

Code of Conduct Adopted for Court Employees

by L. Stuart Ditzen

A code of conduct for approximately 15,000 state-level and county-level court employees has been adopted by the Supreme Court of Pennsylvania.

The product of two years of research and review by the Administrative Office of Pennsylvania Courts, the code establishes clearly-written rules of ethical and professional behavior for court employees to follow as they do their jobs.

"Many of these rules are fundamental to a good faith relationship between the judiciary and its employees and the citizens of Pennsylvania," said Chief Justice of Pennsylvania **Ronald D. Castille**. "Our employees traditionally have been held to high standards, and they have lived up to them for the most part. Adopting a formal code of conduct is a best practice that will help the courts maintain and strengthen those standards."

The code also bars court employees from using their positions for personal gain; from soliciting or accepting additional compensation beyond their salaries for the performance of their duties; from doing special favors or from misusing court resources, supplies or equipment to benefit themselves or others.

Zygmunt A. Pines, Court Administrator of Pennsylvania, said that all state-level employees of the Unified Judicial System are covered by the Code of Conduct. He said the code also covers county-level employees under the supervision of the president judge in each judicial district, including those in judges' chambers, in court administration and in other court-related offices.

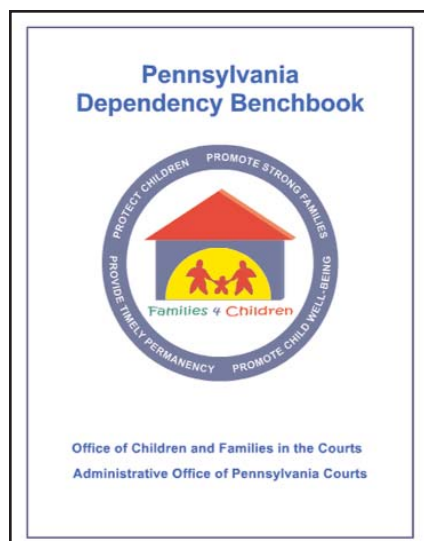
Pines said the AOPC studied employee conduct codes of 26 state judicial systems and the federal courts in developing a code for the Unified Judicial System.

(Code of Conduct continued on page 4)

Dependency Benchbook Released

Spurs Family Focus Momentum; Aids Permanent, Safe Homes for all Foster Care Children

by Steve Schell



The Pennsylvania Supreme Court has released a comprehensive child dependency benchbook designed to better prepare family court judges and child dependency practitioners for the complex legal issues and special needs of abused and neglected children.

"The benchbook creates a comprehensive resource that combines Pennsylvania law, organized pragmatically to allow quick and efficient use, with a series of state and national best practices that will provide judges and practitioners, from the least to most experienced, with the best possible information to support children and families safely," said Pennsylvania Supreme Court Justice **Max Baer**.

(Benchbook continued on page 16)

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New to the Judicial Branch

Counties

Billa Jamison - York - deputy court administrator
Elizabeth Dumond - Chester - deputy court administrator
William Valko - Cambria - district court administrator

AOPC

Nicholas Beeson - Research & Statistics - student intern
Jeannene Breslin - Judicial Services - administrative assistant
Yrina De La Cruz - Judicial Automation - student intern
Betty Jeffers - Judicial Automation - IT security infrastructure specialist
Gerald Miller - Judicial Automation - NOC technician
John Overholtz - Judicial Automation - IT manager
Christopher Rhein - Judicial Automation - student intern
Jason Swope - Judicial Automation - NOC technician

Other Job Changes

John H. Chronister - York - Common Pleas Court judge apptd. sr. judge
Robert A. Freedberg - sr. Superior Court judge apptd. to Superior Court
Daniel L. Howsare - Bedford - president judge apptd. sr. judge

Deaths

Joseph A. Dych - Philadelphia - Common Pleas Court judge
June B. Lilley - Washington - former (sr.) district justice
Ronald B. Merriweather - Philadelphia Municipal Court - former (sr.) judge
James W. Morrissey - Blair - former (sr.) magisterial district judge
Samuel A. Ranck - Northumberland - former (sr.) Common Pleas Court judge
James W. Reedy - York - former district justice

Retirements

Counties

James Fowkes - Bucks - deputy court administrator
Donald Scotilla - Cambria - district court administrator

AOPC

L. Stuart Ditzen - Communications - Assistant for Communications

Resignations

Counties

Roy C. Bridges - Dauphin - sr. magisterial district judge
Bernadette J. Nahas - Schuylkill - magisterial district judge
Zoran Popovich - Superior Court judge appointed sr. judge

AOPC

James Edwards - Judicial Automation - IT specialist
Elliot McConnell - Judicial Automation - IT Service Desk technician
Matthew McKeehan - Judicial Automation - IT Services manager

Appointments

Senior Judges

Hugh F. Mundy - Common Pleas Court

Supreme Court Committees

Jerold P. Anders, Esq. - reapptd. to Civil Procedural Rules Committee
Honorable Ross C. Cioppa - apptd. to Minor Court Rules Committee
Honorable Robert C. Daniels - apptd. chair of Civil Procedural Rules Committee
Honorable Joseph A. Del Sole - apptd. to Appellate Court Procedural Rules Committee
Ronald Eisenberg, Esq. - apptd. to Appellate Court Procedural Rules Committee
Frederick N. Frank, Esq. - reapptd. to Appellate Court Procedural Rules Committee
Leon Pl Haller, Esq. - apptd. to Civil Procedural Rules Committee
Peter J. Hoffman, Esq. - apptd. to Civil Procedural Rules Committee
Honorable Catherine M. Hummel Fried - apptd. chair of Minor Judiciary Education Board
Honorable Richard G. King - apptd. to Minor Judiciary Education Board

(Transitions continued on page 13)

10/26-10/28 Superior Court Session (Phila., Hbg.)
11-2 Election Day Holiday
11/8-11/12 Commonwealth Court Session (Pgh.)
11-11 Veterans Day Holiday
11/16-11/18 Superior Court Session (Phila., Pgh.)
11-25 Thanksgiving Day Holiday

11-26 Day after Thanksgiving Holiday
11/30-12/3 Supreme Court Session (Hbg.)
12/6-12/10 Commonwealth Court Session (Hbg.)
12/7-12/9 Superior Court Session (Phila., Hbg.)
12/24 Christmas Day Holiday (Observed)

Our Changing World (Part 2)

by Zig Pines

(Part 1, which appeared in the Summer 2008 issue, dealt with the demographics of a rapidly growing aging population.)

My 85-year-old neighbor smiles whenever he hears America referred to as a “melting pot.” He fully understands that we are a pluralistic nation of immigrants. But, as he says, America is more like a savory stew or bouillabaisse, made of many different ingredients that retain their identity yet, in combination, add immense flavor.

America has always been a “changing” society that prides itself on assimilation. Historically, we have struggled to honor the concept of *e pluribus unum* (“out of many, one”)—often at the cost of life and blood. Nativist fears and xenophobia, especially in difficult economic times, often reveal the dark side of our national soul. Today, more than ever, America’s population of 308 million people reflects a multi-cultural, ethnic and racial chowder.

How dramatically our world is changing is revealed in our statistical profiles.

For example, according to a recent newspaper article, Georgia, Maryland and Nevada have edged closer to becoming states where minorities now form a majority. Even with a significant decline in immigration because of the current recession, minorities (because of their higher birth rates) are poised to become a majority among children under 5 by 2031 (going from 46.7 percent in 2007 to 47.3 percent in 2008). Without the influx of immigrants, our nation’s labor force would decline by about 7 million between the years 2015 to 2035, thanks in part to the fact that our aged population will triple by 2050. Many economists, in fact, see a prudent immigration policy as a vital imperative for future sustainability and growth.

Let’s take a look at Pennsylvania. According to the U.S. Department of Commerce, the estimated change in Pennsylvania’s minority population from 2000 to 2008 increased by 19.6 percent.

Question: What counties experienced the most dramatic changes in minority population growth (defined as “total population minus white alone non-Hispanic”)?

Statistics show that greater than 100 percent growth occurred in Carbon, Forest, Luzerne, Monroe and Pike counties. The Pennsylvania State Data Center identified a 60 percent to 80 percent change in minority populations in Adams, Clearfield, Franklin, Lackawanna, Lehigh and Northampton counties.

The rising tide of minority populations has direct relevance to our court operations because of our obligations in providing interpreter services for limited English proficient (LEP) people.

According to the 2000 census, the LEP population in Pennsylvania was 972,484. That’s a large number that presumably will be overshadowed by our upcoming census figures. While Pennsylvania’s foreign-born population has been estimated at 4.1 percent, the estimate for persons speaking a language other than English at home in 2000 was 8.4 percent. Counties with an LEP population of 10 percent or more include: Philadelphia (17.7 percent), Lehigh (15.3 percent), Lancaster (13.1 percent), Berks (12.7 percent), Northampton (11 percent), Union (10.4 percent) and Monroe (10 percent). These are followed by Montgomery (9.6 percent) and Delaware (9.3 percent) counties. In the 8.5 percent plus range are the counties of Bucks, Centre, Chester, Dauphin and Pike.

When you look behind the LEP figures, you find amazing diversity. Philadelphia has the most languages spoken (84) followed by Allegheny (76). Delaware and Montgomery are 70 and 68, respectively. Bucks, Chester, Lancaster, Lehigh, Berks, Centre and Northampton are in the 52 to 44 range. Further down the list, we see that approximately 25-30 different languages are spoken in Westmoreland, Washington, Beaver, Butler, Cambria, Schuylkill, Lebanon and Mercer counties.

If your eyes have not yet glazed over this sampling of decade-old statistics, the practical and immediate challenge of these figures will wake all of us up.

This past August the Department of Justice (DOJ) sent a long-awaited letter to all chief justices and state court administrators about the legal obligations of state judicial systems to LEP individuals. Specifically, the DOJ’s letter emphatically stated that federal law requires *all* civil and criminal courts that receive federal financial assistance to provide interpreters at all stages of proceedings *at no cost* to those with limited English proficiency.

The basis for the Justice Department’s position is that compliance with Title VI of the Civil Right Act of 1964 is mandatory on the states (not, incidentally, the federal government). Moreover, these LEP obligations extend to court functions that are conducted *outside* the courtroom as well, for example, information counters, cashier offices, records rooms, sheriffs, probation

(Our Changing World continued on page 6)

Board of Law Examiners Has New Director

by Art Heinz

Gicine P. Brignola Esq., a former assistant dean at the Penn State University Dickinson School of Law, has become the new executive director of the Pennsylvania Board of Law Examiners.

Brignola began her duties during the first week of September and works out of the BLE offices in the Pennsylvania Judicial Center in downtown Harrisburg. She was among more than 50 applicants from as far as Texas and Florida for the position. Four finalists were interviewed by board members, who recommended Brignola to the Supreme Court for final approval.

"Gicine has a proven track record as an effective and imaginative administrator," said **Barbara W. Mather**, board chair. "We are pleased to have her on board."

Brignola has overseen the administration of career services as

assistant dean since Aug. 2000 at the Dickinson School of Law in Carlisle. Prior to that she was a career development director at Widener University School of Law, Harrisburg, where she also served as a legal writing instructor and externship coordinator. She earned an undergraduate degree in marketing at Penn State in 1991 and a juris doctor degree from Temple University School of Law in 1994.

Joe Rengert, who has served ably as acting executive director, remains as counsel to the seven-member board.

The Board of Law Examiners recommends the admission of people to the practice of law in Pennsylvania. Its seven members review bar admission rules and recommend specific rule changes, supervise the examination process, review applicants for character and fitness,



and handle all other bar admission obligations as directed by the Supreme Court.

(To learn more about the BLE: www.pabarexam.org.)

[Art Heinz is the editor of AOPConnected.]

Code of Conduct, continued from page 1

"Public service imposes special obligations," said Pines. "This code of conduct for employees is a road map that will provide immeasurable guidance for all of us as we strive to serve the public honorably."

The code of conduct requires court employees to safeguard confidential information acquired in the course of their work and bars them from disclosing confidential information for any but an official purpose.

The code also prohibits court employees from engaging in partisan political activity as set forth in guidelines issued by the Supreme Court in an order on November 24, 1998, (and originally adopted in 1987).

The code lists 14 points of workplace conduct for employees, including requirements that they work diligently; treat others with respect and impartiality; avoid impropriety and refrain from discrimination, harassment or retaliation against others.

Employees must report to their immediate supervisors any attempt by anyone to induce them to violate any provision of the code. They must also disclose to

their supervisors if they have been arrested, charged with or convicted of a crime—other than a summary traffic offense—in any jurisdiction.

The code specifically references Pennsylvania's whistle blower statute which protects employees from retaliation for reporting wrongdoing. Chief Justice Castille noted that employees should be aware that they can report wrongdoing, even by a president judge as happened in Luzerne County, without retaliation.

Adoption of the code by the Supreme Court follows its 2008 adoption of a system-wide policy on non-discrimination and equal employment opportunity.

A copy of the code of conduct and other court policies are available on the Web site of the Unified Judicial System at www.pacourts.us/T/AOPC.

[Stuart Ditzen recently retired as the assistant for Communications for the AOPC. This is his last story for AOPConnected.]

Puppy Love

Canine Children's Companion Calms Courtroom Concerns

by Art Heinz

The first program of its kind in Pennsylvania—and one of only a handful nationwide—uses a specially trained dog to raise the spirits of children who find themselves brought into Centre County courts as crime victims or witnesses.

Since the launch of the Centre County Courthouse Canine Program in Dec. 2009, nearly three dozen children have been accompanied throughout the prosecution and trial process by a four-legged companion named Princess. The playful yellow lab focuses on comforting and easing the fears of youngsters brought into an oftentimes intimidating courtroom setting.

Developed by Common Pleas Court Judge **Brad Lunsford** and Victim Witness Coordinator **Faith Burger**, the hugely successful program operates at no cost to taxpayers, thanks to community donations and the generosity of a local pet shop that provides food.

"Prior to implementing this program, children were very nervous and frightened at the notion of coming to court," Judge Lunsford said. "Having Princess at their side or at their feet helps to calm them and provides needed comfort, especially during the interview and litigation stages of their case. We even have children who want to come back to see Princess after their case has been resolved."

Princess came to Centre County after having lived with an inmate in the Cambridge Springs State Correctional Institution, who taught her

basic obedience skills. The Prison Puppy Program is supervised and sponsored by a private, nonprofit organization dedicated to the independence and quality of life of individuals with disabilities.

"The idea came to me when I was on an elliptical machine at the local YMCA," Judge Lunsford recalled. "I happened to catch a piece on CNN that featured this program at the San Diego district attorney's office. I have been a dog owner for many years and thought that this would be a great program for our county."

To date, Princess has worked with 34 children and 48 significant others (parents, siblings, etc.), and has been present in nearly 60 proceedings.

"From my perspective, Princess has been a real asset," Judge Lunsford concluded. "Her presence in court seems to calm everyone. Even lawyers are on their best behavior while our 'guest' is present. The response from the community has been overwhelmingly positive."



Faith Burger, left, victim witness coordinator, and Mary Pinkerton, victim advocate, pose with Princess, Centre County's victims' advocate dog.

(Photo courtesy Centre Daily Times)

AOPConnected is published periodically.

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Supreme Court of Pennsylvania

Ronald D. Castille
Chief Justice

Thomas G. Saylor
Justice

J. Michael Eakin
Justice

Max Baer
Justice

Debra Todd
Justice

Seamus P. McCaffery
Justice

Jane Orié Melvin
Justice

Zygmunt A. Pines
Court Administrator
of Pennsylvania

Courts to Meet Challenges Presented by Drilling

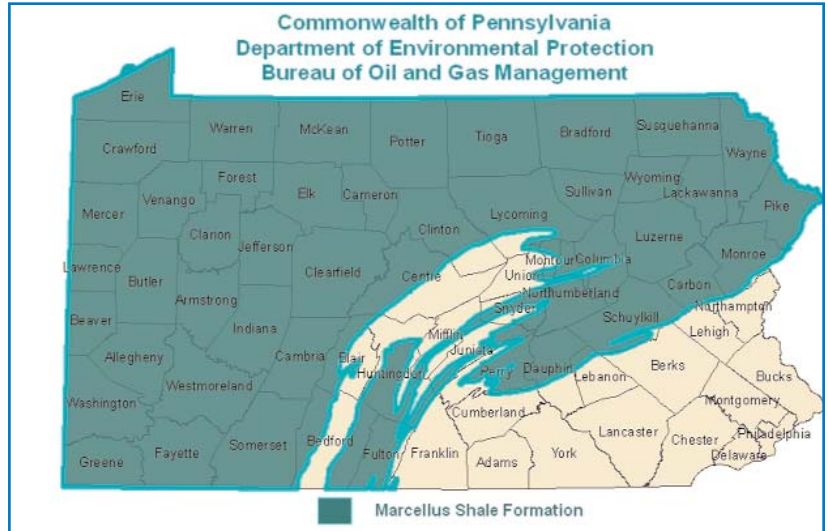
by Cherstin Hamel

The AOPC's Judicial Programs Department is examining the impact of Marcellus Shale natural gas drilling activity on the Commonwealth's rural courts. The Marcellus Shale rock formation contains an estimated 168-500 trillion cubic feet of natural gas and underlies about two thirds of the state. Natural gas well drilling is projected to last a decade, and it is anticipated to have a positive economic impact on rural communities.

Karen Sloan's recent National Law Journal article, "Drilling for Gas, Striking Gold" notes, "Gas and pipeline leases represent the first wave of business for local attorneys...With gas leases come disputes over royalties, estate issues, taxes and a host of other legal matters." The guide produced by Penn State's College of Agricultural Sciences, Marcellus Shale: What Local Governments Need to Know, states, "As indicated by the experience in Texas and Wyoming, it is important for local officials to prepare for the population changes that may occur due to the Marcellus....[S]ome of the major associated changes in the community will likely be:...an increase in crime, particularly nonviolent crimes such as driving under the influence and drug violations."

District court administrators in several counties are already being impacted by natural gas well drilling, and others anticipate they will be affected soon. In Tioga and Bradford counties, the magisterial district courts have been inundated with citations for illegal hauling and overweight trucks; family court litigants have attempted to reargue mineral rights in old divorce cases; mineral rights have been litigated in estate and civil cases and the need for interpreters has increased (many gasfield workers are non-English speaking).

News articles from states that have experienced natural gas drilling booms—namely, Wyoming, Colorado and Texas—provide insight into how Pennsylvania courts may be affected. Increases in the rates of



The Marcellus shale formation in Pennsylvania.

(Graphic courtesy Bureau of Oil and Gas Management)

drunken driving, drug use and trafficking (particularly involving methamphetamine), assaults and domestic violence incidents have been reported. Wildlife poaching and theft of drilling-related equipment and condensate from natural gas well sites have also been reported. In Texas hundreds of cases are expected to be filed on behalf of property owners who contend they were illegally denied the opportunity to sign lucrative natural gas drilling leases negotiated by neighborhood coalitions.

The full impact of Marcellus Shale drilling activity on Pennsylvania's courts remains to be seen. Somerset County Judge John M. Cascio, Tioga County District Court Administrator Nancy Clemens and I are working together to identify how the AOPC can best provide services and resources to affected rural courts. Judges and district court administrators are encouraged to contact the AOPC for more information.

[Cherstin Hamel is the assistant director of the AOPC's Judicial Programs Department.]

Our Changing World, continued from page 3

and parole offices, *pro se* clinics, detention facilities, diversionary programs and signage. While sympathetic to the ongoing fiscal plight of the nation's state court systems, the DOJ letter pointedly stated that "language services expense should be treated as a basic and essential operating expense, not as an ancillary cost." The bottom line is that the United States government has sent its letter as a warning.

Thus, we are now facing another aspect of the challenge of assimilation in our changing society. Our ideals of equality and justice continue to face the brick wall of economic realities.

AOPC Elevates Two to Lead Their Departments

Two veteran AOPC employees have been promoted to new positions within the state court system.

Kim Nieves, Ph.D., a 15-year veteran in the field of research and statistical analysis, was promoted to Director of the Research and Statistics Department. She succeeds former director, Don Harris, Ph.D., who retired in June.

Also promoted was **Mary Beth Marschik**, a Westmoreland County native and 26-year veteran of state government, to the post of Judicial Security Administrator—a position vacated when former administrator Frank Lalley retired in April.

We are fortunate to have seasoned veterans like Kim and Mary Beth already on our management team, ready to step up,” Court Administrator of Pennsylvania **Zygmunt A. Pines** said in announcing the changes. “Their dedication, commitment and extensive experience will be an asset to the AOPC as they provide leadership in these important areas.”

Nieves was hired by the AOPC in July 2000 as a research analyst, later promoted to a senior analyst position in 2003, and as assistant director of the Research Department in 2004. She has worked on many significant projects, including development of the new statewide civil cover sheet and medical malpractice statistics.

After working 13 years with the House Judiciary Committee and eight years with the state Department of Corrections, Marschik began working with the Office of Judicial Security in Sept. 2004 as the assistant administrator. Marschik was instrumental in several statewide security projects coming to fruition, such as the Pennsylvania Judicial Safety Handbook and the video arraignment project for our magisterial district courts.

Nieves, a native of New Jersey, earned her bachelor’s degree from the New School University in New York and graduate degrees from University of Pennsylvania. Marschik earned her master’s degree from the University of Pennsylvania and bachelor’s degree from Grove City College.

In addition to the promotions, **James B. Hazen** has been hired as Judicial Security Advisor. He is assisting in the implementation and execution of security projects and liaisons with county court security committees on safety matters. Hazen is a former area commander of the Pennsylvania State Police (PSP) where he led up to five troop commands and assumed on-site command of major police operations, law enforcement incidents and activities. He also administered training and education programs for the PSP.

Around the Judiciary

Supreme Court Justice **Debra Todd** was presented with the Allegheny County Bar Association’s Philip Werner Amram Award at the organization’s 48th annual bench-bar conference at Seven Springs. Established by the Bench-Bar Conference Committee in 1990, the award is given to individuals who personify professional excellence and demonstrate substantial commitment to the ideals of the ACBA and the betterment of the legal profession.

“Her continuous efforts and unflinching support for the ACBA are unparalleled and she is the kind of lawyer the Amram Award was meant to honor,” said the Hon. **Jeffrey A. Manning**, criminal division administrative judge for Allegheny Common Pleas Court. “In a year in which the bar association’s focus has been on gender equality in the profession, there is no one whose career is more emblematic or more worthy.” Left: Justice Todd with retired Common Pleas Court Judge **Livingstone Johnson**.



(Photo courtesy Allegheny County Bar Association)

Improving Jury Diversity, Cutting Costs Pennsylvania Courts Help Develop National 'Jury Management Tool'

by Steve Schell

Jury trials tend to take a disproportionate share of court resources, and maintaining a pool of prospective jurors who can be summonsed to serve in short notice is costly and labor intensive, according to the National Center of State Courts.

Pennsylvania Courts spent nearly \$6 million in 2008 on jury fees alone. This amount does not include postage, mileage and parking fees associated with seating jurors for some 4,000 trials annually. To assist in jury management, these courts now have a new software tool designed to assess jury administration in ways that could save money and improve the diversity of their jury pools.

The online diagnostic tool, known as The Jury Managers' Toolbox™ (JMT), was developed by the National Center for State Courts (NCSC) in conjunction with Pennsylvania court officials and those from

six other states with a grant from the State Justice Institute.

In June Chief Justice **Ronald D. Castille** strongly encouraged court administrators to take advantage of this tool that "will allow administrators to see how many jury summonses were successfully delivered, how many of those delivered were completed and returned, how many people appeared for duty, how many were excused and how many jurors just didn't 'show.'"

The jury software tool not only gives the administrator the data, it identifies areas of strength and weakness in jury operations, suggests targeted strategies to improve performance and estimates the fiscal and operational impact of those improvement efforts.

The jury tool also complements the AOPC's statewide list that was designed in October 2008 to considerably expand existing county

jury pools by identifying more citizens who are eligible to serve as jurors.

"We encourage court administrators to consider using the jury list compiled by the AOPC and use the free jury tool that can help improve the operations of the jury system, focusing primarily on jury yield and juror utilization, and potentially save money," said **Joseph J. Mittleman**, Director of Judicial Programs and member of the NCSC's jury tool development group.

Bucks County is one of the first counties in the state to use the new jury tool. District Court Administrator **Doug Praul** said the tool "enables us to take jury statistics and put them into analysis tools to measure effectiveness of time and resources. Our goal is to spend less putting together juries for trials and to have fewer jurors who will be called to duty and then spend their day in the waiting room."

Judicial Independence Upheld in Precedential Ruling

Are judicial records stored in county computer servers (or in county filing cabinets) accessible to the public under the state's 2009 Right-to-Know Law? What is the extent of the Office of Open Records' jurisdiction over denials of requests for access to judicial records?

In fall of 2009 the Scranton Times-Tribune requested that Lackawanna County release the e-mails of a Domestic Relations Office employee pursuant to the Right-to-Know Law. The paper argued it was entitled to the information because the employee—though supervised by the judiciary—was paid by the county.

After the county denied the paper's request, the Times-Tribune appealed to the Office of Open Records, which ordered the release of the records because it found that the county provided and controlled the computer system used by the employee.

The Court of Common Pleas of Lackawanna County, represented by the AOPC's **Taylor Williams** and **Michael Daley**, sought injunctive and declaratory relief in Commonwealth Court. The AOPC successfully fought to block the release of e-mails by the county, arguing that the Office of Open Records lacked jurisdiction on the basis of the separation of powers doctrine and the sought-after e-mails of a court-supervised employee were judicial records, not county records.

In a strongly worded majority opinion, Commonwealth Court Judge Dan Pellegrini agreed, stating "[n]either the General Assembly nor the executive branch of government, acting through an administrative agency, may constitutionally infringe upon the powers or duties of the judiciary... Among the judiciary's powers is the ability to supervise its own personnel without interference from another branch of government."

(Precedential Ruling continued on page 12)

Lending a Hand with Haiti's Road to Recovery

by Michael A. Sponsler

On Jan. 12, 2010, a catastrophic magnitude 7.0 earthquake struck the island nation of Haiti and sent this already poor and country unstable into utter dark-ness. In the aftermath, more than 200,000 Haitians lost their lives, and another 1.5 million were left homeless.

Voices

It is into this hopelessness that I journeyed as a team member of AwakenHaiti (www.awakenhaiti.org), an organization supported by the Carlisle Brethren in Christ Church. Our goal was to help the children of the Good Samaritan Orphanages in Port-au-Prince get back on their feet. Both the boys' and girls' orphanages were destroyed by the quake and left the children living in temporary locations, sleeping and going to school in tents provided by the U.S. Army.

Over the past seven years, I have been on similar trips to Peru and Ecuador, but have never had to face this level of destruction and devastation—and I was quite apprehensive about going. With some prodding from my wife, Leslie, and friends, I decided to go.

The best way to describe Haiti is—everything is difficult. The electrical supply is sporadic; building materials and tools are expensive and hard to obtain; nearly all motor vehicles are old and unreliable; traffic is always snarled; ubiquitous trash and rubble piles make most back streets barely passable, and it is smelly, dusty and HOT.

I've learned, however, Haiti is also a place filled with resilient and humble people who are always willing

to return a smile and a wave, are quick to pick up a shovel and work for very little pay, and display the contentment of knowing they are alive.

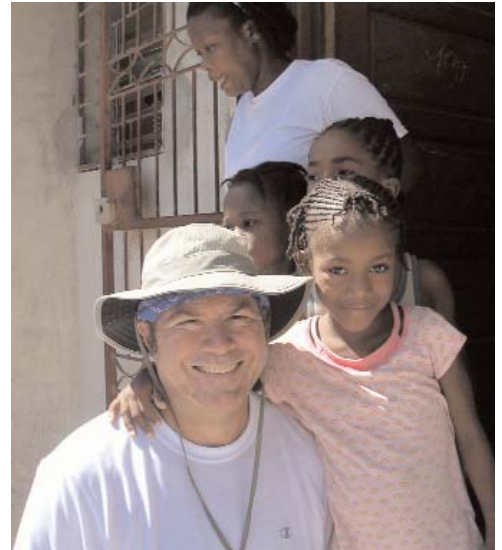
Needless to say, I experienced a rewarding and unforgettable week! Our team of eight was able to convert two newer homes into permanent residences for 50 parentless boys and girls.

We built play areas, a courtyard, showers and walkways; upgraded their electrical supply with a generator and rechargeable battery system and installed the luxuries of a freezer and refrigerator. After working each day, we spent the evenings with the children playing cards and games. We also learned Creole and had our hair braided in corn rows (ouch).

The highlight of the week, however, was delivering food to an orphanage near the remote town of Léogâne (the earthquake's epicenter) and sharing time with 100 children who possess nothing other than the hand-me-down clothes on their backs. As we were leaving, the children sang a song in Creole and English that to my ears rivaled the greatest symphonies of Bach, Beethoven and Mozart. It is ironic that I went there to bring a bit of joy to their lives and left filled with the gifts of their love and their singing. The faces of those children will be etched in my mind for a very long time.

As I was getting on the airplane to return home, my first emotion was that of relief—a hard week had come to an end, and my life was about to return to normal. But after reflection of this unforgettable and rewarding experience, I expect that "things" will never seem normal again. I am now eager to return...and possibly lead a team to continue the work that is needed.

(Mike Sponsler is a senior compensation analyst in the AOPC's Office of Human Resources.)



Mike with Evelyn, a Haitian girl



Three good friends at Good Samaritan Orphanage in Port-au-Prince.

Honors and Dispatches

Senior Superior Court Judge **James J. Fitzgerald III** received the J. Clayton Undercofler III '66 Distinguished Service Award from the Villanova University Law School's J. Willard O'Brien American Inn of Court. The Undercofler award recognizes those who have demonstrated through a career and service an exemplary level of leadership and integrity as well as a dedication to the highest standards of the legal profession and the rule of law.

The Lancaster County Commissioners dedicated the Judge **Henry S. Kenderdine Jr.** Court Self Help Center, and ordered that a plaque bearing that name be placed at the entrance of the center in the courthouse. The self-help center sits on the first floor of Lancaster's courthouse. Information also is provided on the county's Web site. At either location people can access resources to guide them through relatively minor court proceedings, such as filing for uncontested divorce, appealing a driver's license suspension and petitioning the court for a name change, so they don't have to hire an attorney. Much of the information was written by the late judge, who was the court's liaison to the self help center. Judge Kenderdine, who died in April 10 at his home in Mount Joy Township, was 63.

Former Court Administrator of Pennsylvania **Abraham J. Gafni** is among more than 70 lawyers who will serve as 2010-11 chairs of Pennsylvania Bar Association committees. Gafni, who served as court administrator from 1983-1985, was named chair of the PBA Professionalism Committee, which studies, recommends and implements programs and initiatives designed to promote professionalism within the legal community. A former Common Pleas Court judge, Gafni is a professor at the Villanova University School of Law.

Luzerne County President Judge **Thomas F. Burke Jr.** and Lackawanna County Magisterial District Judge **James A. Gibbons** spoke to a delegation of visiting Latin American attorneys, journalists and students about northeastern Pennsylvania's juvenile justice corruption case. Judges Burke and Gibbons both served on the Interbranch Commission on Juvenile Justice that investigated the events leading up to the arrest of two former county judges and the clearing of thousands of juvenile convictions. The delegation was part of a U.S. Department of State international leadership program. The group was exploring government ethics and trans-

parency, global anti-corruption strategies and the role of the media and watchdog organizations in monitoring and reporting on ethical lapses.

Former Supreme Court Justice **Jane Cutler Greenspan** was selected as a "Woman of Valor" by the Anti-Defamation League (ADL) of Philadelphia. Greenspan specializes as a mediator, arbitrator and discovery master for disputes in a variety of areas, including appellate, business commercial, class action, insurance, personal injury and real property for JAMS Philadelphia Resolution Center—a mediation and arbitration service.

This is the inaugural year for ADL Philadelphia's "Women of Valor" awards. Honorees were selected for their strong commitment to the work of the ADL and were recognized as part of the organization's annual spring event. "We congratulate Justice Greenspan on this prestigious honor," said Kimberly Taylor, Esq., vice president east/central and associate general counsel for JAMS. "She has spent her career working in support of the values represented by the Anti-Defamation League, and this is a well-deserved award."

Washington County District Court Administrator **Christine L. Weller** received the "Liberty Bell" Award from the Washington County Bar Association as part of its annual Law Day programming. It is awarded to non-lawyers for outstanding service in promoting a better understanding of our form of government, encouraging respect for law and the courts, stimulating individual responsibilities, contributing to the effective functioning of government and developing an appreciation of the rule of law. The award was presented at the Liberty Bell Banquet held at Washington & Jefferson College.



U.S. District Court Judge **Legrome Davis**, a former Philadelphia Common Pleas Court jurist, was presented with the Criminal Justice Policy Research Leadership Award from Temple University's Criminal Justice Department.

The award, which was presented this year for the first time, honors those who use research to develop strategies for policy reform in the criminal justice system. Judge Davis was

The Nature of Judging

(The following is an abridged version of an address by Supreme Court Justice Thomas G. Saylor for the Jurist in Residence Lecture at the Institute of Law and Government of the Widener School of Law in Harrisburg.)

It occurs to me that in Supreme Court confirmation hearings of late, aspirants, obviously of felt necessity, understate the role of courts in adjudging cases having a constitutional dimension. They seem, at least to me, to suggest that the process is fairly simple; that all judges need do is lay the text of the Constitution alongside the challenged legislative enactment or executive action and declare where the line is to be drawn.

The true reality, however, is that in the area of constitutional interpretation, where I will focus my remarks, a court makes difficult choices among competing values and, unlike the value choices made by the political branches—the executive and the legislature—courts are obliged by tradition, and compelled by institutional necessity, to supply reasons for such choices. It is this work which I will undertake to describe.

And so, what is this thing that we call judging? Socrates said that only four things belong to a judge: to hear courteously, to answer wisely, to consider soberly and to decide impartially. Were it only that simple.

We all study judging in the sense that we read, analyze and attempt to apply judicial decisions in the course of our legal studies and professional lives. But my goal is to probe more deeply into the intellectual and structural underpinnings of judging.

Members of the legal academy have endeavored over time to explain the nature of the judicial function in a scholarly fashion. The first efforts in this regard are generally credited to Christopher Columbus Langdell, the Dean of Harvard Law School from 1870-1895. Langdell's model of the case study of law still predominates in our modern law schools, but the work of Langdell's research and writing was directed towards placing the study of law into a scientific form, much like that of geometry, a series of elementary principles or postulates which could be discerned by surveying the case law, built upon and used descriptively and evaluatively to lead to a certain or right result.

Critics very soon attacked this approach, asserting that the law was not, and could never be, a strictly deductive endeavor like geometry. One of the first such critics was Oliver Wendell Holmes, whose writings outlined a view recognizing judicial creativity and insisting that law does not consist of a self-contained set of

principles or norms, but rather, constitutes a tool to be used to advance social objectives. This movement, which came to be called legal realism, began at the Columbia Law School in the 1920s and reached full bloom at Yale Law School in the 1930s.

But this notion led in turn to another school of thought which Professor Anthony Kronman, in his superb book *The Lost Lawyer*, has termed "prudential realism." Prudential realism, so called, was the invention of Professor Carl Llewellyn, a contracts professor at Columbia.

Concerned to show that appellate courts worked in a "reckonable way," Llewellyn emphasized that, although adjudication is in some sense a creative activity, it is not arbitrary. Rather, there are constraints that guide the adjudicative process and make its exercise understandable. His point, in this regard, was that legal rules alone are not sufficient to supply the necessary discipline, but that judicial creativity is also bound by what he described as traditions and habits, an "ethos" of the jurist's office, which he viewed as an ideal of judicial craftsmanship, like that of a carpenter who acquires habits and skills over time that are used in his craft, particularly in his selection of tools for different jobs.

Turning now to the work of constitutional adjudication, what implements do judges have at their disposal in plying their craft? They first have language, that is, the text of the constitutional provision at issue.

They also have history, which is the intent of the framers in placing a certain provision in the Constitution. Sometimes referred to as "original meaning" or "original understanding," originalism inquires into the meaning that constitutional provisions possessed at the time of their framing and ratification.

Although history informs and elucidates, and thus has weight in constitutional interpretation, as Professor Alexander Bickel cogently wrote: "The original understanding forms the starting link in the chain of continuity which is a source of the Court's authority...[W]hat is relevant is not alone the origin of constitutional provisions, but also 'the line of their growth,' the further links in the chain of continuity."

For example, the Sixth Amendment guarantees an accused the right to have the assistance of counsel for his defense. It is beyond historical dispute that when the Sixth Amendment was proposed in the First Congress such guarantee was considered merely a right to

(Nature of Judging continued on page 13)

Allegheny Courts Begin Criminal Case Reviews

by **Raymond L. Billotte**

In collaboration with Allegheny County criminal justice agencies, the Fifth Judicial District is conducting comprehensive reviews of randomly selected criminal cases. The goals are to 1) improve public safety and reduce harm to our communities, 2) better manage criminal justice system costs through improved practices and system efficiencies and 3) enhance communication of criminal justice system stakeholders.

Criminal case reviews are moderated by President Judge **Donna Jo McDaniel** and me and require the participation of and first-person accounts from all participants in a case. Cases chosen for review are identified, screened and prepared by a subcommittee appointed by the president judge. Only cases that are finally adjudicated and not under appeal are eligible for review. Case participants—Common Pleas Court judge, magisterial district judge, prosecutor, defense attorney, pretrial services officer, probation officer, police officer, treatment providers and the clerks processing paperwork—are part of the session. Victims, witnesses and other non-system personnel do not participate.

After a brief case overview and introduction of participants, packets of information that includes a case summary, criminal history information, detailed report of case events, case processing times, prior treatment program participation, jail time, bond history and failure to appear information are provided. Each participant gives a brief overview of his/her involvement and identifies any issues he/she would like to discuss. Additionally, the president judge and district court administrator facilitate discussion through introduction of issues identified by the subcommittee.

The court has adopted guidelines for the review sessions intended to encourage the active participation of all individuals. Criminal case reviews are not used as a forum for re-arguing the outcome of a case nor for assigning blame to other system stakeholders. Rather, the tone and demeanor of the sessions are positive and focus on systemic issues identified through actual case events, not anecdotal information.

To facilitate the changes identified, President Judge McDaniel appointed a standing committee comprised of the highest-level criminal justice decision-makers, who participate in each review session. It includes the president judge, district court administrator, administrative judge of the criminal division, district attorney, county chief executive, county manager, jail warden, criminal division administrator, Pittsburgh Police Department chief, Allegheny police chiefs association designee, chief adult probation officer, pretrial services director, chief public defender, superintendent of county police, Allegheny County Bar Association designee, magisterial district judge, director of the Department of Human Services, manager of the magisterial district courts and Pittsburgh Municipal Court manager. Two to four case reviews are held each month and are scheduled through the end of 2010.

(Ray Billotte is District Court Administrator for Allegheny County.)



From left: District Court Administrator Ray Billotte, President Judge Donna Jo McDaniel, Department of Human Services Treatment Services Coordinator Erin Dalton, Criminal Division Judge Anthony Mariani.

Precedential Ruling, continued from page 8

The Office of Open Records did not appeal the decision.

County open records officers should be made aware of this decision and directed not to release judicial records merely because they are stored on or in county equipment, including computers and servers.

[The Commonwealth Court's opinion in Court of Common Pleas of Lackawanna County v. The PA Office of Open Records, Lackawanna County - 35 M.D. 2010 - can be found on the UJS Web site at www.pacourts.us/T/Commonwealth/CommonwealthOpinions.htm]

Transitions, continued from page 2

Robert O. Lampl, Esq. - reapptd. to Civil Procedural Rules Committee

Philip D. Lauer, Esq. - apptd. vice chair of Criminal Procedural Rules Committee

Bethann R. Lloyd, Esq. - apptd. to Civil Procedural Rules Committee

Honorable Jeffrey A. Manning - apptd. to Criminal Procedural Rules Committee

Honorable Arnold L. New - apptd. to Civil Procedural Rules Committee

James R. Ronca, Esq. - apptd. vice chair of Civil Procedural Rules Committee

James C. Sargent Jr., Esq. - apptd. vice chair of Appellate Court Procedural Rules Committee

Dr. Jack M. Treadway - apptd. vice chair of Minor Judiciary Education Board

Andrew S. Youman, Esq. - apptd. to Civil Procedural Rules Committee

Other Boards/Committees

Honorable Ida K. Chen - reapptd. to Interbranch Commission for Gender, Racial and Ethnic Fairness

Honorable Kim Berkeley Clark - apptd. to Interbranch Commission for Gender, Racial and Ethnic Fairness

Harold E. Dunbar, Esq. - apptd. to Interbranch Commission for Gender, Racial and Ethnic Fairness

Roberta D. Liebenberg, Esq. - reapptd. to Interbranch Commission for Gender, Racial and Ethnic Fairness

Robert L. Listenbee, Esq. - apptd. to Interbranch Commission for Gender, Racial and Ethnic Fairness

Lucille Marsh, Esq. - reapptd. to Interbranch Commission for Gender, Racial and Ethnic Fairness

James E. McErlane, Esq. - apptd. to Judicial Conduct Board

Gladys Miller-Russell - reapptd. to Interbranch Commission for Gender, Racial and Ethnic Fairness

Burton D. Morris, Esq. - reapptd. to Interbranch Commission for Gender, Racial and Ethnic Fairness

Honorable Thomas A. Placey - apptd. to Judicial Conduct Board

Pennsylvania Association of Court Management

Officers for 2010-11

President - **Donald Heagy** - Westmoreland

Immediate Past President - **Patricia Norwood-Foden** - Chester

Vice-President - **Patricia Ranieri** - Montgomery

President-Elect - **Nancy Clemens** - Tioga

Secretary - **Lisa Kishbaugh** - Monroe

Treasurer - **William Hare** - Beaver

Nature of Judging, continued from page 11

defend by counsel if you had one, contrary to what was then the English law. But how meaningful would such a right be if it had been forever so confined rather than extended by interpretation to require that court-appointed counsel be provided for an indigent defendant whose life or liberty is at jeopardy?

And finally, judges have recourse to precedent—prior decisions regarding the constitutional provision at issue. Precedent is important because, as Holmes once said, “imitation of the past, until we have a clear reason for change, no more needs justification than appetite.”

But of equal importance is the assurance that if constitutional values have been wrongly decreed, or if the circumstances supporting their initial articulation have changed, they will be put aside. Chief Justice Taney, the author of the infamous Dred Scott decision, himself declared his willingness “that it be regarded hereafter as the law of this court, that its opinion upon

the construction of the Constitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should hereafter depend altogether on the force of the reasoning by which it is supported.”

And so, there you have it. Appellate judging is a craft, not a science. In performing their work, judges bring to bear their experience and practical knowledge, honed by habit and informed by common understanding. Although the precise manner in which they do this is difficult to describe, the end of the endeavor is not. Judges, wrote Justice Frankfurter, are called upon for “allegiance to nothing except the effort, amid tangled words and limited insights, to find the path through precedent, through policy, through history, to the best judgment that fallible creatures can reach in that most difficult of all tasks: the achievement of justice between man and man, between man and state, through reason called law.”

Phishing on the Rise, but Don't Take the Bait

by James Tulio

The term "phishing" is a play on the word "fishing" because it alludes to baits to "catch" financial information and passwords. Phishing is a criminal act that can be financially damaging to the unsuspecting person and incredibly frustrating to recover from.

Phishing is masquerading as a trustworthy individual or entity to acquire personal information or engage in malicious activity or for financial gain. It appears as unsolicited e-mails from banks, brokerage firms and retailers with which you may or may not do business. Many sources of these unsolicited e-mails are organized crime syndicates, often from other countries.

According to the Anti-Phishing Working Group (APWG), the number of infected computers from phishing attacks rose 66 percent from the fourth quarter of 2008 to the end of the first half of 2009. An incredible 11,937,944 computers were identified as infected with malicious software from phishing attacks during this period. Further, the APWG recorded 310 brands we all recognize—for example, Microsoft, U.S. Bank, Bank of America—that were hijacked in e-mail phishing attacks and used for criminal intent.

Now that I have your attention with these sobering facts, what should you do?

Education and awareness are the keys to combating a phishing attack. First, never ever respond to an e-mail from an individual or organization you do not recognize or do not do business with. If you are tempted to reply to an e-mail purportedly from a legitimate company, instead of clicking the reply button, open your web browser, type in the legitimate web address of the company, and call them directly to inquire about the e-mail. Legitimate companies constantly re-emphasize to consumers that they will never ask for your personal information via e-mail. If you are being asked in an e-mail to "verify an order you placed," and, knowing you didn't place the order, you want to respond to indicate such—resist that impulse! Should

you have any type of unauthorized charge on your account, use a credit card dispute process to challenge it.

Second, do not click on any hyperlinks in the suspect e-mail. Simply clicking a link can start the process of quietly redirecting your pc to a criminal Web site where it could be hijacked or used to spam or scam others on the Internet. Just delete the e-mail.

Third, make sure you protect your pc. Updated anti-virus and anti-spyware software are important to warn and prevent malicious software from infecting your pc.

What can happen if you reply to a phishing e-mail? First, you confirm to the criminal that the e-mail address used in the attack (yours) is valid. As a result, this will likely not be the last phishing attack. Second, you may provide personal or financial information to a criminal. Third, you can infect your computer with malicious software, which could even capture all of the keystrokes you make on your computer and send them to a criminal. Think about the treasure trove of usernames, account numbers and passwords you might be providing to a mob syndicate in Eastern Europe!

The AOPC's Network/Security Infrastructure team helps to protect our computer resources across the AOPC and appellate courts by scanning e-mails and Web content for known sources of malicious software and for known attack signatures. The AOPC and each appellate court protects its pcs through anti-virus software. Despite these technological protections, it remains tough to stay one step ahead of the bad guys. Protection from phishing attacks starts and ends with you. Be alert and know the steps to take to be safe on the Internet.

[James Tulio is AOPC's manager of Enterprise Information Technology Operations in the Judicial Automation department.]

AOPC Employee Service Milestones

A number of AOPC employees have reached service milestones between July and September 2010. They are:

20 Years

Mark Rothermel - Judicial Automation

Pamela Stager - Judicial Automation

15 Years

Margaret Arris - Human Resources

Thomas Hudson - Judicial Automation

10 Years

Michelle Espenshade - Judicial Automation

James Matters - Judicial Automation

Kim Nieves - Research & Statistics

Rob Roth - Judicial Automation

Francine Stare - Judicial Automation

Honors & Dispatches, continued from page 10

chosen for his long-time collaboration with Temple professors to enhance the city's criminal justice system—namely, for assistance in addressing the prison overcrowding crisis that was violating prisoners' civil rights and costing taxpayers hundreds of thousands of dollars. "Judge Davis's leadership in drawing on a body of research to assist in designing public policy strategy sets a high standard for this award," said John Goldkamp, a Temple criminal justice professor. "It's rare to hear judges discuss public policy outside of the courtroom, and even rarer for them to dedicate themselves to working for decades to ensure a more just and efficient court system."

Allegheny County District Court Administrator **Raymond L. Billotte** was elected to the Board of Directors of the National Association for Court Management at the 25th annual NACM conference in New Orleans, LA. He will serve a three-year term as Urban Court Director.

Kevin Cross, deputy court administrator in charge of financial services for the First Judicial District in Philadelphia, is the current president of the Mid-Atlantic Association for Court Management, MAACM. Cross is the fourth president from Pennsylvania in MAACM's 17-year history. He is preceded in this distinction by Westmoreland County District Court Administrator **Paul Kuntz** (1998), Chester County Deputy Court Administrator **Roberta Webb** (2003), and **Richard Pierce**, a judicial programs administrator for the AOPC (2006).

MAACM will hold its annual conference in Hershey this year, Oct. 3-6. The Pennsylvania Association of Court Management, PACM, will team with MAACM by sponsoring a presentation on one of the 10 Core Compe-

tencies for court professionals as drafted by the National Association for Court Management, NACM. PACM President Don Heagy, deputy court administrator for Westmoreland County, is working with Cross and Kuntz—who is currently serving as Professional Development co-chair for MAACM—in putting on an informative and educational conference.

Philadelphia Common Pleas Judge **Annette Rizzo** has been named a 2010 Blue Sapphire Award recipient by *Philadelphia Row Home Magazine* for her community service. She and other recipients, including Dick Vermeil and Larry Kane, will be presented with the award at the fifth annual Affair to Remember Blue Sapphire Award ceremony, a black-tie business networking gala in Philadelphia.

Two veteran magisterial district judges were recognized for their contributions to the state court system at this year's Special Court Judges Association of Pennsylvania. Delaware County Magisterial District Judge **Richard M. Cappelli** accepted the Themis Award and Cumberland County Magisterial District Judge **Paula P. Correal** was honored with the John T. Jeffers Award.

Judge Cappelli has run numerous orientation programs for new judges and has lectured at Continuing Legal Education programs regarding practices in the district courts. He serves on the Widener University School of Law alumni board and is a member of the Delaware County Criminal Justice Advisory Committee. Judge Correal has lectured on courtroom procedures to newly elected district judges and served as both chair and co-chair on the association's Motor Vehicle Legislative Subcommittee.

2010-11 Officers for Trial Court Conference and Special Court Judges Association

Pennsylvania Conference of State Trial Judges

President - **Arnold L. New** - Philadelphia
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Second Vice President - **Joseph S. Lindsey** - Dauphin
Treasurer - **Larry G. Pentz** - Franklin
Secretary - **Allen P. Page** - Lycoming
Past President - **Donna R. Butler** - Lehigh

Benchbook, continued from page 1

The completion of the benchbook culminated 18 months of work by a committee consisting of trial and appellate dependency judges, chaired by Lackawanna County President Judge **Chester T. Harhut**.

The document is part of the Supreme Court's ongoing efforts—which day-to-day have been led by the AOPC's Office of Children and Families in the Courts in close partnership with the state Department of Public Welfare's Office of Children, Youth and Families—to reduce delays in placing at-risk children safely and permanently in loving, caring homes and to improve the lives of abused and neglected children.

Since 2006 these efforts have led to a 25 percent reduction in the number of Pennsylvania children in foster care, resulting in an annual savings of \$220 million in the gross costs for administering foster care programs statewide.

The court is confident the benchbook will further improve outcomes for dependent children. The document, available on the OCFC's Web site at www.ocfc-pacourts.us, highlights best practices and court procedures with comments from experienced trial judges and

former foster youth. The benchbook includes, in part:

- a summary of the legal requirements for dependency court proceedings as well as detailed information on a number of special topics, such as the rights of older dependent youth and legal representation of children, parents and guardians
- tools such as lists of critical questions to assist in the conduct of many hearings held daily in our dependency courts
- best practices derived from the innovations implemented in various Pennsylvania courts and the cumulative experience of judicial officers in the state as well as national level policy-making and research organizations, such as the National Council of Juvenile and Family Court Judges, the American Humane Association, the American Bar Association's Center on Children and the Law and the National Center for State Courts.

For more information, contact the Office of Children and Families in the Courts at 717-231-3303.

[Steve Schell is an AOPC communications coordinator.]