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THE NEWSLETTER OF THE
WESTMORELAND BAR ASSOCIATION
VOLUME XXIX, NUMBER 5
NOVEMBER 2017

Two Years and Counting

Incentives Key to Success of County's Drug Treatment Court



Westmoreland County's Drug Court Team includes (from left to right): Dave Fry, Tony Marccoci, Keather Likens, William Shifko, Eric Leydig, Judge Bilik-DeFazio, Margaret Greytok, Judge Christopher Feliciani, Keri Mace, Jennifer DeFlicht, Samantha Coppetti, Tim Phillips, Zachary Grimm, and Peter Caravelli.

by Pamela Ferguson, Esq.

On September 28, 2017, Westmoreland County's Drug Treatment Court celebrated its two-year anniversary during a graduation ceremony for five successful participants, increasing the total number of graduates to seven: an impressive number considering the program's length (18 months) and rigorous requirements.

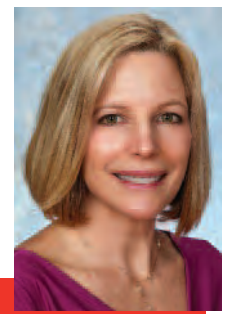
Hailed by Judge Meagan Bilik-DeFazio as "the best program we have to offer in Westmoreland County," Drug Treatment Court's success was neither guaranteed nor predicted.

No one knew, two years ago, if the program would be successful. From the outset, everyone acknowledged the potential for failure, considering the high-risk nature of those for whom the program was established, but believed in the premise that treatment courts improve substance-abuse treatment outcomes and substantially reduce substance abuse and crime at a significantly lower cost than traditional forms of punishment.

The September 28 graduation confirmed this belief and affirmed the foresight of Westmoreland County Commissioners Ted Kopas, Chuck Anderson, and Gina Cerilli, who approved the funding, and the hard work and dedication of the Drug Court team: Judge Christopher Feliciani, Judge Meagan Bilik-DeFazio, Coordinator Eric Leydig; Case Manager Margaret Greytok; Assistant District Attorney Pete Caravelli; Public Defender Jennifer DeFlicht; Detective Tony Marccoci; Drug Overdose Task Force Director Tim Phillips; Veteran Justice Outreach Specialist Keather Likens; Adult Probation Officers William Shifko and Keri Mace; and Adult Probation Aides Samantha Coppetti and Zach Grimm.

Judge Bilik-DeFazio attributes Drug Treatment Court's success to "a change in perspective." Punishment, the philosophy espoused by our criminal justice system, has

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Pamela Ferguson

President's Message

So You Want To Be A Lawyer?

by Timothy C. Andrews, Esq.

I know we all have our own stories about how we came to make the decision to go to law school and become a lawyer. This came to my mind recently after my appearance on a podcast by one of our members, Adam Gorzelsky. Another colleague recently discussed his daughter's tremendous joy in finding out that she passed the bar exam.



Like many of you, I thought about becoming a lawyer from a young age. When I was applying to colleges, I considered Political Science as a major solely because I thought that was the

major that you needed for attending law school. When I was accepted at Washington & Jefferson College—with sufficient financial aid that I could afford to attend—I changed my mind and decided to major in Psychology and Education. Though my family couldn't afford to assist me financially, I was able to complete four years of college with the help of financial aid, work-study programs, and some savings. There were, of course, those ever-present student loans that I would then have to pay back. I decided to go into the workforce and began as a forklift operator at a local mill. I then was a substitute teacher for three years in the Southmoreland

School District. The last two were filling in for teachers on sabbatical for a year. Then, with the encouragement of a former teacher of mine, we both took the LSATs. I applied to law school and was accepted.

I always thought that the law would be a very rewarding and intellectually stimulating career. I hadn't thought about how I would get a job or make money. I spent my three years in law school again using financial aid, work study, and student loans. Upon graduation, I, like all of you, had the largest and scariest hurdle to overcome—the Bar Exam! I consistently worried that I spent all this time and borrowed all this money for a career that I couldn't participate in if I didn't pass one test.

Through the practice exams and the test itself, there were always concerns. Waiting 2½ months to get the results did not help. Upon receiving the letter in the mail—yes, we were still receiving results via mail as opposed to the internet—I was elated that I did pass. A great weight was lifted off of my shoulders. Unfortunately, the next day, a new weight of equal mass descended in that I had loans, expenses, and no job.

Even though I found a job with a firm in Pittsburgh, I always wanted to return home to Westmoreland County, where I did land after about six months. To my great surprise, I became a trial lawyer. I never believed that I would be the one standing up in front of juries outlining cases and presenting evidence.

Though I frequently jest about my foolishness in not remaining a teacher, where I could have retired by this point with a pension, I am grateful for my decision to attend

law school. I have met a lot of tremendous people and made great friendships in my practice of law in Westmoreland County. I have also been lucky enough to have some success in obtaining clients and work throughout my years of practice. I successfully paid off all my student loans and sometimes even forget about those days. My recent discussion with Adam, and talking with colleagues about their children passing the bar exam have brought back some of those thoughts and memories.

I know we all have a story to tell about our decisions. I am grateful for my decision and even more grateful that I decided to come back to Westmoreland County to practice law. It has been a tremendous career thus far; I hope it continues on into the future.

One of my large concerns in the last five to ten years is that someone like me will likely not have the ability to go to school and become a lawyer. The main reason is that you cannot borrow enough money to pay for tuition for both college and law school without assistance from family or other means. If I was in that position, I would likely have not been able to attend college or law school.

I know there are various scholarship and other means to finance an education. I am hopeful that our Bar Foundation, as well as our members, will continue with their philanthropic efforts to assist those of little means to fulfill their desires and dreams by attending law school. ■

“I always thought that the law would be a very rewarding and intellectually stimulating career. I hadn't thought about how I would get a job or make money.”

LawSpeak

“Once honorable treatment for all is taken away, kindness, goodness and justice are without exception destroyed.”

Marcus Tullius Cicero, On Duties: A Guide to Conduct, Obligations and Decision Making

Tim Andrews

What to Know Before Filing Any Document in Court in 2018

by Amy DeMatt, Esq., Court Administrator

If your practice includes filing documents in any of our filing offices in the Westmoreland County Courthouse in 2018, you'll want to read on. On January 6, 2017, the Supreme Court of Pennsylvania adopted the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts, effective January 6, 2018*. The policy governs access to court records in the trial and appellate courts of Pennsylvania, and was drafted to address several concerns.

CONCERN #1: UNIFORM ACCESS TO RECORDS

One concern was uniform access to records: Pennsylvania counties had different practices with regard to which records were available to the public.

For example, in Delaware County, attorneys and parties had access to all filings in a divorce, but other people could inspect such records only with an order of court upon good cause shown. See *Pa. R. Delaware Cty. R.C.P. 1920.90*. In Clinton County, a local rule was adopted that required filers to redact certain information, like Social Security numbers and financial account numbers from a petition in

order to safeguard it. *Pa. R. Clinton Cty. R.C.P. 205.2(a)*. In other counties, the Court engaged in a practice to redact sensitive or confidential information, rather than putting the onus on the filer. In some Pennsylvania counties, judges have issued orders that temporarily prevent electronic access to case files during a jury trial.

Thus, one benefit of a statewide policy was that it would standardize access to records throughout the state, and that attorneys who practiced in more than one county would not have to learn the nuances of filing and access in each particular county.

CONCERN #2: ADVANCE OF TECHNOLOGY PUTS PRIVATE INFORMATION AT RISK

A second concern addressed by the policy was that the advance of technology put private information at risk. The consequences of such risks have been demonstrated in other states throughout the country.

In the state of Ohio, for example, three people who had been arrested and criminally processed, but who were not convicted of crimes, alleged that the corporate owner of a company called MugshotsOnline.com was profiting from mugshots and violating their rights by charging exorbitant "takedown fees" in exchange for removing the mugshots from their site.¹ A different concern arose in the

¹ Brett Snider, Esq., *Online Mugshot Lawsuit: Settlement Reached*, blogs.findlaw.com/injured/2014/01/online-mugshot-lawsuit-settlement-reached.html

Fast Facts About Filing Under the New Public Access Policy

List the following information on a Confidential Information Form, which is *not* visible to the public and omit this information from any filing:*

- Social Security Numbers
- Financial Account Numbers
- State Identification (SID) Numbers
- Minors' Names and Dates of Birth (unless the minor is charged as a defendant in a criminal matter)
- Abuse Victim's Address and other contact information in family court action

File the following information with a Confidential Document Form, with the form being visible to the public, while the document itself is not:

- Financial Source Documents
- Minors' Educational Records
- Medical/Psychological Records
- Children and Youth Services Records
- Marital Property Inventory and Pre-Trial Statement as provided in Pa. R.C.P. 1920.33
- Income and Expense Statement as provided in Pa. R.C.P. 1910.27(c)
- Agreements between parties as used in 23 Pa. C.S. Section 3105

* Other than filings in juvenile cases, adoption cases and child support cases which are sealed or exempted from public access pursuant to applicable authority.

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the sidebar

the sidebar is published bimonthly as a service for members of the Westmoreland Bar Association. Letters to the Editor should be sent c/o WBA, 129 North Pennsylvania Avenue, Greensburg, PA 15601-2311, fax 724-834-6855, or e-mail westbar.org@westbar.org. the sidebar welcomes submissions from members or non-members. Please submit to the Articles Editor, c/o WBA. Back issues from 2000 to the present and a comprehensive, searchable index are available online at www.westbar.org/thesidebar.

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What to Know Before Filing Any Document in Court in 2018

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state of Alabama. There, prosecutors accused Brian Colby Alexander of using Alabama's publicly accessible online court records to steal the identities of dozens of people, including former Alabama Governor Robert Bentley.² Finally, judicial employees have voiced concerns for websites like whosarat.com, which collect information on confidential informants and make such information publicly accessible. Risks resulting from the public "outing" of confidential informants include retaliation and witness intimidation.³

CONCERN #3: E-FILING IN LOCAL COURTS IS BECOMING MORE WIDESPREAD

A third concern and impetus for the policy was that e-filing in local courts is becoming more widespread. The development of e-filing systems

² *ID Theft Case Reveals Security Weaknesses in Alabama Court System*, www.al.com/news/index.ssf/2017/04/id_theft_case_reveals_security.html

³ Adam Liptak, *Web Sites Listing Informants Concern Justice Department*, New York Times, May 22, 2007, www.nytimes.com/2007/05/22/washington/22plea.html

prompts questions about what information should be protected from public access, particularly when posting documents online, and who should be responsible for protecting it from disclosure.

Recent litigation imposing liability on private companies for data breaches suggests that courts should be concerned about access to sensitive, confidential information that is easily accessed via online case records, via e-filing or document imaging systems. However, countervailing constitutional and common law guarantees of open court proceedings and records made the issue of public access less simple than it might be in other contexts, such as in the private sector. In adopting the new policy, Pennsylvania's Supreme Court had foreseen a need for uniformity in handling questions related to the extent of public access and the responsibility for safeguarding certain information.

BALANCING NEED FOR PRIVACY WITH NEED FOR ACCESS

The Public Access Policy balances the need for privacy with the need

for access by providing four means of protecting information: (1) certain information is not publicly accessible, as set forth in Section 7.0 of the Policy; (2) certain documents are not publicly accessible, as set forth in Section 8.0 of the Policy; (3) certain cases and other records are not publicly accessible, as set forth in Section 9.0 of the Policy, and (4) certain information is only publicly accessible at the courthouse, but not accessible online.

In the event that a filer includes information that should be protected, the court may, on motion, or *sua sponte*, with or without a hearing, order the filed document sealed, redacted or amended, and may impose sanctions, including costs necessary to make a document compliant with the policy. *See Public Access Policy at Sections 7.0 and 8.0, subparagraphs F.* All filers will be required to certify their compliance with the policy to the Court, by filing a certificate so stating. *See Public Access Policy at Sections 7.0 and 8.0, subparagraphs D.*

LOCAL IMPACT

Although the Public Access Policy provides that a county may require local attorneys and filers to file redacted and unredacted copies of documents containing confidential information, Westmoreland County's Board of Judges, in consideration of storage issues at local filing offices, as well as the potential burden on local attorneys and court filers, has opted not to require dual filings.

Rather, Westmoreland County's local rule will require the use of a confidential information form, which will protect information such as: Social Security numbers, financial account numbers, Driver's License Numbers; State Identification (SID) Numbers, minors' names and dates of birth (except when a minor is charged as a defendant in a criminal matter), and

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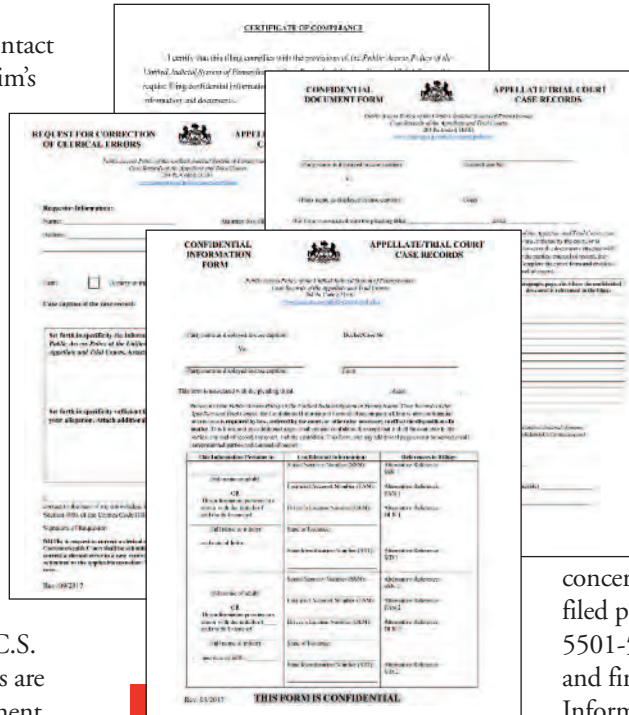
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an abuse victim's address and contact information (except for the victim's name) in family court actions.

Filers will be required to file a cover sheet, called a "Confidential Document Form," with the following documents: financial source documents; minors' educational records; medical/psychological records; Children and Youth Services records; Marital Property Inventory and Pre-Trial Statement, Income and Expense Statements and agreements between the parties, as referenced in 23 Pa. C.S. Section 3105. When documents are filed with a Confidential Document Form, only the form, and not the document itself, will be visible to the public. Use of the form should allow members of the public to see what was filed, without exposing the sensitive and/or confidential information contained in the form.



At left: Samples of forms that will be required as of January 2018 to comply with the Public Access Policy. The forms are available online at www.pacourts.us/public-records/public-records-forms.

documents at a court facility. These protected case records include: Case records in proceedings concerning recording of birth records or the right to obtain certified copies of birth records; case records

concerning incapacity proceedings filed pursuant to 20 Pa. C.S. Sections 5501-5555, except for the docket and final decree; any Confidential Information Form; any document filed under a Confidential Document Form, and information sealed by court order or protected by law or state court rule. This section also includes a provision for making information inaccessible when it presents a risk to personal

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ACCESS TO PHYSICAL AND ELECTRONIC CASE RECORDS

Section 9.0 of the Public Access Policy limits access to certain case records to members of the public, even when they seek to view such

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What to Know Before Filing Any Document in Court in 2018

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security, personal privacy, or the fair, impartial, and orderly administration of justice, as determined by the Court Administrator of Pennsylvania, with approval of the Chief Justice of the Supreme Court.

Section 10.0 of the Policy limits electronic or remote access to records. This section provides a compromise between providing access locally, to those who are likely to need it, and protecting such information from those who seek to “web-scrape,” mine, or collect data from the World Wide Web. Thus, for example, the identity of victims, jurors, and witnesses (other than experts) in criminal cases is shielded from remote access, but remains accessible to those who physically enter an office and review the papers.

This applies as well to: transcripts; *in forma pauperis* petitions; case

records in family court actions and in actions governed by the Decedents, Estates, and Fiduciaries Code, Adult Protective Services Act, and Older Adult Protective Services Act, except for dockets, court orders, and opinions in those cases; and, finally, to original and reproduced records filed in the Supreme Court, Superior Court, and Commonwealth Court.

OTHER ITEMS OF INTEREST

The policy also addresses other items of interest to those who regularly deal with court records. Section 4.0 deals with requests for access to records. Section 5.0 addresses responses to requests for access, and Section 6.0 addresses fees. In addition, in the event that a record is alleged to contain clerical errors, defined as errors or omissions appearing in a case record that are patently evident, as a result of court personnel’s action or

inaction, Section 11.0 provides a procedure by which to seek to have such errors corrected.

For attorneys, as these provisions will likely alter the manner in which you prepare your filings beginning in January 2018, the entire policy bears reading, is brief, and can be found at: goo.gl/NkQrNK. In addition, local attorneys and paralegals might be interested to know that there are several CLE seminars available which address questions and scenarios related to the policy.

Court administration predicts that unanswered questions regarding the public access policy will arise after implementation. Any such questions, comments, and concerns can be relayed to Amy DeMatt, Esq., Court Administrator, by email at: adematt@co.westmoreland.pa.us, or by calling 724-830-3828. ■



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Remembering Bob Cassol

Editor's note: Robert Y. Cassol passed away on Monday, February 27, 2017. He is survived by his wife of 25 years, Kathe; his children, Anne Baumgartel and Robert H. (Linda) Cassol; his stepchildren, Ken (Cary) Bohl, Amy (Bernie) Bohl Girman, and Kathleen (Lee) Bohl Miller; and his beloved grandchildren, Connor (Emily) Moriarty, Sam (Laura) Bohl, Dave, Nicholas, and Kyle Bohl, Anna and Noel Bohl-Fabian, Kurt Baumgartel, and Nicholas and Matthew Cassol. Memorial contributions may be made to the Lewy Body Dementia Association at www.lbda.org.

by The Hon. Christopher A. Feliciani

Despite the popular belief that my former partner, Larry Kerr, taught me everything I knew about practicing law, I learned a lot about being a lawyer from my senior partner, Bob Cassol.

Bob was a man who loved his family more than anything else in his life. He spoke often and with great pride about his children, Robert and Anne. When Bob met his wife, Kathe, 25-some years ago, it was obvious to all of us in the firm that he had met his soul mate. When he spoke about his wife and his children, his eyes lit up as though he had just hit the lottery.

Bob was a very kind man. He was a true gentleman, in the purest sense. He was very soft spoken and I cannot recall even a single occasion when it

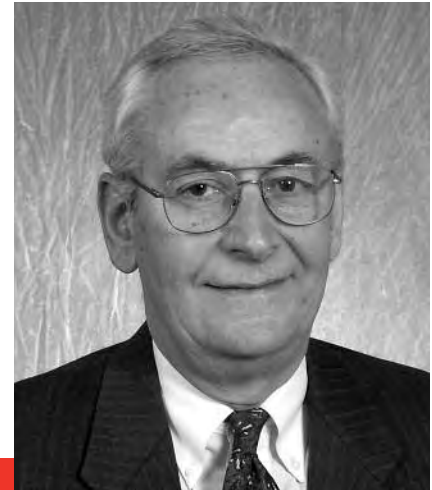
became necessary or even important to Bob to raise his voice.

He also had incredible patience. His family may have misinterpreted his patience with procrastination or indecisiveness, but when it came to the law, Bob's patience was an attribute that benefited his clients in many ways.

I learned a great deal from Bob about how to handle divorce cases.

In 1990, as a young lawyer just learning the ropes, I was handling a divorce action for a client and received a somewhat aggressive letter from opposing counsel. I won't go into a whole lot of detail about the letter, because it would probably be inappropriate, but it described how I was going to be used as a human mop.

Suffice it to say, this letter stirred up a lot of my Italian hormones and, as a young lawyer, I remember becoming somewhat enraged that a



fellow member of the bar association would even send a such provocative correspondence to another lawyer.

So I sat in my office determined to draft an even nastier letter in reply. After reading the letter, I was somewhat proud of the manner in which I was able to use the English language to lash back at a fellow lawyer. I thought the letter was so good, that I would share it with my senior partners, Bob Cassol and Vince Morocco. They would realize what a competent lawyer I was and maybe even give me a raise.

I walked into Bob's office first, and sat down across from his desk. I showed him the letter I received and sat very quietly as Bob had his head down, reading. The room was silent. Bob didn't show a hint of emotion as he read this horrible letter that had been sent to me.

I expected him to say something like, "Wow, what a nasty letter," or, "How inappropriate for a fellow lawyer to send something like that." Instead, Bob, in his typical sense and reaction, kept his head down the whole time while reading the letter in silence, not a word out of him.

Then he tilted his glasses down and he looked at me and said, "Let's see your response."

I handed him my letter, expecting a reaction, but, again, there was not even a hint of emotion as he read what I thought was an incredible response to this letter.

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If you would like to make a gift to the Foundation as a meaningful expression of respect, please make check payable to the Westmoreland Bar Foundation and mail to WBA Headquarters, 129 North Pennsylvania Avenue, Greensburg, PA 15601.



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SEPTEMBER 2017 TRIAL TERM

Of the nineteen cases listed for the September Civil Trial Term, two settled, thirteen were continued, one proceeded to a non-jury trial, one was submitted to binding arbitration, one proceeded as a summary jury trial, and one was tried.

RHEAGAN C. SMITH, A MINOR, BY AND THROUGH HER PARENT AND NATURAL GUARDIAN, JEANEAN SMITH, INDIVIDUALLY

V.

**WAL-MART REAL ESTATE BUSINESS TRUST, A DELAWARE STATUTORY TRUST, T/D/B/A WAL-MART SUPERCENTER, AND WAL-MART STORES EAST, LP, T/D/B/A WAL-MART SUPERCENTER
NO. 1123 OF 2016**

Cause of Action: Premises Liability

On August 20, 2015, the minor child, Rheagan, who was 12 years old at that time, was visiting Defendants'

JURY TRIAL VERDICTS

BY BETH ORBISON, ESQ.,
JAKE ORESICK, ESQ., AND
LEEANN PRUSS, ESQ.

store, the Wal-Mart located in Unity Township. When she was leaving, Rheagan was standing on a shopping cart being pushed by Ron Alborn, a family friend. As they approached Mr.

did you know?

Westmoreland County Civil Jury Trial Verdicts from 2000 to the present are available online at www.westbar.org/verdicts.

Alborn's vehicle, Plaintiffs alleged that the shopping cart hit a pothole/crevice in the parking lot that caused Rheagan to fall off the shopping cart. Plaintiffs alleged that as a result she suffered injuries and resulting medical expenses. Plaintiffs sought monetary damages.

Defendants denied any liability as to the cause of the fall and further alleged that Plaintiff Rheagan's injuries were caused partially by her own negligence of improper use of the shopping cart. Defendants requested a verdict in their favor.

Trial Date: September 12, 2017

Plaintiffs' Counsel: Timothy J. Scelsi, Reeves & Ross, Latrobe

Defendants' Counsel: Jeffrey T. Criswell, Thomas, Thomas, & Hafer, LLP, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: The jury found in favor of Defendants. ■

Remembering Bob Cassol

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After he finished reading, I expected Bob to say, "Hey, good letter, Chris, you should never have to take that kind of attack or abuse from another lawyer."

But, instead, he said, "Chris, did you mail this letter yet?"

I said, "No, I didn't mail it yet. I was going to mail it today."

He smiled—and I'm sure we've all learned this same lesson from senior lawyers—and he said, "Don't mail it quite yet. Just leave it here with me, and tomorrow, when you come into the office, if you'd still like to send the letter, we'll put it in the mail tomorrow."

The next day, I got to the office early, walked into Bob's office before he got in, and I looked at the letter again. I specifically remember saying to myself, "Oh, my God, I cannot

send this letter—it is horrible." This was how Bob taught me, without even the slightest amount of pressure, that you can't let your emotions get the best of you. He had a very gentle manner of teaching life skills without using a lot of words.

On the rare occasion that the partners in our firm disagreed about anything, Bob had a gift of calming even the most contentious of arguments. With just a single word, Bob would be able to defuse the most difficult situations that appeared to have no reconcilable solution. He did this often and most effectively.

He also taught me the art of drafting meaningful and unambiguous contracts. I recall once we were drafting an equitable distribution agreement in a divorce case, and it is no exaggeration when I say that we redrafted that agreement at least 30 times. I would redraft it, take it back

into his office and show it to him, and, in his typical sense he looked down at the document, read it and would say, "Chris, it's just not quite right. Take it back, look at this provision, change this, or change that."

Finally, I got to the point where I felt there was nothing else I could change to make this a better contract. But sure enough, Bob looked at it again and he found one word or one phrase that was drafted incorrectly, or just not the way he intended it to be. I reread it and said, "You know what, you're right."

His patience, his meticulous way of handling things was just amazing. These are qualities that he passed on to me and, I'm sure, many other members of the bar association, as well as his family and his children. These are qualities that are so important to being a good lawyer, a good father, a devoted husband, and a loyal friend. ■

To-Wit: First Step

by S. Sponte, Esq.

Although I didn't recognize the number on the caller ID, I answered the phone anyway. "Law offices," I said. It's the greeting I always use whenever I answer my own office phone. After nearly fifty years of practice I have learned never to first identify myself until I know whether or not the caller is armed or pissed or both.

"Hi," a voice responded jovially, "this is _____." I quickly recognized the name as that of a colleague formerly of this county who had relocated out of state some years before. "Is this _____?" he said, asking for me by name.

I immediately thought through the entire catalogue of possible reasons why he would be calling me. We never had any professional dealings together, so he could not be seeking retribution, and since we had never been close

friends there was no reason for him to be mad at me.

When I then 'fessed up to being me he told me he was calling to apologize for insulting me some time ago.

“Truly though, I had no memory of any such insult from him, and believe me, I remember them all; I keep a complete written list, along with notes on how to get even.”

"That's so kind of you," I responded, "and very much appreciated." I hadn't the slightest idea what he was talking about but because apologies come so few and far between in our profession I always accept them, warranted or not.

"But refresh my recollection," I continued, "exactly which insult are

you apologizing for?"

"It's been bothering me for years," he replied, without offering any additional specificity. He then launched into a profuse, heartfelt apology replete with wonderful, groveling phrases. Oh, I loved it.

Truly though, I had no memory of any such insult from him, and believe me, I remember them all; I keep a complete written list, along with notes on how to get even, but he was not on it.

Now I never knew him to be a drinker but I began to wonder if this was not in fact his first step in Alcoholics Anonymous, the "apologize to everyone you've hurt" part. He finished his apology with a prayer beseeching God to bless me with a lot


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G

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Daniel Joseph

To-Wit: First Step *continued from page 9*

of wrongful death cases and then went on to tell me that he had just joined Lawyers Anonymous. The first step in his path to redemption, he informed me, was to apologize to everyone he'd ever insulted or hurt in his career.

"Please," I told him, "feel free to call whenever you want to apologize," and with that we said goodbye.

I'd never heard of Lawyers Anonymous before but a quick Google search informed me that it's an embryonic organization modeled after AA; its mission is to provide aid and assistance to lawyers suffering heartbreak and remorse for the bad things they've done. The website's home page is not at all subtle in displaying some possible examples. "FORECLOSED ON ORPHANS AND WIDOWS, DID YOU," it queries. "GOTTEN RAPISTS, MURDERERS AND PEDOPHILES OFF, DID YOU," it inquires. And then, perhaps worst of all, "PRACTICED FAMILY LAW, DID YOU?"

The organization's basic premise is pretty clear; all lawyers have something they need to apologize for, and it's best to get on with it before the emotional

weight of the transgressions becomes so encumbering that one's professional impetus grinds to a complete and utter standstill.

Maybe there's something to this, I thought, and so heeding the website's initial suggestion, I sat down at my desk with a proper yellow pad and started to write down the names of all the lawyers and/or judges and/or clients I may have hurt, insulted, or offended during the course of my career. Fifteen minutes later I had filled up seven yellow pads and hadn't made a dent.

The real truth is, though, there's only one thing I've done that's haunted me in my career, only one, and it's haunted me for thirty-five years. My opposing counsel in the matter was an alcoholic, but even sober he wasn't very good. I had taken a default judgment against his client because four months after I filed the complaint, despite my many forewarnings to him, he still had not filed a responsive pleading. He waited three more months after that to file a petition to open the judgment and then asked me for certain stipulations of fact which he thought would help him. None of

them were material though, and I readily agreed. In return, I asked for a few stipulations as well.

It's not my fault he agreed to them, one of which made it absolutely impossible for him to ever prevail. It's not my fault he didn't understand that. I expected him to refuse to agree, but he read them in front of me and signed them without a word, and that wasn't my fault either. It ended up costing his client a huge amount of money and him his place in his partnership. No doubt it also ruined what liquor had left him of his career.

He never spoke to me after that, and soon thereafter he retired and moved away. Not much later he died. I regret how it turned out for him, I really do, but it's not my fault.

That's what I keep telling myself. I endlessly argue that in this adversarial profession sometimes we take no prisoners, sometimes it's just rip and tear. I've even written and submitted to myself a brief on the subject. I've read it too, and it's a good one, but despite my best efforts as an advocate, I'm not yet convinced.

I've never told this story before, not to anyone. I was the only one who ever knew it, but I had to tell someone, and now you know it, too. That helps a bit. So tell me, what do you think? It wasn't my fault, was it?

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Westmoreland Revisited

The Biographer's Dilemma

How do you eulogize someone about whom there is not much to be said?

by The Hon. Daniel J. Ackerman

Many years ago, perhaps at a time when people were less sensitive, but more honest, a preacher presided at a funeral of a man he had never met. After a few perfunctory remarks and reading several verses of scripture, he paused, and looking at the pitifully small gathering said, "Amos lived among you, and you knew him better than I, would some of you like to share a sentiment with us?" There was a long and awkward silence, so he added, "It needn't be much, even a few words will do." Following another pause, an elderly gentleman raised his hand, and staring at the preacher said, "His brother was worse."



The Hon. Daniel J. Ackerman

This story came to mind as I perused Albert H. Bell's *Memoirs of the Bench and Bar of Westmoreland County Pennsylvania*, written in 1924. Mr. Bell's book of 302

pages contains, as one might expect, summaries of the professional lives of members of our bar from its inception prior to the American Revolution, through the first two

decades of the twentieth century. These were lawyers of distinction; some were prominent statesmen; or in a few cases, military heroes. Yet, Mr. Bell also saw the value of recognizing a few lesser lights, who, as in the present case, were unconventional in their approach to the law. In drawing his sketch of Marcus A. Canders, Mr. Bell shows us someone who was not much of a lawyer, but, who despite, or because of his eccentricities was apparently appreciated by his colleagues, for "Mr. Canders was happy-go-lucky in the practice of his profession."

Mr. Canders was born in South Huntingdon Township in 1839, and named for the Roman Emperor Marcus Aurelius (161-180), a practitioner of Stoicism, who, like Canders himself, was dedicated to finding and preserving equanimity in the midst of conflict. Educated in what Mr. Bell refers to as the "common schools," Canders read law with the Hon. Edgar Cowan and was admitted to the Westmoreland bar in 1860. In appearance and dress he was what was then called a "dandy," as can be seen from Bell's description.

continued on page 12

Intellectual Property Law Patents, Trademarks, Copyrights

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J.D. from Temple University
Chemistry studies at University of Pittsburgh
Registered Professional Engineer (Pennsylvania)
Formerly Assistant Professor at Villanova University
Formerly Doctoral Candidate in Mathematics at Bryn Mawr College

The Biographer's Dilemma *continued from page 11*

"In appearance, Mr. Canders was tall, angular and fully bearded. He was polite, social and practiced the manners of the old school lawyer. He habitually wore a high silk hat, a 'Prince Albert' coat and pantaloons to match. He insisted on the harmonies of dress and indulged in severe animadversions on the lack of judgment in dress which he thought was displayed by one of his brethren who was well-to-do, well connected socially and a lawyer of great reputation. He complained that the lawyer referred to had no taste in dress, that he always wore a forty dollar coat and vest with a two dollar pair of pants."

No slave to scholarship, Mr. Canders kept no library, nor in his twenty-five years of practice did he maintain an office. According to Bell, "His office was wherever he found pen, ink and paper." His research was done on the sidewalks of Greensburg, or perhaps over lunch by picking the brains of his colleagues. He deemed it easier to copy a pleading of another, rather than to draft it from legal principles, and rules of evidence were more easily learned by observing trials than from memorization. "He was willing to work, but not too hard," observed Bell, adding, "To succeed by following the line of least resistance presupposes a keener

No slave to scholarship, Mr. Canders kept no library, nor in his twenty-five years of practice did he maintain an office.

wit, a quicker perception, a readier adaptability and more-sufficient control of mental gravity that will enable the individual always to land on his feet and maintain the perpendicular than most men have been endowed with by nature. The line of least resistance is not found in the pathway of the lawyer who attains eminence." That said, Bell admitted that "Mr. Canders could do some things well." Nor was he "devoid of a sense of the dignity of his profession. He valued his able brethren highly, and withal had a competent sense of his own importance."

In the nineteenth century, drinking was more widely condoned, and Mr. Canders, it seems, loyally pursued refreshment, even if he lacked the necessary funds and had, on occasions, to turn to others. One lawyer Canders often relied upon, a Mr. Hazlett, "knew Canders well enough to know when he was thirsty and was about to make a touch for the price of a drink, but he insisted that he prove his sobriety before responding to the touch. The customary test was that he must walk a crack the entire length of the floor without side-stepping. If the day was yet young Canders could toe the mark."

Even the fees Canders charged were a balancing act between what he perceived as the client's parsimony and the amount of cash he had in his own pocket. "On one occasion while in Christ Cribbs' cigar store, a favorite resort, a farmer client asked Canders to examine his deed and see if it was properly executed. The client paying for a purchase at the store had a number of silver dollars in his hand. After Canders had advised him that his deed was good, the client asked him his fee, 'Oh, just what you have in your hand,' Canders replied to the surprise and chagrin of the client."

Bell concluded his eulogy, "Never very vigorous in health, Mr. Canders died in Greensburg in 1885."

The inclusion of this biographical sketch in *Memoirs of the Bench and Bar* is surprising because of its candor. Yet it is refreshing in a sense, for in each generation of lawyers, and in every other profession for that matter, there are characters, whose stories are never written, but are the stuff of local lore. It's hard not to like the story of a man who claiming a superior memory, said "I can remember at the moment of my birth of seeing the candle burning on the mantel piece." ■



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Incentives Key to Success of County's Drug Treatment Court

continued from page 1

proven ineffective in addressing the underlying cause of an addict's criminality. Effecting real change in an addict's behavior requires a change in attitude through a focus on positivity. Quoting a recent Drug Court graduate, the judge expounded, "You can't have a positive life with a negative mind."

Changing someone's mindset, particularly someone who is grappling with an addiction, is not an easy task, as it is expected that most of the participants in the program will slip at least once. While a relapse does not necessarily mean immediate termination from the program, it may warrant the imposition of sanctions. Unlike traditional penal system forms of punishment, Drug Treatment Court's sanctions are often in the form of a positive activity, such as writing a letter of apology or participating in a



community service activity. Incarceration has been used; however, judiciously.

The main emphasis in Drug Treatment Court is on incentives. "Incentives give them a goal to work towards and those received in court from the judge are those most appreciated," Coordinator Eric Leydig explained. "Many of the participants have never received any type of reward, not even a simple applause or a 'good job!' As a result, they fail to recognize

when they're being rewarded for their positive behaviors. Sometimes we have to tell them that the reward is for them. It's so encouraging to see the recognition on their face when it dawns on them that the applause is for them."

Outweighing sanctions by a ratio of 7-to-1, incentives come in a multitude of forms. Gift cards, candies, applause, judicial certifications, travel permissions, reductions or dismissal of criminal charges, entry into gift drawings, bracelets, and money clips have been used to encourage positive behaviors.

Since the program began, Judges Feliciani and Bilik-DeFazio have imposed a combined total of 279 sanctions and awarded 1,971 incentives. The outcome of this incentive-heavy program has been quite favorable. Of the seven graduates

continued on page 14

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Incentives Key to Success of County's Drug Treatment Court *continued from page 13*

and forty-two current participants in the program, only two have received criminal convictions while in the program: one was sentenced to probation, while the other was given credit for 48 hours served.

Even when sanctions are imposed, the team encourages and reinforces positive behaviors. As an example, Leydig explains that the team often responds to positive drug screens by commending the participant's behavior after the slip if they're honest and admit to using and seek help from the team immediately thereafter. Judge Bilik-DeFazio described how she "celebrated" one participant's honesty about using: "We congratulated him on being truthful because we all knew that six months prior, he would have lied to avoid incarceration. Celebrating his positive response encouraged further positive behavior.

Celebrating milestones, instilling a sense of self-worth and pride for accomplishments, no matter how small, while positively addressing expected setbacks along the way is what makes this program work. With

pride, Judge Feliciani described how their recent graduates were ready to enter society as productive members with jobs, housing, and in some cases reunited with their children. That is what makes this program the best there is. Through accountability, support, and supervision, our Drug Court has given people, who were once on the edge of the precipice, the opportunity to do remarkable things in their lives.

Lamenting the only negative to the program, Judge Feliciani said, "I wish we could offer it to more people. With limited funds and resources, we have to cap our program at 50. There are so many more people who need this program."

Judge Bilik-DeFazio agrees and looks to January 2018, when she is hopeful the program might be expanded: "The DRC (Day Reporting Center) was shuttered on September 1 because it was too restrictive: a one-shoe-fits-all program that didn't address the individualized needs of each of the participants. Treatment needs to be personalized and participants need to be severed from the places and things that encourage their addiction. The DRC didn't address that need; Drug Court does."

The next graduation ceremony will be held December 28, 2017, at Noon in Judge Bilik-DeFazio's Courtroom. At press time, seven more participants are expected to graduate from the Drug Court program, doubling its number of success stories. ■

For further information about Drug Treatment Court, visit www.co.westmoreland.pa.us/2286/Drug-Court.

Admission into the Drug Treatment Court program starts with a referral to Coordinator Eric Leydig. If you have a client who would benefit from the alternative Court program, email Eric at eleydig@co.westmoreland.pa.us or call 724-830-3120.



He's coming to town and everyone's invited!
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Ranker Elected Vice President at Quarterly Meeting



John Ranker

At the Fall Quarterly Meeting held on Wednesday, October 4, 2017, John M. Ranker was elected Vice President, filling the vacant seat on the WBA Board of Directors.

The special election was held at the University of Pittsburgh at Greensburg in the Campana Chapel following the presentation of a one-hour complimentary CLE seminar.

John is the founding partner of John M. Ranker & Associates in Greensburg. His election leaves vacant one Director position on the board, which is expected to be filled at the next membership meeting.

wba news

where in the world IS THE WBA MEMBER?

Last October, I took a two-week trip to Eastern Hungary, Romania, Ukraine, and Czech Republic. I went to visit my parents' and grandparents' hometowns and visited nine cemeteries.

We were also in Budapest and Prague. The photo is of me (no kidding) next to the gravesite of my great-great-grandfather, Jacob Schwarcz, the man after whom I'm named. He died in 1893. This was in the village of Szamoszeg in Eastern Hungary.

—Jack Bergstein



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CALENDAR OF EVENTS

All committee meetings and activities will be held at the WBA Headquarters unless otherwise noted. Visit www.westbar.org for more information about activities and CLE courses, or to **register online**.

DECEMBER

- 2** Holiday Dinner Dance, Westmoreland Country Club, 6:30 p.m.
- 4** [PBI CLE] The Emerging Retiree, Noon to 3:15 p.m., 3S
- 7** [PBI CLE] 2017 Criminal Law Update, Noon to 4:15 p.m., 3S 1E
- 11** [CLE] Bridge the Gap, 9 a.m. to 1 p.m., 4E
- 12** Dinner with Santa, 5:30 to 7 p.m.
- 14** [CLE] Video Compliance, 9 a.m. to 3:45 p.m., 4S 1E
- 15** [CLE] Practice Management in the Mobile Era, Noon to 1:15 p.m., 1E
- 19** Ned J. Nakles American Inn of Court, 5 p.m.
- 20** [PBI CLE] The Law of Guns in Pennsylvania, 9 a.m. to 4:30 p.m., 5S 1E

- 21** Holiday Gathering & Retirement Party for President Judge Richard E. McCormick, Jr., 4 to 7 p.m., Megan's Suite at The Palace Theatre, Greensburg
- 25** Courthouse closed in observance of Christmas
- 29** Last day to pay your 2018 Membership Dues!

JANUARY

- 1** Courthouse closed in observance of New Year's Day
- 10** Real Estate Committee, Noon
- 11** Ned J. Nakles American Inn of Court, 5 p.m.
- 15** Courthouse closed in observance of Martin Luther King Jr. Day
- 16** Family Law Committee, Noon
- 17** Membership Committee, Noon
Elder Law & Orphans' Court Committees, Noon

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**Monday,
December 11, 2017
9:00 am - 1:15 pm
WBA Headquarters**

Seminar Fees:

PRE-REGISTRATION:
(Must be prepaid & received at the WBA
office by 12 pm December 8, 2017)
CLE Credit
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As a courtesy of the Westmoreland Bar Association, this seminar is being offered **FREE** to **newly admitted WBA attorneys** who are required to complete the Bridge the Gap program by their first CLE compliance

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PROGRAM FORMAT

This four hour program produced by the PA CLE Board consists of the following sections.

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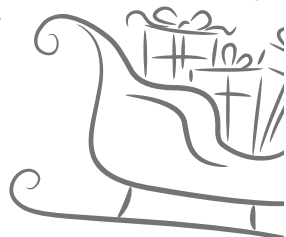
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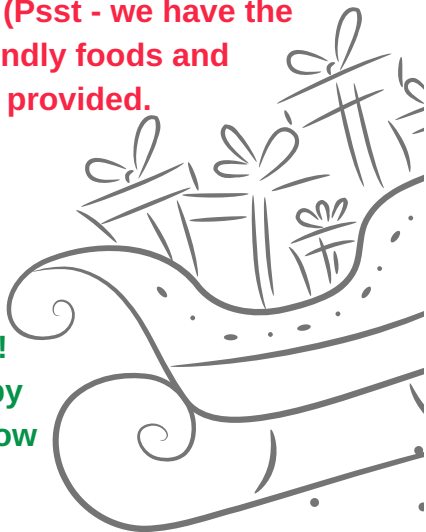


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5:30 to 7 p.m WBA Headquarters

All attorneys - and staff - are invited!

**Bring your children, grandchildren, nieces,
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**All WBA attorneys are invited!
Please RSVP at 724-834-6730 by
Tuesday December 5, so we know
how many to plan for.**



Thursday

December 14, 2017

WBA Headquarters

9 am - 2:45 pm

Seminar Fees:

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(Must be prepaid & received at the WBA office by 12:00 pm December 13, 2017)

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Session 1 — 1 Substantive Credit

9:00 am – 10:00 am (Video from 9/26/17)

Untangling UM/UIM Auto Coverage

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*Stacking Waivers

*Household Vehicle Exclusion

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*Dennis B. Rafferty, Esquire

*Jessica L. Rafferty, Esquire

*Joyce Novotny-Prettiman, Esquire

Session 3 — 1.5 Substantive Credit

12:00 pm -1:30 pm (Video from 10/25/17)

Taking Control of Your Financial Destiny

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Speakers:

*Paul J. Brahim, CFP, AIFA, Chair and CEO

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Session 2— 1.5 Substantive Credits

10:15 am – 11:45 am (Video from 10/24/17)

New Changes To The Pennsylvania DUI and License Suspension Statutes

1. New Ignition Interlock options in lieu of License Suspension.

2. Changes in mandatory sentencing calculations in DUI cases.

3. Impact of License Suspensions for serious traffic violations.

Speakers

*Michael D. Ferguson, Esquire

Ferguson Law Associates

*Timothy Andrews, Esquire

Former Prosecutor & 30 Years' Experience in DUI and WBA President

Session 4 — 1 Ethics Credit

1:45 pm – 2:45 pm (Video from 6/10/16)

Whose File Is It Anyway?

Speaker:

Amy J. Coco, Esquire

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December 14, 2017 Video Compliance CLE

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Speaker:

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**Friday,
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12:00 pm - 1:15 pm
WBA Headquarters**

Seminar Fees:

PRE-REGISTRATION:

(Must be prepaid & received at the WBA office by 12 pm December 14, 2017)

CLE Credit

WBA Members - \$30 per credit hr.

Non-Members - \$50 per credit hr.

Non-Credit

FREE

WALK- IN:

CLE Credit

WBA Members - \$40 per credit hr.

Non-Members - \$50 per credit hr.

Non-Credit

FREE

Lunch will be provided.

Westmoreland Bar Association

129 North Pennsylvania Ave.

Greensburg, PA 15601

724-834-6730

Fax: 724-834-6855

www.westbar.org

For refund policy information, or if special arrangements are needed for the disabled, please contact the WBA Office at 724-834-6730, or by email at westbar.org@westbar.org.

This seminar is the first in a series sponsored by The Law Practice Management Committee. The #1 request from the 2017 focus group sessions was to provide members with education on Technology issues that impact the practice of law. .

One (1) Ethics Credit is available toward your annual CLE requirements.

You may pre-register for this seminar by visiting the westbar.org website. You must "LOG IN" to register.

OR submit the form below.

December 15, 2017

Practice Management in the Mobile Era

Name: _____

Attorney I.D. # _____

Enclosed is my check made payable to the Westmoreland Bar Association.

Bill my MasterCard VISA DISCOVER for \$ _____ (Amount).

Card # _____

Expiration Date _____ 3-digit code _____

Credit Card Billing Address _____

Pre-Registration Fees

CLE Credit:

WBA Members - \$30 per credit hour

Non-Members - \$50 per credit hour

Non-Credit:

FREE

To qualify for Pre-Registration Seminar Fees - Please return this form and your payment to the WBA Office, 129 North Pennsylvania Avenue, Greensburg, PA 15601, **by 12 pm December 14, 2017.**

**'Tis the season for holiday cheer and
we have the perfect setting to enjoy
this season.**

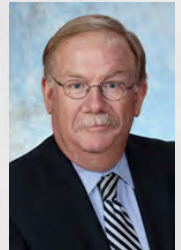
The Honorable Richard E. McCormick, Jr., President Judge
Retirement Party and Portrait Unveiling*

*In conjunction with the annual WBA Holiday Gathering

WBA members:

Please join us as we pay tribute to Judge
McCormick Jr. for his many years of service to
Westmoreland County.

- Appointed to Court of Common Pleas – 1990
 - Elected to Court – 1991
 - Elected President Judge – 2014
 - Retiring – January, 2018



Thursday, December 21, 2017

4 – 7 pm

Megan's Suite, Palace Theatre, Greensburg, PA

Catering provided by Sun Dawg with complimentary
wine and beer

Kindly RSVP by Monday, December 18 to
westbar.org@westbar.org or to the bar office 724-834-6730



OPEN ENROLLMENT!

OPEN ENROLLMENT REDUCED FEE PROGRAM

It is open enrollment for the WBF Reduced Fee Program and we are looking for attorneys who wish to participate.

Changes to the Reduced Fee Program beginning in 2018 include

- **\$20 application fee for qualified clients**
- **\$50/hour billing rate**
- **Option to charge a flat fee for specified representation (not to exceed \$50/hour rate)**

Many Westmoreland County residents need legal representation but truly cannot afford traditional legal services. These clients for some reason do not qualify for representation through Laurel Legal Services or through Pro Bono so Reduced Fee provides the option for these individuals to pay a discounted rate for legal representation in the areas of Family Law, Bankruptcy, Tenant, Consumer Matters, Unemployment Compensation, and Wills and POAs.

How are the clients qualified?

To qualify the client must fall within 200% of the Federal Poverty Guidelines before taxes. Each client is required to complete an application, meet income, asset and legal issue guidelines, and provide evidence to qualify for the services.

Family Size	Monthly Income	Annual Income
1	\$2,010	\$24,120
2	\$2,707	\$32,480
3	\$3,403	\$40,840
4	\$4,100	\$49,200
5	\$4,797	\$57,560
6	\$5,493	\$65,920
7	\$6,190	\$74,280

How does the referral process work?

Once qualified the client is given a list of Reduced Fee attorneys who have registered for the corresponding practice area. The client is responsible for calling and scheduling an appointment with one of the attorneys on the list. After the appointment is scheduled, the Pro Bono office will provide verification and a closing form directly to the attorney to evidence that the client has been properly qualified for services. Every attorney has the right to accept or decline any case, as the client is not guaranteed representation. **The reduced fee is an hourly billing rate of \$50.00/hour or a flat rate that does not exceed the \$50/hour rate.** A retainer may be charged but must be at that rate. The client is responsible for all costs of the litigation, including court fees, advertising, etc.

There are no registration fees to participate in Reduced Fee. Simply complete and return the application.

Participation Requirements:

1. Be admitted to practice law in the Commonwealth of Pennsylvania
2. Complete the application (included).
3. Be a current member of the Westmoreland Bar Association.
4. Maintain professional liability insurance in the minimum amount of \$100,000/\$300,000 during the registration period for this application.
5. Have no prior, or current, disciplinary actions.
6. Complete a retainer/fee agreement for each client, indicating the hourly billing rate of \$50.00 per hour or the agreed upon flat fee. Clients are responsible for payment of all court costs, fees, etc. for their case.

To finalize your participation in the program, complete the application (back) and return to the Pro Bono office via mail or in person, at 2 N. Main Street, Suite 411, Greensburg, PA 15601, fax: (724) 837-4221 or email at amanda.probono@comcast.net.

WESTMORELAND BAR FOUNDATION
REDUCED FEE PROGRAM REGISTRATION

Please complete and return as follows:

Pro Bono Program

Westmoreland County Courthouse
2 North Main Street, Suite 403
Greensburg, PA 15601

Fax: (724) 837-4221

Email: amanda.probono@comcast.net

Participant Information:

Name: _____

Office Address: _____

Telephone Contact: _____

Areas of Practice (Lists you will be included on):

_____ Family Law (custody, divorce, support, PFA)

_____ Civil Defense

_____ Landlord-Tenant

_____ Estates (wills, POAs, etc.)

_____ Bankruptcy

_____ Real Estate

_____ Collection Defense

_____ Consumer Matters

_____ Unemployment Comp/SSD/SSI

Other: _____

I have checked the areas of law in which I am competent to practice and will accept reduced fee client calls in these area(s) of law. I agree to be responsible for the case if accepted. I understand the charges for my services to qualified reduced fee clients shall not exceed \$40.00 an hour plus costs. I certify I have professional liability insurance in the amount of \$100,000/\$300,000 during the registration period for this application.

DATE: _____

Attorney Signature