcing – Fiduciary outsourcing significantly reduces investment fiduciary and administrative fiduciary responsibilities for employers.

Access to best-in-class providers – Companies can access recordkeeping services, participant communications, investment management, and plan support.

Economies of scale pricing – Pooling of assets allows for economies of scale pricing for businesses so that they are not purchasing as an individual business, but as a part of a larger collective.

Role of the pooled plan provider

The PPP is the named fiduciary of the PEP and has the overall responsibility

for the PEP, which includes initial selection and ongoing monitoring of the various service providers. Typically, the PPP will also act as the 3(16) plan administrator, fulfilling almost all of the various administrative roles that typically would be handled by the employer for an individual 401(k) plan. Note that with a PEP, a single consolidated Form 5500 is filed and, if required, a single plan audit is performed. Participating employers would no longer need to file their own Form 5500 or have a plan audit performed, which is welcome news for many.


Investment management

Discretion for investment selection in a PEP is typically delegated to a third-party investment fiduciary under ERISA Section 3(38). Their role generally includes selecting the fund menu lineup as well as monitoring investment performance and manager selection. This approach may provide scale and pricing power to the participants by pooling assets. As with an individual 401(k) plan, participants have the ultimate responsibility for asset allocation decisions for their own portfolios

Fiduciary responsibility

Not all PEPs are the same, as each may have a somewhat different overall

Continued on page 12




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רודף שלום

Wendell G. Freeland Society honors Judge Clark

By Zandy Dudiak

The Wendell G. Freeland Society, a litigation honor society comprised of judges, lawyers and law students, held a reception at the Joseph F. Weis, Jr. U.S. Courthouse on Jan. 29 to honor retired Allegheny County Common Pleas Court Judge Kim Berkeley Clark for her longstanding commitment to the bench and bar.

About 35 people attended the reception for Clark, who retired in December 2023 after serving five years as President Judge of the Fifth Judicial District of Pennsylvania. The reception by the society, which was formed in 2022 and dedicated to the advancement of litigation excellence, was paired with a program on Applied Improv presented by Pitt law professor Ben Bratman.

Marilyn Horan, a judge on the United States District Court for the Western District of Pennsylvania, offered a heartwarming reflection on times she and Clark both served on the state bench. Then Lisa Freeland, the appointed federal public defender for the Western District for the last 20 years, gave a moving tribute as she spoke of her father Wendell Freeland's and her own respect and admiration of Clark.

"It was a lot more emotional than any of us anticipated," said U.S. District Judge Cathy Bissoon, who serves as the society's programming chair.

Horan, who spoke first, served as a judge of the Butler County Court of Common Pleas where she presided over civil and family law cases before becoming a district judge for the Western District in 2015.



SUBMITTED PHOTO

She talked about the mission she and Clark shared as Family Court judges and noted that she gave Clark an angel pin from her personal collection because Clark has been an angel in her life and angel to the children and families she served. Horan also remarked about the positive changes Clark had made in Allegheny County and promoted statewide.

In her remarks that followed, Lisa Freeland said the relationship between her family and Clark's went back years. Judge Clark's father, Clarence "Knowledge" Clark, worked for decades in the county Department

of Elections and knew the elder Freeland, an attorney who once ran for state representative.

Like Judge Clark, Wendell Freeland began his career in the Allegheny County District Attorney's Office. He was one of her mentors and supporters until his death in 2014.

In his private practice, Wendell Freeland focused on criminal and civil rights cases. He understood the connection between the two and often spoke about how racism infected the administration of justice.

"My father was someone who was very outspoken," Lisa Freeland said.

Clark shared that trait, she said, referencing a June 2021 open letter about systemic racism in the justice system that the president judge posted on the court website. In the letter, Clark addressed "the uneven playing field on which racial and ethnic minorities, those who do not squarely fit into traditional gender roles, other disadvantaged persons, and the poor enter the justice system."

Clark's letter stressed that the public must see members of the local judiciary and court staff "working with urgency to attain this goal in equal solidarity with them, with other justice-related institutions, and with each other."

"Her letter said what people didn't want to hear and she was criticized," Lisa Freeland said. "In making those comments, I believe she emulated my father and that he would have been very proud of her for saying what needed to be said."

Prior to the reception, Bratman presented Applied Improv, an interactive

improvisation session designed to improve communication, presentation and listening skills, and otherwise prepare traditional "over-preparers" to deal with the unexpected.

Since forming two years ago, the Wendell G. Freeland Society has offered programs that included a session on the trial of a high-profile case with Judge Peter Cahill, who presided over the Derek Chauvin trial, and managing societal polarization with Professor Peter Coleman of Columbia University.

"Since that time, we have delivered programmatically for our members and fellows and demonstrated that a litigation honor society need not be artificially circumscribed to a particular discipline or subject matter," Bissoon said. "We can recognize the excellence of a diverse set of practitioners while delivering on meaningful programming."

Bissoon said the group is hoping to recruit junior members interested in a litigation track and then mentoring them to be ethical, community focused and "great" litigators.

"Over the past year, two society members, Cindy Chung and Kezia Taylor, have gone on to become federal judges, reflective of the deep talent pool in our organization," she noted. ■

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LAW PRACTICE MANAGEMENT

Exploring virtual isolation: Unveiling the impact of hyperconnectivity on legal professionals

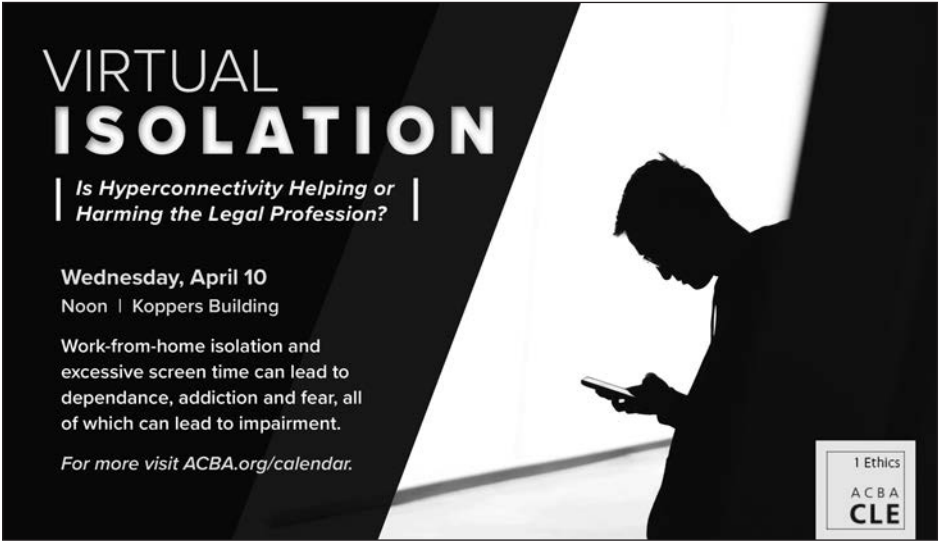
By ACBA Staff

The Allegheny County Bar Association is set to host a Continuing Legal Education (CLE) event titled “Virtual Isolation: Is Hyperconnectivity Helping or Harming the Legal Profession?” on April 10.

Scheduled from 12-1 p.m., the event will take place in the Mellon Room at the Koppers Building Conference Center. Attendees can earn one hour of ethics CLE credit, and the program is also eligible for one hour of credit under the West Virginia Rules for Mandatory Continuing Legal Education. Pizza will be served to participants.

In today’s digitally dominated world, it’s not unusual for individuals to find themselves more engaged with their smartphones than with their loved ones or professional peers. Smartphones have seamlessly integrated into every aspect of modern life, blurring the lines between work, social interactions and personal time. However, excessive usage of these devices can lead to dependency, addiction, and a sense of isolation, leaving individuals feeling simultaneously connected and alone.

Recent research has shed light on the alarming rise in issues such as



alcoholism, addiction and mental health disorders among legal professionals. This raises pertinent questions about the role of technology in exacerbating these challenges.

The upcoming CLE event will feature Lawyers Concerned for Lawyers, focusing on critical topics including:

- Identifying early signs of impairment, with a special focus on stress, anxiety and trauma, including

the mental health impact of technology in the post-COVID-19 era.

- Highlighting the free and confidential support services available to lawyers, judges, their families and law students through Lawyers Concerned for Lawyers.
- Introducing wellness strategies tailored for legal professionals and their families.
- Addressing the ethical dilemmas arising from the enforced isolation of

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the pandemic, with a specific examination of the role of technology and its potential long-term implications on the legal landscape.

The speaker for this event will be Brian Quinn from Lawyers Concerned for Lawyers of PA.

Members interested in attending can register online at [ACBA.org/calendar](https://www.acba.org/calendar). ■

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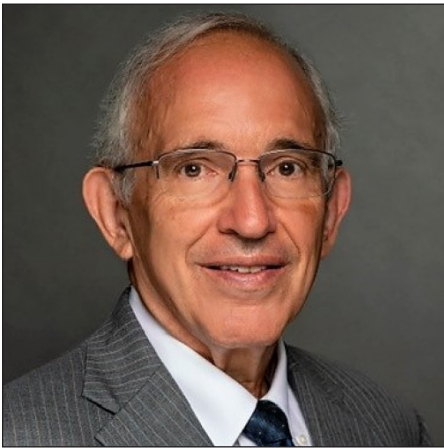


The biggest banks you’ve never heard of – how the trillion dollar Federal Home Loan Bank system keeps banks humming – at least for now

By Fred Egler

What do Silicon Valley, Signature, First Republic and Signature Banks all have in common? Frequent readers of the financial press will correctly recall that they all recently failed. What readers might not know is that each of these banks had borrowed billions from the Federal Home Loan Bank (FHLB) system, a depression-era creation that now serves as a critical pillar of stability of the U.S. financial system. The \$1.5 trillion-dollar FHLBs have strayed far from their original goal of facilitators of mortgage lending. These largely unknown banks now serve as a “lender of next-to-last resort” to commercial banks and life insurers, raising questions about the quality of their assets and the implicit federal guarantee of their liabilities.

The FHLBs were chartered by the Hoover Administration in 1932 to provide a source of liquidity to mortgage lenders and alleviate the collapse of the mortgage market. These regional banks (currently 11 in all) are owned by their members who, until 1989, were limited to the thrift and life insurance institutions that dominated the mortgage market. FHLB membership declined precipitously in the 1980s as a result of the collapse of many thrifts during the savings and loan crisis. As a result, the Bush



Fred Egler

administration greatly expanded the categories of financial institutions eligible for FHLB membership. As a tradeoff, Congress stipulated that 10% of FHLB profits were to be devoted to affordable housing.

Like many other financial reforms, the 1989 changes had massive unintended consequences. Market factors made the FHLBs extremely attractive sources of short-term funding for commercial banks. Because they lent only on secured collateral with a super-priority lien (ahead of even the FDIC in the event of an institution’s failure), FHLBs could borrow at lower rates than other traditional suppliers

of liquidity for commercial banks. They also enjoyed the same implicit government guarantee of their liabilities as other Government Sponsored Enterprises (GSEs) like Fannie Mae and Freddie Mac. The years following the 1989 changes saw the number of eligible FHLB members double and FHLB balance sheets increase by a factor of six, to \$1 trillion.

The FHLBs became increasingly dependent on commercial banks as customers for their loans (known as advances). The combination of the demise of the thrift industry and rise of Fannie Mae and Freddie Mac to dominance in mortgage lending left commercial banks as the FHLBs’ dominant borrowers (FHLB members also own an interest in the institution proportional to the amount of their outstanding advances). These banks, in turn, took advantage of competition among FHLB banks to reduce their borrowing costs. As bank holding companies expanded, their subsidiaries could borrow from more than one FHLB member. This led FHLB banks, who were also eager to expand, to compete with each other by offering more favorable rates.

These trends exploded during the financial crisis of 2007-08. The short-term money market froze, locking commercial banks out of a traditional source of liquidity. Those banks,

traditionally wary of the stigma that accompanies borrowing from the Federal Reserve’s discount window, massively increased their dependence on FHLB advances. FHLB advances to commercial banks increased by 50% in the 2007-2008 period, according to a study by the Federal Reserve.


Post-financial crisis regulatory reforms drove more short-term commercial bank funding to the FHLBs. The increased bank capital requirements imposed by the Dodd-Frank banking reforms required banks to carry more capital against their traditional unsecured forms of funding – including Fed Funds interbank lending and commercial paper – than were required by FHLB advances, which are secured. Commercial banks also discovered that FHLB advances could be used to purchase high quality liquid assets and comply with the liquidity coverage ratio, another Dodd-Frank requirement.


Changes in regulation of so-called prime money market funds, which lend to banks on an unsecured basis, also benefited FHLBs. These changes pushed many of the assets in these funds to government money market funds, which purchased FHLB short term securities. By the end of 2017, the Fed estimated that almost 20% of

Continued on page 12

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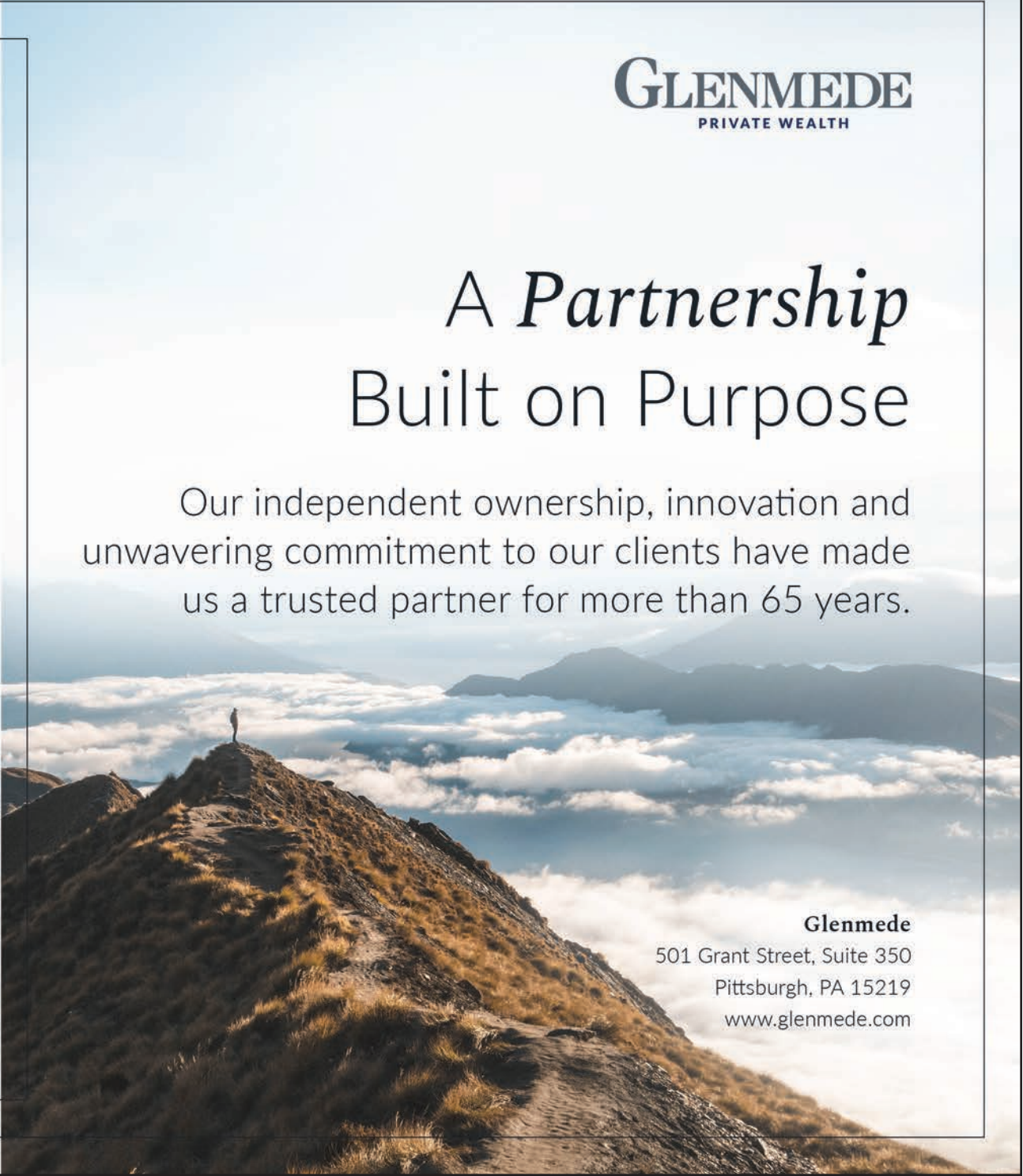




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Professional Ethics Committee shares important ethics opinion with members

The following Ethics Opinion was prepared by the ACBA Professional Ethics Committee to assist members in addressing ethical issues that arise from the practice of law. Other ethics opinions that address frequently asked questions will be shared with ACBA members in the future. Members of the Professional Ethics Committee take month-long shifts as Duty Officers throughout the year, and during their shifts, these individuals commit to taking calls and addressing ethics questions from any member of the ACBA. For more information, or to obtain the contact information of this month's Duty Officers, visit [ACBA.org/officerassignments](https://acba.org/officerassignments).

Ethics Issues Presented: What actions may or must a lawyer take when the client appears to be engaged in or to have recently completed fraud against innocent and unknowing third parties?

Facts Presented: Client seeks a lawyer's assistance unfairly taking value from third parties. This can take many forms. By way of example:

Client is a General Partner of a limited partnership and seeks lawyer's assistance acquiring the interests of some or all of the Limited Partners for below market prices and without disclosing a series of related party transactions arguably or actually prohibited by the Limited Partnership Agreement and by falsely inflating expenses and downplaying revenues.

Client possesses funds belonging to one or more third parties and seeks lawyer's assistance in identifying the third parties and then acquiring the rights of the third parties to the funds for below market value and without informing the third parties that money is already owed and stored on their behalf.

Because timing is an important component of the advice, for the third alteration assume the client has already consummated some or all of the contemplated transactions and now seeks a lawyer's assistance with final documentation or money transfer.

Rules At Issue: Rule 1.6.
Advice Given: These hypothetical situations implicate the intricacies of Rule 1.6 confidentiality's exceptions. Under Rule 1.6, client communications and other information related to the representation are generally afforded the highest level of confidentiality. That confidentiality bows or breaks when in conflict with Rule 3.3 (not implicated here), disputes with the lawyers (not implicated here), and when certain rights of third parties are put at sufficient risk.

Rule 1.6(c)(2) *permits* a lawyer to reveal otherwise confidential information "to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interests or property of another." Similarly, Rule 1.6(c)(3) *permits* a lawyer to reveal otherwise

confidential information "to prevent, mitigate or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used."

Comments 11, 12, and 13 add some clarity.

Comment 11 clarifies that the exception embodied in Rule 1.6(c)(2) permits disclosure of otherwise confidential information only where doing so will both "prevent the client from committing a crime" and where that crime is "reasonably certain to result in substantial injury to the financial or property interests of another." The comment cautions lawyers not to "substitute his or her own sense of wrongdoing for that of society at large as reflected in the applicable criminal laws." In other words, if the client's conduct is wrongful and even offensive but not literally criminal, the exception at Rule 1.6(c)(2) does **NOT** apply and the lawyer **must** maintain the client's confidentiality. Also, the Rule and the comment are written in the past tense, a lawyer may reveal confidential information to *prevent* the commission of a crime, not to remedy the effects of a past or already committed criminal offense in which the lawyer was not him/herself involved.

Comments 12 and 13 address Rule 1.6(c)(3) and teach that a "lawyer may *have* to reveal information relating to the representation "to avoid assisting


a client's *criminal or fraudulent* conduct." Comment 12 (emphasis added). Where the lawyer is "innocently involved in past conduct by a client that was criminal or fraudulent" the lawyer **may** reveal otherwise confidential information to remedy the harm. Comment 13.

Therefore, to the extent the lawyer determines the actions of client are **fraudulent or criminal** in nature and the lawyer's efforts were used in connection therewith, the lawyer **MAY** reveal confidential information to remedy the impact of the fraudulent or criminal conduct.

To the extent the lawyer determines the actions of client are **fraudulent or criminal**, the lawyer **must** refuse to participate in the **fraudulent or criminal** conduct and **may** reveal confidential information if doing so is necessary to ensure lawyer does not participate in the **fraudulent or criminal** conduct.

Most difficultly, if the lawyer determines the client is **presently engaged** in the commission of a **criminal** act, lawyer **may** reveal confidential information to avoid "substantial injury to the financial or property interests of another." If the lawyer determines client is engaged in **fraudulent but not criminal** conduct or that any criminal conduct has already been completed, lawyer may **NOT** disclose confidential information.

Continued on page 14





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CLE on motions practice to be held March 27

By ACBA Staff

The Allegheny County Bar Association Civil Litigation Section will present an in-person CLE titled “Allegheny County Discovery Motions Practice – Tips from the Bench and Bar” on Wednesday, March 27.

The CLE, which is being planned by Jonathan M. Stewart, will be held at the City-County Building. This program has been approved for 1.5 hours of substantive CLE credit and 0.5 hour of ethics CLE credit and also qualifies for two hours of credit under the West Virginia Rules for Mandatory Continuing Legal Education.

Attendees will learn about effectively presenting and arguing discovery motions in Allegheny County from a panel of seasoned practitioners and the Hon. Philip A. Ignelzi, the dedicated discovery motions judge in the Allegheny County Court of Common Pleas Civil Division.

This program will cover best, preferred and required practices for discovery motion presentation in Allegheny County. Attendees will also enjoy the enactment of several mock motions argued by experienced attorneys and presided over by Judge Ignelzi. Additionally, Judge Ignelzi’s Law Clerk, Lee M. Vapniarek, will offer his own insights into effective discovery motions practice.

Specifics to be covered include:


**Allegheny County
Discovery Motions Practice**
Tips from the Bench and Bar

Wednesday, March 27
2:30 p.m. | City-County Building

Learn about effectively presenting and arguing discovery motions in Allegheny County from a panel of seasoned practitioners and the Hon. Philip A. Ignelzi.

All Rise (A Glass) Happy Hour to follow CLE at the offices of Spilman Thomas & Battle.

For more visit [ACBA.org/calendar](https://www.acba.org/calendar).



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- Overall changes to discovery motions practice since COVID
- Filing process and procedure
- Satisfaction of Local Rule 208.2(e) “Meet and Confer”
- Ethics: Courtroom demeanor and civility with bench and bar
- Order, Order, Order!

Attendees are invited to attend the next Civil Litigation Section “All Rise (A Glass)” happy hour immediately following the CLE at the law offices of Spillman, Thomas and Battle in One Oxford Centre. The reception is sponsored by HKA.

Speakers include Judge Philip A. Ignelzi, Allegheny County Court of

Common Pleas; Gina M. Zumpella, Edgar Snyder & Associates; Lee M. Vapniarek, Allegheny County Court of Common Pleas, and Julian E. Neiser of Spilman Thomas & Battle, PLLC. Moderator is Jonathan M. Stewart of SMT Legal. For more visit [ACBA.org/calendar](https://www.acba.org/calendar). ■

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HSBD Book Launch Celebration

PHOTOS BY JAMES PIAGGIO

Carrie Xu visits the booth to view the ACBA Homer S. Brown Division's first ever children's book, "Black Lawyers of the Burgh" during the HSBD's book launch celebration at Fogo de Chão on Feb. 22.



Paul Ellis and Judge Wrenna Watson pause for a photo during the HSBD's book launch celebration.




ACBA President-Elect Regina Wilson and Pittsburgh Legal Diversity & Inclusion Coalition Executive Director Ena Lebel pause for a photo.




ACBA Director of Diversity, Equity and Inclusion Kellie Ware, ACBA Past-President Elizabeth Hughes, HSBD Treasurer Jessyca McCarl and HSBD Chair Gabrielle Lee pose for a photo at the event.


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Ms. Nocera is affiliated with The Conflict Lab and holds in-person sessions at 5167 Butler Street, Pittsburgh PA 15201.



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POOLED EMPLOYER PLANS
continued from page 3

service model and level of administrative support. A PEP should be evaluated based on many factors, including the overall strength and experience of the various service providers. While much of the fiduciary responsibilities may be transferred to the PPP in a PEP, individual plan sponsors still do maintain some level of fiduciary responsibility. This would include (i) the initial decision to join a PEP and selection of the specific PEP, (ii) ongoing monitoring of the PEP and its service providers, and (iii) to the extent not otherwise delegated to another fiduciary by the PPP, the selection and monitoring of the 3(38) investment manager. Importantly, PEPs also protect individual adopting employers from the “one bad apple” rule, so adopting employers generally don’t need to be concerned about liability arising from possible issues from other adopting employers.

Conclusion

As the costs of regulation, compliance, complexity, and litigation have increased, many employers from small to large are considering leveraging the scale and efficiency available through PEPs. The challenge is clear: How do employer-sponsored defined contribution plans gain access to high-level expertise, the benefits of scale, and still maintain efficiency? The answer may be a pooled employer plan.

For more information, please contact Kim Cantalamessa at 412-616-0274 or kim_cantalamessa@keybank.com. ■

Craig Greenwald, FSA, EA, MAAA, is National Director, Retirement Solutions at KeyBank.

FEDERAL HOME LOAN BANK SYSTEM
continued from page 7

the money in the \$3 trillion money market fund portfolio was invested in FHLB debt. This has allowed the FHLBs to borrow at lower rates for a shorter term. And when the Fed switched from so-called quantitative easing to quantitative tightening, draining funds from the financial system in an effort to reduce inflation, banks lost their excess reserves at the Fed, increasing demand for FHLB advances to manage liquidity.

All of this caused FHLB advances in general, and to commercial banks in particular, to soar. By the end of 2017, the Fed estimated that 65% of all FHLB advances were going to commercial banks. Total advances hit a record \$1 trillion in 2023 and total FHLB balance sheets ballooned to \$1.5 trillion. The combination of the increasing size of FHLB balance sheets, their relatively thin capitalization, and their almost complete disconnection from their original mission of housing finance began to raise eyebrows. Critics have claimed that the system’s retained earnings (which totaled \$24.6 billion in 2022), its generous dividends to members that are paid in proportion to the size of their advances (\$1.4 billion in 2022) and large bonuses to executives are signs that the system is not fulfilling its mission of supporting affordable housing. (The total FHLB payout for affordable housing programs in 2022 was \$355 million).

Critics have also claimed that the FHLBs’ lax credit standards have served to prop up banks that would otherwise have failed, dumping a larger liability onto the FDIC when a bank finally does collapse. These complaints were amplified by the 2022 failures of

Silicon Valley, Signature, First Republic and Signature Banks. These banks failed with outstanding FHLB advances in excess of \$50 billion, many of which were made immediately prior to the banks’ collapse. While the resulting loss to the FDIC’s Deposit Insurance Fund – a loss that will be paid by other FDIC-insured banks – was \$31 billion, the FHLB’s super priority as a secured lender makes it unlikely that they will sustain any losses at all. Bloomberg reports that the President of the San Francisco FHLB, Silicon Valley Bank’s primary lender, received a multi-million-dollar bonus in 2022.

Critics found more fodder for their claims in the 2023 failure of Heartland Tri-State Bank, a small bank in Kansas. Its former CEO, Shan Hanes, was indicted for embezzling \$139 million and using it to purchase worthless crypto investments. An investigative report by the Fed found that the bank obtained \$21 million in FHLB advances in June and July of 2023 – an amount equal to about 15% of the bank’s assets – after exhausting other sources of liquidity to fund wires by the CEO, despite the fact that it had never borrowed from the FHLB. Critics pointed to the failure as an example of lax credit and risk management by the FHLBs, leading to another loss imposed on the FDIC.


The FHLB’s dominant position as a lender to banks has also raised questions about its ability to withstand systemic shocks. Many FHLB banks experienced solvency issues during the 2007-08 financial crisis, mainly as a result of defaults on mortgage-backed securities (MBS) held on their balance sheets. The FHLB of Seattle was required to merge with the FHLB of Des Moines as a result of the failure

of its primary customer, Washington Mutual, and losses in its MBS portfolio. The FHLBs’ increased reliance on short term funding could create a liquidity crisis if investors began to doubt the implicit government guarantee of its obligations. The FHLBs did experience some negative impact on their ability to borrow as a result of the troubles at Fannie Mae and Freddie Mac, two other GSEs, during the financial crisis until the government put Fannie and Freddie into conservatorship and made the guarantee of their obligations explicit.

These and other criticisms of the FHLBs caused its regulator, the Federal Housing Finance Administration, to commission a review and recommend multiple reforms last year. Most of the proposals involve improved communication among the FHLBs, its members and customers, and their regulators. And regulators have recently proposed that all banks take advances from the Fed discount window at least annually, to reduce the stigma of doing so, ensure that they have the operational ability to satisfy Fed requirements, and discourage use of the FHLBs as a lender of last resort.


Despite their many faults, a Fed study found that reducing availability of advances by FHLBs would likely decrease the availability of credit for individuals and small businesses, especially from smaller banks. Created for one purpose but now serving another, the FHLBs are an example of a relatively unknown portion of the financial system whose performance could have a significant effect on bank lending in particular and the global financial system as a whole.

Continued on page 14



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Bar Briefs

News and Notes

The Pennsylvania Supreme Court has announced the reappointment of **Arthur Stroyd**, partner at the boutique litigation firm of Del Sole Cavanaugh Stroyd, to the Board of the Lawyers Fund for Client Security. Stroyd’s reappointment underscores his continued dedication to upholding the integrity of the legal profession and his commitment to serving the community. Stroyd brings a wealth of experience and leadership to his role on the Board, having previously served as President of the Allegheny County Bar Association and the Academy of Trial Lawyers. He is also a distinguished Fellow in the American College of Trial Lawyers, an honor bestowed upon only the top 1% of lawyers in Pennsylvania. Additionally, Stroyd was recently honored with the Aradhna Award by Leadership Pittsburgh, Inc., for his visionary leadership and transformative contributions to the Pittsburgh region.

Houston Harbaugh has announced the election of its three-member Executive Committee and Officers for 2024. The members of the Executive Committee are **Jessica A. Ellel**, **John M. Hartzell Jr.**, and **Samuel H. Simon**. The firm’s Executive Officers are **Alex Thomson**, President; **John Hartzell**, Treasurer; and **Heidi Rai Stewart**, Secretary. The Executive Committee which is responsible for the Firm’s overall management, and Officers are elected annually by the Firm’s partners.

Ellel concentrates her practice in healthcare law. Chair of Houston Harbaugh’s Health Law Practice, she

works almost exclusively with health care entities and health practitioners. Jessica is especially well-versed in HIPAA compliance and conducts on-site and remote HIPAA training and maintains Houston Harbaugh’s HIPAA compliance manual.

Hartzell concentrates his practice in estate planning and estate and trust administration and chairs the Firm’s Estates and Trusts practice. With prior experience as a Certified Public Accountant, he leverages his knowledge of tax law for businesses and individuals in preparing estate and gift tax plans, and he works with business owners on their succession planning matters.

Simon concentrates his practice on commercial/business litigation and co-chairs the Firm’s Litigation Practice. He regularly represents clients in the construction, manufacturing, oil and gas and wholesale/retail/distribution industries, as well as individuals in matters such as breach of contract disputes, negligence, restrictive covenants, civil rights, construction litigation and environmental litigation.

Thomson concentrates his practice in business law. He represents a wide range of business clients from start-ups to publicly traded companies in a diverse set of industries, from steel to software. He has counseled clients in numerous corporate transactions, including sales, acquisitions, mergers, joint ventures and strategic alliances.

Stewart concentrates her practice in the area of estate planning and estate and trust administration. Her work in the Firm’s Estates and Trusts practice extends to Special Needs planning and Long-Term Care planning, including Elder Law.

PROFESSIONAL ETHICS COMMITTEE continued from page 9

Legal Ethics Hotlines, like the Hotline run by the ACBA Professional Ethics Committee, generally refuse to provide advice about substantive law. Lawyers facing this hypothetical would be well advised to seek the assistance of experienced criminal practitioners to assist them in forming a reasonable belief about whether or not a client’s actions were criminal in nature. ■

FEDERAL HOME LOAN BANK SYSTEM continued from page 12

The FHFA’s report on the FHLBs, “The FHLBank System at 100: Focusing on the Future,” is available at www.FHFA.gov/FHLB100.

My podcasts, “Risk Management for Financial Institutions – How Banks Stay Safe and Sound” and “Not Too Boring to Fail, Part II – How changes in investment strategies affect the life insurance and annuity industry,” are available at youtu.be/2kNWCLQp678 and youtu.be/zeD1txRMxbM. ■

Fred Egler is an independent consultant who advises on operational risk issues at financial institutions, including banking, securities and insurance. He is also a member of the National Roster of Arbitrators of the American Arbitration Association. He can be reached at fred@egler.com.

Articles wanted for the Lawyers Journal

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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Trained at Harvard Medical School and did psychiatric residency at Johns Hopkins Hospital

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Past Head of three Academic Departments of Psychiatry including the St. Francis Medical Center where he became Chairman when Rabbi Alexander Twerski stepped down – The latter is what brought Dr. Singerman and his family to Pittsburgh 30 years ago – Dr. Singerman resides in the South Hills

In Memoriam

John F. Dugan



John F. Dugan

John F. Dugan passed away peacefully on Saturday, Feb. 17, 2024. He was 88 years old. Dugan was the beloved husband to the late Colette Dugan for 36 years. He was also preceded in death by his parents Albert and Helen Dugan. He is survived by his daughters, Jina Adams and Julie Mair (Michael); grandchildren Gennifer, William, Amina, Max, Mei-Lin, and Mei-Ying; stepchildren Tricia Marchbanks (Scott), Christopher Cox (Candace), and Greg Cox; step-grandchildren, Ryan (Thuy), Lyndsay (Brett), Alyssa, Austin, Alexandra; and step-great grandchildren, Brooklynn and Logan. He was born and raised in the Philadelphia area. He received a Bachelor of Arts (*cum laude*) from the University of Pennsylvania in 1956, where he was elected to Phi Beta Kappa. He was a member of Delta Tau Delta and the Sphinx Senior Society, as well as Editor-in-Chief of The 1956 Record (yearbook), Sports Editor of the *Daily Pennsylvanian*, and a member of the Franklin Society, among other things. During college, he also served in the Army ROTC. He received a Juris Doctor (*cum laude*) from the University of Pennsylvania Law School in 1960, where he was a member of the Order of the Coif, the highest legal scholastic distinction, and ranked eighth in his graduating

class. He was on the Moot Court Board, Honor Committee, and Vice President of Hare Law Club. While in law school, he married his first wife of 26 years, Cam Dugan. He proudly served in the United States Army Reserve from 1956 to 1966. John spent the majority of his legal career in Pittsburgh, PA, retiring from Kirkpatrick & Lockhart LLP in 2000, where he specialized in all facets of labor and employment law. During his career, he litigated over 100 arbitration cases in 20 states. He also served, among other distinctions, as co-chair of the American Bar Association's Committee on Antitrust, RICO, and Labor Law, as well as chair of the Allegheny County Bar Association's Labor and Employment Law Section, and chairman of the Labor Relations Section of the Pittsburgh Personnel Association. John and Colette were seasoned travelers who journeyed to all seven continents and John to all 50 states. He wrote that his "most memorable experience was taking a quick swim without a wetsuit in freezing Antarctica waters." He played tennis well into his 80's and regularly won doubles tournaments in his age group. Every summer, he swam a mile at the Pittsburgh Field Club. He enjoyed hiking and built trails in the woods behind his home where he hiked with his grandchildren. He loved to watch most sports, but especially college basketball and football; every day he did the *New York Times* crossword and Sudoku puzzles, and was an avid history buff. He was famous for his "junk box" gifts that contained anything from

hotel soap, shower caps, post-it notes, emery boards, used tennis balls, and other random items he acquired (for free) on his many adventures. John was quick witted, a beautiful writer, a loving husband and devoted family man, a great provider, a prankster, and unforgettably, a kid at heart.

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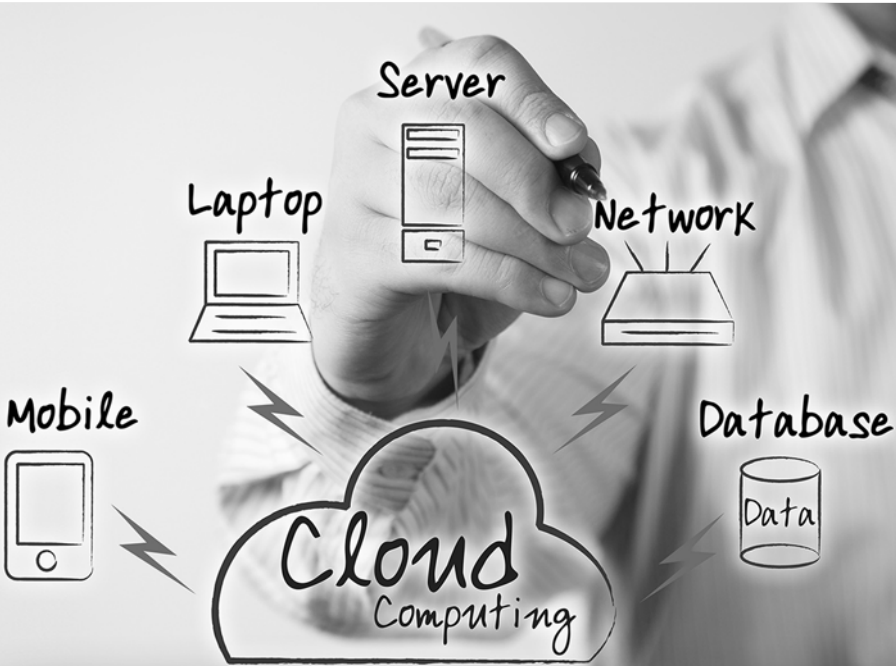
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About our presenters: Mike Fertig has been in the industry for over thirty years, acquiring many of his clients through speaking and educating. Prior to joining Fragasso, Jim Sinegal was an analyst at Morningstar where he provided regular commentary for CNBC, NPR and American Banker.

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