

CAMPUS MAP

CAMPUS MAP LEGEND

Numbers on map indicate Building Name & Offices.

- 1 Classroom and Law Library Building, Classrooms, Faculty Offices, I.T.S., Library
- 2 Basketball/Tennis Courts
- 3 Student Activities Offices, Bookstore
- 4 Cafeteria
- 5 **Courtroom Annex/A180**, Classroom, Nursing School, Moot Courtrooms
- 6 Administration Building, Deans, Admissions, Career Development, Business Office, Registrar, Financial Aid, Social Work Program
- 7 Central Pennsylvania Law Clinics



SESSION #1

FAMILY LAW

HANDOUTS



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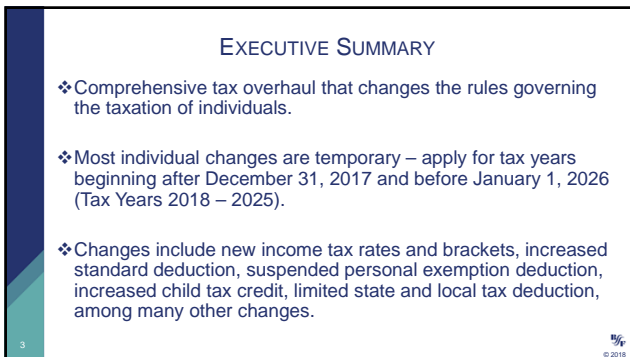
TAX REFORM IMPACT
 APRIL 13, 2018

 Randy L. Fackler, CPA, CEPA
Principal



**TAX REFORM IMPACT:
 INDIVIDUAL UPDATES**

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EXECUTIVE SUMMARY

- ❖ Comprehensive tax overhaul that changes the rules governing the taxation of individuals.
- ❖ Most individual changes are temporary – apply for tax years beginning after December 31, 2017 and before January 1, 2026 (Tax Years 2018 – 2025).
- ❖ Changes include new income tax rates and brackets, increased standard deduction, suspended personal exemption deduction, increased child tax credit, limited state and local tax deduction, among many other changes.

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INDIVIDUAL TAX RATES & BRACKETS

2017 (SINGLE)		2018 (SINGLE)	
RATE	SINGLE	RATE	SINGLE
10%	\$0-\$9,325	10%	\$0-\$9,525
15%	\$9,326-\$37,950	12%	\$9,526-\$38,700
25%	\$37,951-\$91,900	22%	\$38,701-\$82,500
28%	\$91,901-\$191,650	24%	\$82,501-\$157,500
33%	\$191,651-\$416,700	32%	\$157,501-\$200,000
35%	\$416,701-\$418,400	35%	\$200,001-\$500,000
39.6%	\$418,401 and up	37%	\$500,001 and up

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INDIVIDUAL TAX RATES & BRACKETS (CONT'D)

2017 (MARRIED FILING JOINT - MFJ)		2018 (MARRIED FILING JOINT - MFJ)	
RATE	MARRIED (MFJ)	RATE	MARRIED (MFJ)
10%	\$0-\$18,650	10%	\$0-\$19,050
15%	\$18,651-\$75,900	12%	\$19,051-\$77,400
25%	\$75,901-\$153,100	22%	\$77,401-\$165,000
28%	\$153,101-\$233,350	24%	\$165,001-\$315,000
33%	\$233,351-\$416,700	32%	\$315,001-\$400,000
35%	\$416,701-\$470,700	35%	\$400,001-\$600,000
39.6%	\$470,701 and up	37%	\$600,001 and up

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INDIVIDUAL TAX RATES & BRACKETS (CONT'D)

2017 (HEAD OF HOUSEHOLD)		2018 (HEAD OF HOUSEHOLD)	
RATE	HEAD OF HOUSEHOLD	RATE	HEAD OF HOUSEHOLD
10%	\$0-\$13,350	10%	\$0-\$13,600
15%	\$13,351-\$50,800	12%	\$13,601-\$51,800
25%	\$50,801-\$131,200	22%	\$51,801-\$82,500
28%	\$131,201-\$212,500	24%	\$82,501-\$157,500
33%	\$212,501-\$416,700	32%	\$157,501-\$200,000
35%	\$416,701-\$444,550	35%	\$200,001-\$500,000
39.6%	\$444,551 and up	37%	\$500,001 and up

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AMT EXEMPTION

- ❖ AMT is retained for individuals but with higher exemption amounts:
 - ❖ \$109,400 for joint returns and surviving spouses (Pre-Reform = \$84,500)
 - ❖ \$70,300 for single taxpayers (Pre-Reform = \$54,300)
 - ❖ \$54,700 for married taxpayers filing separately (Pre-Reform = \$42,250)
- ❖ Phase-out of exemption starts at:
 - ❖ \$1,000,000 for joint returns and surviving spouses (Pre-Reform = \$160,900)
 - ❖ \$500,000 for all other taxpayers (Pre-Reform = \$120,700 – single; \$80,450 – MFS)

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STANDARD DEDUCTION

- ❖ Increased to:
 - ❖ \$24,000 for Married Filing Joint (Pre-Reform = \$12,700)
 - ❖ \$18,000 for Head of Household (Pre-Reform = \$9,350)
 - ❖ \$12,000 for all other taxpayers (Pre-Reform = \$6,350)
- ❖ Adjusted for inflation in tax years after 2018.
- ❖ No changes were made to the current law additional standard deduction for elderly and blind.

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PERSONAL EXEMPTIONS

- ❖ Suspended by reducing the exemption amount to zero for tax years 2018 – 2025.
- ❖ In 2017, the personal exemption was \$4,050 per exemption, which was subject to phase-out based upon AGI.

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KIDDIE TAX MODIFIED

- ❖ Child's net unearned income in excess of \$2,100 taxed using trust and estate tax rates and brackets.
- ❖ Previously the child's unearned income was taxed at the higher of the parents' tax rates or the child's tax rates.

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CAPITAL GAINS

- ❖ Rates on capital gains and qualified dividends retained.
- ❖ For 2018, the 15% preferential rate starts at:
 - ❖ \$77,200 for Married Filing Joint
 - ❖ \$51,700 for Head of Household
 - ❖ \$38,600 for Single filers
 - ❖ \$2,600 for Trusts and Estates

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CAPITAL GAINS (CONT'D)

- ❖ For 2018, the 20% preferential rate starts at:
 - ❖ \$479,000 for Married Filing Joint
 - ❖ \$452,400 for Head of Household
 - ❖ \$425,800 for Single filers
 - ❖ \$12,700 for Trusts and Estates

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ADDITIONAL MEDICARE TAX (0.9%) &
NET INVESTMENT INCOME TAX (3.8%)

❖ The Tax Reform leaves in place these current taxes and their threshold amounts.

❖ For 2017 & 2018, the threshold amounts are:

- ❖ \$250,000 for Married Filing Joint
- ❖ \$200,000 for Single
- ❖ \$125,000 for Married Filing Separate

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CHILD TAX CREDIT

❖ Child Tax Credit increased from \$1,000 to \$2,000 per qualifying child under the age of 17.

❖ Credit begins to phase out at modified AGI of \$400,000 for MFJ and \$200,000 for all others.

❖ Pre-Reform: Phase out began at \$110,000 (MFJ) and \$75,000 (all others)

❖ \$500 nonrefundable credit for certain non-child dependents.

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CHILD TAX CREDIT (CONT'D)

❖ Maximum refundable portion of credit is increased from \$1,000 to \$1,400.

❖ Refundable credit is equal to 15% of earned income in excess of \$2,500.

❖ Taxpayer must provide a social security number for each qualifying child in order to receive the child tax credit.

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CHANGES TO ITEMIZED DEDUCTIONS (SCHEDULE A)

- ❖ Medical Expenses
- ❖ State & Local Taxes
- ❖ Mortgage & Home Equity Interest
- ❖ Charitable Contributions
- ❖ Personal Casualty and Theft Losses
- ❖ Miscellaneous Itemized Deductions
- ❖ Gambling Expenses
- ❖ Overall ("Pease") Limitation

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MEDICAL EXPENSES

- ❖ For tax years beginning after December 31, 2016 and ending before January 1, 2019 (Tax Years 2017 – 2018), the medical expense deduction floor is reduced to 7.5% of AGI.
- ❖ AMT preference is also eliminated for the same period

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STATE & LOCAL TAXES

- ❖ Individual taxpayers may claim an itemized deduction of up to \$10,000 for the aggregate of:
 - ❖ State and local property taxes
 - ❖ State and local income taxes (or state and local sales taxes in lieu of income taxes)

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STATE & LOCAL TAXES (CONT'D)

- ❖ State and local property taxes and state and local sales taxes that are paid or accrued in carrying on a trade or business are deductible (on Schedules C, E or F).
- ❖ State and local income taxes that are paid or accrued in carrying on a trade or business are not allowed as a deduction (on Schedules C, E or F).

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MORTGAGE & HOME EQUITY INTEREST

- ❖ Reduction of mortgage interest deduction to interest on \$750,000 of acquisition indebtedness for debt incurred after December 15, 2017.
- ❖ \$1 million limitation remains for debt incurred prior to and on December 15, 2017 ("grandfathered").
- ❖ Debt refinanced after December 15, 2017 can maintain its "grandfathered" status to the extent the amount of debt does not exceed the amount refinanced.
- ❖ Deduction for interest on home equity indebtedness is suspended for tax years 2018 – 2025.

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CHARITABLE CONTRIBUTIONS

- ❖ AGI limitation on cash contributions is increased from 50% to 60%.
- ❖ For contributions made in tax years beginning after December 31, 2017, no charitable deduction is allowed for any payment to an institution of higher education in exchange for which the payor receives the right to purchase tickets or seating at an athletic event.
 - ❖ An 80% deduction was previously allowed.
- ❖ Higher standard deduction will impact the amount of charitable contributions made to tax exempt organizations.

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PERSONAL CASUALTY & THEFT LOSSES

❖ Deductions are suspended, except for personal casualty losses incurred in a Federally-declared disaster.

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MISCELLANEOUS ITEMIZED DEDUCTIONS

❖ All miscellaneous itemized deductions that are subject to the 2% floor are suspended for the 2018 – 2025 tax years.

❖ Includes:

- ❖ Unreimbursed employee expenses
- ❖ Tax preparation fees
- ❖ Investment fees
- ❖ Safe deposit box
- ❖ Other expenses subject to 2% floor

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GAMBLING LOSS LIMITATION MODIFIED

❖ All deductions for expenses incurred in carrying out wagering transactions, and not just gambling losses, are now limited to the extent of gambling winnings.

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OVERALL ("PEASE") LIMITATION

- ❖ Under Pre-Reform law, the total itemized deductions were limited (to the amount that overall deductions exceeded 3% of AGI) for certain upper-income taxpayers.
- ❖ This overall limitation on itemized deductions is suspended for the 2018 – 2025 tax years.

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Summary Recap of Schedule A Changes

- Medical – 7.5% floor for 2017 & 2018 tax years
- State & Local Taxes – limited to aggregate of \$10,000
- Interest - \$750,000 acquisition indebtedness cap for newer debt; no home equity interest deduction

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Summary Recap of Schedule A Changes

- Gifts – 60% AGI limitation; no deduction for contributions in exchange for athletic event tickets or seating
- Casualty & Theft Losses – generally suspended except for Federally-declared disasters
- 2% Miscellaneous Itemized Deductions – all are suspended
- Gambling Loss Limitation – all expenses now limited to extent of winnings
- Overall Limitation - suspended

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RETIREMENT

- ❖ Conversion from traditional IRA to Roth IRA is permitted. However, re-characterization of that conversion back to a traditional IRA is not permitted.

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RETIREMENT PLANNING POINT

- ❖ Planning Point:
 - ❖ Individuals with a Required Minimum Distribution (RMD) requirement can make Qualified Charitable Distributions (QCD) from a taxable IRA to reduce taxes.
 - ❖ A direct transfer to charity is excluded from income and satisfies the annual IRA RMD.
 - ❖ Lowers AGI, which effects certain calculations and thresholds.
 - ❖ No charitable deduction allowed, but with a higher standard deduction and the changes to itemized deductions this provision is even more beneficial.
 - ❖ Qualifications:
 - ❖ Taxpayers who are over 70 ½ years old and subject to RMD.
 - ❖ Up to \$100,000 in annual donations direct from IRA to charity.

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EXPANDED USE OF 529 PLAN FUNDS

- ❖ Previously funds in a 529 plan could only be used for “qualified higher education expenses” for eligible schools that included colleges, universities, vocational schools and other postsecondary schools.
- ❖ For distributions after December 31, 2017, “qualified higher education expenses” include tuition at an elementary or secondary, public, private or religious school, up to a \$10,000 limit per tax year.

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ALIMONY PAYMENTS

- ❖ **Pre-reform** – alimony payments are generally tax deductible for the payor and included in the income of the payee unless designated otherwise in the divorce or separation agreement.
- ❖ **Tax reform** – alimony payments will not be deductible by the payor and not included in income of the payee for any divorce or separation agreement executed after December 31, 2018.
- ❖ Agreements executed on or before December 31, 2018 will be grandfathered under the pre-reform rules but can be modified to expressly provide that the new tax reform rules apply if modified after December 31, 2018.

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OTHER INDIVIDUAL PROVISIONS

- ❖ Moving expense deduction generally suspended
- ❖ Teacher expense deduction retained
- ❖ Student loan discharge
- ❖ Repeal of Affordable Care Act Individual Mandate (after Dec. 31, 2018)

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EXAMPLE #1 – SINGLE FILER WITH STANDARD DEDUCTION

Single	Pre-Reform (2017)	Tax Reform
Income	\$75,000	\$75,000
Itemized Deductions	n/a	n/a
Standard Deduction	\$6,350	\$12,000
Personal Exemptions	\$4,050	\$0
Taxable Income	\$64,600	\$63,000
Marginal Tax Rate	25%	22%
Tax	\$11,888	\$9,799

- ❖ Tax savings of \$2,089

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EXAMPLE #2 – MARRIED FILING JOINT WITH 2 QUALIFYING CHILDREN (STANDARD DEDUCTION)

MFJ	Pre-Reform (2017)	Tax Reform
Income	\$75,000	\$75,000
Itemized Deductions	n/a	n/a
Standard Deduction	\$12,700	\$24,000
Personal Exemptions	\$16,200	\$0
Taxable Income	\$46,100	\$51,000
Marginal Tax Rate	15%	12%
Child Tax Credit	\$2,000	\$4,000
Tax	\$3,982	\$1,739

❖ Tax savings of \$2,243

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EXAMPLE #3 – MARRIED FILING JOINT WITH 2 QUALIFYING CHILDREN (ITEMIZED DEDUCTIONS)

MFJ	Pre-Reform (2017)	Tax Reform
Income	\$175,000	\$175,000
Itemized Deductions*	\$31,125	\$30,000
Standard Deduction	n/a	n/a
Personal Exemptions	\$16,200	\$0
Taxable Income	\$127,675	\$145,000
Marginal Tax Rate	25%	22%
Child Tax Credit	n/a	\$4,000
Tax	\$23,396	\$19,779

- \$6,125 State Tax
- \$5,000 Property Tax
- \$5,000 Charitable Contributions
- \$15,000 Mortgage Interest

 ❖ Tax savings of \$3,617

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EXAMPLE #4 – MARRIED FILING JOINT WITH 2 COLLEGE CHILDREN

MFJ	Pre-Reform (2017)	Tax Reform
Income	\$175,000	\$175,000
Itemized Deductions*	\$31,125	\$30,000
Standard Deduction	n/a	n/a
Personal Exemptions	\$16,200	\$0
Taxable Income	\$127,675	\$145,000
Marginal Tax Rate	25%	22%
Child Tax Credit	n/a	n/a
Tax	\$23,396	\$23,779

- \$6,125 State Tax
- \$5,000 Property Tax
- \$5,000 Charitable Contributions
- \$15,000 Mortgage Interest

 ❖ Additional Tax of \$383

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EXAMPLE #5 – HIGH INCOME EARNER (MFJ)

MFJ	Pre-Reform (2017)	Tax Reform
Income	\$450,000	\$450,000
Itemized Deductions*	\$39,664 (reduction due to "Pease" limitation)	\$30,000
Standard Deduction	n/a	n/a
Personal Exemptions	n/a	n/a
Taxable Income	\$410,336	\$420,000
Marginal Tax Rate	33%	35%
Child Tax Credit	n/a	n/a
Tax	\$110,627	\$98,378

* \$15,750 State Tax
 * \$8,000 Property Tax
 * \$5,000 Charitable Contributions
 * \$15,000 Mortgage Interest

❖ Tax savings of \$12,249

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MFJ
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EXAMPLE #6 – HIGH INCOME EARNER (MFJ)

MFJ	Pre-Reform (2017)	Tax Reform
Income	\$750,000	\$750,000
Itemized Deductions*	\$50,164 (reduction due to "Pease" limitation)	\$35,000
Standard Deduction	n/a	n/a
Personal Exemptions	n/a	n/a
Taxable Income	\$699,836	\$715,000
Marginal Tax Rate	39.6%	37%
Child Tax Credit	n/a	n/a
Tax	\$222,364	\$203,928

* \$26,250 State Tax
 * \$12,000 Property Tax
 * \$5,000 Charitable Contributions
 * \$20,000 Mortgage Interest

❖ Tax savings of \$18,436

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ESTATE & TRUST TAX RATES & BRACKETS
 2017 (ESTATE & TRUST) 2018 (ESTATE & TRUST)

RATE	ESTATE & TRUST	RATE	ESTATE & TRUST
15%	\$0-\$2,550	10%	\$0-\$2,550
25%	\$2,551-\$6,000	24%	\$2,551-\$9,150
28%	\$6,001-\$9,150	35%	\$9,151-\$12,500
33%	\$9,151-\$12,500	37%	\$12,501 and up
39.6%	\$12,501 and up		

❖ AMT exemption – the base figure of \$22,500 and phase-out amount of \$75,000 remain unchanged.

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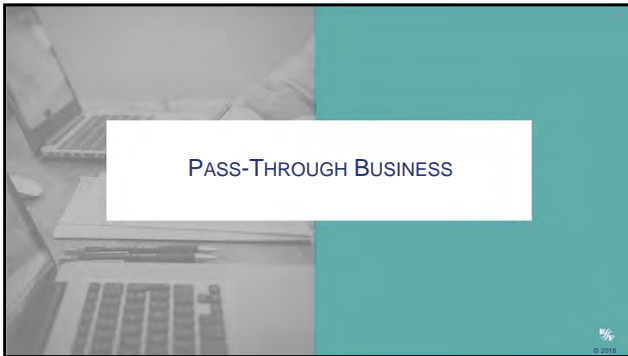
ESTATE & GIFT TAX EXEMPTIONS

- ❖ Federal estate and gift tax unified credit basic exclusion amount is increased to \$10 million (adjusted for inflation the 2018 exemption will be approximately \$11.2M), effective for decedents dying and gifts made after 2017 and before 2026 (2018 – 2025 tax years).
- ❖ For decedents dying and gifts made before 2018 and after 2025, the exclusion amount is \$5 million, adjusted for inflation (\$5.49 million in 2017).
- ❖ Annual gift tax exclusion is \$15,000 for 2018 (\$14,000 in 2017).

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PASS-THROUGH BUSINESS



CODE SEC. 199A QUALIFIED BUSINESS INCOME

- ❖ New deduction for pass-through business income
- ❖ Effective for tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026
- ❖ Qualified Business Income (QBI) applies to all non-corporate taxpayers, including a trust or estate, who have QBI from a:
 - ❖ Partnership
 - ❖ S corporation
 - ❖ Sole proprietorship

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CODE SEC. 199A QUALIFIED BUSINESS INCOME (CONT'D)

The deduction is equal to the SUM of:

1. The LESSER of:
 - ❖ The **combined qualified business income** amount of the taxpayer, or;
 - ❖ An amount equal to 20% of the excess (if any) of taxable income over the sum of any net capital gain (i.e. long-term), plus the aggregate amount of the qualified cooperative dividends.
2. PLUS the LESSER of:
 - ❖ 20% of qualified cooperative dividends, or;
 - ❖ Taxable income less net capital gain.

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CODE SEC. 199A QUALIFIED BUSINESS INCOME (CONT'D)

Combined qualified business income (actually a deduction) is:

The SUM of:

1. The LESSER of:
 - ❖ 20% of the taxpayer's **qualified business income** with respect to the **qualified trade or business**, or;
 - ❖ The GREATER of:
 - 50% of the W-2 wages with respect to the qualified trade or business, or;
 - 25% of the W-2 wages with respect to the qualified trade or business, plus 2.5% of the unadjusted basis immediately after acquisition of all **qualified property**.
2. PLUS:
 - ❖ 20% of qualified REIT dividends and qualified publicly traded partnership income dividends

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CODE SEC. 199A – DEFINITIONS

Qualified Business Income:

- ❖ Includes the net domestic business taxable income, gain, deduction, and loss with respect to any qualified trade or business.
- ❖ Excludes investment income such as dividends, investment interest income, short-term and long-term capital gains and similar items.

Qualified Trade or Business – any trade or business other than:

- ❖ A **specified service trade or business**, or;
- ❖ The trade or business of performing services as an employee.

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CODE SEC. 199A – DEFINITIONS (CONT'D)

Specified Service Trade or Business*

- ❖ Any trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees (excluding engineering and architecture), or;
- ❖ Which involves the performance of services that consist of investing and investment management, trading or dealing in securities, partnership interest, or commodities.

**Exempt from exclusion if the taxpayer's taxable income does not exceed certain thresholds*

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CODE SEC. 199A – DEFINITIONS (CONT'D)

Qualified Property – Tangible property of a character subject to the allowance for depreciation under section 167:

- ❖ Which is held by, and available for use in, the qualified trade or business at the close of the taxable year.
- ❖ Which is used at any point during the taxable year in the production of qualified business income, and;
- ❖ The **depreciable period** for which has not ended before the close of the taxable year.

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CODE SEC. 199A – DEFINITIONS (CONT'D)

Depreciable period – Starts on the date the property was first placed in service and ending on the later of:

- ❖ The date that is 10 years after such date, or;
- ❖ The last day of the last full year in the applicable recovery period that would apply to the property under section 168.

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CODE SEC. 199A – THRESHOLD AMOUNTS

- ❖ Limitation (based on W-2 wages paid) is phased in.
- ❖ Taxable Income Threshold Amount: \$157,500 (single)/\$315,000 (joint)
- ❖ Phase-in limit: \$50,000 (single)/\$100,000 (joint)

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CODE SEC. 199A – THRESHOLD AMOUNTS (CONT'D)

- ❖ What happens when:
 - ❖ Taxable income is below the threshold amount?
 - ❖ Taxable income is above the threshold amount but below \$207,500 (single)/\$415,000(joint)?
 - ❖ Taxable income is above the phase-in amount?
- ❖ What about a specified service trade or business?

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CODE SEC. 199A – EXAMPLE 1

ABC, LLC Partner	Ownership %	Share of QBI	Share of W-2 Wages	Share of Unadjusted Basis of Qualified Property	20% x QBI	50% of wages	25% wages + 25% of property
Amy	10%	100,000	35,000	50,000	20,000	17,500	10,000

For 2018, Amy files a joint return and the total joint taxable income is \$225,000. Amy would have a \$20,000 deduction since her taxable income is under \$315,000.

What if ABC, LLC is a Specified Service Business? Amy would still have a \$20,000 deduction since her taxable income is under \$315,000.

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CODE SEC. 199A – EXAMPLE 2

ABC, LLC	Ownership %	Share of QBI	Share of W-2 Wages	Share of Unadjusted Basis of Qualified Property
Partner Bill	30%	300,000	105,000	150,000

20% x QBI	50% of wages	25% wages ± 2.5% of property
60,000	52,500	30,000

For 2018, Bill files a joint return and the total joint taxable income is \$320,000. Bill would have a \$59,625 deduction.

Bill's excess taxable income is \$5,000 or 5% $((320,000 - 315,000)/100,000)$. Bill's allowable deduction of \$59,625 = $60,000 - ((60,000 - 52,500) \times 5\%)$.

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CODE SEC. 199A – EXAMPLE 2 (CONT'D)

ABC, LLC	Ownership %	Share of QBI	Share of W-2 Wages	Share of Unadjusted Basis of Qualified Property
Partner Bill	30%	300,000	105,000	150,000

20% x QBI	50% of wages	25% wages ± 2.5% of property
60,000	52,500	30,000

Applicable % of 95%	285,000	99,750	142,500	57,000	49,875	28,500

What if ABC, LLC is a Specified Service Business? Bill would have a \$56,644 deduction.

Bill's excess taxable income is \$5,000 or 5% $((320,000 - 315,000)/100,000)$. Bill's allowable deduction of \$56,644 = $57,000 - ((57,000 - 49,875) \times 5\%)$.

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CODE SEC. 199A – EXAMPLE 3

ABC, LLC	Ownership %	Share of QBI	Share of W-2 Wages	Share of Unadjusted Basis of Qualified Property
Partner Curt	60%	600,000	210,000	300,000

20% x QBI	50% of wages	25% wages ± 2.5% of property
120,000	105,000	60,000

For 2018, Curt files a joint return and the total joint taxable income is \$700,000.

Curt would have a \$105,000 deduction.

What if ABC, LLC is a Specified Service Business? Curt's deduction would be \$0.

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CODE SEC. 199A – EXAMPLE 4

Curt's has \$600,000 of QBI. In addition, Curt has \$220,000 of long-term capital gain, and \$120,000 of itemized deductions, for taxable income of \$700,000. Curt's deduction is limited to the lesser of:

- ❖ Combined qualified business income of \$105,000, or;
- ❖ 20% of the excess of taxable income over the sum of any long-term capital gain (\$700,000 – 220,000) or \$96,000.

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2018 INCOME TAX RATES

Federal C-Corporation (Top Rate)

Federal Flat Rate 21.00%
Federal Dividend Rate 23.80%

Federal C-Corp Effective Rate 39.80%
(21% + 79% x 23.8%)

PA C-Corporation Flat Rate 9.99%

Federal Individual (Top Rate)

Federal Top Rate 37.00%
QBI 20% Deduction Benefit (7.40%)*

Federal Individual Top Rate 29.60%

PA Individual Flat Rate 3.07%

*Qualified Business Income (QBI) benefit of 7.4% (37% x 20%) is a best case scenario. This calculation is based on various rules and limitations.

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FACTORS TO CONSIDER FOR CONVERSION TO C-CORPORATION

- ❖ Ultimate plans for getting money out to the shareholders
- ❖ Retention of money in business
- ❖ Effect on future sale of business if purchaser demands an asset sale

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FACTORS TO CONSIDER FOR CONVERSION TO C-CORPORATION (CONT'D)

- ❖ S-Corporation considerations:
 - ❖ Effect on previously tax income, partial relief
 - ❖ Inability to re-elect S status for 5 years
 - ❖ Built in gains tax if re-elected
- ❖ Uncertainty over length of low corporate tax rate given political climate

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EMPLOYER CREDIT


Paid Family and Medical Leave (FMLA):

- ❖ Allows eligible employers to claim a credit equal to 12.5% of the amount of wages paid to qualifying employees on FMLA if the rate of payment under the program is 50% of the wages normally paid to an employee. Wages over 50% could get additional credit (25% max).
- ❖ Must pay at least 2 weeks and 50% or more of regular wages
- ❖ Employee must be employed by the employer for one year or more.

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QUESTIONS?




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SESSION #2

ESTATE PLANNING

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Estate Planning & Probate Update



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www.cherekalaw.com

Definition of Estate Planning

I Want to Control My Property While I'm Alive and Well;

Plan for Me and My Loved Ones if I Become Disabled;

Definition of Estate Planning

- Give What I Have
- To Whom I Want
- When I Want
- The Way I Want

All at Fully Disclosed and Controlled Cost to Me and Those I Love

◆ Estate Planning Options

- No Documents
- Will & Power of Attorney
- Living Trust

- Three Types of Estate Plans
 - Married Couple
Under \$22,400,000
 - Married Couple
Over \$22,400,000
 - Unmarried Individual

Federal Estate Tax Reduction

Key Tax Savings Provisions

- ◆ Unlimited Marital Deduction
- ◆ \$11,200,000 Applicable Exclusion Amount
- ◆ Flexibility – Formula & Trustee

Federal Estate Tax Reduction
Trustee Instructions:
Transfer up to Exemption Equivalent to Family Trust, Put Any Excess in Marital Trust

The diagram consists of two red ovals on a blue background. The left oval is labeled 'Marital' and 'Excess' below it. The right oval is labeled 'Family' and '1st \$11,200,000 (Today)' below it.

PA Inheritance Tax

- No Exemptions Like Federal Tax
- No Tax on Bequests to Spouses
- Life Insurance Not Taxable

PA Inheritance Tax

- Children/Lineal Heirs 4.5%
- Siblings 12.0%
- Others 15.0%

Personal Planning Goals

- Catastrophic Illness Protection
- Remarriage Protection
- Creditor Protection
- Divorce Protection
- Values Promotion

Types of Change an Estate Plan Faces

- ◆ Changes in Your Personal Situation
 - Personal
 - Financial

Types of Change an Estate Plan Faces

- ◆ Changes in the Legal Environment
 - Tax
 - Non-Tax (Personal Protections)

Flexibility Design Provisions

- Anticipate Recurring Changes
- Design Flexibility to Utilize Changing Exemptions
- Choose Powers to Accommodate Change
- Design Flexibility in Dispositive Provisions

Flexibility Design Provisions

- Choose Trustees to Permit Flexibility
- Optimize Independent Trustee Provisions
- Optimize Trust Protector Provisions
- Maximize Flexibility in Trustee Succession
- Maximize Flexibility in Investment Powers and Duties

Implementation/Funding

- Re-arrange Ownership to Use Exemptions
- Re-arrange Beneficiary Designations to Minimize Overall Taxes

◆ **Regular Updating Process**

- Review Asset Ownership
- Review Family
- Review Law and Taxes

◆ **Team Approach**

Times of Uncertainty

- ◆ Team Approach
- ◆ Client Centered Process
- ◆ Control Back to Client
- ◆ Regular Review / Updating

**THANK
YOU!**

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SESSION #3

**MALPRACTICE
AVOIDANCE**

HANDOUTS

Welcome
Avoiding Legal Malpractice
2017-2018



Pennsylvania Bar Association
Professional Liability Committee
Your Other Partner

PBA Member Benefits

Director of County Bar Services
Susan E. Etter, Esq.
800-932-0311, x. 2256



Pennsylvania Bar Association
Your Other Partner

PBA Member Benefits

Director of Western Pennsylvania Services
Bridget M. Gillespie, Esq.
800-932-0311, x. 2300

Heinz 57 Center, 339 Sixth Avenue, Suite 760
Pittsburgh, PA 15222



Pennsylvania Bar Association
Your Other Partner

PBA Annual Meeting May 9-11, 2018

HERSHEY LODGE - CONVENTION CENTER



Current President, Sharon López, Incoming President, Chuck Eppolito
WIP, Wednesday, May 9 - this year is WIP's 25th Anniversary
Committee and Section Meetings on Thursday, May 10
The Pennsylvania Bar Foundation Annual Meeting, May 10

Quick Guide to Benefits

- Casemaker:** A leader in helping legal research and compliance (CR) to be a member of the American Bar Foundation. The program will be available to members in a few years. Right now, they are looking for members who will be in the future.
- COMCAST BUSINESS:** An MBA Member Benefit Program provides a variety of services to members. The program is available to members who are active in the program. The program is available to members who are active in the program.
- USI AFFINITY:** USI Affinity provides a variety of services to members. The program is available to members who are active in the program. The program is available to members who are active in the program.
- Clia:** Clia provides a variety of services to members. The program is available to members who are active in the program. The program is available to members who are active in the program.
- Office DEPOT:** Office Depot provides a variety of services to members. The program is available to members who are active in the program. The program is available to members who are active in the program.
- FedEx:** FedEx provides a variety of services to members. The program is available to members who are active in the program. The program is available to members who are active in the program.
- InterCall:** InterCall provides a variety of services to members. The program is available to members who are active in the program. The program is available to members who are active in the program.
- LAWPAY:** LawPay provides a variety of services to members. The program is available to members who are active in the program. The program is available to members who are active in the program.
- Lenovo:** Lenovo provides a variety of services to members. The program is available to members who are active in the program. The program is available to members who are active in the program.
- DocuSign:** DocuSign provides a variety of services to members. The program is available to members who are active in the program. The program is available to members who are active in the program.
- verizon:** Verizon provides a variety of services to members. The program is available to members who are active in the program. The program is available to members who are active in the program.
- SoFi:** SoFi provides a variety of services to members. The program is available to members who are active in the program. The program is available to members who are active in the program.

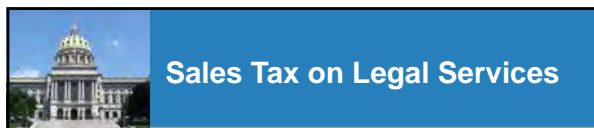
BAR NEWS

Victory and Strategy Mark PBA 2017 Legislative Year

The PBA Legislative Department has achieved a significant victory in the 2017 legislative session. The department has successfully passed over 4,000 bills, a record for the organization. This success is a testament to the hard work and dedication of the legislative staff and the support of the members.

The department has also focused on building relationships with legislators and services sections and committees with legislative agendas. This approach has been instrumental in the department's success.

The PBA is an important partner in the effort to thwart any attempts to reduce advertising in county bar legal journals. The department has been vocal in its support of advertising in these journals, recognizing its importance to the legal community.




Sales Tax on Legal Services

The PBA has taken the lead, year after year, in opposing a sales tax on legal services. The advocates, both inside and outside the legislature, for eliminating school property taxes, are gearing up for a vote as early as late spring/early summer 2018.

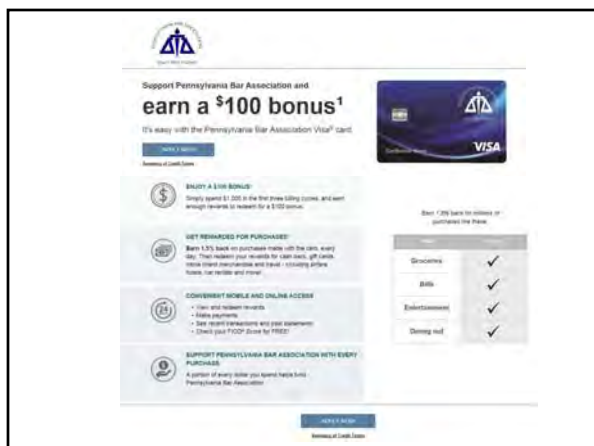
All the major gubernatorial candidates, Republican and Democrat, support elimination of school property taxes --- it will likely be an issue in the campaign --- the threat of a tax on legal services is not going away.

Click on the [Legislative Action Center](#) for all the tools you need!
[How to be an Effective Grassroots Activist Opposing A Sales Tax on Legal Services](#)
[Sales Tax on Legal Services Talking Points](#)
[Sales Tax on Legal Services News Articles](#)
[Find Your Legislators](#)
[Sample Legislator Email in Opposition to a Sales Tax on Legal Services](#)
[Contribute to the PABAR-PAC](#)



PBI | Pennsylvania Bar Institute

With payment of your PBA dues, you can activate up to **\$200 in tuition discounts** for PBI courses!



Support Pennsylvania Bar Association and earn a \$100 bonus¹
 It's easy with the Pennsylvania Bar Association Visa® card

EARN A \$100 BONUS
 Simply spend \$1,000 in the first three billing cycles, and earn enough rewards to receive for a \$100 bonus.

GET REWARDS FOR PURCHASES!
 Earn 1.5% back on purchases made with the card, every day. That means your rewards for cash back, gift cards, home repair, groceries and travel - everything you'd expect, car rentals and more!

CONVENIENT MOBILE AND ONLINE ACCESS

- Scan and receive rewards
- Mobile payments
- See reward transactions and past statements
- Check your FICO Score for FREE!

SUPPORT PENNSYLVANIA BAR ASSOCIATION WITH EVERY PURCHASE
 A portion of every dollar you spend helps fund Pennsylvania Bar Association

See \$100 back for rewards or purchase the Visa

Gasoline	✓
Bills	✓
Entertainment	✓
Dining out	✓

- Included with PBA membership
- App available for Android, iPhone and iPad
- Tracking Client Research track of time spent doing online research for a client using the Client and Session Summary features of Casemaker. The session summary contains the date, time and client for each search, which can be used to keep track of billable hours for the client.
- Help is available by phone, live chat, free training webinars

The advertisement for Casemaker features a woman in a business suit holding a tablet. It lists three main services: CaseCheck, CiteCheck, and Casemaker Digest. CaseCheck is described as a faster system for finding cases. CiteCheck provides a report on whether case citations continue to be valid. Casemaker Digest is a daily summary of appellate decisions. The Casemaker logo at the bottom is accompanied by the tagline 'THE LEADER IN LEGAL RESEARCH' and the website 'www.caseinfological.com'.

Member-to-Member Connection

- Make the most of the service by ensuring that your areas of practice are up to date.
- [Member Login](#) enter your username and password
- Look for the "Update My Information" link under the My Dashboard heading on the left side of the screen.

- Free statewide service for PBA members to search for other members by specific areas of practice and geographic locations.

The slide features a screenshot of the Member-to-Member Connection website interface, which includes a search bar and various filters. The Pennsylvania Bar Association logo is located in the bottom right corner.

PBA Member Benefits

Law Practice Management

1. A partner is leaving the firm. How do we handle future fees for flat-fee or contingent ongoing cases which stay or go?
2. What's the right software for my firm for time & billing and practice management?
3. How long do I have to keep client files?
4. My partners and I are all getting on in years. The youngest of us is over 65 years old. We have no written agreement. How do we handle retirement or disability?
5. We have a staff member who had been with us a long time, but has become increasingly difficult in a number of ways. How do we handle it?
6. Do I need cyber insurance? If so, how much?


The slide includes the Pennsylvania Bar Association logo in the bottom right corner.

PBA Member Benefits

Law Practice Management

We hope you will consider the Law Practice Management (LPM) area on the Pennsylvania Bar Association web site your first stop whenever you have questions, encounter issues or need resources to assist you in managing the business side of your practice.

This area includes information to assist you from cradle to grave: from starting up a practice to closing and/or selling a practice and all the challenges in between, including those involving human resources, financial management, technology, marketing, records management and a myriad of others.




PBA Member Benefits

Law Practice Management

There is also a resource section on the website with a variety of helpful resources including articles, checklists, podcasts and listings of additional resources organized into categories to help you find what you're looking for quickly and efficiently.

You can also submit questions using the "Ask Ellen" link on the PBA web site. Questions usually receive a response within 48 hours, and often faster.



PBA Member Benefits

Law Practice Management

If you would like assistance on any business management challenge, please contact PBA Law Practice Management Coordinator

Ellen Freedman, CLM
800-932-0311, x. 2228




PBA Member Benefits

PBA Ethics Opinions

Ethics opinions are issued by the Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility, which responds to requests of any PBA member concerning the impact of the provisions of the Pennsylvania Rules of Professional Conduct upon that member's prospective conduct. The committee does not address questions about a lawyer's past conduct, disciplinary matters, matters in litigation or questions of law.

Members have access to a searchable database of 62 formal and 1,222 informal opinions from the PBA Committee on Legal Ethics and Professional Responsibility.

Ethics opinions of the committee are advisory only and are not binding on the Disciplinary Board of the Supreme Court of Pennsylvania or any other court. An ethics opinion carries only such weight as an appropriate reviewing authority may choose to give it.




PBA Member Benefits

PBA Ethics Hotline

Victoria L. White, Esq.
800-932-0311, x. 2214

Any PBA member with an ethical question concerning his or her own prospective conduct may call the PBA Ethics Hotline or submit a written request for an ethics opinion to Victoria.White@pabar.org.

These services are not available to the general public or to lawyers who are not members of the PBA.



PBA Member Benefits

PBA Professional Liability Committee

Monitors and makes recommendations concerning:

- lawyers' liability case law and related statutes;
- administrative developments, including lawyers' liability insurance coverage and the market for that insurance;
- the formation and operation of any PBA-related lawyer liability insurer, and PBA-sponsored or endorsed lawyers' liability insurance programs.


The committee shall explore and conduct legal malpractice avoidance and loss-prevention programs.




PBA Member Benefits

- 49 Committees and 18 Sections
- Solo and Small Firm Section Listserv
- Free one year section membership
(conditions apply)





The Pennsylvania Bar Association
Lawyers' Professional Liability Insurance



USI Affinity
Where Lawyers Go
For Protection

The Pennsylvania Bar Association endorses this Lawyers' Professional Liability plan administered through USI Affinity because it offers exclusive coverages, expanded risk management programs and membership credits for Pennsylvania Bar Association members.

USI Affinity is the largest broker of Lawyers' Professional Liability in the state of Pennsylvania. We have been serving the needs of Pennsylvania law firms, attorneys and their families for more than 60 years as the Pennsylvania Bar Association's endorsed broker and partner. The Pennsylvania Bar Association Insurance Program offers complex insurance solutions tailored to the unique needs of attorneys - from optimal business insurance to outstanding employee benefits choices to personal coverages.


Highlights of the Professional Liability program:

- All CNA LPL policies in the state of Pennsylvania will now include additional coverage allowing for a reduced deductible for claims, when engagement letters have been used.
- Limits of Liability range from a minimum of \$100,000 per claim / \$300,000 aggregate up to a maximum of \$10M/\$10M. Claims expense outside limits coverage is available, subject to underwriting.
- Underwritten by an "A Rated" carrier, delivering world-class underwriting, dedicated claims and state-of-the-art risk management tools and resources.
- Broad coverage and policy features tailored to meet the unique requirements of law firms in Pennsylvania. From solo attorneys to large firms, USI Affinity and CNA can design coverage to protect law practices of all sizes.
- A 5% Bar Association membership credit. This 5% credit will be applied to your Lawyers' Professional Liability Policy premium for membership in the Pennsylvania State Bar Association, on a per attorney basis.
- A 2.5% risk control credit per attorney for two years after completing a qualifying CNA risk management seminar.

Questions or Concerns?

PBA Endorsed (CNA) Claims Repair Hotline: 888-200-5212

Members covered by the PBA-endorsed professional liability insurance program can speak confidentially with a representative who may help them head off or mitigate a potential malpractice claim. Your early call to the Claims Repair Hotline may make all the difference!



CNA Policy Highlights

- Continuous Coverage – no duty to report *potential* claims
 - But it is always wise to report early
- Broad definition of legal services – includes arbitrator, mediator, fiduciary
- Coverage for disciplinary proceedings up to \$50,000
- 50% reduction of deductible for quick (364 days) claim settlement
- Assistance in responding to a subpoena
- Optional extended reporting period




CNA Policy Highlights

- Broad settlement clause – no “hammer” clause
- Coverage for discrimination complaints up to \$25,000
- Coverage for an unauthorized disclosure (privacy event)
- Coverage for regulatory inquiry up to \$25,000
- *New enhancement: 50% reduction of deductible up to \$25,000, if insured used an engagement letter (as defined by the policy) in connection with the legal services that are the subject of the claim



Engagement Letters

- When lawyers apply for malpractice insurance, the majority claim to routinely use engagement letters in their practices.
- When a malpractice claim is asserted, the lawyer’s file **rarely** contains an engagement letter.
- You must save your engagement letter for **5 years**



Engagement Letters

Policy Endorsement:

“If the **Insured** utilized an engagement letter in connection with the **legal services** that are the subject of a **claim**, and such **claim** is otherwise covered under the Policy, then the **Insured’s** deductible applying to such **claim** will be **reduced by 50%...**”



Engagement Letters

Include, at a minimum, the following information:

- Scope of undertaking
 - Identity of client
 - Fee arrangement
 - File retention and destruction procedure
- AND
- Signed by the client.



Engagement Letters


Rule 1.5 (b)


When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.



Disengagement Letters

The end of an engagement and the “closing of your file” should be documented in the same way the commencement of an engagement is documented. If you fail to affirmatively end your engagement, you are still engaged.





PROFESSIONAL COUNSEL™

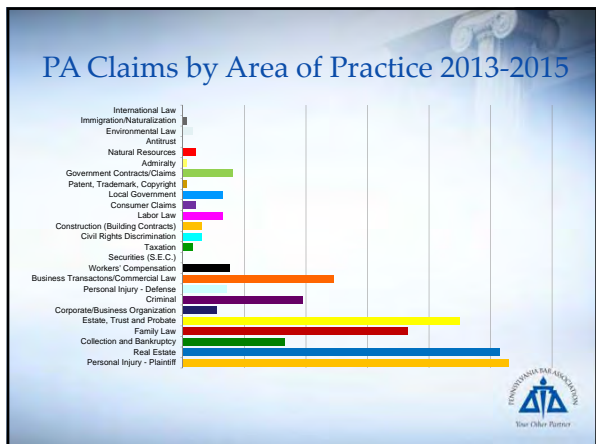
ADVICE AND INSIGHT INTO THE PRACTICE OF LAW®

Lawyers' Toolkit 3.0:
A Guide to Managing
the Attorney-Client Relationship

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Please note that the table of contents has been updated with hyperlinks that are already in the accompanying document. All content in this PDF can be opened and printed in another document, for ease of use.

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Avoiding Legal Malpractice

All of the materials covered today and many more valuable resources related to the featured professional liability and responsibility topics in this year's vignettes are available online.

pabar.org/site/ALM2017

THE PENNSYLVANIA BAR ASSOCIATION
Your Other Partner

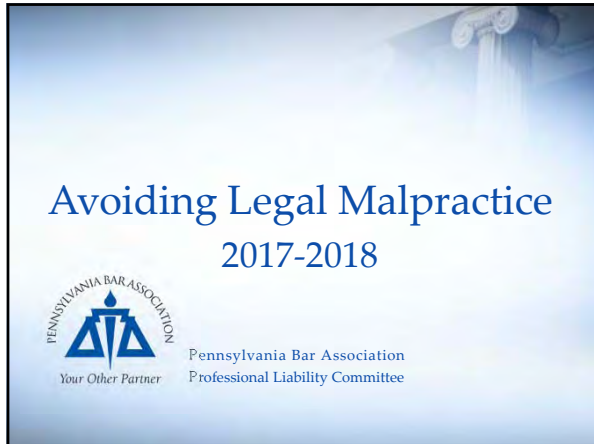
Supporting Materials

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- ALMS Issues 2017-2018
 - All in the Family Issues
 - Put the File in the Box Issues
 - My Mother Got Me Sued Issues
- CNA Toolkit 3.0
- CNA Sample Disengagement Letter
- Zurich Application
- Rule 1.2, Scope of Representation and Allocation of Authority Between Client and Lawyer, The Pennsylvania Code
- Rule 1.6, Confidentiality of Information, The Pennsylvania Code
- Rule 1.5, Fees, The Pennsylvania Code
- Rule 1.6, Confidentiality of Information, The Pennsylvania Code

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PHB Toll Free 1-800-935-0351 | ENA Hotline 1-609-399-5312 | www.pabar.org



Avoiding Legal Malpractice 2017-2018



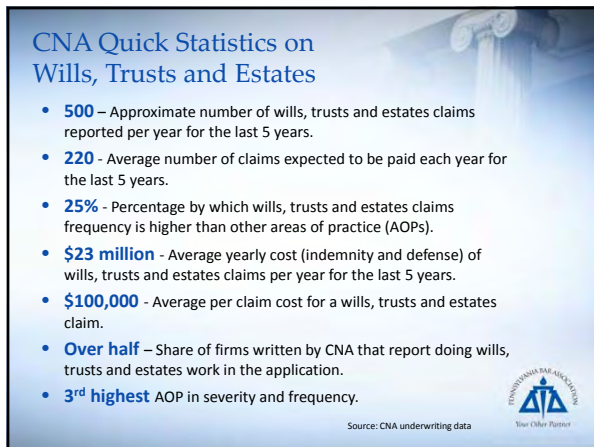
Pennsylvania Bar Association
Professional Liability Committee

Your Other Partner



All in the Family






CNA Quick Statistics on Wills, Trusts and Estates

- **500** – Approximate number of wills, trusts and estates claims reported per year for the last 5 years.
- **220** - Average number of claims expected to be paid each year for the last 5 years.
- **25%** - Percentage by which wills, trusts and estates claims frequency is higher than other areas of practice (AOPs).
- **\$23 million** - Average yearly cost (indemnity and defense) of wills, trusts and estates claims per year for the last 5 years.
- **\$100,000** - Average per claim cost for a wills, trusts and estates claim.
- **Over half** – Share of firms written by CNA that report doing wills, trusts and estates work in the application.
- **3rd highest** AOP in severity and frequency.

Source: CNA underwriting data



Accepting or Rejecting a New Client or a New Matter?

Rule 1.16 – A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded.



A Complex Foundation

Wills, trusts and estates matters require a thorough knowledge of multiple areas of the law including:

- Wills
- Probate
- Trusts
- Taxation
- Insurance
- Property
- Real estate issues
- Executor
- Domestic relations
- Guardianship
- Corporate and business issues
- State and Federal laws

Source: CNA



Most Frequent Malpractice Errors


Most Frequent Malpractice Errors Claimed Against Wills, Trusts and Estates Practices

- Improperly drawn/recorded documents
- Improper handling /disbursement of funds
- Conflicts of interest
- Failure to follow client's instruction
- Failure to understand/anticipate tax
- Failure to know/accurately apply the law

Source: CNA claims data, 2009 – 2014




What are the legal malpractice and professional responsibility issues presented in this vignette?





Issues

1. What are the limits of **self-promotion**? Is it acceptable to tell a client that your law firm's resources are limitless and that it can handle anything? Do such representations raise the standard of care? (Rule 7.1)
2. Can one person retain a lawyer to do legal work for another? Can a lawyer form an **attorney/client relationship** with someone he/she has not met? With whom has Prescott formed a relationship? Douglas? Fielder? Hamilton? (Rule 1.2)
3. What **duty of confidentiality** does Prescott have as to Fielder and Douglas? Prescott will be performing work for them, but has been asked/directed by their father to be kept in the loop. (Rule 1.6)



Rule 7.1 Communications Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.



Rule 1.2(c) Limiting Scope of Representation

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.



Rule 1.6 Duty of Confidentiality

(a) A LAWYER shall not reveal **information relating to representation** of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).



(b) A LAWYER shall reveal such information if necessary to comply with the duties stated in Rule 3.3.



Rule 1.6 Duty of Confidentiality


(c) A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary:

- (1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in death or substantial bodily harm or substantial injury to the financial interests or property of another
- (2) to prevent or to rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used



Issues


4. **Delegating Work.** Can a lawyer assign legal work for a secretary to perform? (Rule 5.3)
5. **Discrimination.** Can a law firm be liable if a client directs that its work be performed only by male lawyers? (Rule 8.4g)
6. Is it acceptable for a lawyer to become **romantically involved with a client?** (Rule 1.8j)



Rule 5.3 Responsibilities regarding nonlawyer assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer.
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer




Delegating Legal Work

Rule 5.5, comment 2: Unauthorized Practice

The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons.


This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, **so long as the lawyer supervises the delegated work and retains responsibility for their work.**



New ABA Model Rule 8.4(g)

Prohibiting Harassment and Discrimination


- The ABA House of Delegates approved a Model Rule amendment in August 2016 prohibiting harassment and discrimination in the practice of law.
- The Rule amendment was proposed by the Standing Committee on Ethics and Professional Responsibility, with support from various ABA committees and sections.
- A similar prohibition has been in the Model Rule comment since 1988 but not adopted in PA.
- The Unified Judicial System (UJS) already has a Policy on Non-Discrimination prohibiting harassment or discrimination and a Code of Conduct for Employees.
- 25 jurisdictions have adopted some form of anti-discrimination/anti-harassment black letter rules, including 13 that have adopted the language from the previous Comment 3 of Model Rule 8.4.



ABA Model Rule 8.4(g)

It is professional misconduct for a lawyer to: ...

“(g) Engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This Paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16. This Paragraph does not preclude legitimate advice or advocacy consistent with these Rules.”



PBA Recommendation for 8.4(g)

- Approved by PBA House of Delegates Nov. 18, 2016 based on joint recommendation from Women in the Profession and Legal Ethics and Professional Responsibility Committee.
- The PBA first recommended a rule amendment to prohibit sexual harassment in 1996.

It is professional misconduct for a lawyer to:

(g) engage in conduct that **the lawyer knows** is harassment or discrimination **as those terms are defined in applicable federal, state or local statute or ordinance**, on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.



Rule 1.8 (j), Relationship with Client

A lawyer shall not have sexual relations with a client unless a consensual relationship existed between them when the client-lawyer relationship commenced.



Issues

- 7. Who in the law firm is responsible for verifying that Prescott's legal work is performed adequately? Is revenue the only consideration? (Rule 5.1)
- 8. Can Prescott be liable by assisting Hamilton in defrauding his ex-wife by concealing the existence of a substantial marital asset? (Rule 1.6)
- 9. Is it acceptable for Prescott to draw a pre-nuptial agreement for both parties to a pending marriage? Has Prescott formed an attorney/client relationship with Abbie? (Rule 1.7)
- 10. Can one lawyer represent a married couple in the creation of an estate plan? Are there circumstances when both husband and wife require separate counsel? (Rules 1.7, 1.8)



Rule 5.1. Responsibilities of Partners, Managers and Supervisory Lawyers

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.



Rule 1.7 Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.



Pa.R.P.C. Rule 1.8 Conflicts of Interest

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close familial relationship.




Pa.R.P.C. Rule 1.8 Conflicts of Interest

Comment [8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.




Issues

11. When drafting wills for clients, does the lawyer assume a **duty to the beneficiaries**?
Guy v. Liederbach, 459 A.2d 744 (1984)
Agnew v. Ross, (2017)
12. When drafting wills for clients, does the lawyer need to understand the consequences of a **beneficiary with special needs**?



Engagement Letters


- When lawyers apply for malpractice insurance, the majority claim to routinely use engagement letters in their practices.
- When a malpractice claim is asserted, the lawyer's file **rarely** contains an engagement letter.
- You must save your engagement letter for **5 years**



Engagement Letters

Policy Endorsement:

"If the **Insured** utilized an engagement letter in connection with the **legal services** that are the subject of a **claim**, and such **claim** is otherwise covered under the Policy, then the **Insured's** deductible applying to such **claim** will be **reduced by 50%...**"



Engagement Letters

Include, at a minimum, the following information:

- Scope of undertaking
 - Identity of client
 - Fee arrangement
 - File retention and destruction procedure
- AND
- Signed by the client.



SESSION #4

**WORKERS
COMPENSATION**

NO HANDOUTS

SESSION #5

GOVERNMENT LAW

HANDOUTS



Dauphin County

BAR ASSOCIATION

Reapportionment: When you have to draw the line somewhere

CLE presentation at Widener University Commonwealth Law School, 13 April 2018, 2:45 p.m.

By **William Martin Sloane**,* DBA, EdD, JD, LLM (Labor), PhD, DCL ~ sloane@lawyer.com

I. Philosophy.

- A. Community of interest.
- B. Single-member geographical districts.
- C. Plurality wins.

II. A brief divertissement: the "reform" of reducing the size of the legislature.

III. Who reapportions the General Assembly?

... The four members within 45 days after their certification shall select the fifth member, who shall serve as chairman of the commission

The chairman shall be a citizen of the Commonwealth other than a local, State or Federal official holding an office to which compensation is attached.

If the four members fail to select the fifth member within the time prescribed, a majority of the entire membership of the Supreme Court within 30 days thereafter shall appoint the chairman as aforesaid

Pa. Const. art. II, § 17(b).

IV. What standards govern reapportionment of the General Assembly?

A. State.

Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Pa. Const. art. I, § 5.

The Commonwealth shall be divided into 50 senatorial and 203 representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. . . . Unless absolutely

* Md. & Pa. Bars. Pro-Chancellor, International University for Graduate Studies. Senior Vice President for Internal Quality System, Charisma University. Faculty Chair, Atlantic University. Adjunct Faculty, Mount St. Mary's University. Staff, General Assembly of Pa., 1974-2010; Chief Counsel and Compliance & Ethics Dir., House Dem. Caucus, 2007-08. The views expressed herein are his own and not those of any organization.

necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

Pa. Const. art. II, § 16.

B. Federal (Fourteenth Amendment, Equal Protection Clause).

1. A legislative plan will not be struck down for inequality of population if the difference in population between its largest district and its smallest district is less than 10 percent. *Gaffney v. Cummings*, 412 U.S. 735 (1973).

2. *Thornburg v. Gingles*, 478 U.S. 30 (1986), created the standard for determining whether § 2 of the Voting Rights Act requires that a majority-minority district be drawn. *Bartlett v. Strickland*, 556 U.S. 1 (2009), added the requirement that a minority group be a numerical majority of the voting-age population in order for § 2 of the Voting Rights Act to apply. *Shaw v. Reno*, 509 U.S. 630 (1993), held that legislative and congressional districts will be struck down by courts for violating the Equal Protection Clause if they cannot be explained on grounds other than race. While not dispositive, “bizarrely shaped” districts are strongly indicative of racial intent.

COMMENTS: Putting aside the fairly narrow majority-minority circumstances, **contiguity** and approximate **population equality** are the only unconditional requirements. The “absolutely necessary” exception renders aspirational the **political-subdivision** sentence within which it is contained. This leaves the element of **compactness**. There is no definition in the constitution of what compactness is; there are embarrassing illustrations in practice, however, of what it is not:



For background on the machinations resulting in the 16th legislative district of 2001-2011, see this author's article in *PBA News & Views*: www.pabar.org/pdf/glspring02.pdf (pp. 8-9).

V. Who reapportions Pennsylvania's 18 Congressional Districts?

~~The Supreme Court of Pennsylvania.~~ Well actually, it's always been the General Assembly of Pennsylvania, decennially, by statute, with gubernatorial approval.

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State **by the Legislature thereof**; but the Congress may at any time by Law make or alter such Regulations
U.S. Const. art. I, § 4, cl. 1 (emphasis added).

VI. What standards govern reapportionment of Pennsylvania's 18 Congressional Districts?

A. State.

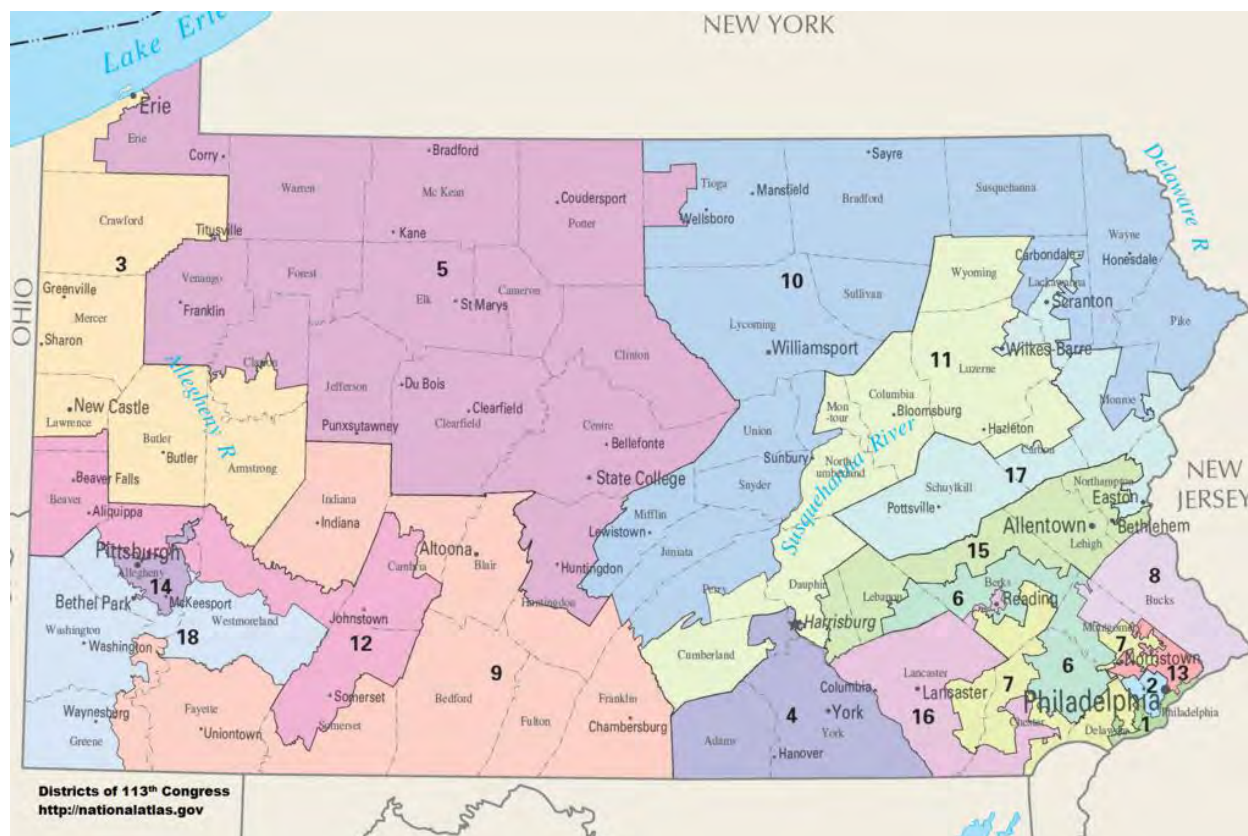
Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Pa. Const. art. I, § 5.

B. Federal (Fourteenth Amendment, Equal Protection Clause).

Congressional districts must be mathematically equal in population, unless necessary to achieve a legitimate state objective, such as compactness, respecting municipal boundaries, preserving the cores of prior districts and avoiding contests between incumbents.
Karcher v. Daggett, 462 U.S. 725 (1983).

« Here are Pennsylvania's 18 Congressional Districts as they appeared from 2011 through 2018: »



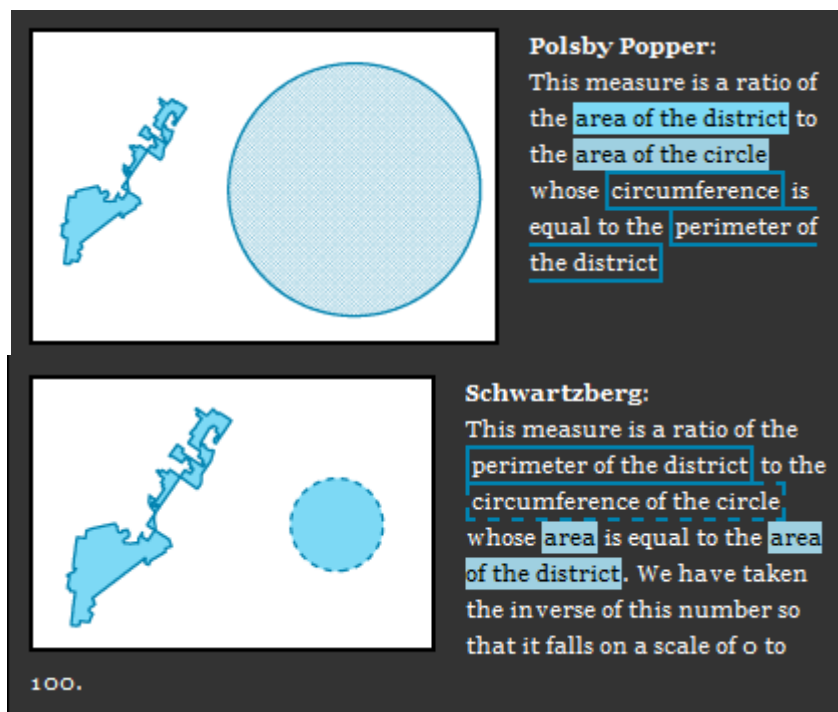
VII. Let's return to the concept of **COMPACTNESS**, which has two categories of measurement.

A. Dispersion-based measures evaluate the extent to which the shape of a district is dispersed, or spread out, from its center.

B. Indentation-based measures evaluate how smooth (better) or contorted (worse) the boundaries of a district are. Here are the two leading techniques:

1. Polsby-Popper Method is the most common way to measure compactness.
2. Schwartzberg Method compares the district to a circle of the same area as the

district.

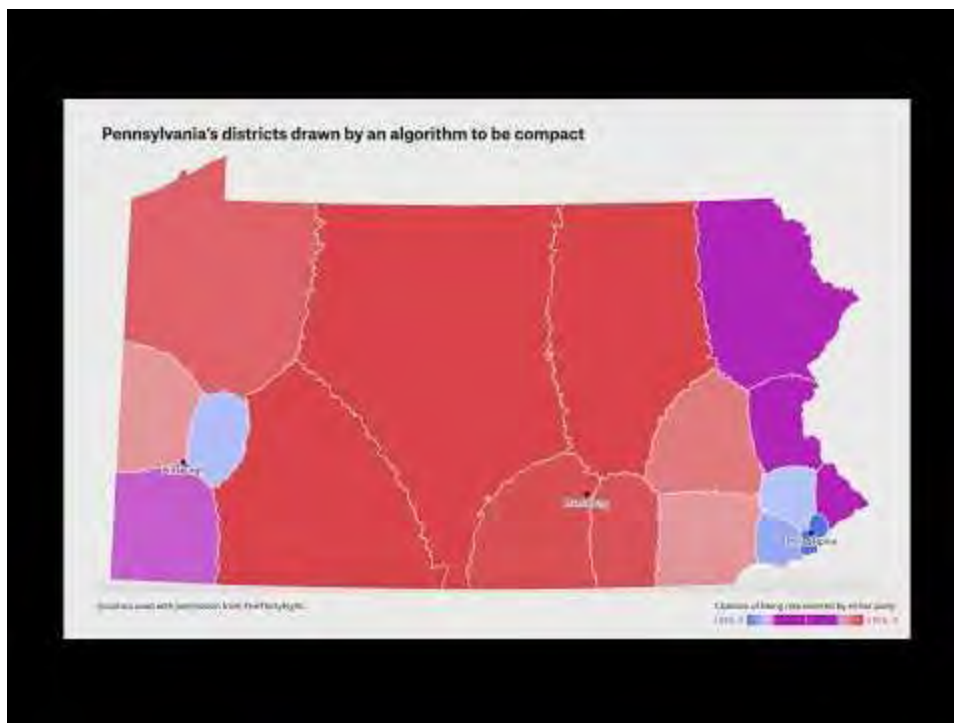


Is it possible to make this concept quantifiable and judicially reviewable? Useful analogies may be found in several states' laws that are designed to prohibit "balloon," "barbell" or "shoestring" municipal annexations, e.g., Ariz.Rev.Stat.Ann. § 9-471(H). Here is a proposal that this author made to the PBA Constitutional Revision Commission in 2011:

"Compact" means territory that meets all of the following criteria:

- (i) the perimeter squared of the district is at least 30% of the product of 4π times the area of the district;
- (ii) the area of the district is at least 20% of the area of the smallest circle that spans the entire district;
- (iii) the area of the district is at least 40% of the area of the minimum convex bounding polygon enclosing the district; and
- (iv) the perimeter of the district is no more than five times the perimeter of a circle of equal area.

« What would Pennsylvania's 18 Congressional Districts look like if they were compact? »



VIII. *Agre v. Wolf*, No. 17-4392, 2018 WL 351603 (E.D. Pa. Jan. 10, 2018).

A federal three-judge panel held, 2-1, that Pennsylvania's Congressional reapportionment plan does not violate the Elections Clause, Article I, Section 4, of the U.S. Constitution.

"The structural change plaintiffs seek must come from the political branches (elected legislatures and executives) or the political process itself, not the courts."

IX. *League of Women Voters et al. v. The Commonwealth of Pennsylvania* (Pa. 2017);

<http://www.pacourts.us/assets/opinions/Supreme/out/j-1-2018majorityopinion.pdf>

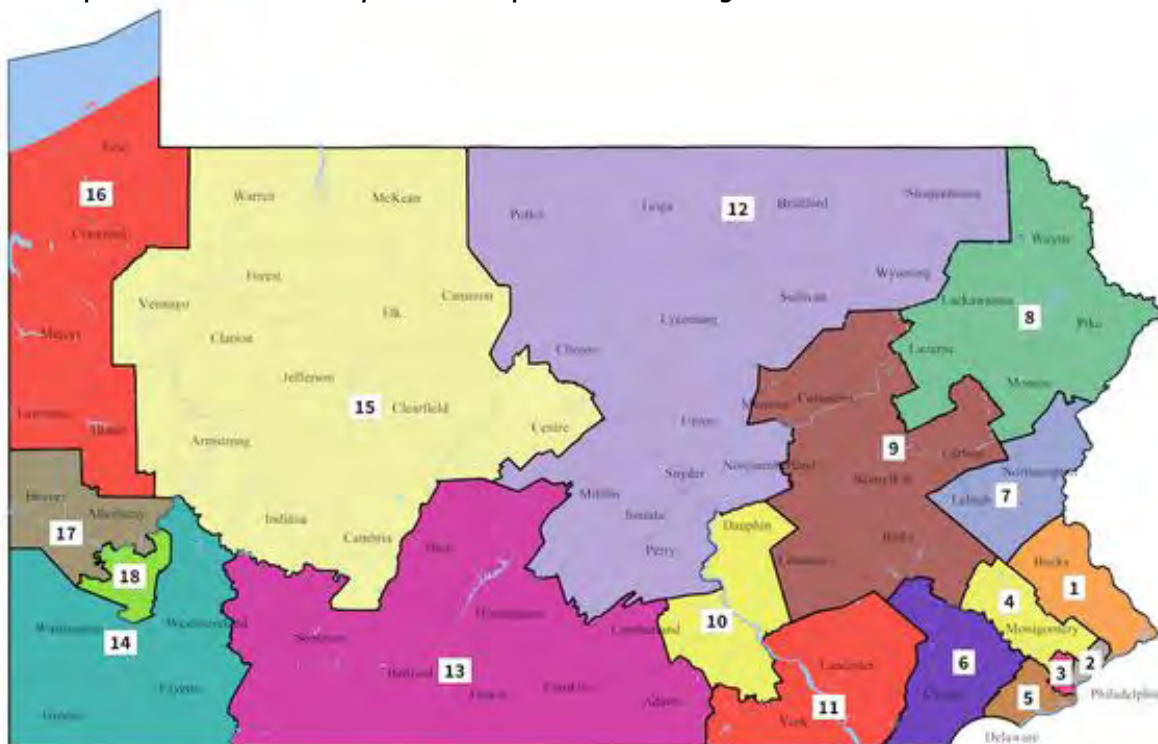
[W]e hold that the 2011 [Congressional redistricting] Plan violates Article I, Section 5 – the Free and Equal Elections Clause – of the Pennsylvania Constitution . . . [which] guarantees our citizens an equal right, on par with every other citizen, to elect their representatives. . . .

Specifically, partisan gerrymandering dilutes the votes of those who in prior elections voted for the party not in power to give the party in power a lasting electoral advantage. By placing voters preferring one party's candidates in districts where their votes are wasted on candidates likely to lose (cracking), or by placing such voters in districts where their votes are cast for candidates destined to win (packing), the non-favored party's votes are diluted. It is axiomatic that a diluted vote is not an equal vote, as all voters do not have an equal opportunity to translate their votes into representation. . . .

[T]he use of compactness, contiguity, and the maintenance of the integrity of the boundaries of political subdivisions maintains the strength of an individual's vote in electing a congressional representative. When an individual is grouped with other members of his or her community in a congressional district for purposes of voting, the commonality of the interests shared with the other voters in the community increases the ability of the individual to elect a congressional representative for the district who reflects his or her personal preferences.

We recognize that other factors have historically played a role in the drawing of legislative districts, such as the preservation of prior district lines, protection of incumbents, or the maintenance of the political balance which existed after the prior reapportionment. . . . However, we view these factors to be wholly subordinate to the neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts. . . . When, however, it is demonstrated that . . . these neutral criteria have been subordinated, in whole or in part, to extraneous considerations such as gerrymandering for unfair partisan political advantage, a congressional redistricting plan violates Article I, Section 5 of the Pennsylvania Constitution.

X. The Supreme Court of Pennsylvania's map for 2018 through 2021, unless amended:



SESSION #6

BANKRUPTCY LAW

NO HANDOUTS