

**Philadelphia Bar Association 2010 Annual Report Questionnaire
of the State Civil Litigation Section (SCLS), the Rules and Procedure Committee (RPC),
the Compulsory Arbitration Committee (CAC) and the Medical Legal Committee (MLC)**

1. Brief Description of the Section and its Mission:

The SCLS consists of the RPC, CAC and MLC. Its purpose is to promote the objectives of the Philadelphia Bar Association within the field of state civil litigation. The SCLS exists to advance the development of the law and the furthering and continuing education of the Philadelphia Bar within that field in all its branches; to formulate and extend the study of this field of law; to cooperate in attaining uniformity with respect to both legislation and administration in all matters within this field; by cooperating with judicial, legislative, and administrative bodies and other constituents of the organized Bar to further these activities; to suggest improvements in the applicable laws, practices and procedures; and to simplify and improve the application of justice in this field, in conformity with the Charter and Bylaws of the Philadelphia Bar Association as in effect at the time.

2. Section and Committee Leadership:

SCLS Executive Committee:

Robert T. Szostak, Esquire, Co-Chair

David E. Prewitt, Esquire, Co-Chair

Kari Samuels, Esquire, Secretary

Robert E. Paul, Esquire, Treasurer

Thomas G. Wilkinson, Jr., Esquire, Section Liaison to Board of Governors

RPC:

Donna Lee Jones, Esquire, Co-Chair

Mark N. Cohen, Esquire, Co-Chair

CAC:

Brad S. Rush, Esquire, Co-Chair

Joshua D. Baer, Esquire, Co-Chair

MLC:

John Mirabella, Esquire, Co-Chair

Daniel J. Rovner, Esquire, Co-Chair

3. Most Significant Programs of 2010:

<u>Date</u>	<u>Section/Committee</u>	<u>Program</u>
02/03/10	RPC	<p><u>The Medicare Secondary Payor Act: How to Satisfy Liens While Protecting Clients, Counsel and Insurance Carriers</u></p> <p>Featured speakers for this complex program were Roy Franco, Director, Risk Management Strategies, Safeway, Inc.; Will Shapiro, James Street Group; and Glen Ricketti, Esquire, Margolis Edelstein.</p>
03/03/10	SCLS	<p><u>UM/UIM Practice and Procedure Post-Koken and the Developing Impact on the Civil Litigation System</u></p> <p>This dynamic program featured as panelists Harris T. Bock, Esquire, Director of The Dispute Resolution Institute; John A. Livingood, Jr., Esquire, Margolis Edelstein; Katherine Cole Douglas, Esquire, Bennett, Bricklin and Saltzburg; and Scott B. Cooper, Esquire, Schmidt Kramer.</p>
04/07/10	RPC	<p><u>Discovery Issues Associated with Social Networking Websites</u></p> <p>This eye opening presentation featured Stephen Bruderle, Esquire, Margolis Edelstein; and Louis Cinquante, Esquire, Cornerstone Legal Consultants.</p>

05/05/10	RPC	<p><u>Bad Faith in PA: You Can't Always Get What You Want</u></p> <p>Presented by experts in the field, Louis A. Bove, Esquire, Bodell, Bove, Grace and VanHorn; and Mark W. Tanner, Esquire, Feldman Shepherd.</p>
05/26/10	MLC	<p><u>State of Medical Malpractice Litigation in Philadelphia County and Statewide</u></p> <p>The Honorable Jacqueline F. Allen, Team Leader of the Court of Common Pleas Day Forward 2009 Program, delivered an informative presentation on the latest medical malpractice data locally and statewide.</p>
06/02/10	SCLS	<p><u>Video Preparation, Editing, Use and Presentation for Settlement and Trial</u></p> <p>James R. Ronca, Esquire from Anapol Schwartz provided a demonstrative presentation including his statewide perspective on the art of visual advocacy for all aspects of complex catastrophic civil litigation with emphasis on video design, concepts regarding video presentations for settlement, mediation and trial, and technical advice based on a series of examples from actual cases.</p>

09/01/10	SCLS	<p><u>A National Success Story: Mass Tort Programs in Philadelphia Common Pleas Court</u></p> <p>The Honorable Sandra Mazer Moss, Coordinating Judge of the Complex Litigation Center, Tobias L. Millrood, Esquire from Pogust, Braslow & Millrood, LLC and Robert C. Heim, Esquire from Dechert, LLC, designed, developed and presented a significant program detailing the Philadelphia Mass Tort Programs as a model of efficiency and fairness for litigants in pharmaceutical, medical device, product and other mass tort litigations, and offered insights into the secrets of the program's success, with a current update on the inventory of the program with emphasis on hormone therapy litigation as an example of the successes and challenges within mass tort litigation.</p>
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4. **Most Significant Events of 2010:** Programs

5. **Events in the News that Influenced/Impacted the Program/Events of 2010:**

The Programs of the SCLS and RPC were cutting edge, right off the news and well-received by our members as top rated presentations on current litigation issues affecting the practice of civil litigation. Our programming was delivered well before the topic areas became featured news in local and statewide journals. Examples from our important and timely body of work, value and service to the Bench and Bar include:

Weeks in advance of many seminars addressing medicare lien issues, the RPC Medicare Secondary Payor Act Program included extensive materials and PowerPoint presentation on all aspects of lien resolution under the Medicare, Medicaid and SCHIP Extension Act of 2007.

Similarly, the SCLS hosted a program which provided comprehensive analysis and materials on UM/UIM Practice and Procedure as affected by the *Koken* opinion which held that the Insurance Commissioner cannot require mandatory arbitration clauses in UM/UIM endorsements. This Section seminar provided guidance on varieties of arbitration clauses post-*Koken*, venue and removal issues, pleading concerns, joinder/misjoinder of actions, discovery and trial issues generated by the *Koken* holding.

Another RPC Program, Discovery Issues Associated with Social Networking Websites, was especially interesting and alarming. The panelists explained the law of admissibility of social networking websites at trial, and provided commentary about the discovery, location and retrieval of electronically stored information for both civil and criminal matters. E-Discovery resources on the web and their use in the litigation process also helped make this program a success well before the issues it covered “caught on” in featured legal news.

6. **Particularly Compelling Human Stories that Occurred in the Course of the Program Year:** None to Report.

7. **Section/Committee meetings in 2010:**

The Section met quarterly; the RPC met monthly when the Section did not meet; the CAC held three meetings; and the MLC held one meeting.

8. **Resolutions Proposed/Drafted and Adopted in 2010:**

Resolution to Recommend to the Pennsylvania Supreme Court Civil Procedural Rules Committee that Pa.R.C.P. 1311.1 Be Revised

9. **Resolutions Proposed/Drafted, but Not Adopted in 2010:** N/A

10. **Future Plans for Section/Committee:**

The SCLS will be presenting three CLE programs at the annual Bench-Bar Conference on October 15 and 16, 2010 as follows:

1. **Trial Advocacy: The Power of Ideas**

Course Planner: Regina M. Foley, Esquire

Panelists: Gerald A. McHugh, Esquire and Robert J. Mongeluzzi, Esquire

2. **The Philadelphia JPT Program: A Fresh Perspective on What it Takes to Be and Appear Before a JPT**

Course Planners: Robert T. Szostak, Esquire and Charles A. Mapp, Sr., Deputy Court Administrator

Course Moderators: Robert T. Szostak, Esquire and David E. Prewitt, Esquire

Panelists: Hon. D. Webster Keogh, Administrative Judge, Trial Division; Hon. William J. Manfredi, Supervising Judge, Trial Division; Hon. Sandra Mazer Moss, Coordinating Judge, Complex Litigation Center; Hon. Jacqueline F. Allen, Judicial Team Leader, 2009 Day Forward Program; Hon. Howland W. Abramson, Judicial Team Leader, 2008 Day Forward Program; Hon. Leon W. Tucker, 2007 Day Forward Program; Hon. Mark I. Bernstein, Commerce Program; Hon. Idee C. Fox, Team Leader, Motions Court and Statutory Appeals Program; Edward F. Chacker, Esquire; and Gerald J. Valentini, Esquire.

3. Technology in the Courtroom

Course Planner/Moderator: Kathleen D. Wilkinson, Esquire

Panelists: Hon. Sandra Mazer Moss; Donna Lee Jones, Esquire; Timothy R. Lawn, Esquire and Scott W. Reid, Esquire

On October 27, 2010, the MLC will present a program entitled “Cox v. Barry: How Not to Commit Legal Malpractice in a Medical Malpractice Case”, featuring Thomas J. Duffy and Daniel J. Sherry as panelists. In addition, the RPC has planned a program on Philadelphia Discovery Court to take place in November, 2010, and the SCLS will hold its Annual Meeting/ Holiday Reception on December 6, 2010 at Smith & Wollensky on West Rittenhouse Square.

11. Other Information for Consideration for the 2010 Annual Report:

1. The SCLS and RPC reviewed, discussed, submitted and unanimously adopted a Resolution in opposition to Pennsylvania Supreme Court Civil Procedural Rules Committee Proposed Recommendation No. 239, proposing Amendment of Rule 213.3 governing pre-trial conferences and promulgation of new Rules 212.5 and 212.6 governing settlement conferences. Mandatory presence of a representative of an insurance company at these conferences was opposed “in favor of having all parties’ clients i.e. the plaintiff, as well as the insurance carrier/defendant, ‘promptly available by telephone’, as an additional aid to the Court in an effort to settle cases.” It was also suggested that the Rules be amended to require counsel to have settlement authority, and/or have the claims adjuster available by telephone.

2. The RPC opposed the Pennsylvania Supreme Court Civil Rules Committee Proposed Recommendation No. 246 governing voir dire. This issue generated statewide debate, particularly over whether a judge is required to begin voir dire examination of jurors. The Proposed Recommendation was ultimately changed to allow for a judge's presence to be waived by the agreement of the Court and counsel. The Recommendation's proposal that Pa. R.C.P. 220.1 be amended to require attorneys to conduct the bulk of examination of prospective jurors was not revised. Our position, in part, that "the Proposed Recommendation No. 246 would adversely impact the functions of the civil trial courts of the First Judicial District," was thus favored by the Supreme Court's Civil Procedural Rules Committee in a manner consistent with the views of our Civil Trial Division. As a result, both the Bench and the Bar were most appreciative of our support in this important rule change that affects not only the process of voir dire itself, but also the limited court resources available to fund the conduct of the entire process of jury selection in Philadelphia County.

3. On May 5, 2010, Thomas G. Wilkinson, Jr., Esquire, as Amici Counsel for the Pennsylvania Bar Association, Philadelphia Bar Association, and Allegheny Bar Association, reported to the RPC on the Amici Curiae Brief filed on April 27, 2010 with the Supreme Court of Pennsylvania in *William Gillard v. AIG Insurance Company, et al.*, No. 10 EAP 2010. In the Brief, Amici Counsel urged the Supreme Court to reverse the Superior Court ruling that the attorney-client privilege only applies to information given to the attorney by the client with a clear statement that communications made within the lawyer/client relationship are privileged when made for the purpose of soliciting or providing legal advice. The RPC unanimously concurred with the views of Amici Counsel that a failure to protect the confidential communications of legal advice from attorney to client would significantly harm the attorney-client privilege and undermine the confidential nature of the attorney-client relationship because attorney advice and client communications are inextricably intertwined. Mr. Wilkinson explained that the Superior Court's opinion left the scope of the attorney-client privilege uncertain and unworkable, served to chill the delivery of candid legal advice by lawyers and resulted in a significant adverse impact on legal representation in a corporate context where in-house counsel constantly offer legal opinions and advice based on and reflective of privileged client communications. The RPC fully agreed with Amici Counsel that the Supreme Court should reaffirm that the scope of the attorney-client privilege in Pennsylvania includes a lawyer's confidential communications to a client in the course of

providing legal advice. The RPC expressed gratitude and encouragement to Mr. Wilkinson for the extraordinary effort on behalf of our Bar Association, the PBA and ACBA. [Oral Argument in *Gillard* took place on September 14, 2010.]

4. The SCLS, RPC and CAC submitted a “Resolution to Recommend to the Pennsylvania Supreme Court Civil Procedural Rules Committee that Pa. R.C.P. 1311.1 Be Revised” to the Board of Governors. On September 30, 2010, the Board, by a vote of 27 to 1, passed the Resolution which urges the Supreme Court to adopt the Proposed Revisions to Rule 1311.1. These Proposed Revisions clarify the process for withdrawal of an election to proceed under the Rule, implement a “usual and customary” standard for payment of witness fees, including expert witness fees, and provide a three part procedure for the presentation of testimony from a person whose testimony has been waived under the Rule. The Resolution and Proposed Revisions to Rule 1311.1 have been submitted to the Supreme Court Civil Procedural Rules Committee for consideration and adoption by the Supreme Court.