

**Philadelphia Bar Association
Board of Governors
September 30, 2010 Minutes**

The meeting was called to order at 3:36 pm.

State Civil Litigation Section Co-chair Robert Szostak and member Ron Kovler were recognized to present a Resolution on behalf of the State Civil Litigation Section to revise Rule 1311.1. Attorney Szostak explained that the proposed revisions are designed to foster a more efficient administration of justice. Rule 1311.1 sets forth procedures on appeal from arbitration awards in the Courts of Common Pleas. The procedures streamline the process on appeals from arbitration because the amount in controversy is stipulated to be a maximum of \$25,000 on appeal. It allows the parties to save resources that are used on appeal as parties do not have to present a doctor/expert live and can present his/her testimony by report and CV. The defense lawyer may subpoena the expert and he can come in and testify in the case live as a witness in the case.

According to Attorney Szostak, there is an issue that comes up with what costs the expert is entitled to when he is subpoenaed and what is the opportunity for redirect after the doctor comes in to testify live. Attorney Szostak referred to a Pennsylvania Superior Court opinion of Judge Richard Klein who observed that Rule 1311.1 should be interpreted at the Pennsylvania Supreme Court Rules Committee level rather than through case law on appeal.

Attorney Szostak reported that in July 2010, the Arbitration Committee of the Section voted in favor of the rule revisions unanimously and the Rules Committee of the Section voted in favor but made a change as to the fee structure for an expert subpoenaed to testify at trial in such cases. The State Civil Section then addressed the proposed revisions and a total of 80 percent voted in favor on the proposal which asks the Supreme Court to revise Rule 1311.1 accordingly.

Ron Kovler, who is also the President of the Philadelphia Trial Lawyers Association, stated that he supports the Resolution and is available to answer any questions. He pointed out that many defense attorneys and judges believe this rule change will be beneficial to both plaintiffs and defendants. Upon motion made and seconded, there were some technical amendments made which were accepted. Assistant Treasurer Wes Payne asked about why the original word "stipulate" was being changed to the use of the word "elect" to a limit of \$25,000 on appeals from arbitration. Attorney Kovler stated this would make the procedure run more smoothly as the election could also be withdrawn upon consent by the parties. He also stated that his understanding of the opposition to the proposed revisions was based on the changing of "reasonable" fees which originally appeared to "usual and customary" fees for experts. The Superior Court decision by Judge Klein found the word "reasonable" could create greater problems as the trial judge would then have to determine what "reasonable" expert fees were. The Resolution passed with one vote against.

The July 2010 Minutes were approved. (There was no meeting in August.) Treasurer Joe Prim was recognized and presented the Treasurer's report for the last two months. Dues are still down and that issue is being addressed by the Membership Task Force. Expenses are

slightly up. Overall the budget is on target by over 97 percent. Upon motion made and seconded the Treasurer's report was accepted.

Chancellor Scott Cooper then announced there was a vacancy on *Philadelphia Lawyer Magazine* and he asked that the Board approve the appointment of M. Kelly Tillery of the Pepper firm to fill this opening on the editorial board. Upon motion made and seconded, this appointment was approved.

Chancellor Cooper made announcements. He reported that he attended the ABA annual meeting and National Council of Bar Presidents meeting. Executive Director Ken Shear noted that Scott Cooper was appointed to the Executive Council of the National Council of Bar Presidents.

Chancellor Cooper attended a leadership exchange which had valuable interaction and the Philadelphia Bar was mentioned prominently. He also joined a tour of San Francisco to look at green jobs, technology and innovation.

Chancellor Cooper also commended the Women in the Profession Committee which did a great program with Judge Jeanine Pirro, who is a former Westchester County New York District Attorney and County Court Judge who now has her own television court show.

Chancellor Cooper reported that there has been ongoing dialog with the state judiciary on issues of mutual concern. Earlier in September, City Council leaders came in to speak about how to reshape business privilege taxes in Philadelphia and spoke with Chancellor Cooper and other bar leaders about this. The Tax Section will engage in active study of the tax proposals. Stuart Weintraub will head up this effort. Bills were introduced on September 30 in City Council concerning these initiatives.

The Association had an excellent event at Jenkins Law Library for the work of the Historical Society and a crew from Temple University showed a highlight reel of the interviews done with all living chancellors. Twenty-two former chancellors attended the event. Jenkins also displayed some of the original documents for review including the original charter for the Association.

Chancellor Cooper also hosted a dinner with bar presidents from surrounding counties in Pennsylvania, New Jersey and Delaware which was well received. There will be further meetings hosted by other bars. By getting together, this enables discussion on issues such as how to select judges, local rules, and other matters of common interest.

Scott Reid was recognized and announced that the Association has hired a diversity officer for the Association, Naomi K. McLaurin, who is from Atlanta and has extensive experience with diversity issues. Scott Reid reported that he will stay on as diversity chair for the next year to help in the transition of Ms. McLaurin in this position. Chancellor Cooper gave high praise to Scott Reid for his time commitment and devotion to the search for a diversity officer.

The Chair then recognized Riya Shah, Chair, Legal Rights of Children Committee to present a Resolution from the Legal Rights of Children Committee regarding Sexting. She

reported that the Resolution had been approved by several committees as well as the Criminal Justice Section. Proposed PA House Bill 2189 is designed to make something which is not a crime a crime in Pennsylvania, by making the dissemination, transmittal, or possession of a sext message a summary offense or misdemeanor in the second degree for minors. "Sexting" does not fall under child pornography laws. She stated that making this a misdemeanor or a summary offense will have long lasting effects on the child; juveniles would not be deterred from sharing such photos so if the goal of the law is to deter child predators, the goal will not be met. Upon motion made and seconded, there were some friendly amendments to the Resolution with regard to sharing the materials between minors and that educating and disciplining should include parents. These amendments were accepted and the Resolution passed unanimously.

Chancellor-Elect Rudy Garcia was recognized to present about the recent Gillard v. AIG Pennsylvania Supreme Court oral argument, in which the Association filed an amicus brief. Gillard deals with the attorney-client privilege in Pennsylvania. Most attorneys believe that advice given to a client is privileged and that that protection of communications between an attorney and client are a two-way street. Under common law there was always a two-way street of protection of communications between a client and the lawyer. In 2007, in Nationwide v. Fleming, the Pennsylvania Superior Court limited the protection available to communications from lawyer to client. There ended up being a split decision in the Supreme Court so the issue was not determined by the Supreme Court until now. The issue came back in Gillard and the Association, Pennsylvania Bar Association (PBA) and Allegheny Bar Association filed an amicus brief. According to Chancellor-Elect Garcia, the argument seemed to go very well and the Chief Justice thanked the bar associations for their input. There was discussion of how it would be difficult to separate out advice from what was communicated by the client or the lawyer. Chancellor-Elect Garcia thought that bar representatives being at the oral argument was important. The Association had a lot of positive interaction with the State Bar; the Associations petitioned to argue as well but the petition to allow argument was denied. Representatives of the Association met with counsel to help shape arguments beforehand. Robert Byer from Duane Morris and State Civil Litigation Section representative Tom Wilkinson participated in the effort.

Vice Chair Regina Foley and Vice Chancellor John Savoth were recognized to present on the Bench Bar. They reported that there are a lot of great CLE courses, the Zenger trial reenactment would be excellent, and there will be great entertainment on Friday night. Attendance is good and everyone is urged to attend. They also continue to ask for scholarships so that public interest and government attorneys can attend. Delegates from the Lyon Bar Association and from the PBA were expected to be attending as well.

Chancellor-Elect Garcia also announced he is co-chairing the Bar Foundation Gala which will be held this year at the Lincoln Financial Field on November 6, 2010 and urged the Board's support of this important fund raiser.

The Chair then recognized Board members Sean Sullivan and Jeff Gross, who presented on the status of the 2010 Annual report. There are 57 sections and committees to whom surveys were sent. After they get the reports in they will ask for input from the sections and committees. The report is expected to be ready by January 2011. They will follow up with the stand alone committees who work on the Association awards as well.

Bar Academy Chair Judge A. Michael Snyder was recognized to present on the status of the Bar Academy. Judge Snyder reviewed the programs held by the Bar Academy this year. At a presentation on the Philadelphia Union soccer team, 60 attended although 90 had signed up, with no cost to attend. They added a minimum charge of \$15 and thereafter attendance remained steady. The second event was held at KYW news radio, where members heard from management. The next event was at Le Bec Fin, with tours of the kitchen, George Perrier spoke, and great food and drink were consumed. The next event was Philadelphia Opera at the Ethical Society, including a presentation by the Opera's executive director about ABC's of opera, followed by recorded music and live singing. They sold out the event and had 38 attendees. The most recent event was at the Apple store briefing room on how to use the latest devices such as I Pad and applications specific to the legal market. Upcoming events will be at the Kimmel Center in late October, Jazz at Cadence and a tour of the Tasty Kake bakery. There will be future tours of many different types including Citizens Bank Park and the Zoo. There have also been some new members who have joined the Association as a result.

Chancellor Cooper presented a Resolution providing for the Governance of the Philadelphia Bar Association Academy. Upon motion made and seconded, there was discussion of technical amendments which were accepted. The Resolution passed unanimously.

Judy Stouffer was recognized to speak on behalf of Michael Hayes, about the green initiatives of the Association. She is a paralegal and involved with the Association from a paralegal standpoint. She presented a report on the Green Ribbon Task Force and noted that a lot of firms are already participating in their own green initiatives. Trisha Sadd, an associate at Montgomery McCracken, discussed what law firms could do from a paper usage, electric and entire practice vantage point. They are asking firms to look at the list of suggestions and compliance options for firms to follow and be on a list of firms which support the Green initiatives. Just as outside counsel like to see diversity issues, Attorney Sadd believes that they will also be interested in sustainability.

Stouffer and Sadd presented a Resolution asking the Association to endorse the Green Ribbon Sustainability Initiative. Upon motion made and seconded, there was discussion of clarifying the requirements with regard to how long documents are required to be kept to make sure there is allowance for paper documents to be maintained for as long as required by law. There were questions as to how the pledge of a law firm to "go green" would work. Sadd responded that the goal is to have firms comply even if they only do one thing so that they can be listed. There was further discussion of how the participation of firms will be publicized and how this is good for the environment and economical as well. The Association has an opportunity to be a leader in this way. The Resolution passed unanimously.

Upon motion made, the meeting was adjourned at 5:25p.m.

Respectfully submitted,

Kathleen D. Wilkinson
Secretary

**Board of Governors
Attendance
September 30, 2010**

Present:

Scott Cooper
Kathleen Wilkinson
Larry Beaser
Joseph Prim

Rudolph Garcia
John Savoth
Regina Foley
Sophia Lee

Richard Seidel
Jacqueline Segal
Wesley Payne

Stacy Tees
Scott Reid
Sean Sullivan
Danielle Banks
Stacy Tees
Angus Love
Mehrin Masud-Elias
Ken Shear

Scott Sigman
Lou Rulli
Scott Reid
Michael Schaffer
Lee Applebaum
Hon. A. Michael Snyder
Albertine DuFrayne

H. Marc Tepper
Jeffrey Gross
Lou Rulli
Brandi Brice
Andre Denis
Michael Berkowitz
Alfred Fuscaldo

Absent:

Maria Feeley
Karen Detamore
Jeffrey Campolongo
Richard Harris
Pedro Ramos
Kimberly Ruch-Alegant
Sayde Ladov
Gaetan Alfano
Carolyn Chopko
Shanese Johnson
Judith Stein
Peter Berson
Daniel Blickman
Tom Wilkinson
A. Michael Pratt