



Pennsylvania Bar News

Volume 35 • Number 5
March 3, 2025

Promoting Professional Excellence in the Law: Serving Lawyers in Every Practice Area in Every Corner of Pennsylvania

Sunshine Week Events to Commence This Month in Pennsylvania

“No one should be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest,” said President Lyndon B. Johnson on July 4, 1966, in a press release to the public upon signing the Freedom of Information Act.

Since then, the Freedom of Information Act has become fundamental in the protection of Americans’ civil liberties in and out of the courtroom. Signed on March 16, 1966, the aim of the act was to ensure Americans’ access to information regarding the functions of the government and any federal agency. The act was signed into law on the birthday of President James Madison, an American visionary who was instrumental in drafting the Constitution and Bill of Rights, most notably advocating for the First Amendment.

The U.S. will celebrate the 20th anniversary of “Sunshine Week” this year, a week aimed at shining light on government action and promoting transparency in bureaucracy, while we also near the 60th anniversary of the signing of the Freedom of Information Act in 2026. The PBA Bar/Press Committee will join this initiative by sponsoring a week of events dedicated to recognizing the importance of right-to-know laws and initiatives for attorneys and journalists alike.

“It’s a great opportunity for PBA members to go out and talk about issues that are near and dear to us as media and transparency lawyers and reach a really wide audience, because people all across the country are celebrating Sunshine Week,” said Paula Knudsen Burke, attorney and co-chair of the Bar/Press Committee.

The Bar/Press Committee’s Sunshine Week events span from March 10–16, with events in Harrisburg, Philadelphia and Pittsburgh. An itinerary can be found on the PBA’s website under News and Publications>>Media Resources.

Sunshine Week events last year began with a discussion hosted by

the Pennsylvania Cable Network (PCN) on “Open Courts,” a program that encourages open access to court proceedings for the public. The event featured Francine Schertzer, journalist, PCN senior vice president and member of the Bar/Press Committee; Christopher Baxter, CEO/president and founder of Spotlight PA; Judge

continued on page 2



PBA FEATURED MEMBER BENEFIT

Did you know members have access to insurance programs such as professional liability pet, travel, long-term care insurance, and more through USI? Members covered by the professional liability insurance can access the confidential claims repair hotline to mitigate a potential malpractice claim. Plus, members who attend Avoiding Legal Malpractice Seminars can earn up to a 7.5% discount on their malpractice insurance (save \$325+). [Learn more and sign up today.](#)

The Pennsylvania Bar News is a semimonthly publication of the Pennsylvania Bar Association.

Board of Governors

Nancy Conrad, *President*
Kristen B. Hamilton, *President-elect*
James R. Antoniono, *Vice President*
James A. Wells, *Chair, House of Delegates*
Jacqueline B. Martinez, *Secretary*
Kelly R. Mroz, *Treasurer*
Michael J. McDonald, *Immediate Past President*

Young Lawyers Division Representatives

Melissa Merchant-Calvert, *Chair*; Adrienne Peters Sipes, *Chair-elect*; Jennifer A. Galloway, *Immediate Past Chair*

Governors

Tyesha C. Miley, *Minority*; Judge Cheryl L. Austin, *Minority*; Matthew M. Haar, *Unit County*; Stephanie F. Latimore, *Woman*; Riley H. Ross III, *Zone 1*; Eric M. Prock, *Zone 2*; Paul D. Edger, *Zone 3*; Judge Tiffany L. Cummings, *Zone 4*; Sean P. McDonough, *Zone 5*; Maureen S. Kroll, *Zone 6*; Tina M. Fryling, *Zone 7*; Christopher G. Gvozdoch, *Zone 8*; Carol A. Shelly, *Zone 9*; Richard L. Manilla, *Zone 10*; Jeffrey S. DuBois, *Zone 11*; Rodney R. Akers, *Zone 12*

Editorial Committee

Magistrate Judge William I. Arbuckle III, *Chair*; Michael J. Molder, *Vice Chair*; Riley H. Ross III, *Board of Governors Liaison*; Stephanie A. Titzel, *Executive Editor*; Jenny Fern, *Editor*; Timothy L. Clawges, *Legal Editor*

Members

Emeline L.K. Diener, Jill E. Durkin, Mary Wagner Fox, Richard J. Frumer, Bernadette M. Hohenadel, Judge Thomas King Kistler, Peter W. Klein, Alyson Tait Landis, Stephanie F. Latimore, Catherine R. O'Donnell, Riley H. Ross III, Hannah M. Schroer, Cheri A. Sparacino, Andrij V.R. Szul, Zanita A. Zacks-Gabriel

Contributing Writers

Ellen Freedman, Paul C. Troy, Andrew M. Lamberton, Taylor Burton

PBA Executive Staff

Matthew M. Holliday, *Executive Director*
William R. Christman III, *Deputy Executive Director and General Counsel*
Erika Bloom, *Director of CLE Content Delivery*
Clair A. Papieredin, *Director of CLE Content Development*
Ursula L. Marks, *Director of Committees and Sections*
Stephanie A. Titzel, *Director of Communications and External Relationships*
Susan E. Etter, *Director of County Bar Services and Special Projects*
Dr. Tevis Bryant, *Director of Diversity, Equity and Inclusion*
Terry Rodgers, *Director of Information Technology*
Lisa L. Hogan, *Director of Finance*
Anna M. King, *Director of Legislative Affairs*
Wendy A. Loranzo, *Director of Meetings*
Karla D. Andrews, *Director of Member Services*
Donna L. Gerson, *Director of Western Pennsylvania Services*
Tameka L. Altadonna, *Governance and Foundation Manager*
David Keller Trevaskis, *Director of Pro Bono Services*

Editorial correspondence should be mailed to 100 South Street, P.O. Box 186 | Harrisburg, Pa. 17108-0186
Phone: 800-932-0311 | Fax: 717-238-1204
www.pabar.org

Views expressed herein do not necessarily reflect the official views or policies of the Pennsylvania Bar Association. The appearance of a product advertisement or sponsorship herein does not constitute an endorsement of the product by the Pennsylvania Bar Association.

Sunshine Week Events to Commence This Month in Pennsylvania

continued from page 1

Terrence R. Nealon of Lackawanna County; and Michael Berry and Paula Knudsen Burke, attorneys and co-chairs of the Bar/Press Committee.

Events continued in Philadelphia with a panel co-sponsored by Pennsylvanians for Modern Courts, a nonprofit group that advocates for judicial reform and helps educate the public on court proceedings in Pennsylvania. The event featured Jim Davy and Kaitlyn M. Gurney, both attorneys in Pennsylvania; Samantha Melamed, an investigative reporter for the *Philadelphia Inquirer*; Julie Christie, a journalist for Resolve Philly; and was moderated by Deborah R. Gross, a member of the Bar/Press Committee and president/CEO, Pennsylvanians for Modern Courts.

Harrisburg 's Sunshine Week festivities hosted a hybrid panel at the Pennsylvania State Archives that featured current and past heads of the Pennsylvania Office of Open Records: Liz Wagenseller, Erik Arneson and Terry Mutchler. The celebration of Sunshine Week concluded in Pittsburgh with an event co-sponsored by the University of Pittsburgh School of Law.

Efforts like Sunshine Week are the reason the PBA's Bar/Press committee was created. The objective of the committee is to increase dialogue and cooperation between the press and the legal industry, with the goal of creating a more direct path for the public to learn and understand what is happening in the legal system. Members of the committee aim to defend the rights entrusted to Americans in the First and Sixth Amendments of the Constitution, and further work being done to guarantee those rights are upheld. Both journalists and attorneys are welcome as members of the Bar/Press Committee.

“This is a really unique committee that allows us to advocate for transparency in conjunction with some of the folks who use these laws the most—the journalists themselves,” said Knudsen Burke.

Each year, the PBA Bar/Press Committee also recognizes exemplary journalistic work through annual media awards given to reporters creating news and feature content in print media, broadcast media, radio/podcast media, editorial work and commentary work.

Judges for the media awards look for content that promotes transparency in the judicial system for the public. They primarily focus on journalists who provide their readers/viewers with a greater understanding of the legal system, educate citizens on the intersection of everyday life and the legal industry and discuss practices/procedures that need improvement to help lawmakers modernize the legal system.

“The media awards are a fantastic way to showcase why it's important for us to ensure that the public, journalists, the press and lawyers all have access to this kind of work and resources, because without it, we're going to be missing out on a ton of important information,” said Knudsen Burke.

Any reporter, broadcaster or editor in Pennsylvania can enter a submission for the media awards. Submissions must be published between July 1, 2024, through June 30, 2025, to be considered later this year, and must be from publications and outlets with at least half of their coverage area within Pennsylvania. First place winners are awarded \$400 and a certificate, and second place winners are awarded \$100 and a certificate.

Awards are given in six categories based on publication size and type of media produced:

continued on page 3

Sunshine Week Events to Commence This Month in Pennsylvania

continued from page 2

print outlets with 30,000 readers or more, print outlets with less than 30,000 readers, editorial and commentary work, broadcast news in Philadelphia and Pittsburgh news markets, broadcast news in all other news markets and radio/podcast content. Five first and second place winners are chosen across these categories.

The judging panel is comprised of lawyers, judges, journalism professors and print media representatives chosen by the Bar/Press Committee. Judges look for submissions that exemplify educational value, thoroughness, organization, reporting effectiveness and excellence in the creators writing/reporting.

Thirty-one entries were submitted by journalists and editors across Pennsylvania last year. Awarded submissions ranged in coverage of how several Pennsylvania counties used opioid settlement money, as reported by Kate Giammarise and Sarah Boden in Spotlight PA, to coverage on a tax fraud case that uncovered the defendant built a grandiose home using millions of dollars of unpaid tax income, as reported by Lori Falce in the editorial section of the *Tribune Review*.

Jillian Forstadt and Julia Zenkevich, reporters from 90.5 WESA, were given a first-place award for their story, “Students with disabilities held at Allegheny County Jail face discrimination,

complaint alleges,” which aired in December 2023. The story uncovered a lack of educational resources being provided to students being held at the jail, highlighting a complaint filed with the Pennsylvania Department of Education. The story focused on the jail's academic institute that failed to offer students with learning disabilities or other disabilities the right to receive a full education, and shed light on criticism of the institute halting the minors' education immediately upon their 18th birthday, describing it as “[upending] their education.”

Stories like these are examples of the powerful work the judges are looking to promote through the media awards. “All these stories help shed more light on the justice system,” said Knudsen Burke.

No entry fee is required to submit a piece for consideration. Entry rules

and the submission form can be found on the PBA website under News and Publications>>Media Resources>>PBA Media Awards.

In addition to the Bar/Press committee's work, the PBA's media response initiative also helps connect lawyers and journalists. On the PBA website, visit News and Publications>>Media Resources>>Media Response Team. There, journalists can reach out to the PBA to request anything from further information on a certain court case or ways to reach out to a lawyer to help them better understand some aspect of the legal system.

“It helps connect PBA membership with journalists, either the lawyers serving as an expert for a story, or we can help connect the lawyers with a journalist,” said Knudsen Burke. “It's really a kind of a unique resource within the PBA.”

To get involved with the media response team, email PBA Public Relations Coordinator Morgan Barr at morgan.barr@pabar.org.

For more information on the Bar/Press Committee, visit the PBA website and select Get Involved>>Join Committees and Sections.



Scan here to learn more about the Bar/Press Committee



PBA President Nancy Conrad on Women's History Month

A few years ago, PBA President Nancy Conrad sat with some of the most prolific women in the women's right movement at a tea service following a conference she attended. Much to her excitement, Conrad sat next to Gloria Steinem. The two women talked about their positions.

"How do we preserve the legacy of past work for our daughters and colleagues, and how can we engage them to recognize and continue our commitment and work for women's rights?" Conrad asked Steinem.

Steinem said, "They will see it in you, in us, in what we do."

March is Women's History Month, a month dedicated to celebrating the work and lives of American women throughout history.



Nancy Conrad with Gloria Steinem

Women's History Month began as a week-long celebration in Santa Rosa, California, in 1978. The Education Task Force of the Sonoma County Commission on the Status of Women organized events for students and residents to coincide with International Women's Day celebrations.

Women's history was a relatively undiscussed topic in K-12 schools, so the community of Santa Rosa took this time to bring presentations on women's history into classrooms and ran a "Real Woman" essay contest that drew in hundreds of submissions from people throughout the county.

Other communities throughout the country began to follow Santa Rosa's lead as word spread of the work they were doing. The National Women's History Alliance

began lobbying for a federally recognized national holiday in 1980, and President Jimmy Carter issued a presidential proclamation that transformed the movement into a nationally recognized week-long holiday. Women's History Week then became Women's History Month when Congress passed a law in 1987.

"From the first settlers who came to our shores [...] men and women have worked together to build this nation. Too often, the women were unsung and sometimes their contributions were unnoticed. But the achievements, leadership, courage, strength, and love of the women who built America was as vital as that of the men whose names we know so well," said President Carter in his public address declaring Women's History Week.

PBA celebrates Women's History Month by looking to women in the legal industry and recognizing the powerful achievements they have made. Conrad says women have been a pillar of inspiration in her work as an attorney.

"Women attorneys have qualities to be sound advisers, fierce litigators, reasonable negotiators, inclusive and thoughtful leaders, and masters at managing the demands of our professional and personal lives. We figured it out and, when necessary, like Ginger Rogers said, we do it 'backward and in high heels,'" said Conrad.



After earning her bachelor's degree in psychology from Lycoming College and her master's degree in counseling from Penn State, Conrad worked as a teacher for third and fourth grade students and as a counselor in a school district outside Philadelphia. She then attended law school at Temple University and began her career as an attorney.

Conrad is the PBA's 130th president. She is managing partner of the Lehigh Valley office of White and Williams LLP and a resident of Lehigh County.

"It is an honor and privilege to serve as president of the Pennsylvania Bar Association and the seventh woman

continues on page 5

PBA President Nancy Conrad on Women's History Month

continued from page 4

president of the PBA. There is a special responsibility to serve with integrity, excellence and professionalism, and I am grateful for the opportunity to serve and make a positive impact on the legal profession, our association and our communities," she said.

Conrad is co-vice chair of the PBA Federal Practice Committee, a member of the PBA Labor and Employment Law Section Executive Council and a member of the PBA Commission on Women in the Profession (WIP) Executive Council. Conrad began her involvement with PBA through attending several WIP events.

"WIP welcomed and supported me and the initiatives we have advanced during this bar year. We jointly planned and presented at their annual conference and fall retreat. During the fall retreat, I had the honor of facilitating a program with the Chief Justice of Pennsylvania, Debra Todd, and the president judges of the Commonwealth and Superior Court, Renée Cohn Jubelirer and Anne Lazarus. Our conversation focused on the qualities that define a woman of substance and valor and, while many qualities were identified, we all agreed that there is not one quality, not one path and that every woman finds her path to identify and apply the qualities that form the core principles that lead her way," said Conrad.

Conrad says that Women's History Month is an opportunity to look back on the powerful and ongoing women's rights movement.

"It is a time for recognition and remembrance of the many trailblazers that led the way for women's rights and advancements. I had the honor of meeting and engaging in conversations with trailblazers that impacted my life, including Justice Sandra Day O'Connor, Gloria Steinem, Doris Kearns Goodwin and Chief Justice Todd. These extraordinary women inspire us to define our path and what is next for each of us," said Conrad.

Conrad hopes that young women beginning their careers in law will continue to look to the powerful women who have inspired her in her own career. She urges women to uphold the dedication she exhibits in her work.

"I hope that women have recognized the passion and excellence that I apply to my practice and advocacy for my clients, my service to the PBA, our members and related organizations to advance the mission of the PBA, and my service to our communities," she said.

Conrad calls for excellence for women involved in the PBA and for all members of the PBA. Her vision for a successful and stellar legal industry does not end with the work produced for clients, but extends to all aspects of personal and professional success.



PBA President Nancy Conrad, Pennsylvania Supreme Court Justice Debra Todd, Pennsylvania Superior Court President Judge Anne Lazarus, Pennsylvania Commonwealth Court President Judge Renée Cohn Jubelirer

"Early in my legal career, I received the sage advice that many women received from Betty Friedan, 'You can have it all, just not all at the same time.' While for me, it is not about having it all, it is about doing the best I can at any point in time. It is essential to set priorities — professional and personal, to identify your path and recognize that there will be detours, twists, turns and a bumpy ride. Be true to yourself, set goals over your lifetime, and remember to give yourself grace," said Conrad.

ATTORNEY DISCIPLINARY / ETHICS MATTERS STATEWIDE PENNSYLVANIA MATTERS NO CHARGE FOR INITIAL CONSULTATION

Representation, consultation and expert testimony in disciplinary matters and matters involving ethical issues, bar admissions and the Rules of Professional Conduct

James C. Schwartzman, Esq.

- Judge, Court of Judicial Discipline
- Former Chairman, Judicial Conduct Board of Pennsylvania
- Former Chairman, Disciplinary Board of the Supreme Court of Pennsylvania
- Former Chairman, Continuing Legal Education Board of the Supreme Court of Pennsylvania
- Former Chairman, Supreme Court of PA Interest on Lawyers' Trust Account Board
- Former Federal Prosecutor
- Selected by his peers as one of the top 100 Super Lawyers in Pennsylvania and the top 100 Super Lawyers in Philadelphia
- Named by his peers as *Best Lawyers in America* 2022 and 2015 Philadelphia "Lawyer of the Year" Ethics and Professional Responsibility Law and Legal Malpractice Law

(215) 751-2863

Join Us In Supporting The Pennsylvania Bar Association Statewide High School Mock Trial!

As one of the largest in the nation, the Pennsylvania Bar Association Young Lawyers Division Statewide Mock Trial Competition gives over 260 high school student teams and over 2,000 students from across the state the opportunity to act as lawyers and witnesses in simulated civil trials before actual judges and panels of juries. Each year, the winning team goes on to represent Pennsylvania in the national competition.

Please join us with a financial donation. Sponsorships are available for individuals, law firms and organizations, ranging from \$250 to \$2,500.

Your generosity will empower students.

For additional information, email sponsorships@pabar.org

	Hero Sponsor \$2,500	Gold Sponsor \$1,000	Silver Sponsor \$500	Bronze Sponsor \$250
Recognition as a sponsor				
Logo featured on all event materials				
Logo featured on Mock Trial section of PBA website				company name (no logo)
Acknowledgement on social media				
Ad in e-brief				



The Difficulty of Dysfunctional Families

By Paul C. Troy and Andrew M. Lamberton

There is an old Garrison Keillor joke about dysfunctional families. It goes as follows:

What is the definition of a dysfunctional family picnic?

It is one where everyone brings a covered dish and an unresolved issue.

Unfortunately, for attorneys representing members of dysfunctional families, those situations are no joke.

While the difficulty of dysfunctional families is self-explanatory, we are writing specifically this month about the difficulty practitioners face in providing legal representation to people that are part of a dysfunctional family. We have

represented lots of attorneys, and it is startling how many times the root cause of the problem the attorney is facing is due to their client being part of a dysfunctional family. This is not just a problem for family lawyers. We see it all the time with trusts and estates attorneys. It can pop up in any practice area.

Odds are many of you could take a long look at any of the matters you are handling and find that some sort of family dysfunction is at the center of the issue. We certainly won't solve dysfunctional families in this article, but we will try to offer advice that may provide an ounce of prevention to

practitioners representing members of such families.

Let's take a look at trusts and estates lawyers for example. In administering an estate, their client is ordinarily the executor or administrator of the estate. But what if the administrator of the estate doesn't like the other beneficiaries? What if their communication is poor or non-existent? We have defended surcharge actions where beneficiaries complained about one thing or another with the administration of an estate. We would then come to learn that the real basis of their complaint was that they didn't have information – at least they didn't think they had information – that

would allow them to determine whether things had been handled properly. They didn't know these things because the administrator wouldn't talk to them or because the attorney was unwilling to talk to them. After all, the attorney had to worry about attorney-client privilege. Maybe the attorney's client, the administrator, didn't want the client talking to any other beneficiaries. While the subsequent surcharge action might be completely frivolous, the attorney having to spend the deductible on his or her lawyer's professional liability policy to defend the claim is anything but a frivolous expense.

continues on page 10

LAWPAY
AN AFFINIPAY SOLUTION



"I love LawPay! I'm not sure why I waited so long to get it set up."

– Law Firm in Ohio

Trusted by 50,000 law firms, LawPay is a simple, secure solution that allows you to easily accept credit and eCheck payments online, in person, or through your favorite practice management tools.



22% increase in cash flow with online payments



Vetted and approved by all 50 state bars, 70+ local and specialty bars, the ABA, and the ALA



62% of bills sent online are paid in 24 hours

Data based on an average of firm accounts receivables increases using online billing solutions. LawPay is a registered agent of Synovus Bank, Columbus, GA., Fifth Third Bank, N.A., Cincinnati, OH, and Wells Fargo Bank, N.A., Canadian Branch, Toronto, ON, Canada.

YOUR FIRM LOGO HERE

**Trust Payment
IOLTA Deposit**

New Case Reference

**** * 9995 ***

TOTAL: \$1,500.00

**Get started at
lawpay.com/pba
866-730-4140**



Court Summaries

By Timothy L. Clawges

CHILDREN

Superior Court

DEPENDENCY — limited standard of review — clear and convincing evidence — reliance on Adoption Act — lack of suitable housing — exclusion of evidence — conduct of parent while child hospitalized — employment status — prior history with Department of Human Services — standard of review — best interests of child — clear and convincing evidence — order discharging petition for dependency reversed

In the Interest of K.B., 2025 PA Super 21 (Jan. 27, 2025) — Court errs by relying on Adoption Act as basis to discharge dependency petition and in excluding evidence regarding conduct of parent while child was hospitalized, parent history with Department of Human Services, employment status and continued housing instability.

PLACEMENT — child under age 18 — private dependency action — jurisdiction — Medicaid eligibility — eligibility for independent case living management and educational grants — out-of-home placement — 42 Pa.C.S. 6302 — transfer of physical and legal custody to third party — order finding child was in placement affirmed

In the Interest of S.K., 2025 PA Super 22 (Jan. 28, 2025) — Finding that child under 18 has been in out-of-home placement affirmed when adjudication of dependency and transfer of physical and legal custody to third party has occurred; placement in foster care or foster kinship care not required to establish such placement.

CIVIL LITIGATION

Superior Court

VICARIOUS LIABILITY — pizza chain franchisor — vehicle accident — delivery driver striking other person — negligence — loss of consortium — FRANCHISE AGREEMENT — level of control by principal — en banc court — judgment against franchisee in favor of plaintiff affirmed

Coryell v. Morris, 2025 PA Super 28 (Jan. 31, 2025) — Judgment against pizza chain franchisor, its franchisee and its employee affirmed when pizza delivery person struck third party with vehicle since there was conflicting evidence of the nature of the franchisee relationship with franchisor such that jury was able to decide whether the franchisor exerted or had the authority to exert control over day-to-day operations of franchisee when franchise agreement permitted franchisor to dictate results produced by the particular store and precise manner in which they were achieved.

CONFESSIONS

Superior Court

STATEMENTS MADE TO POLICE OFFICER WHO WAS ALSO CLERGY — clergy-communicant privilege — 42 Pa.C.S. 5943 — communications entered into voluntarily — agreement to include officer and discussions for practical purposes — trusted police officer to bring defendant safely into custody — sexual offender registration — *Torsilieri* opinion — judgment of sentence affirmed

Commonwealth v. Ross, 2025 PA Super 27 (Jan. 30, 2025) — Statements to a police officer who was also clergy are not

privileged under the clergy-communicant privilege, 42 Pa.C.S. 5943, when defendant entered into the communication voluntarily and the officer was included in the discussion for the practical purpose of having a trusted police officer to bring defendant into custody, not for spiritual or penitential reasons.

CRIMINAL PROCEDURE

Superior Court

CONSTABLE — personal vehicle — display of red and blue lights on vehicle — Section 4571(b)(1) — Vehicle Code — 75 Pa.C.S. 4571(b)(1) — question of law — Statutory Construction Act — de novo standard of review — plenary scope of review — CONSTABLE NOT POLICE OFFICER — summary offense — judgment of sentence affirmed

Commonwealth v. Wiggs, 2025 PA Super (Feb. 6, 2025) — Judgment of sentence for summary offense of displaying red and blue lights on a personal vehicle also used by a constable in his duties, Section 4571(b)(1) of the Vehicle Code, 75 Pa.C.S. 4571(b)(1), affirmed; court rejects the claim that the constable is a police officer.

EMINENT DOMAIN

Commonwealth Court

DECLARATION OF TAKING — recreational purpose — open space — Section 2201 — Second Class Township Code — 53 P.S. 67201 — lack of limitations on Eminent Domain Code — Lands Act — 32 P.S. 5008(b) — order overruling preliminary objections to declaration of taking affirmed

In Re Condemnation of Property in Rem Identified as Tax Parcel Number 62-00-02014-00-3, No. 1101 C.D. 2023 (Feb. 4, 2025) — Order overruling preliminary objections to declaration of taking affirmed when taking was under authority of township code and Eminent Domain Code, not the Lands Act, and substantial evidence supports the finding that the actual purpose of taking was for public recreational use since open space is inevitable in passive recreational

use and does not, on its own, trigger restrictions in Section 8 of the Lands Act, 32 P.S. 5008, hence does not invalidate a such condemnation for recreational purposes.

FEDERAL CRIMINAL PROCEDURE

Third Circuit

SENTENCING — zero-point offender — reduction in sentence — U.S.S.G. 4C1.1 — aggravating role adjustment — not engaging in continuing criminal enterprise — 18 U.S.C. 848 — retroactivity — judgment affirmed

U.S. v. Milchin, No. 24-1484 (Feb. 5, 2025) — Any defendant who received either an aggravating role adjustment or was engaged in a continuing criminal enterprise is ineligible for U.S.S.G. 4C1.1, zero-point offender reduction.

JUDGMENTS

Superior Court

FOREIGN JUDGMENT — out of state — Full Faith and Credit — Article IV, Section 8 — U.S. Constitution — petition to strike — LACK OF NOTICE OF UNDERLYING AMENDED JUDGMENT — lack of proper service of motion to amend judgment — service on expired address — significant additional monies sought by motion to amend — failure to comply with other state rules of service — timeliness — denial of petition to strike judgment reversed

1650 East 47th v. 360 Degrees of Perfection, 2025 PA Super 23 (Jan. 28, 2025) — Order denying petition to strike judgment from another state reversed when motion to amend judgment to add monies to the underlying judgment was not served in accordance with procedural rules in the state where the judgment originated.

MECHANICS LIENS

Superior Court

AFFIDAVIT REQUIREMENT —

continued on page 9



Court Summaries

continued from page 8

Section 502 — Mechanics Lien Law — 49 P.S. 1502 — substantial compliance — filing sheriff's return of service — strict compliance required only if minimally sufficient notice must be filed to perfect a lien — statutory interpretation — de novo standard of review — plenary scope of review — order granting petition to strike lien reversed

Clark Property Maintenance v. Peak Real Estate Solutions, 2025 PA Super 15 (Jan. 24, 2025) — Doctrine of substantial compliance applies insofar as a sheriff's return of service satisfies the affidavit requirement of Section 502 of the Mechanics Lien Law, 49 P.S. 1502; strict compliance is required only insofar as minimally sufficient notice pursuant to the law must be filed to perfect a mechanics lien.

MEDICAL MALPRACTICE

Superior Court

NEGLIGENCE — colonoscopy — recommendation and performance of procedure counter-indicated for situation — EXPERT WITNESS — standard of care — board certified in internal medicine and gastroenterology — Section 512 — Medical Care Availability and Reduction of Error Act — 40 P.S. 1303.512 — summary judgment for defendants reversed

McAleer v. Geisinger Medical Center, 2025 PA Super 25 (Jan. 28, 2025) — Summary judgment for defendants improper when expert reports unequivocally state defendant-physician breached standard of care and failed to properly assess patient and that if a different procedure would have been performed, complications could have been avoided. Court erred in concluding that gastroenterologist was not qualified to opine on the standard of care applicable to a colorectal surgeon.

MEDICAL MARIJUANA

Commonwealth Court

EVALUATION OF DISPENSARY PERMIT APPLICATIONS — narrative section of application — different scoring in different regions — rational basis — burden of proof — substantial evidence — denial of permit application affirmed

Local Dispensaries v. Department of Health, No. 421 C.D. 2024 (Jan. 29, 2025) — Denial of permit application for dispensary affirmed though applications are scored differently by separate scoring panels since no evidence scoring process or methodology lacked rational basis.

RIGHT-TO-KNOW LAW

Commonwealth Court

ATTORNEY-CLIENT PRIVILEGE — redactions — factual information to establish privilege — quiet title action — correspondence of members of board of property with counsel — affidavit from open records officer — determination affirming production of records with redactions affirmed

Bergere v. Department of Community and Economic Development, No. 269 C.D. 2024 (Jan. 30, 2025) — Determination affirming production of records with redactions to preserve attorney-client privilege affirmed when affidavit of open records officer provided certificate attesting to good faith search for requested records and established all elements needed to show redactions needed to preserve attorney-client privilege.

SEARCH AND SEIZURE

Superior Court

PROTECTIVE SWEEP — robbery — single perpetrator — escape on foot — money tracked by GPS — defendant under arrest — police entry into apartment — consent of third party — reasonable belief person had authority to permit entry — right to counsel — defendant refusal to continue when informed that differ-

ent court-appointed attorney not an available option — waiver by conduct — judgment of sentence affirmed

Commonwealth v. Brinkley, 2025 PA Super 24 (Jan. 28, 2025) — Protective sweep of apartment was improper when the investigation was for a single suspect in a robbery and defendant was already under arrest and restrained, but search was valid when police entered the apartment after a person who they reasonably believed had authority to permit others to enter allowed them in.

SEARCH WARRANT — misstatement that defendant had been positively identified by a witness as the offender — probable cause — totality of circumstances — misstatement not deliberate or intentional — probable cause without misstatement — authentication of letter — Pa.R.E. 901(a) — witness observed letter being written — first-degree murder — weight of evidence — judgment of sentence affirmed

Commonwealth v. Kimmel, 2025 PA Super 18 (Jan. 24, 2025) — Denial of suppression motion proper despite misstatement in affidavit of probable cause when there was probable cause absent the misstatement and no indication the misstatement was deliberate or intentional.

RESTITUTION — theft by unlawful taking — Section 3921 — Crimes Code — 18 Pa.C.S. 3921 — placeholder restitution figure — clear intent of parties to bifurcate proceedings — statement at sentencing that placeholder figure be utilized — failure to timely render decision — Pa.R.Crim.P. 720(B)(3)(a) — legality of sentence — claims regarding sufficiency of proof not valid — judgment of sentence affirmed

Commonwealth v. Rapp, 2025 PA Super 16 (Jan. 16, 2025) — Fact that a decision was filed more than 120 days after a post-sentence motion regarding restitution did not render the order invalid when clear intent of the parties that sentencing be bifurcated and the court ordered a placeholder restitution figure when it originally sentenced defendant.

PAROLE VIOLATION — new criminal charge — county sentence — inactive supervision — explicit sentencing order defendant subject solely to special conditions — counsel failure to file Rule 1925(b) statement — per se ineffectiveness — order revoking parole and recommitting defendant vacated

Commonwealth v. Baldassano, 2025 PA Super 26 (Jan. 29, 2025) — Order revoking parole because defendant was charged with new offense allegedly committed while on county parole vacated when he was on inactive supervision and the original sentencing order stated he was subject to certain special conditions but not subject to rules and regulations of the county probation department.

UNEMPLOYMENT COMPENSATION

Commonwealth Court

PANDEMIC UNEMPLOYMENT ASSISTANCE BENEFITS — Section 2102(a)(3) — Coronavirus Aid, Relief and Economic Security Act — 15 U.S.C. 9021(a)(3) — claimant serving penalty weeks in connection with a prior overpayment — not covered individual — order affirming decision finding claimant ineligible affirmed

Cunningham v. Unemployment Compensation Board of Review, No. 377 C.D. 2023 (Jan. 24, 2025) — Since claimant was eligible for and had not yet exhausted all rights to regular unemployment compensation benefits while she served her penalty weeks while her regular unemployment compensation benefits claim was pending, she does not qualify for pandemic unemployment assistance.

WIRETAP

Superior Court

HARASSMENT — disorderly conduct — recorded telephone calls — challenges to admissibility under Wiretap Act — failure to follow the Rules of Criminal Procedure — pretrial motion to suppress required — judgment of sentence affirmed

continued on page 10

The Difficulty of Dysfunctional Families

continued from page 9

Commonwealth v. Markos, 2025 PA Super 19 (Jan. 27, 2025) — Challenges to admission of recorded telephone calls under the Wiretap Act are waived when a party does not follow applicable Rules of Criminal Procedure, which required them to file a pretrial motion to suppress.

ZONING AND LAND USE

Commonwealth Court

VARIANCE — single-family home — conversion to multifamily dwelling — unnecessary hardship needed for grant of variance to establish multifamily dwelling — ordinance not confiscatory — waiver — failure to raise issue before zoning hearing board — denial of variance application affirmed

Palmer v. Susquehanna Township Zoning Hearing Board, No. 1235 C.D. 2023 (Feb. 4, 2025) — Loss of short-term rental income is not sufficient to establish unnecessary hardship required for grant of variance to change single-family residence to multifamily dwelling.



Timothy L. Clawges is counsel to the Pennsylvania House of Representatives Judiciary Committee. He also writes case digests for the PBA Criminal Justice Section Newsletter.

In proposing some solutions, we begin with the disclaimer that we are not trusts and estates attorneys. Nothing we write in these articles is the standard of care for any attorney. If trusts and estates lawyers reading this article have better ideas, please write to us. We'll pass your ideas along.

We have seen circumstances where attorneys have been able to convince the administrators to either provide information to other beneficiaries directly or allow the attorney to do so. Attorneys would obviously have to weigh the risks and benefits of answering questions from beneficiaries to not cloud the question of "who is your client?"

So, just like when the problem in dysfunctional families is a lack of communication or improper communication, zero or improper communication can subsequently become a problem for the attorneys. Improving that communication one way or another is the best prevention. For example, attorneys could explain to administrators the downstream risks of surcharge actions or senseless litigation that can result from a lack of communication. That could convince an administrator to see the light and share information with a sibling he or she don't like. Never mind who said what that one time, let's avoid senseless lawsuits.

Other preventative measures can be as follows:

- Engagement letters defining who your client is and the scope of your retention.
- Written evidence of communications in your file.
- Disengagement letters, which are a great shield against claims by nonclient family members claiming you also represented them. Try to avoid denting that shield or putting holes in it by

having verbal communications with them where you answer questions. Once an attorney provides something that might possibly be interpreted as advice, he or she could be on a slippery slope to an implied attorney-client relationship.

- Withdrawing from the representation with court approval, if required.

Finally, when you're having an initial meeting with clients, try to meet or speak with just one person. Then, as you listen to the story, look for signs of potential dysfunctional family relationships. Give some thought as to whether taking on that matter might lead to problems down the road. We would never advise that you automatically turn down every such client. However, trust your instincts as to the temperature of the situation and potential risks through the representation. You will be glad you did.

Whether in trusts and estates or any other fields, if any of our readers have thoughts on how to handle situations

with or caused by dysfunctional families, please send us a note. We would be happy to offer them as solutions in a future article.

Addendum to February 3, 2025
Article: Last month, our article "Some Considerations Regarding the Corporate Transparency Act" discussed a national injunction enjoining enforcement of the Corporate Transparency Act (CTA) and the government's appeal to the United States Supreme Court. See *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792, doc. 160 (5th Cir. Dec. 26, 2024); *McHenry v. Texas Top Cop Shop, Inc.*, No. 24A653. Shortly after the article was published, the Supreme Court stayed the District Court's order pending disposition of the Fifth Circuit appeal. See *McHenry*, 2025 U.S. LEXIS 424 (Jan. 23, 2025). But there is a second national injunction entered in the Eastern District of Texas. See *Smith v. U.S. Dept. of the Treasury*, No. 6:24-cv-336, doc. 30 (E.D. Tex. Jan. 7, 2025). As of this Addendum, the government is appealing to the

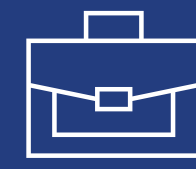



Andrew M. Lamberton is a partner and trial attorney at Kane Pugh Knoell Troy & Kramer LLP. alamberton@kanepugh.com



Paul C. Troy is a partner at Kane Pugh Knoell Troy & Kramer LLP, focusing his practice on trial advocacy. ptroy@kanepugh.com

Legal Marketplace



Expert Services

A BOARD-CERTIFIED DOCUMENT AND HANDWRITING EXAMINER — J. WRIGHT LEONARD, BCFE, CDE. Federal, State and Local Courts. Examination/Testimony in Civil/Criminal Matters. 1500 Walnut St. #M-12 Philadelphia, PA 19102 215-735-4000 www.ForgeryID.com

ATTORNEY PROFESSIONAL LIABILITY EXPERT — Kevin B. Scott, AV-rated attorney with more than 35 years of corporate and municipal finance experience, available as expert witness in attorney professional liability cases. Expertise includes finance, mergers and acquisitions and contract interpretation. Full CV upon request. Email: Kscott5586@gmail.com 215-801-2022

REAL ESTATE LAW EXPERT — Richard W. Stewart, former chair, Disciplinary Board of the Supreme Court; former vice chair, Pennsylvania Board of Law Examiners; over 15,000 titles examined; AV-rated. Licensed title agent and real estate broker. 301 Market St. Lemoyne, PA 17043 717-761-4540 ext. 288 RWS@JDSW.COM

FREELANCE PARALEGAL SUPPORT

— Need an extra hand? With over 20 years of experience in corporate, real estate, and estate planning, I provide personalized, timely, and cost-effective solutions, allowing you to focus on your clients and business growth. Wendy Bratton Diem Diem Notary & Paralegal Services, LLC Lancaster, PA Call/Text: 717-269-7545 www.diemnotary.com

Legal Resources

ESTATE SETTLEMENT — Helping settle estates by purchasing vintage, classic and late-model cars, trucks and motorcycles, buying entire car collections, big or small, in varying conditions. Contact Kim Miller, 717-577-8206, or email krmiller1965@yahoo.com.

It Pays to Advertise in Legal Marketplace

LINE RATES:

PBA Member: \$35
Non-PBA Member: \$40
(first 30 words, each additional word \$1.50)

BLIND ADS: Processing surcharge \$10

BOX AD RATES:

Ad Size	PBA Member		Non-PBA Member	
	Member	Member	Member	Member
1 col. x 1	\$ 75	\$ 95		
1 col. x 2	\$135	\$170		
1 col. x 3	\$195	\$250		

Non-PBA Member: \$40
(first 30 words; each additional word \$1.50)

BLIND ADS: Processing surcharge \$25

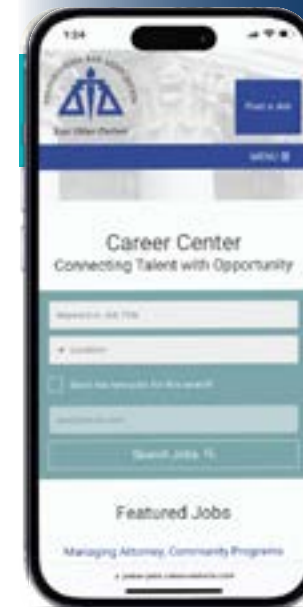
Legal Marketplace

Pennsylvania Bar Association
100 South Street P.O. Box 186
Harrisburg 17108

For display and classified advertising information, call 800-932-0311.

sponsorships@pabar.org

CAREER CENTER Connecting Talent with Opportunity



- PLACE** your job in front of highly qualified members and job seekers
- SEARCH** our resume database of qualified candidates
- MANAGE** jobs and applicant activity right on our site
- LIMIT** applicants only to those who are qualified
- FILL** your jobs more quickly with great talent





Brought to you by the
Pennsylvania Bar Association
 100 South Street | Harrisburg, PA 17101

Inside:

- **Pennsylvania’s Annual “Sunshine Week” Celebration, More on PBA’s Bar/Press Committee**
- **PBA President Nancy Conrad on Women’s History Month**
- **The Difficulties of Dysfunctional Families**
- **Court Summaries**
- **News from PBI**

Grow. Connect. Succeed.



Upcoming Events

Find more information in the PBA Events Calendar at www.pabar.org or call the PBA Member Services Center at 800-932-0311.



March 4

PBA Government Lawyers Committee and Administrative Law Section Lunch and Learn

March 6-8

59th Annual Conference of County Bar Leaders | Wyndham, Gettysburg

March 11-12

Health Law Institute 2025 | Hilton, Harrisburg

March 19

PBA Young Lawyers Division Lunch and Learn

March 27

Women in the Profession 2025 Virtual Spring Conference

Please check the PBA website (www.pabar.org) and PBI website (www.pbi.org) frequently for updates.

Read more stories like these in *The Pennsylvania Lawyer*



The feature-article lineup in the March/April issue of *The Pennsylvania Lawyer* magazine includes member-written articles on a new Pittsburgh ordinance that limits pre-employment medical marijuana screening; on sanctions against a judge for his political posts on Facebook; how the shaping and reshaping of Title IX complicates school compliance; a Women’s History Month feature on women lawyers and judges making Pennsylvania history; and an interview with director, writer, novelist and storyteller Nicholas Meyer. Also in the issue, readers’ favorite columns, from “The Effective Lawyer” to “Letters” to “War Stories,” as well as another “Parting Shot” photo feature. Look for the issue in the mail and online for members-only access at www.pabar.org.



Continuing Legal Education Arm
 of the Pennsylvania Bar Association

Check out our upcoming in-person events:

Health Law Institute

Mar. 11 & 12, 2025
 12 substantive, up to 2 ethics CLE
 Regular: \$399 each day
 Hilton Harrisburg & Towers, Harrisburg

Workers’ Compensation Bench and Bar Conference

Apr. 3, 2025
 3 substantive, 1 ethics CLE
 Regular: \$399
 PBI Conference Center, Mechanicsburg

Environmental Law Forum

Apr. 9 & 10, 2025
 12 substantive, up to 2 ethics CLE
 Regular: \$399 each day
 Hilton Harrisburg & Towers, Harrisburg

Employment Law Institute

Apr. 15 & 16, 2025
 12 substantive, up to 2 ethics CLE
 Regular: \$399 each day
 The CLE Conference Center, Philadelphia

Register Today!
 800-932-4637 | www.pbi.org