

LAWYERS JOURNAL

FOCUS *on* FAMILY LAW

ACBA recommends voting “yes” for retention election candidates

On November 5th

VOTE YES!

KEEP THESE LOCAL QUALIFIED JUDGES...

SUPERIOR COURT OF PENNSYLVANIA



The Honorable
Judy Olson

COMMONWEALTH COURT OF PENNSYLVANIA



The Honorable
Patricia A. McCullough

ALLEGHENY COUNTY COURT OF COMMON PLEAS



The Honorable
Kim Berkeley Clark
Family Division



The Honorable
Robert J. Colville
Criminal Division



The Honorable
Kim D. Eaton
Family Division



The Honorable
Susan Evashavik DiLucente
Criminal Division



The Honorable
Philip A. Ignelzi
Civil Division



The Honorable
Arnie Klein
Civil Division



The Honorable
Jeffrey A. Manning
Criminal Division



The Honorable
Kevin G. Sasinoski
Criminal Division



The Honorable
Don Walko
Civil Division



The Honorable
Joseph K. Williams, III
Orphans' Court Division

By ACBA Staff

Election Day is Tuesday, Nov. 5 and when Allegheny County voters head to the polls, they will be asked to vote “yes or no” regarding whether 12 local judges should be retained.

The ACBA polled its members during the spring, asking its members to indicate whether each Allegheny County judicial candidate running for retention should be “recommended” or “not recommended” for retention. Judges from the Allegheny County Court of Common Pleas, as well as judges from the Pennsylvania Superior Court and Pennsylvania Commonwealth Court with a principle office in Allegheny County were included in the survey.

This year, all of the Allegheny County judges who were included in the survey received a “recommended” rating. The ACBA Judicial Excellence Committee (PAC) is managing an umbrella campaign for these judges, recommending the public to “vote yes” and keep these twelve qualified judges on the bench.

The judges are:

Superior Court of Pennsylvania

Hon. Judy Olson

Commonwealth Court of Pennsylvania

Hon. Patricia A. McCullough

Allegheny County Court of Common Pleas

Hon. Kim Berkeley Clark
Hon. Robert Colville
Hon. Kim D. Eaton
Hon. Susan Evashavik DiLucente
Hon. Philip A. Ignelzi
Hon. Arnie Klein
Hon. Jeffrey A. Manning
Hon. Kevin G. Sasinoski
Hon. Don Walko
Hon. Joseph K. Williams III

Without many high-profile races, the upcoming election is not expected to be highly publicized and, as a result, a low voter turnout is expected. That means it is more crucial than ever for ACBA members to not only vote, but to spread the word to family and friends about the importance of retention elections, and to share their own insights regarding the qualifications and job performance of these judges, explained ACBA President Lori McMaster.

“As attorneys know, retention elections are extremely important, because keeping qualified judges on the bench is absolutely crucial for a functioning legal system. Unfortunately many individuals who are not members of the legal community do not understand the importance of retention elections, or even how retention elections work,” McMaster said. “That’s why the ACBA is looking for our members

Continued on page 6

Chairman of the Emmys to address Pittsburgh legal community

By Zandy Dudiak

When he graduated from college, Terry O'Reilly could have gone to law school.

Instead, he took a \$72-a-week job as a television reporter, a decision he said his father never understood.

Now, after more than 40 years spent in television news, O'Reilly serves as president and CEO for Pittsburgh Community Broadcasting Corp., the parent corporation for the all-news 90.5 WESA-FM and all-music 91.3 WYEP-FM, two of the three local National Public Radio (NPR) stations. He also is chairman of the board of the National Academy of Television Arts and Sciences.

O'Reilly will get to tell tales of the trade, explain trends in the rapidly-changing media industry and offer



Terry O'Reilly

some good news for the future as the featured guest at the ACBA Signature Speaker Series event (non-CLE) on Nov. 12.

“In this critical time for journalism, Terry O'Reilly draws on his decades of experience in media and journalism to ensure that Pittsburgh Community Broadcasting remains a beacon of unbiased reporting for the communities of western Pennsylvania,” said Courtnae Turko, vice president of Human Resources & Organizational Development for Pittsburgh Community Broadcasting.

When O'Reilly took on the role overseeing WESA and WYEP, which had merged under a new corporation, it was his third stop in Pittsburgh. The New York City native moved “out west” to Pittsburgh with his family when he was 8 years old. After college and a few other jobs, he returned to the “grimy, industrial” Pittsburgh of

Continued on page 6

Articles on family law practice advice and substantive topics begin on page 4.

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LAWYERS JOURNAL

The *Lawyers Journal* is published fortnightly by the Allegheny County Bar Association
 400 Koppers Building
 436 Seventh Avenue
 Pittsburgh, PA 15219-1818
www.ACBA.org
 Advertising: 412-402-6686/
mgoodwin@acba.org
 Address Changes: 412-402-6612
 Fax: 412-261-6438
 Circulation 5,799
 © Allegheny County Bar Association 2019

Editor-in-Chief: *Erin Lucas Hamilton, Esq.*
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Gender Bias Duty Officers

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

Kimberly Brown412-394-7995
 Jeanine DeBor412-396-5215
 Rhoda Neft412-406-5434

Ethics Hotline

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

October
 Nancy L. Heilman412-297-4900
 Mark Vuono412-471-1800
November
 Amy Coco412-765-3399
 John H. Riordan, Jr.412-394-3347

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

Brooks v. Brooks, Regan J.Page 225
College Funds

The parties’ marriage settlement agreement appointed father as custodian of the children’s college savings funds that included PUTMA accounts as well as 529 accounts. Father transferred funds from one child’s 529 account to pay for another child’s college tuition. Mother filed a Petition for Special Relief to enforce the settlement agreement arguing that the father improperly transferred funds from one child’s account to the other and failed to keep the mother informed of the complete account statements as required by the settlement agreement.

Maloney v. Maloney, Bubash, J.Page 227
Alimony

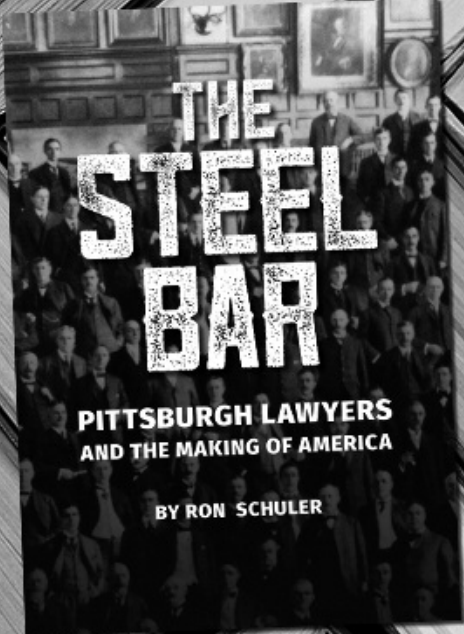
Husband and wife were married twenty-two years and at the time of the Master’s Hearing on Equitable Distribution and Alimony, the husband was fifty years of age, earning \$235,000 per year and the wife was fifty-three years of age and earning minimal income. Husband’s vocational expert opined that the wife could earn just shy of \$35,000 per year. Upon review, the court disagreed.

T.T. v. L.M., Shogan, J., Kunselman, J., and Strassburger, J.Page 230
Custody

The mother, who had been residing in Las Vegas, Nevada for over three years, sought to relocate the parties’ thirteen-year-old child from Allegheny County where he had been living with the father. The father did not file a counter-affidavit objecting to the mother’s relocation proposal; rather, he filed his own complaint for custody. The trial court consolidated the two requests and denied the mother’s request for relocation of the child.

J.H. v. J.Y.W., Hens-Greco, J.Page 233
Custody and Relocation

The parties, never married, are the parents of an 11-year-old child who has been in the shared custody of the parties with slightly more physical custody resting with the mother. The father requested primary custody and permission to relocate to Lawrence County, thus increasing the distance between the parties from approximately thirty or sixty minutes apart to one hour and fourteen minutes apart. Both parties have now married with the mother having five other children in her household.



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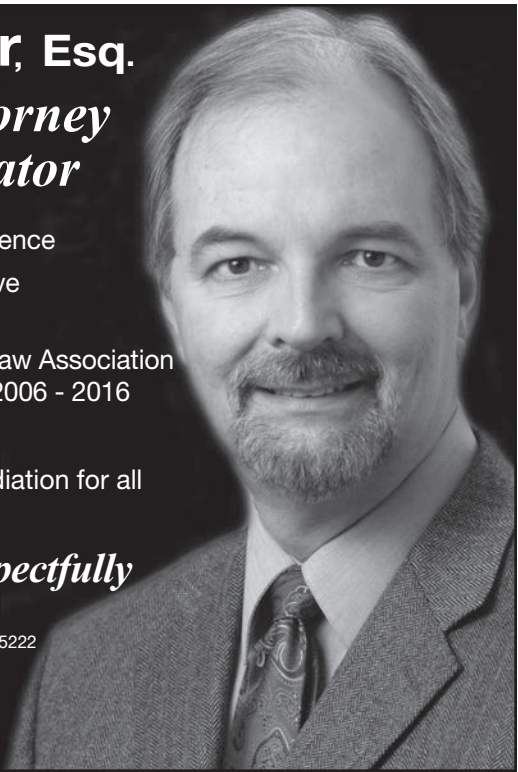
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PRESIDENT’S MESSAGE

The ‘Trump Bump’ in law school admissions

By Lori McMaster

Much discussion has occurred recently regarding the increase in law school applications since the inauguration of President Donald Trump.

Professor Michael Madison of the University of Pittsburgh School of Law follows admissions data closely. “Law school applications peaked about 20 years ago, declined gradually until 2009-2010, nosedived after that, and have now more or less stabilized – around 60,000 applicants per year today.”

Kellye Testy, President and CEO of the Law School Admissions Council (LSAC) noted that law school applicants increased 3.3 percent in 2019, which on top of the prior year’s significant applicant increase means there was an 11.6 percent increase over the last two years. “With nearly all our 2019-2020 applicant and application data accounted for, as of July 31, 2019 we’re seeing 62,427 applicants to U.S. law schools which represents a 3.3 percent increase over last year and an 11.6 percent increase over a two-year period.” Above the Law, Kathryn Rubino, ‘The Number of People Applying to Law School is Up Again this Year – Proving the Trump Bump is More than Just a Fleeting Trend’, 8/5/19. Available at: <https://abovethelaw.com/2019/08/the-number-of-people-applying-to-law-school-is-up-again-this-year-proving-the-trump-bump-is-more-than-just-a-fleeting-trend/>

Despite increased competition from the GRE standardized test in law



Lori McMaster
ACBA President

school admissions, the number of LSATs administered has also risen, suggesting that the trend in increased law school applications may be continuing. Ms. Testy reports “seeing an increase of 7.3 percent in the number of LSATs administered (26.7 percent when looking at a two-year period), and a 3.2 percent increase in new test takers. Because almost all applicants begin their enrollment journey by taking the LSAT, national trends in test takers help preview the coming cycles.” Id. As of October, 2017, the number of registrations for the December exam was 21.4 percent higher than the total at the same time in 2016. In June 2017, the LSAC announced that it would be increasing its administrations of the LSAT to six times annually, up from

four. In fact, between June 11, 2018, and June 3, 2019, the LSAT was given seven times. ABA Journal, Stephanie Francis Ward, ‘The Trump Bump for Law School Applicants is Real and Significant, Survey Says’, 2/22/18. Available at: <http://www.abajournal.com/news/article/the-trump-bump-for-law-school-applicants-is-real-and-significant-survey-say>

Charmaine McCall, Dean of Admissions and Financial Aid at Pitt Law, notes that, while law school applications declined 40 percent between 2010 and 2015, “Pitt Law has seen a steady rebound. We saw increases in both 2017 and 2018.”

Why the increase in law school applications? Many attribute it to the politics-driven “Trump bump.” According to a 2018 Kaplan Test Prep survey of more than 500 pre-law students, 45 percent said that “the current domestic political climate impacted their decision to apply to law school”, a marked increase from the prior year. National Jurist, Mike Stetz, ‘The Trump Bump continues’, 2/26/19. Available at: <http://nationaljurist.com/prelaw/trump-bump-continues>

Jeff Thomas, Executive Director of Kaplan’s pre-law programs, commented: “We’ve seen significant jumps in both LSAT takers and law school applications over the past admissions cycle, which has fueled speculation about how much impact, if any, the 2016 election and subsequent political climate has had on this year’s law school


admissions landscape. We now have an answer: It’s significant. The bump is real.” Kaplan Press Release, ‘Kaplan Test Prep Survey: Over 30 Percent of Pre-Law Students Say the Results of the 2016 Election Impacted Their Decision to Apply to Law School’, 2/22/18. Available at: <https://www.kaptest.com/blog/press/2018/02/22/kaplan-test-prep-survey-30-percent-pre-law-students-say-results-2016-election-impacted-decision-apply-law-school/>

In fact, nearly one third of the pre-law students surveyed (32 percent) said the results of the 2016 election impacted their decision to become lawyers. Id.

According to the Kaplan Test Prep’s 2018 law school admissions officers survey, 87 percent of 121 law school admissions departments which were surveyed by phone reported that the current political climate in the U.S. was a significant factor in the increase in law school applications. This includes 30 percent who describe it as a “very significant” factor. Kaplan Press Release, ‘Kaplan Test Prep Survey: Nearly 90 Percent of Law Schools Say the Political Climate Was a Significant Factor in Application Increase’, 2/25/19. Available at: <https://www.kaptest.com/blog/press/2019/02/25/kaplan-test-prep-survey-nearly-90-percent-of-law-schools-say-the-political-climate-was-a-significant-factor-in-application-increase>.

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Ways to keep family law a rewarding practice

I know, as much as any of you do, that a steady diet of family law can create an emotional roller coaster. Clients challenge and discourage me. One minute, it is the top of the world and the next is the “bottom of the heap.” So, I want to share with you my requirements, making family law a satisfying, enriching and rewarding practice.

Most clients are truly great folks, but, unfortunately, we are meeting them at their worst. They are full of anxiety and anger, pain and fear. Emotion and passion are running high, too. In the midst of the client's emotional outpouring, hold yourself separate. Remember, the situation and issue is theirs, not yours. Providing empathy and support is different than becoming enmeshed with them. Once enmeshed, your objectivity and ability to advocate can become compromised and it is much harder to leave the client's issues at the office and enjoy your evenings and weekends.

Get to know your fellow attorneys as people and not as just the opposing parties' advocate. Join the ACBA Family Law Section. By participating in some of our Family Law Section's



social hours, events and monthly meetings, you will have an opportunity to socialize and network, and share funny stories with a fellow family law attorney. The section has 14 active committees and you can join and be a part of any one of them. Attend the children's issues round table held at 8:00 a.m. on the third Tuesday of each month, in the 5th floor conference room at the Family Law facility. No reservation or payment is required. Join the committee and participate in the programming.

By joining one of the Family Law Section's 14 committees, you will get a great start. Our ADR Committee explores the application of mediation, the collaborative process and arbitration, and other out-of-court processes to Family Court and family issues. If you are interested in rules, rule changes and upcoming legislation, the Rules Committee or the Legislation Committee would be a good fit for you. If you are concerned about the quality of practice of your adversaries, join the Professionalism Committee or the Mentoring Committee and take an active part in making sure that young lawyers are given an opportunity to learn the very best ways to practice family law. Equally as important are the Public Service and Pro Bono Committees, whereby you might provide legal services to the community or

Practice courtesy and respect for the court and your adversary. In motions court, when a judge looks down at the bench and starts to write, you should know that a decision has been made and it is only polite to quit talking, arguing and be respectful while the judge finishes noting the order. If the judge has more questions or wants to hear from either you or your opponent, the judge will ask. Remember, you want to be known as a respectful, competent attorney.

I hope to see you at the Family Law Section meetings, held at noon on the second Tuesday of each month in the mezzanine of the Frick Building. Come to the holiday party on Tuesday, December 10, or to the annual meeting on the second Tuesday in May, 2020.

I look forward to seeing you there! ■

**For more information on the benefits
of joining the Family Law Section visit
*www.ACBA.org/Family-Law-Section.***

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LAW PRACTICE MANAGEMENT

CNA professional liability fact sheet: Family law

By CNA staff

As an area of practice, family law includes all litigation and legal services related to antenuptial and domestic relationships, separation and divorce, alimony and child support, child custody, surrogacy and adoption.

Frequency of Family Law Claims

CNA claim frequency in the family law area of practice has been consistently higher when compared to all other areas of practice in the last six years. In fact, the most recent data reflects an upward trajectory of family law claims. See Chart 1.

Claim counts arising from family law have increased from 98 incurred claims in 2007 to 245 incurred claims in 2016. See Chart 2.

Quick Stats

- Average of 498 claims reported per year
 - Average of 181 claims paid per year
 - Average cost per claim: \$65,755
 - Average yearly cost of all family law claims: \$11.9 million
 - #4 claims area by count
- Source: CNA Lawyers Professional Liability Claim Data 2007-2016

Visit us today at www.ACBA.org.

Top Causes of Family Law Claims

This chart represents the most common claim allegations against family law practitioners between 2007 and 2016. Disciplinary grievances are excluded from the data, which, if included, would represent more than one third of total reported incidents in the area of practice over that time. See Chart 3 on page 11.

Risk Management Tips

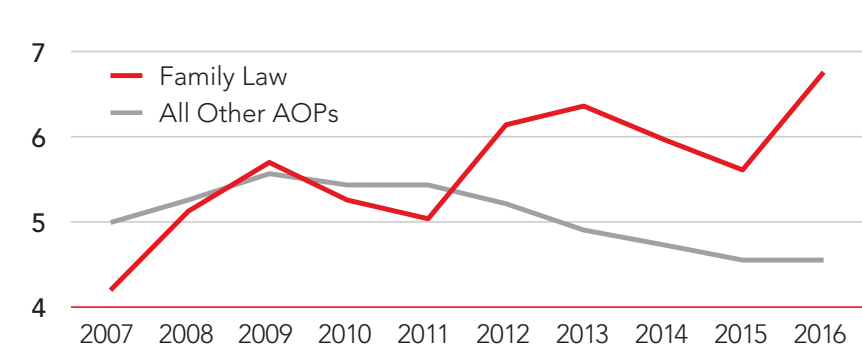
Screen New Clients

Be cautious when a prospective client has been represented by one or more prior attorneys for the same matter. Also be wary of a client who is overly concerned with fees or otherwise indicates an inability to pay. Most states do not permit contingency fees in domestic relations matters, but consider requiring a retainer up front to alleviate long-term financial stress.

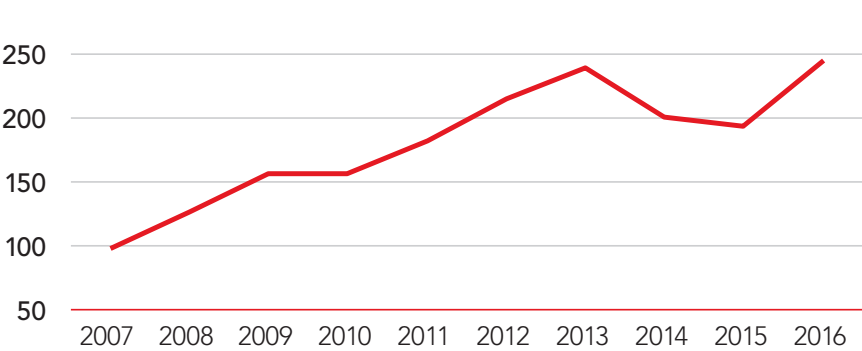
Be Wary of Conflicts

Even where a divorce is uncontested, an attorney cannot ethically represent both parties. Less obvious conflicts involve the prior joint representation of both spouses in a substantially related matter (e.g. estate planning or a real estate transaction). The practice

Historical Claim Frequency (per 1,000 attorneys)



Count of Family Law Claims Incurred Per Year



of “conflicting out” potential attorneys – meeting with several attorneys solely to preempt their retention by the other spouse – can

result in a disciplinary complaint if not properly recognized.


Continued on page 10

“Excellent; one of the best. An extremely creative lawyer, which makes him dangerous for the opposition.”
-Pittsburgh Tribune Review

“The archangel of employment rights in Western Pennsylvania.”
-Pittsburgh Tribune Review

“Extremely smart in the scholarly sense and has that practical street smart sense. You don’t see that combination in too many lawyers.”
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RETENTION ELECTION
continued from front page

to help. Retention elections always tend to fly ‘under the radar,’ and without any high-profile contests in this particular election, we expect even stronger-than-usual voter apathy and a low turnout for this one. ACBA members overwhelmingly recommended these 12 judges for retention, so we are now counting on you, our members, not only to get out and vote on Nov. 5, but also to encourage others to do so by explaining the important role retention elections play in our democracy.”

For more information, visit www.JudicialVote19.org. ■

Sidebar online

Have you ever deleted a *Sidebar* only to realize later that you needed to check something in it? Does your email filter sometimes route the *Sidebar* to your spam folder? If so, don’t worry – you can find the newsletter online at ACBA.org. We link to the past four *Sidebar*s at ACBA.org/Sidebar-Editorial-Policy.

SIGNATURE SPEAKER SERIES
continued from front page

the 1970s to serve as an executive producer and news director at KDKA-TV during what he calls “the heyday of local television news.” Then Westinghouse Broadcasting transferred him to New York and he began a series of jobs elsewhere before returning to Pittsburgh in 2016.

“We’ve been trying hard to grow both stations,” O’Reilly said.

But it’s the news format of WESA that he said is vital in the local journalism crisis where the only print-edition daily newspaper has been cut to three days a week. For the city, and especially older folks like O’Reilly’s mother who rely on print instead of digital news, the change has quite an impact.

“She felt like part of a community,” he said. “There was a tactile sense of, ‘This is where I live. This is my community.’”

WESA is trying to fill the void through radio, he said, with free and non-partisan news coverage. In recent years, the news staff has doubled from 12 to 24 or 25 – and the listenership has more than doubled, too, to about 200,000 people a week. WESA now has the largest full-time radio newsroom in Pittsburgh.

“We don’t do car chases,” O’Reilly said. “We don’t do fires.”

But what they do is provide context and the back stories. He said that 90 seconds is about all most radio news stories get, but with WESA, it’s up to seven minutes.

“The role of public radio is to bring light, not heat, to the issues of the day – civil conversations more than headlines,” he said.

In the partisan environment that exists today, O’Reilly said that WESA

If you’re going

What: Signature Speaker Series

Where: Rivers Club, 301 Grant St., Suite 411, downtown Pittsburgh

When: 5 p.m. Tuesday, Nov. 12; presentation at 5:30 p.m., networking reception at 6:15 p.m.

Cost: \$10 ACBA members, \$30 non-ACBA members; admission includes hors d’oeuvres. A cash bar is available.

Registration deadline: Thursday, Nov. 7

sometimes gets complaints about a specific story that has a strong conservative or a progressive point of view. He said he asks listeners to look at the journalistic output as a whole.

“We get at issues from many points of view,” he said.

In July 2018, O’Reilly began a two-year term as the chairman of the board of trustees for The National Academy of Television Arts & Sciences, the 18,000-member organization that administers TV’s Emmy Awards.

“I do that as a labor of love because I was in television so long,” he said.

The position requires him to spend weekends traveling around the country in order to have a presence at the regional Emmy Awards. During those trips, he’s had a chance to meet the next generation of media creators, who use the latest tools to tell stories in the most appropriate format, whether podcasts, videos or in text.

“It’s remarkable to see what’s coming out of these colleges today. There is no hesitation to pick up equipment, learn how to use it, and go out and cover stories. They are really facile storytellers.”

Previous ACBA series speakers include Heather Lyke, University of Pittsburgh athletic director; Christina Cassotis, Allegheny County Airport Authority CEO; J. Kevin McMahon, president and CEO of the Pittsburgh Cultural Trust; and Dawn Keezer, Pittsburgh Film Office executive director.

“We try to do these two or three times a year,” said Christina Daub, Director of ACBA Membership & CLE. “All of our speakers series have been incredibly successful. We hope that trend continues.”

It was Keezer who inspired Casey Kurelich, associate counsel with WESCO Distribution Inc. and someone who attends many ACBA events, to suggest O’Reilly as the next featured speaker.

“It occurred to me if there was an interest in film, there might also be an interest in television and that’s where a lot of Terry’s experience is,” said Kurelich. “Courtnae (Turko, my sister) has mentioned that his work with the Emmys, and media in general, includes navigating issues with various labor unions (e.g., the actors) and I thought it was interesting from an attorney perspective. Plus, I thought it would be a good opportunity to bring some attention to Pittsburgh’s public radio stations.” ■

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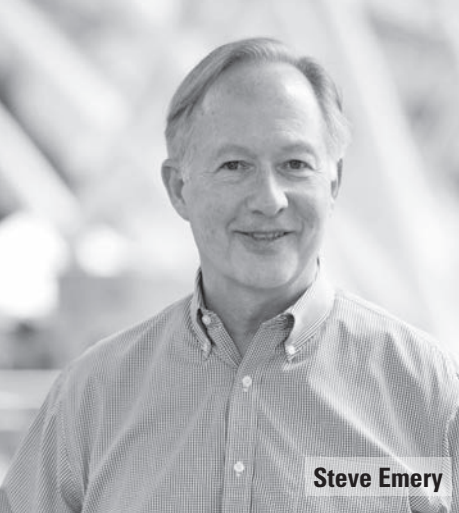


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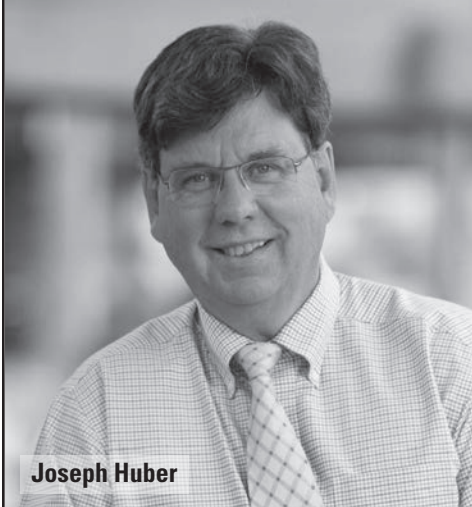
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To spy or not to spy?

The Do's and Don'ts of surveillance of a cheating spouse

By Phil DiLucente and Ken Horoho

“My spouse is cheating on me. I know it. But how do I prove it?”

Family law attorneys hear this from clients on almost a weekly basis. Because these issues can have criminal ramifications, colleagues practicing in that area of the law are often consulted. In a 2011 study, published in the journal Archives of Sexual Behavior, it was found that about 23% of men and 19% of women in heterosexual relationships reported having cheated on their partner. So when the national average for marital infidelity is roughly one in five, it's seldom surprising when a spouse feels they have good reason to suspect cheating.

When we are confident that infidelity has likely occurred, it leads attorneys to the inevitable question, “How do we prove it?” and therein lies the problem.

Digital technology that was once the domain of law enforcement and the intelligence community is now readily available to consumers at any electronics store. Audio and video recorders, smart doorbell systems, home security systems, handheld recording devices, even smartphones now have the capability to make anyone an amateur private investigator.

What's more, thanks to the popularity of reality television, most people have seen shows like “Cheaters,” where producers set up cameras in people's



Phil DiLucente

homes or place tracking devices on their cars, presumably to catch them in awkward circumstances. But how much of that is simply Hollywood entertainment and how much is actually legal under Pennsylvania law?

A person has a constitutional right against illegal searches and seizures if the person asserting the right has an expectation of privacy in the item searched. Under Article 1, Section 8 of the Pennsylvania Constitution, there is an absolute expectation of privacy in one's home and in a person's car, even though the expectation in a car is much less than in one's own place of residence.



Ken Horoho

Many of these cases begin with a spouse or private investigators utilizing GPS tracking devices on a vehicle. GPS or Global Positioning Systems record the movements of vehicles. Any GPS device used for such a purpose is subject to the Wire-Tapping and Electronic Surveillance Control Act 18 Pa. CSA § 5701.

In short, the state of the law in Pennsylvania is that it is illegal to intercept or cause another to intercept wire, oral, or electronic communication unless there is consent. Citing 18 Pa CSA § 5701, Pennsylvania courts have held that the surreptitious acquisition

of this type of information using a device without consent leads to evidence that is inadmissible.

Vehicle Tracking

A GPS tracker is often placed on a vehicle to monitor a spouse's movements. It is much more convenient and more cost-effective than paying a private investigator to “sit” on a spouse hoping they will catch them traveling somewhere compromising. However, in this instance, title matters. If the parties jointly own the vehicle in question, either party has the right to track its whereabouts. If the vehicle is owned by one, then the non-titled party does not have the right to use GPS to track it. In short, in Pennsylvania you may track someone's movements in a vehicle if the vehicle is titled to you or jointly titled to you and your spouse.

Digital Surveillance

The next question posed by aggrieved spouses almost always refers to gaining access to their spouse's cellular phone, email, social media accounts, and the like. Title 18 of the Pennsylvania Consolidated Statutes also addresses this question. Pennsylvania's wiretapping law is a “two-party consent” law which makes it a crime to intercept or record a

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International travel and the single parent

By Carla Schiff Donnelly

Now that you have ditched your spouse and can finally focus on your travel bucket list, you look forward to seeing the world through your children’s eyes. Indeed, international travel with children is fun and educational. You may ask, “Are there any limitations on your ability to travel with your children?” On the flip side, what restrictions are there for your ex traveling with the children.

Your child will need a passport to travel outside of the country. Ordinarily, even in intact families, both parents must appear together for an appointment with the post office to apply for or renew a passport. In the alternative, if a child is under the age of 16 and both parents are not present to apply for the passport in person, the non-applying parent or guardian must provide written consent for the minor child to apply for a U.S. Passport with Form DS-3053. You can find the form on the State Department website, www.state.gov.

If one parent/guardian is unable to locate the other in order to appear together, that parent can complete a “Statement of Exigent/Special Family Circumstances” Form, which requires additional evidence, such as an incarceration order. According to the State Department, a parent can also obtain or renew their child’s passport with a court order “specifically permitting the applying parent to apply for the child’s passport.” When a parent refuses to cooperate with the other parent in obtaining or renewing



Carla Schiff Donnelly

the passport, such an order may be obtained through the family court, usually by motion. However, the best practice would be to address the issue of international travel and passports in the initial custody agreement.

Regarding concerns about your ex traveling, there are usually two main concerns. First, if the other parent wants to take your child to a country you deem to be unsafe. For example, if the other parent wants to travel to Syria despite the warning on the State Department website, “Do not travel to Syria due to terrorism, civil unrest, kidnapping, and armed conflict.” In the short term, if your child does not

have a passport or it is expired, you can refuse to cooperate in the process. If the passport is in your possession, you can refuse to turn it over. Either way, you are probably headed to family court. If the other parent has the valid passport, you will then need to seek the family court’s intervention. The court will consider the State Department warning as well as evidence from the parent wanting to travel about safety precautions and the purpose of the trip. For example, the parent may argue the child’s grandparents are in Syria and have never met the child. Further, their home is in a safe part of the country away from the concerns expressed by the State Department.

The second area of concern is that the parent will not return with the children. The Hague Convention provides that a child who is taken to or retained in a foreign country without the consent of a parent must be returned to the country of residence unless an exception, such as abuse, applies. Even with Hague Convention countries, the return of the child is often not immediate, especially if the other parent claims abuse or another exception. In countries not signatories to the Hague Convention such as China, India, Jamaica, and Aruba, return of the child can be nearly impossible. If you believe there is a flight risk, protection from the court should be sought to prevent the other parent from obtaining passports, visas or other documents needed to leave the United States and/or enter a particular country.

The State Department has set up the Children’s Passport Issuance Alert Program (CPIAP) in order to help prevent international parental child abduction. If a passport application is submitted for a child who is enrolled in CPIAP, the Department of State’s Office of Children’s Issues attempts to alert the parent(s)/guardian(s) to verify whether they approve the passport issuance. If your children are citizens of a foreign country or have dual citizenship, a concern would be that the parent could obtain foreign passports. In that event, I would suggest contacting the consulate or embassy and expressing your concern. They may be able to tell you if your children hold a foreign passport and/or put a hold on any application for one.

The bottom line when it comes to international travel and the single parent is to plan ahead by addressing international travel in the custody agreement. Next, if you suspect you may get pushback on your travel, get the issue out there early enough to give you time to cut through the court and government red tape. Leave plenty of time to allow you and your child to enjoy the excitement of planning the trip. ■

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The Tax Cuts and Jobs Act and the new Pennsylvania Support Guidelines

By Meghan L. Zupancic

When the Tax Cuts and Jobs Act of 2017 (TCJA) was signed into law on December 22, 2017, most individual taxpayers were focused on the effects of the changes to their individual personal income tax rates and to their allowable tax credits and deductions. However, family law practitioners nationwide were focused on the provision of the Act that had the biggest impact on their daily practices and on their clients' wallets. Section 11051 of the TCJA abolished the alimony deduction for all support orders entered after January 1, 2019. Under the "old rules," which were in effect for several decades, a spouse making alimony payments could deduct these payments from his or her income and the spouse receiving the payments would claim the payments as taxable income.

Under the TCJA, the alimony deduction was still in effect for any divorce or separation agreements entered prior to December 31, 2018. After the tax reform, the payor spouse could no longer deduct alimony payments and the payee spouse was no longer required to include them in his or her taxable income. This rule not only applies to divorce and separation agreements entered after December 31, 2018, but also to earlier divorce and separation agreements



Meghan L. Zupancic

modified after December 31, 2018, but *only if* the modification states that the new law applies.

In Pennsylvania, where the alimony deduction also applied to orders for spousal support and alimony *pendente lite* (APL) (support paid by one spouse prior to the entry of a divorce decree) and where the support guidelines took into account the tax ramifications of a spousal support or APL award, the legislature was tasked with creating new support guidelines in response to the TCJA. The results, the purpose of

which are to offset the change in the tax impact, are set forth in Pa.R.C.P. 1910.16-4, where new orders (and modifications to which the provisions apply) entered after January 1, 2019 are subject to the new guidelines. Orders and all other modifications of orders entered before January 1, 2019 are subject to the old guidelines.

Aside from the tax treatment, there are two major differences between the old guidelines and new guidelines. First, under the old guidelines, child support was calculated first and then spousal support/APL was calculated second. This order is reversed under the new guidelines with the spousal support/APL award calculated first, followed by the child support calculation. This means that under the new guidelines, spousal support/APL is deducted from the payor's income and included in the payee's income prior to the calculation of child support, which has the effect of lowering the payor's child support obligation. Not only does this reversal have the effect of lowering the basic child support obligation, but it also affects the allocation of other expenses, such as unreimbursed medical expenses, child care, educational needs, and extracurricular activity expenses. As the payor spouse is

deemed to have a lower net income, and the payee spouse a higher net income, for the purpose of contribution to extra expenses the recipient spouse now has to pay a higher percentage of these expenses than he or she would have under the old guidelines. While this may not seem significant, it can make a drastically noticeable difference in cases involving large amounts of extra expenses, such as private school tuition or extraordinary medical expenses.

The second critical difference under the new guidelines is the calculation of spousal support/APL. Under the old guidelines, spousal support/APL was essentially 40% of the difference between the parties' respective net incomes without dependent children and 30% of the difference, taking into account the previously calculated child support obligation, with dependent children. Under the new guidelines, the calculation is somewhat more complex. If the parties have dependent children, the spousal support award, before any adjustments for additional expenses, is 25% of the payor's net income less 30% of the payee's net income. If the parties do not have

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Bob Ross painting class scheduled for Nov. 6



Ever wanted to learn to paint happy little trees?

ACBA members have the chance at a Bob Ross painting class on Wednesday, Nov. 6 from 5 to 7 p.m. in the Koppers Building. The class will be taught by Sandy Hughey of Sandy's Inspirations, a certified Bob Ross painting instructor (that's a real thing).

The class is open to painters of all skill levels, including beginners. Cost is \$45 for ACBA members and includes pizza, beer, wine and soft drinks. Guests welcome. For more information or to register, visit www.ACBA.org or email Christina Daub at cdaub@acba.org. ■

PRESIDENT'S MESSAGE continued from page 3

Interestingly, the recent increase in law school applications is principally driven by women. "As recently as 2013, women were still a minority among applicants to U.S. law schools. This year they accounted for 55%. So U.S. law schools will for at least the next few years be churning out more smart, politically engaged, probably left-leaning lawyers, most of them women." Gender and the Law Prof Blog, Tracy Thomas, *'The Trump Bump Sees More Women Going to Law School'*, 9/17/19. Available at: https://lawprofessors.typepad.com/gender_law/2019/09/the-trump-bump-sees-more-women-going-to-law-school.html

Thus, the historical interplay between the country's political landscape and the legal profession continues. "Law schools can seize this moment and, like the generation inspired by Woodward and Bernstein to pursue careers in journalism, lead the renaissance in legal education that would revive a profession in need of an injection of youth, idealism, and high-tech savvy." Nicolas W. Allard, former Dean of Brooklyn Law School. TaxProfBlog, Paul Caron, *'Brooklyn Dean: Donald Trump Is Causing A Legal Education Renaissance, Just As Woodward & Bernstein Inspired A Generation To Pursue Journalism*

Careers', 2/25/17. Available at: https://taxprof.typepad.com/tax-prof_blog/2017/02/brooklyn-deandonald-trump-is-causing-a-legal-education-renaissance-just-as-woodward-bernsteine-inspi.html

Anecdotally, law school career services professionals have likewise told me that current law students are expressing increased interest in careers in government and public interest. Recent graduate employment outcomes at Pitt Law and Duquesne law bear this out. For the Class of 2017, approximately 11 percent of the employed law school graduates from both Pitt and Duquesne obtained post graduate positions in government and public interest. In 2018, both the raw number and percentage of employed Pitt Law and Duquesne Law graduates working in government and public interest rose significantly. For the Class of 2018, 19.8 percent of the employed law school graduates at Pitt and 19.2 percent of those at Duquesne were working in such roles. While these graduate employment trends may not be attributable to a "Trump bump," it is nonetheless reassuring that so many of our local law school graduates are pursuing legal careers in service to the common good.

I welcome hearing your thoughts about this message, so please do contact me at mcmaster@pitt.edu or 412-648-2359.

All my best, Lori. ■

CNA PROFESSIONAL LIABILITY continued from page 5

Manage Emotions and Expectations

Keep expectations realistic by having frequent discussions about the client's goals and explaining all possible outcomes. In the interest of obtaining a favorable resolution and avoiding a disciplinary complaint, maintain integrity and civility with opposing counsel, notwithstanding client pressure to the contrary.

Watch for Substance Abuse or Mental Illness

If a client's condition hinders his or her ability to participate in the representation, an attorney may be justified in taking certain actions to protect the client's interests. In some cases, recommending therapy or counseling can pave the way for a more productive attorney-client relationship and a better outcome for the client.

Maintain Sufficient Communication

Complaints related to inadequate communication arise in all practice areas, but clients in family law representations are often less sophisticated and may be working with an attorney for the first time. Consistent communication and patient, thorough explanations of case developments are therefore vital.

Select the Right Jurisdiction

Early in the representation, discuss with the client whether geographical connections may permit filing in another state, and both understand

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CNA PROFESSIONAL LIABILITY
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and explain to the client why variations in terms of property distribution rules, grounds for divorce, tax laws and trends in custody or alimony awards would merit doing so.

Document the File

More than in other practice areas, clients in family law representations may insist on courses of action and decline others based upon financial or emotional considerations. Memorialize these discussions, including the stated reasons for the client’s decision and the presented alternatives, to counter potential allegations that the attorney mishandled the case or acted without authority.

Ensure Adequate
Discovery/Investigation

Explore whether informal discovery is appropriate, but recognize where the nature of a client’s assets or the animosity between the parties will not allow for effective representation absent the initiation of formal discovery. Either way, inform the client of potential disadvantages of both strategies and document those discussions.

Retain Experts if Necessary

Inaccurately valuing a business, trust, or piece of property can form the basis of a malpractice claim. Since most attorneys lack the expertise to produce these calculations on their own, selecting a qualified expert and complying with court rules regarding expert disclosure are critical. Many attorneys wisely turn to specialists for drafting qualified domestic relations

orders (QDROs) as retirement plans have grown more complex.

Draft Prenups Carefully

Even in states where both parties are not required to retain separate counsel, each party should have the time and information necessary to fully consent to the terms of the prenuptial agreement. Pay attention to circumstances indicating undue influence and avoid unconscionable or illegal provisions (e.g. modifications to future child support) that jeopardize overall enforceability.

CNA Risk Control Resources

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- “Client Intake Procedures: Avoiding Problematic Clients”
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Top Causes of Family Law Claims



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TO SPY OR NOT TO SPY
continued from page 7

telephone call or conversation unless all parties to the conversation consent. It states, quite clearly, that a person is guilty of a felony if he or she intentionally intercepts or attempts to intercept oral, written, or electronic communications.

There are two exceptions to this statute. First, the party with the monitored phone must give consent to be tracked/spied upon. Second, the party intercepting information must obtain a proper court order allowing them to do so legally. But don't count on a family court motions judge to provide that relief on a regular basis.

Under the same Pennsylvania statute, it is a misdemeanor to intentionally collect stored communication, such as email, without authorization from the owner of the communications, unless the owner consented to sharing the communication, or there is an appropriate court order that allows the seizure of the stored information.

Home Video Surveillance

Finally, spouses will often ask about video recordings made in their own home. With the popularity of home video surveillance systems, "nanny cams," and similar devices, can a spouse legally record their partner, with or without sound, without their knowledge?

The answer here is good news for the suspecting spouse. Under 18 Pa. Cons. Stat. § 5703 it is currently legal to make a video-only recording of anything happening at your home, at any time, without informing anyone. The fact that the camera is hidden has no effect on this concept. If your camera is video only, meaning that sound is not able to be recorded by the device, then you can record whatever, and whomever, you'd like in your own home without anyone's permission, even a spouse who also would presumably have an expectation of privacy. However, audio recordings are a different story. In general, Pennsylvania's Wire-Tapping and Electronic Surveillance Control Act, 18 Pa. CSA § 5701, bans the secret recording of anyone's speech in a nonpublic place without their consent, unless the recording is sanctioned in advance by a court order. It is illegal to record someone's voice without their permission in Pennsylvania. Any home surveillance camera or similar device that records a person's voice is illegal without their consent even in your own home. In short, you will be able to see the compromising acts but not be able to listen to your spouse's transgressions, which may be for the best.

To Spy or Not to Spy?

So, should your client engage in some form of electronic surveillance of a cheating spouse? And if so, how can you do it such that any evidence obtained will be admissible in court and not have the unintended consequence of running afoul of the law?

When consulting with a suspecting spouse on these issues, a lawyer's analysis on whether to pursue a forensic investigation or provide mitigation advice will usually focus on a few key considerations.

- First, will the investigation provide litigation value or help meet the burden of proof on the key issues in the suspecting spouse's case? In cases of suspected cyberstalking, hacking or spyware, a lawyer needs to decide if the case warrants the expense of forensic examination. In custody and matters seeking orders for protection from abuse, it may be money well spent. When dividing marital assets it may be much less important because marital misconduct is not a factor in equitably dividing the marital estate.

- Next, if a forensic investigation is pursued, how can the attorney and client avoid both the ethical and criminal minefields under Pennsylvania law, such as the right to privacy or protection against illegal search and seizure?
- And finally, will providing mitigation advice help eliminate the client's fear of electronic devices and cyberstalking issues? If the goal is to give the client peace of mind, then explaining how and why to protect their electronic devices maybe the best strategy.

While the temptation to catch a cheating spouse in an act of infidelity may be great, and gathering damaging information may be both easy and

affordable, knowing the legal limitations and risks before proceeding is always a good idea. It could affect both the outcome of a divorce case and keep you on the right side of the law. ■

Phil DiLucente is the founder and managing partner of Phil DiLucente and Associates, LLC. Ken Horoho is a partner in the family law firm of Gentile, Horoho & Avalli, P.C.

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TAX CUTS AND JOBS ACT
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dependent children, the award is 33% of the payor's net income less 40% of the payee's net income.

While the new rules have little effect on orders for child support only, the changes to the spousal support/APL guidelines can have a significant effect on orders involving spousal support by reducing the monthly obligation. These reductions might present as if they favor the payor spouse, and disadvantage the payee, however, these reductions do not necessarily equate to the savings the payor would have experienced via the tax deduction. ■

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Financial planning guidance with a Certified Divorce Financial Analyst

By Mallory Labik

Are you familiar with a CDFA, or a Certified Divorce Financial Analyst? This designation is typically held by a financial advisor who has specific knowledge and experience working on the financial impacts of a divorce. Becoming a CDFA requires passing four different exams covering the fundamentals, financial issues and tax issues of divorce. The certification also requires case study reviews, and how one can apply their knowledge to realistic scenarios.

A CDFA professional is there to work alongside attorneys to serve clients who are possibly preparing for a divorce and need to comprehensively understand how that may affect their financial future. There are too many cases where people split assets in a manner they think is beneficial without performing the proper due diligence. Often a settlement may fail to address their long-term needs.

Key benefits of partnering with a CDFA

As the attorney, you have the legal knowledge and experience required to handle a divorce case. You are an extremely valuable member of your client's team, but you may require additional resources when handling a situation with in-depth financial questions and scenarios.

A CDFA possesses the financial knowledge and expertise to carefully review the details of each divorce case. They are responsible for understanding the family's assets, determining the client's financial needs and projecting the future circumstances of each potential settlement. A client's settlement may be proposed without being thoroughly evaluated to determine how they will be positioned financially in the long term. That's where a CDFA can show their value.

Complex financial considerations during the divorce process

When preparing for a divorce case, it's important to get a solid summary of your client's assets. Often in marriages you'll find that one spouse handles the finances, and the other spouse may not have a thorough understanding of the shared assets and liabilities. To properly evaluate and reach a potential settlement, a concrete understanding of a couple's financial situation is imperative.

Another item that is often overlooked is the impact taxes can have on different types of accounts. Withdrawals on retirement accounts are taxed differently than a personal account, and sometimes they can incur a penalty. Some securities held within a personal account may have larger taxable gains than others. Without a detailed review of the



Mallory Labik

client's tax situation, there could be a significant negative impact on their portion of the settlement.

One last item of significant importance is how critical it is to have a client's potential settlement projected into the future. With a new income level, reduced assets, and additional expenses, they need to know if they can financially survive the changes. Too often proposals appear to be beneficial, but ultimately one spouse ends up struggling financially while the other thrives. With an in-depth analysis, this can be avoided.

Financial projections should consider growth, inflation, taxes and specific details unique to each case. It's important to be as detailed as possible when running an analysis. Settlement proposals need analyzed to determine if they would be enough for a client's survival; and if it's not, possible solutions can be identified.

A process of educated decisions, not emotional decisions

Surviving a divorce may be one of the most challenging times during the client's life, but it is so important to set emotions aside in order to make the best financial decisions for themselves and their family. Having a financial expert assist you in this process can absolutely help put things into perspective. A CDFA will present figures and the projections using only logic, leaving little room for emotional decision making.

After a divorce, the client will have an entirely new set of financial circumstances. In many cases, it's the first time an individual may be responsible for making financial decisions independently. New accounts need to be established, beneficiaries need to be updated, alimony and child support payments need to be protected and an overall

Continued on page 16

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Cryptocurrency: The naturally hidden asset

By Julie Colton

Digital assets are complicating asset division and support in family law matters. Cryptocurrency is a digital asset that is used like virtual money on the internet. Cryptocurrency is often also referred to as virtual currency. There is a dispute over whether or not cryptocurrency is recognized as a form of currency. Different countries treat cryptocurrency differently.

Many people associate cryptocurrency with nefarious purposes, but that is not always the case. Some people prefer to use cryptocurrency for online purchases to ensure secure financial transactions. A person may use cryptocurrency for investment purposes as the exchange rate can swing vastly and rapidly. Additionally, some people use it simply to capitalize on discounts or rewards offered for the use of cryptocurrencies. There are a number of reasons why a person may utilize cryptocurrency.

People are most familiar with the form of cryptocurrency called Bitcoin. There are a large variety of cryptocurrencies, including but not limited to: Litecoin, Ethereum, Ripple, Zcash, Bitcoin Cash and Cardano. There are more than 2,700 unique cryptocurrencies throughout the world.¹

The funds are often bought, sold, and traded on various platforms. Coinbase is a popular platform that buys, sells, and trades Bitcoin. Some other digital currency exchange platforms are Kraken, BitStamp, ShapeShift, Gemini, and Bisq. With each you need to learn the terms of how they work, which



Julie Colton

cryptocurrencies they work with and the exchange rate.

Cryptocurrencies are validated by a blockchain. This refers to a list of records called blocks that are linked together like a chain. Blockchains are designed to be secure. The foundation of a blockchain is a “decentralized database.” Blockchains can include a piece of information called a hash.

Figuring out how much cryptocurrency exists or whether or not cryptocurrency exists is becoming important as virtual currency becomes more popular. Obtaining documentation about cryptocurrency can be tricky. Often the point of

cryptocurrency is for the transactions to remain private or secure.

First, it needs to be determined if the cryptocurrency owner has a wallet and whether that wallet is online or is a physical device. The wallet will have an ID and a password for logging in which can be requested in discovery. Wallets can be similar to a portable hard drive and be an actual physical item. In other instances the wallet may just be online and through one of the cryptocurrency exchange platforms.

A person can usually download a transaction history from his/her wallet or exchange platform. The transaction history is often downloaded as an Excel spreadsheet and contains information like a bank statement such as date, time, amount of cryptocurrency, conversion rate, balance, transaction ID, and hash information. Be careful, oftentimes when a person deletes his/her account the transaction history disappears and cannot easily be recreated.

If there is not a transaction history available, a request for emails about transactions can be helpful. The emails serve as a receipt of buying and selling cryptocurrency. They may include the conversion rate on the email along with a date and timestamp. In some instances it may identify where the cryptocurrency user deposited the funds after sale or where they withdrew the funds from to make a purchase. This can help identify other assets as well.

A person may or may not receive tax documents about his/her cryptocurrency accounts. Whether or not a person

receives tax documentation depends on if the person’s account hits certain parameters specified by the exchange being used. If they meet the parameters then tax documents will be issued.

In 2014 the Internal Revenue Service issued Notice 2014-21 that virtual currency was to be treated as property for tax purposes and therefore it was subject to capital gains taxes. Earlier this year, the IRS began sending letters to taxpayers with virtual currency transactions that may have failed to pay the appropriate taxes. The tax consequences should be considered when transferring and valuing assets in a divorce. It may also be relevant when determining taxes in a support case.

It is crucial to know if any parties in a family law matter have cryptocurrency. Cryptocurrency can be a marital asset eligible for division in a divorce. If you know cryptocurrency exists it will need to be valued. Cryptocurrency has an exchange rate just like standard currency and it can be converted into U.S. dollars. There are programs on the internet that can assist with the conversion of cryptocurrency to dollars. It may be helpful to know which conversion rate program that cryptocurrency owner utilizes.

If there is to be a transfer of virtual currency as part of a divorce, the person who is new to virtual currency should make sure they are fully informed before accepting the currency. Does the person know how to access and use the virtual currency? Are

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Unpacking the high-conflict custody toolbox: Tools to minimize stress on children

By Aleksandra J. Kocelko

While it might seem like any custody case is ripe for “high conflict,” many are able to be resolved amicably without contentious litigation. However, there are always those cases that cannot be settled, and end up back in court repeatedly. There comes a point in time where hearings, motions, and court appearances simply don’t solve the problems parties are facing. These cases take a toll on all involved, and the negative impact on children cannot be underestimated.

Research reveals that children involved in high-conflict custody cases may develop a host of psychological issues, including behavior problems, trust issues, and coping difficulties. It is critical for parents to alleviate conflict as quickly as possible. To do so, it is helpful to understand what tools and options are available to help facilitate timely and efficient resolutions for your clients.

- Our Family Wizard – One of the most popular tools to help parties communicate is a subscription to a program like Our Family Wizard. This app provides a convenient, centralized way for parties who are co-parenting but living apart to:

- share messages and documents
- add events such as classes, extracurricular activities and practices, special events and medical appointments to a calendar, and



Aleksandra J. Kocelko

- track finances for reimbursement

It can be accessed through a web browser, or by downloading the app. The beauty of Our Family Wizard is all communication and information is permanent so messages cannot be deleted, and records exist showing when a message has been read. Attorneys can be granted “professional” access to see the calendar, messages, etc. for a particular family. A bonus feature can even include a “tone-meter” which will remind the user to watch

his or her language and tenor before sending a message.

- Apps – If the cost or features available with Our Family Wizard are more than parents need, there are a variety of other free or low-cost apps available. Some use a shared Google Calendar or Cozi to list appointments, school events, and other important dates. Simpler apps for communication include Talking Parents, App Close, or Truece. Depending on what features are needed, and what parents can afford, there is something out there for everyone.

- Co-Parenting Counseling – This particular type of counseling teaches parents effective communication skills and conflict resolution, and facilitates joint decision-making. It helps to shift attention from the disintegration of the relationship to their children. This also helps to prevent children from serving as messengers, shuttling information to and from each house. Co-parenting counseling may help parties identify successful strategies for:

- operating separate households while maintaining some consistency for the kids
- deciding what sports or activities their children may participate in, and possibly
- working out a custody schedule

The goal with co-parenting counseling is to learn these skills and techniques so that, in the future,

parents can resolve issues without the need for a counselor or third party.

- Mediation – Parents who are not able to resolve the custody dispute on their own may seek a mediator to assist them in developing a custody schedule or addressing other issues. A mediator is a neutral person, usually a trained professional, who works with both parties to improve communication and address conflict resolution. An experienced custody mediator can often suggest creative solutions that parents may not have considered. Mediation is meant to be non-adversarial and can help parties decrease tension which can hinder effective communication, whereas heading straight to court often exacerbates fears and emotions. Mediation can be used for parties who need to create or rework a general custody or holiday schedule, select a child’s school, or determine in which sport(s) the child should participate.

- Parenting Coordinator – The use of parenting coordinators was recently reinstated in Pennsylvania. Coordinators are attorneys or mental health professionals appointed by the court to assist parents who simply are unable to agree on things like custody exchanges, participation in activities, childcare, and the transfer of information. The parenting coordinator gathers information, and then makes a recom-

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FINANCIAL PLANNING GUIDANCE
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financial projection needs to be consistently updated.

A CDFA can provide clear, concise and detailed guidance during this transition period and well after. Though the divorce proceedings may be over, their finances will still need to be continuously updated and reviewed. This information can serve as a guide to making well-informed financial decisions throughout their life. ■

Mallory Labik, CFP, CDFA, is a Financial Advisor with Fragasso Financial Advisors. Investment advice offered through Fragasso Financial Advisors, a registered investment advisor.

CRYPTOCURRENCY
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there any tax liabilities or potential tax liabilities from the funds transferred? If a buyout is to occur it may make sense to specify the amount of cryptocurrency that equals the buyout. For example, the distribution might specify that one spouse is to receive the equivalent of a specific number of Bitcoin with proof of the conversion rate and time of conversion to be provided simultaneously with the buyout funds. This would help to prevent the risk of either spouse obtaining a windfall based on the market fluctuation between the time of agreement and the conversion to U.S. dollars.

In a support matter assets or income could be hidden inside cryptocurrency accounts. It has not been determined whether or not cryptocurrency is income for support purposes. A budget analysis should note if a client is purchasing items, gift cards or services with cryptocurrency instead of standard currency. Those expenses will not appear on a normal bank statement. They may also be harder to identify as the third party in the transaction is often identified by a series of numbers and letters to help protect anonymity.

Virtual currency can hold real value. It is important to make sure that it is properly discovered and valued in family law matters. ■

¹ A State Legislator’s Guide to Blockchain, Maria L. Hodge, Jurist Legal News and Research (www.jurist.org/commentary/2019/09/maria-hodge-blockchain/).

HIGH-CONFLICT CUSTODY TOOLBOX
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mendation on the outstanding issues. Parenting coordinators can only be used for cases that already have a final custody order in place, so if your clients are working through the initial court proceedings, this option would not be available.

These are just a small sample of the options in a Family Law toolbox available to help minimize the harm to children at the center of custody cases. There are also dozens of books (try *Joint Custody with a Jerk*, by Julie Ross), articles, online courses, and educational podcasts to help individual parents learn the skills necessary for successful co-parenting.

Regardless of whether your clients are using all of the tools outlined above, or none of them, learning to communicate and co-parent effectively is vital for their children’s well-being. Knowing what options are available will help you better advise parents on what they can do to work together. Given that the “level of conflict between the parties” is one of the 16 enumerated custody factors that judges consider when awarding custody, getting that conflict under control as soon as possible puts your client in the best position moving forward. ■



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Goal of proposed legislation is to amend Pennsylvania’s Protection from Abuse Act

By Sabrina Korbel

Alina Sheykhet was a talented young woman who shined her light for others through her love of dance and performing arts. As a University of Pittsburgh student, she aimed that light toward the goal of becoming a Doctor of Physical Therapy with a plan to dedicate her life to helping others. Tragically, that light was dimmed on October 8, 2017, when Alina’s ex-boyfriend, Matthew Darby, broke into her home and brutally killed her. Alina was 20 years old. Darby is currently serving a life sentence for first-degree murder.

Just a few weeks prior to her death, Alina had broken off the relationship with her ex-boyfriend. Domestic violence advocates know that leaving an abuser is the most dangerous time for victims of domestic violence. However, when survivors seek to end a relationship, it is sometimes difficult for them to assess their own safety. Allegheny County Court of Common Pleas Judge David Spurgeon recognized this when Alina appeared before him to seek protection through the Court on September 21, 2017, the day after Darby broke into her apartment for the first time. While Alina explained to the Court that she was not scared but just wanted her ex-boyfriend to stay away, Judge Spurgeon recognized the signs of lethality, focused on Darby’s escalating behavior, and granted Alina’s Temporary Protection from Abuse Order.

While Alina’s experience confirmed the fundamental need for specially trained and dedicated judges who understand domestic violence and lethality dynamics, her death also raised many concerns about gaps in the legal system. In Pennsylvania, particularly in counties where there is a high volume of PFA petitioners, service of Temporary PFA petitions and orders is disjointed. Due to a lack of court resources, PFA petitioners in Allegheny County face the burden of taking the PFA paperwork to the local police department for service on defendants. In Alina’s case, the police were unable to successfully serve the PFA paperwork on Darby prior to the Final PFA Hearing. In addition, there is a lack of communication between county court systems with regard to pending criminal charges and PFA violations. At the time Darby was arrested, charged and released for breaking into Alina’s apartment in



Sabrina Korbel

Allegheny County, he was out on bond for criminal sexual assault charges in Indiana County. Unfortunately, the two courts were not able to effectively communicate this information to each other. Finally, when setting the bail/bond conditions, the court failed to consider the risk of harm this abuser posed to his victims.

In response to some of these gaps, Pennsylvania State Representative Anita Astorino Kulik (D-Kennedy Township) introduced House Bill 588, or Alina’s Law, in February 2019. The proposed legislation plans to amend Pennsylvania’s Protection from Abuse Act by giving discretion to judges presiding over PFA cases to assess whether abusers pose a present substantial risk of 1) violating the PFA Order or 2) committing a crime against the victim punishable by incarceration. In those cases where this risk exists, judges could direct that an electronic monitoring system be secured to abusers that would screen their location in relation to their victims. HB 588 is presently under review by the House Judiciary Committee.

In support of this legislation, Representative Kulik noted that, “if a victim does their part in getting a Protection from Abuse order, then the State should do its part in making sure the order is not violated.” The Pennsylvania Coalition Against Domestic Violence reports that across the Commonwealth of Pennsylvania, 122 victims in 2018 and 117 victims in 2017 had their lives taken as a result

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of domestic violence. Representative Kulik said, “the threat on Alina’s life fell through the cracks of the state system, and as a result she lost her life. It’s time the Commonwealth did its part by guaranteeing the safety of domestic abuse victims and making sure defendants don’t violate these orders.”

Alina’s family knows that she was so much more than just a statistic. “My daughter was the light of my life; she was beautiful, strong, and had a bright future until it was cut short by a senseless act of violence,” Elly Sheykhet said about Alina. “She was failed by the system that was supposed to protect her, and we are hopeful that Alina’s Law will prevent such tragedies from happening to other women.”

Alina’s family established Alina’s Light to honor Alina’s life and to raise awareness about domestic violence. To learn more about Alina’s Light, please visit www.alinaslight.com.

October is Domestic Violence Awareness Month. If you are working with a victim of domestic violence or are in an abusive relationship, there are agencies in Allegheny County that can provide shelter, connect survivors to resources, and establish safety plans. If you need confidential domestic violence services, please contact one of the 24-hour hotlines listed in the box above. ■

Korbel is Legal Director, Women’s Center & Shelter of Greater Pittsburgh.

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Chapter 53 and the truth about Santa Claus

By Pauline Calabrese

It was Christmas Eve. With the glow of the lights on the tree and the warmth of the fireplace, our home looked and felt like a Norman Rockwell painting. Our small children were filled with anticipation and had no doubt that Rudolph could make it through the soft snow that was falling from the night sky. The house was filled with the aroma of cookies baking in the oven. There was a profound sense of peace, until my husband came into the kitchen and whispered to me, “So maybe it’s time we tell the truth about Santa Claus.”

I was stunned. Our children were under the age of seven. Seeing the look on my face, he said, “I mean, maybe it’s time *you* learned the truth – not the kids.” Taking one of the warm cookies he said, “Look, this cookies-and-milk thing is getting old. Come midnight, I’m sure Santa could go for a gin and tonic.” I stood there relieved, glad we were on the same page concerning the truth about Santa. Still, he got me thinking. The thoughts came quickly and were varied: “Maybe Mrs. Claus would like an adult beverage at midnight, as well.” “Who invented liquid soap and why?” “How does Chapter 53 of the Domestic Relations Code come into play here?”

23 Pa. C.S.A. Section 5328 provides: *In ordering any form of custody, the court shall determine the best interest of the child...* (Emphasis added.) Although family law practitioners must zealously advocate for their clients, the court must determine the



Pauline Calabrese

best interest of the child – not the parents. Accordingly, the issue is not whether the parent is deprived of the company of the child, but whether the child is improperly deprived of the company of the parent. With that said, Section 5328, which sets forth the factors to be considered when awarding custody, specifically considers “*frequent and continuing contact*” between the child and both parents. In addition, Section 5328 recognizes “*The need for stability and continuity in the child’s... family life and community life.*”

Certainly traditions, including those surrounding holidays, are often part of a child’s family life and community life. In fact, Section 5331, which empowers the court to require a “Parenting Plan,” statutorily recognizes 16 holidays. In addition, the parties may request that holidays specific to their culture or religion be included in the Custody Order.

The holidays set forth in Section 5331 are *Martin Luther King Day, Presidents’ Day, Easter, Memorial*

Day, Fourth of July, Labor Day, Yom Kippur, Rosh Hashanah, Thanksgiving, vacation after Thanksgiving, Christmas vacation, Kwanzaa, New Year’s Eve/Day, Spring vacation, Easter Sunday, and Child’s birthday.

While holidays can be festive and filled with joy, sometimes there is stress, especially in divided families in the middle of litigation. One of the rewards of practicing family law, however, is creating order out of chaos – crafting a proposed Custody Order that replaces fear with peace. Once the Custody Order is in place, everyone knows where they are supposed to be, eliminating the risk of argument or even the need for discussion.

Consent Custody Orders should contemplate legal and physical custody. Section 5322 defines legal custody as the right to make major decisions related to health, education and religion. Physical custody relates to the *actual physical possession and control of a child*. A Custody Order should delineate a “daily schedule,” a “holiday schedule,” and a “vacation schedule.”

In crafting a holiday schedule, typically, the parties share the day or alternate years. However, there is no

holiday schedule devised by statute or case law. Every family is free to design a schedule that fits best for their family. The parties may agree that one parent gets custody on a particular holiday every year. The only certainty in crafting a proposed Custody Order is that the attorneys will be involved in a struggle – usually with the client.

Early in my career, I had a client who was acting like a child, adamant that she have custody every Christmas morning, “for the sake of the children.” She was genuinely distraught, thinking that her children would worry that Santa would not know where to deliver the presents if they were not “at home.” I put her mind at ease. As gently as I could, I told her the stark truth. A truth that every child in the universe knows – **Santa can go anywhere in the whole wide world** – even to the home of the noncustodial parent. ■

Pauline Calabrese is a partner at Notaro Calabrese & Epstein. She has been practicing family law for over 25 years, presents family law continuing legal education courses, and has served as the supervising attorney for the law clinic at Duquesne University School of Law.

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Bar Briefs

News and Notes

Duquesne University School of Law student, **Marvi Wahla**, is the recipient of the 2019 Burns White Diversity in the Law Scholarship, awarded to a first-year, diverse student at the University’s School of Law. Ms. Wahla, a graduate of George Mason University, was selected from a competitive pool of qualified applicants. The annual Burns White Diversity in the Law Scholarship is awarded to a qualified candidate who adds diversity to the incoming class, and includes a paid summer clerkship at the firm following the successful completion of the recipient’s second year of law school. In addition, a mentor from Burns White will work with Ms. Wahla for the duration of her legal education.

The Judicial Conduct Board of Pennsylvania is pleased to announce that the Supreme Court recently appointed **Judge Renée Cohn Jubelirer** to the twelve-member Board. As specified in the Constitution, she will serve as the appellate judge member of the Board. Her four-year term commenced on August 31, 2019. The Judicial Conduct Board is an independent body of Pennsylvania citizens comprised of three judges, three lawyers and six lay members. Half of the Board members are appointed by the Governor and half by the Pennsylvania Supreme Court. The Board’s members serve four-year terms, without pay, and no more than half of its appointed members may be from the same political party. Judge Cohn Jubelirer is currently

serving her second ten-year term as a Judge of the Commonwealth Court of Pennsylvania. She was elected to her first term in November 2001. She secured her current term via a November 2011 retention election.



Steven D. Irwin

Leech Tishman is pleased to announce that equity partner **Steven D. Irwin** was recently awarded the Certificate of Leader Development for successful completion of the Commandant’s National Security Program at the U.S. Army War College. He is one of only 50 civilians across the U.S. who was awarded this certificate in 2019. Irwin serves as Chair of Leech Tishman’s Government Relations Practice Group, and is also a member of the Corporate, Employment and Litigation Practice Groups. The annual Commandant’s National Security Program, held from July 22-25, 2019 in Carlisle, PA, serves as the capstone event of the U.S. Army War College Distance Education Program. The program consisted of a series of guest speakers and panel presentations by nationally recognized subject matter experts on topics involving national security strategy and policy. Civilian guests were invited to attend the program along with the students.



Sara Davis Buss

Buss has more than 35 years of experience practicing in public finance law.

Sara Davis Buss, a member of Eckert Seamans Cherin & Mellott, LLC, was elected to the National Association of Bond Lawyers Board of Directors. She will serve a three-year term, which officially began on the date of her election, September 11. Davis

Throughout the years, she has closed numerous transactions for municipalities, counties, state agencies, redevelopment and other public authorities, school districts, hospitals, health care facilities, utilities, and educational, social service, and cultural institutions. In representing such diverse clients, Davis Buss has served as bond counsel, lender’s counsel, note counsel, underwriter’s counsel, borrower’s counsel, issuer’s counsel, bank counsel, and financial advisor’s counsel. In just the past eight years, she closed more than 165 transactions that have ranged from \$500,000 to more than \$1.67 billion.

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