

Lessons Learned from Lincoln Shape Civility, Professional Conduct

A prominent attorney who became a U.S. president tried in excess of 5,000 cases.

He lost the first time he ran for political office.

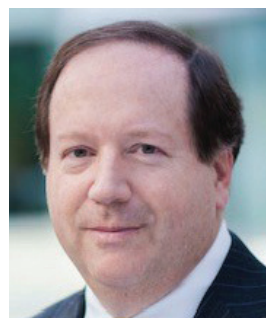
There have been at least 16,000 books written about the man who goes by the sobriquet of “Honest Abe.”

What Abraham Lincoln, the 16th U.S. president, and one of 26 Amer-

ican presidents that were lawyers, left behind formed the framework for ethics, standards and civility in the legal profession.

Lincoln was born in a one-room log cabin on Feb. 12, 1809, in Hodgenville, Kentucky. He was voted into office as U.S. president on Nov. 6, 1860. He died from an assassin’s bullet on April 15, 1865.

Lincoln historians are still trying



Thomas G. Wilkinson Jr.



Anne N. John



Matthew Pinsker

to research, record and reconcile all that he accomplished from his humble beginning until his end, 56 years later.

Lincoln is widely quoted and misquoted, yet he still remains in the speech and writing repertoire of inspirational leaders worldwide.

“One thing you will learn if you study Lincoln as a lawyer is that he actually tried something in excess of 5,100 cases, which is just a staggering number, just incredible,” said Thomas G. Wilkinson Jr., Cozen O’Connor, Philadelphia, PBA past president; co-chair, PBA Civility in the Profession Committee; and past chair, PBA Civil Litigation Section. “Lincoln developed a reputation as an outstanding trial lawyer and appellate oral advocate. He also was well regarded for his honesty, storytelling, humor, integrity and hard work. That’s how the sobriquet of Honest Abe developed, and it served him well as he became more and

more politically active.”

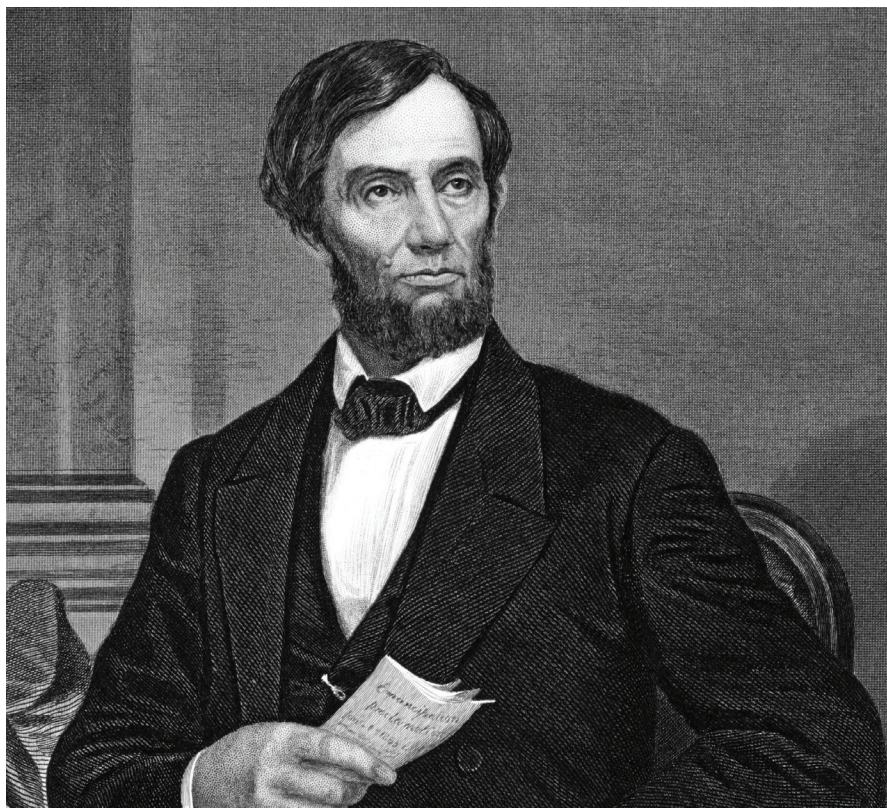
Wilkinson moderated a panel during a Pennsylvania Bar Institute webcast, “Lessons from Abraham Lincoln in Professionalism and Civility 2023,” on Dec. 8.

Little Formal Schooling

Lincoln had very little formal schooling and took a course of self-study. He was a voracious reader.

Lincoln’s family moved to rural Indiana when he was 7 years old. In later years, he held several short-term positions, including as a clerk. Then he moved to Springfield, Illinois, and served two years in the legislature before getting his license to practice, a self-study regimen at the time.

In 1844, he began to practice with William Herndon, Wilkinson said, “and thereafter started to travel on what was referred to as the Eighth Circuit. He handled numerous jury trials of all types and occasionally at



What Abraham Lincoln, the 16th U.S. president, and one of 26 American presidents that were lawyers, left behind formed the framework for ethics, standards and civility in the legal profession.

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the time was appointed to serve as a local judge in lieu of the regular sitting judges.”

Lincoln’s last big trial was a murder trial in 1859, shortly before he won the presidential nomination.

“Despite it being sort of a slam-dunk case for the prosecution, because there’s no question that his client did stab the victim to death, Lincoln made a compelling two-hour closing speech and demonstrated that his client acted in self-defense and got a complete jury verdict in his client’s favor,” Wilkinson said.

According to Wilkinson, a famous case, which is the subject of a number of books, referred to as the so-called “Almanac Trial,” involved the defense of William Armstrong in a murder case that hinged on the testimony of a single eyewitness who swore that he saw Armstrong strike the fatal blow, thanks to the light of the moon overhead. On cross-examination, Lincoln produced an almanac that showed that it had been a moonless night, destroying the credibility of the key witness. The jury acquitted and a fictionalized version of the case was featured in John Ford’s 1939 film, *Young Mr. Lincoln*, played by a young Henry Fonda.

“How Lincoln treated others in his law practice and in his political life may help guide us in our day-to-day interactions with opposing counsel, clients, judges, lawyers and others,” Wilkinson said.

Strategies to Compromise

Lincoln spoke passionately about compromising strategies and about getting opposing forces to work together, the very definition of nonpartisanship, and a view that placed him in the vanguard of

politicians at the time. Compromises lead to more successes in court or in politics. He was always willing to put personal grievances aside and befriend his adversaries to advance larger objectives, a capacity chronicled in Doris Kearns Goodwin’s book, *Team of Rivals: The Political Genius of Abraham Lincoln*, according to Wilkinson.

“Lincoln recognized that lawyers don’t appear weak if they concede a point, or if they reach an amicable resolution,” said Anne N. John, Uniontown. John is PBA past president; co-chair, PBA Civility in the Profession Committee; chair-elect, PBA Solo and Small Firm Section; and vice chair, PBA Senior Lawyers Committee. “Those actions actually confirm their confidence and their strength, and that willingness to negotiate and work with others should not be confused with a lack of zeal. Lawyers use the word ‘zeal’ very often, and in fact it’s in the preamble to the Rules of Professional Conduct, where it states that a lawyer as a representative of clients performs various functions, and one of those functions as advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system. As negotiator, a lawyer seeks results advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client’s legal affairs and reporting about them to the client or to others.”

A substantial number of books, more than 16,000, have been written about Lincoln, more than any other American, Wilkinson said. Additional books seem to be published virtually on a daily basis.

“Lincoln remains the tallest president and the only president to hold a patent,” Wilkinson said. “He was the first president to advocate for black veterans to have the right to vote and the first president not born in the original 13 states. He was also the first president assassinated in office.

“I learned what a daunting subject Lincoln was. I also learned, to my dismay, that a series of aspirational quotes widely attributed to Lincoln were never uttered by him, or at least there’s no such proof.”

Here is a supposed quote from Lincoln folklore, which remains in dispute: “Give me six hours to chop down a tree and I’ll spend the first four sharpening the axe.” One incorrectly attributed: “It’s not the years in your life that count, it’s the life in

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your years.” That “years-in-your-life” quote originated from a financial services firm, according to historians.

“There are a lot of quotes attributed to Lincoln, and you find these quotes in even the books and the articles and speeches from today’s politicians,” Wilkinson said. “It turns out that many of those quotes, while aspirational, really could never be attributed to Lincoln.”

Truths of His Existence

Lincoln scholars are still happy to pour over records to sift the truths of his existence.

“I grew up in Lancaster and was surrounded by American history, with field trips to Gettysburg, Valley Forge and Independence Hall,” said Matthew Pinsker, professor of history and Pohanka Chair in American Civil War History, Dickinson College. “The book that I would always recommend as the best biography for Lincoln, written by David Herbert Donald, called *Lincoln*, was published in 1995. I still think it’s the best single-volume biography of Lincoln.”

Some consider Lincoln paramount among writers.

“You always want to urge people to read his own writings,” Pinsker said. “He’s the best writer in American history.”

Lincoln took extensive notes to use in speeches. One in 1850, a law lecture, contained some wisdom for

attorneys. It is uncertain if Lincoln actually made the presentation, one that focused on professional conduct.

“Among the many good and wise recommendations from Lincoln was to be diligent and to leave nothing for tomorrow,” Wilkinson said. “It should be done today. That’s clearly wise advice for current lawyers.”

“I’ve always been impressed by that statement of Lincoln’s (about compromising),” said Judge A. Michael Snyder (ret.), The Dispute Resolution Institute LLC, Philadelphia. “Obviously, as a mediator, our job is to get people to agree to compromise, understand the value of

it. One has to start even earlier than before people are in my room, to get them to understand the value.”

Judge Snyder spoke about the “great honor” of being able to teach at Temple Law School.

“I teach mediation,” he said. “One of the things that I try to impart to my students is the tremendous damage, as well as the tremendous positive, that can occur in a courtroom. It’s very easy for a trial lawyer to act as a boxer in a ring. His or her job is to score a knockdown, to win, but ultimately though, the problem is that that leaves someone else on the map, someone who may not be able

to pick themselves up again.

“But, on the other hand, if the lawyers can encourage one another and a mediator can encourage one another to come together to resolve something, it’s not only something that benefits the lawyers but that benefits the clients, because a litigator is often comfortable in a courtroom,” he said. “I have never seen a plaintiff or a defendant, whether an individual or a large corporation, who is comfortable in the courtroom. If you look at their body language, the tension in their voice when they’re



Judge A. Michael Snyder

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Court Summaries

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review — en banc court — denial of benefits affirmed

Precht v. Unemployment Compensation Board of Review, No. 710 C.D. 2021 (Dec. 18, 2023) — Denial of benefits on basis that claimant was self-employed affirmed; positive steps analysis is applicable to determine whether individual is self-employed in a standalone context under the Unemployment Compensation Law after separation from employment.

WORKERS’ COMPENSATION

Commonwealth Court

COMPROMISE AND RELEASE AGREEMENT — original jurisdiction — settlement offer regarding wage loss portion of claim — refusal to settle — settlement offer withdrawn — Section 449 — 77 P.S. 1005 — lack of agreement — complaint dismissed

Searfoss v. Commonwealth, No. 145 M.D. 2023 (Dec. 7, 2023) — Complaint in nature of breach of contract, quasi-con-

tract and mandamus seeking to enforce compromise and release agreement settling workers’ compensation claim in original jurisdiction dismissed when employer refused to execute written compromise and release agreement resulting in dismissal of claim; there was never a valid and enforceable settlement agreement as matter of law.

AVERAGE WEEKLY WAGE — CONCURRENT EMPLOYMENT — Section 309(e) — 77 P.S. 582(e) — no requirement that claimant work both positions on day of injury — employment relationship sufficiently intact — past earning experience remaining valid predictor of future earnings loss — order affirming grant of petition to review compensation benefits affirmed

Resources for Human Development v. Dixon, No. 494 C.D. 2022 (Dec. 20, 2023) — Order affirming grant of petition to review compensation benefits affirmed when, though claimant did not recall whether she worked for concurrent employer on actual date of injury, she continued to work with concurrent employer past last day of employment with employer; there is no requirement the claimant had to work both positions on day of injury. ⚖️

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in the courtroom, it's that of being placed in the middle of the arena and looking for where the hungry lions are coming from. But if I can bring them into my mediation room, and I can talk to them as one human being to another, if I can use that little bit of humor that I have to relax them, I can see their body language relaxing, the tension goes out of their body. At that point in time, it is that much easier for me ultimately to secure their trust and to get them to be willing to make a compromise.

"As a mediator, if I can convince people of the value of mediation, what I can also do is save them and their clients time, and save them and their clients' money and, after all, if a lawyer's job is to not only advocate

for their client, but to seek the best possible result, oftentimes that result is achieved by mediation," Judge Snyder said. "Especially if they can achieve that result, something they can live with, far quicker without the bloodshed of a courtroom."

In Lincoln's notes for a law lecture, Judge Snyder said, Lincoln admonished attorneys to "Persuade your neighbors to compromise whenever you can. Discourage litigation. Point out to them how the nominal winner is often a real loser, considering their expenses and wasted time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough."

Judge Snyder said, "I think that that is just such a precious statement. It's something that is as applicable today in 2023 as it was when Lincoln wrote it more than 200 years ago."

"Lincoln was incorporating these types of actions into his presentations to juries and judges and the number of trials that he engaged in, the success of his cases, I think that all speaks to his ability to mesh all of this by taking action ahead of time and preparing," John said. "A lot of the success comes down to preparation. He marshalled the facts. He did the research. He did his homework. He got to know his clients. He got to know his cases. There are anecdotes about his very close empathy and understanding of the clients and the clients' needs and his concern for people. I think that his credibility was enhanced by his ability to work with the facts, and the law, and formulate a plan that allowed him to show his confidence by showing that he was willing to concede those points that may not have had any impact on his case, but certainly had an impact on the judge and the jury."

Once you've done your homework, John said, "You've done your

preparation and you've educated yourself on the law and its application to those facts, then I think the lesson of Lincoln is learned in that respect. Lincoln was ahead of his time in the sense that he focused his energy on preparation. Likewise, once you're prepared, you're more confident in the ability to negotiate and reach a resolution."

'Honest Abe'

Lincoln was known for his sobriquet, "Honest Abe."

"He would initiate the discussion or respond to a judge's query with the 'I reckon' introduction: 'I reckon,' like he's given a lot of thought," Wilkinson said. "I think people found that amusing, but also it implied that he'd given the matter a lot of consideration before he answered. Sometimes he'd also use it to introduce something amusing."

Lincoln's philosophy about integrity and honesty appears in the rules followed today.

"Lawyers are governed by the mandatory Rules of Professional Conduct that our Supreme Court has promulgated and has enforced through the Supreme Court's Disciplinary Board," John said. "Lincoln's honesty as a methodology can be found in those rules. For instance, Rule 3.3 is candor toward the tribunal, and it begins with 'a lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.'"

"Not only when you read those words, but when you hear Lincoln's words and you look at his method of practice, his preparation, enabled him to know what the facts were, it enabled him to know what the law was as applied to those facts, and be truthful to the tribunal," she said. "This profession that we're in, is a much smaller com-

munity than we realize, and judges and juries know when someone's being honest and they see the integrity behind a statement."

"Lincoln also carried a lot of favor with juries and with judges by essentially acknowledging and sweeping away facts that were unhelpful or key points that the other side might have felt were very important to their case," Wilkinson said. "He'd give them up readily, and by giving them up readily, he wouldn't cling to an inaccurate fact or to a position that was legally unsound. He'd give it up and then just hone in on what was the really critical point necessary for his client to win the case. Sometimes his jury speeches would be very short, because he would give away those points, the other side would be feeling really good. Then he'd just go in with a dagger and on the

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critical point necessary to win. He got excellent results by doing that because it demonstrated integrity and honesty. That helped him along the way. I think it also helped him in his political career.”

Lincoln's Humor

Humor really played an important role both for Lincoln personally and emotionally, because of his common melancholy moods, according to Wilkinson, but also helped him become a more effective lawyer and politician.

With Lincoln's expertise as a storyteller, he had a keen perception of the ridiculous, Wilkinson said.

“Lincoln could draw that out of situations and was known for a virtually constant flow of humor that he used in service of the truth,” Wilkinson said. “He could also be

self-deprecating. One critic called him a baboon, and Lincoln commented, ‘He may well have said that, but what troubles me is that he’s usually right.’ Lincoln was criticized for his facial appearance, as a ‘cranky face,’ and Lincoln said, ‘Well you know, if I had another face, do you think I’d wear this one?’

“Some believe it was a compensation mechanism for his melancholies and others liken it to the need for some form of emotional release from the many difficult issues that he faced,” Wilkinson said. “It seemed to be more of a coping mechanism for Lincoln.”

“There’s so much stress today in every profession, every form of employment, everywhere in life, frankly, the stress is very difficult to manage,” John said. “Humor is not only something that we anecdotally see as reducing the stress, but there have actually been studies to that effect.

“There is actual basis for the use of humor appropriately: You have to use the appropriate form of humor at the appropriate time and not overuse it. We’ve all seen that in our practices. It can and it does diffuse a very tense situation when used appropriately.”

“What did the sense of humor do for Lincoln?” Wilkinson said. “Almost everything. It got him jobs, won him cases and elections and made him popular. It drew a crowd made up of those who initially came to scoff at him, but then stayed to help him succeed.

“Lincoln committed to facts, but let’s not forget that he didn’t let that get in the way of a good story,” Wilkinson said. “Storytelling was an art form but used in service of the truth. One of the journalists at the time commented about this, that Lincoln always had something at the ready, to either explain or to reinforce a point. Sometimes he drew from

his readings in the Bible, or from the Greek classics, from Socrates, and sometimes he arguably just made things up from something else and drew from that. It just worked very well for him. People were eager to have some levity at the time.”

“The demands upon on all of us by technology, by progress, have made it so that each profession, each job, is a job that is full of stress,” Judge Snyder said. “I found that one of the ways of moderating or eliminating that stress to some degree is by the use of humor, and particularly if you can use self-deprecating humor, people can then bond with you.

“The humor that is the sarcastic humor, which is targeted at someone else, is always the humor that is going to cause you the most

damage. It’s going to hurt others, but it’s going to lessen people’s opinion of you, if this is all you can do. On the other hand, if you can use self-deprecating humor, if I can talk about the fact that I am not blessed by being six-foot-three with the 29-inch waist and a full head of dark hair, what I do is not only tell the truth but I let others know that you can’t bring me down by insulting me about something like that. I’m willing to see the humor in my own existence to humanize me, and if I do so I think that it makes me more approachable.

“During the time that I was on the bench, I’m sitting up there on a raised platform, wearing that fancy black dress, and you know the black dress may be great as far as mak-



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ing every judge look the same, but you know it's only the judge that can wear the high heels with it that really sets himself apart," he said. "It's humor that insults no one, it's humor that makes a stressful situation a little less so. I found that to be a constant in the way that I conduct myself on the bench and in the way that I conduct myself in the classroom."

Lincoln's Empathy

Lincoln also had the important power of empathy.

"One of the things that Lincoln did that not many presidents did, especially during war time, which is pretty incredible, is that he would just stand there at the White House with a long list of people in line, common people with petitions," Wilkinson said. "It's really remarkable that, in the middle of the war, he would spend hours a day with anybody who might just show

up out of the blue with obviously no advance appointment. They may have been looking for a job, looking for amnesty or some sort of protection for their husbands who might have deserted the army. They may have been looking for some assistance with personal or financial matters. He would listen to all of those issues. He wouldn't necessarily grant all those petitions. If he felt it was contrived, fabricated or lacking in merit, he'd very pointedly tell them so. In many cases, he was a remarkably kind in his responses to those petitions, making a little note for his assistant to help someone find a job, to give clemency to the union soldier to allow them to return to the army after having abandoned it, and so forth."

"It was a different world back then," Pinsker said. "Presidents did not have security yet. There were customs of what they called levees, where the public could wait in line and just

shake hands with the president, which was all presidents, not just Lincoln. He was more accessible and more open than anybody. He called it his 'public-opinion baths,' so that he got to hear and see what people were thinking and saying directly."

By the time he became president, he was really relatively quite successful financially, according to Wilkinson, even though his financial arrangements with his partner were basically not in writing and just sort of casually handled.

"He also took the time to mentor others," Wilkinson said. "There were a number of law students who worked under his auspices, and their notes are also recorded in some books. They all have very favorable things to say about his efforts to supervise and mentor them and just sort of show them the way, as to how to effectively practice and how to deal with clients well and honestly

and try to do a great job for everybody who walked in the door.

"Lincoln wasn't a basher or someone who would be rude and denigrating to witnesses, even if he thought they were stretching or failing to disclose what they saw or knew. His presence and his forthrightness seemed to draw out that testimony."

Lincoln also valued effectiveness over partisan politics, Wilkinson said. He may not have been the first to assemble a so-called team of rivals, but "he seems to have wisely benefited by not burning bridges and denigrating those who might have been in a position to help his administration. He may have later fired those same people, or those generals, who weren't getting the job done the way he liked, and he may have done that somewhat unceremoniously, because of the exigency of the time."

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“Lincoln was a demanding boss,” Pinsker said. “Most of the cabinet officers didn’t survive the first term. He replaced his vice president. He went through a series of generals-in-chief, five different commanders of the army of the Potomac. But he didn’t fire people, he recycled them. George McClellan was promoted, demoted, promoted again; he was never completely fired. He was

in uniform serving in the Union Army, from the front in New Jersey, where there wasn’t much combat, but serving in the union army in the summer of 1864, when he was nominated to be president by the Democratic Party and ran against his commander-in-chief in the election. We’ve never had anything like that since, but it was the situation that they were dealing with in the middle of the Civil War. To illustrate

how times have changed: the Union general in uniform is running for president against his commander-in-chief, and the chairman of the Lincoln reelection effort was the editor of the *New York Times*, so the press wasn’t as fair and balanced back then as it is now. The standards and the ethics were all different.”

When you talk about professionalism, especially in politics, it requires recognition that you can’t just favor your loyalists, your friends and your sycophants, which is what most party bosses and politicians often do, Pinsker said.

“But Lincoln had a broader sense of what their party and what the nation stood for,” Pinsker said. “He was more objective. He held people to standards, especially regarding subordinates, peers and rivals, that transcended personal loyalty. Very few politicians of that era did that. I consider that a hallmark of profes-

sionalism, a desire to be objective.”

Lincoln’s ways of operating have withstood the test of time.

“What made Lincoln effective at remembering quotations, and I think lawyers will totally appreciate, is that he read aloud,” Pinsker said. “It drove his law partner crazy. He read the newspaper aloud, the Bible aloud, Shakespeare, a famous book called *The Columbian Orator*, aloud. It’s what taught him how to write, but it’s also what helped him remember. It’s the advice I give my students, and I think anybody who speaks for a living can appreciate the value of that and very few of us do it anymore, but it’s what made him so successful.”

One Rule of Professional Conduct is 4.1, truthfulness in statements to others, and that rule begins with, “In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person or fail to disclose a material fact to a third person, when disclosure is necessary to avoid aiding and abetting a criminal or fraudulent act by a client unless disclosure is prohibited by Rule 1.6.”

“The mandatory Rules of Professional Conduct govern our behavior and mandate that we comply with same, but we also have an aspirational Code of Civility, and that Code of Civility incorporates many of those same non-misrepresentations,” John said. “Don’t misrepresent. All of that can be seen in our practice today as exemplified by Lincoln and as followed by the Rules and the Code. Even though the Code of Civility is aspirational, those Rules are mandatory and we’re all familiar with them.”

John said, “Lincoln’s lessons continue.”

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Upcoming Events

Find more information in the PBA Events Calendar at www.pabar.org or call the PBA Member Services Center at 800-932-0311.

Jan. 24-28	PBA 2024 Midyear Bench/Bar Meeting
Feb. 29-March 2	58th Annual Conference of County Bar Leaders
March 7	PBA Commission on Women in the Profession Virtual Spring Conference
March 15-16	PBA Labor and Employment Law Section Council Meeting
March 21-23	PBA Statewide High School Mock Trial Competition
April 12-14	PBA Civil Litigation Section Retreat
May 8-10	PBA Annual Meeting

Please check the PBA website (www.pabar.org) and PBI website (www.pbi.org) frequently for updates.