



Board Adds "Grey House" to 2001 Bench/Bar Conference



by Bob Johnston, Esq.

The Westmoreland Bar Association Board of Directors recently announced the rental of an additional condominium at Deep Creek Lake for the upcoming Bench/Bar Conference June 14-16. Dubbed "Grey House," the new facility will be available for use by the older members of the association for card games, conversation, and the occasional afternoon nap, and will be stocked with a fine selection of large-print editions of "Reader's Digest."

According to John Scales, who has graciously agreed to serve as host, "we'll be close enough to the Young Lawyers' condo to hear the

music, but without all the jostling." (An apparent reference to an acquaintance who has fallen unexpectedly in years past.) Board member Jim Silvis, when casting his ballot for Grey House

exclaimed that this year, "maybe we won't have to eat Jell-O out of those tiny

little cups, I never understood why they don't just give it to you in a bowl like at home."

Grey House will also provide additional restroom facilities, thereby addressing a matter of some irritation to the younger set. Remarks like "I've been standing in this line for 20 minutes; must be some old guy in there" and "if you're just going to stand there, take it outside" are expected to become a thing of the past.

When asked to explain the Board's apparent newfound interest in older

members, incoming President John Campfield pointed to statistics suggesting that more than half of the Bar Association now carries AARP cards. "We're told by the Planning Committee that, eventually, the young lawyer will go the way of the buffalo," said John. When asked if it has anything to do with the fact that the average age of the Board is approaching 60, John declined to comment and abruptly ended the interview.

To get to Grey House, look for a condominium like the one pictured at left. In the alternative, when standing facing the Young Lawyers' condo, Grey House will be two doors to your right. Remember to bring your ID.

Les Meets His Cow



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President's Message

The Sun Always Shines Again

by Diane E. Murphy

I was wondering if any of my colleagues out there are experiencing the same rapid rate of burnout that I am beginning to notice in my practice. I recall in my earlier years I could go a span of about two to three years, usually working six days a week, before I felt like I needed a vacation or at least some time off. It's a good thing, too, because in those early years I couldn't afford a decent vacation. Across the state was just as far and unobtainable as some exotic location where I could



sit on the beach sipping piña coladas under a grass umbrella.

But now, I find that I begin to yearn to get away about every six to eight weeks.

Because of my work schedule, I of course cannot go anywhere that often. And I also have this incredible sense of guilt that reminds me I must stay and be responsible. So I play mind games with myself and think of the pleasantries of the legal profession to keep me going. Those pleasantries differ per individual and we all define those for ourselves. My pleasantries change periodically depending on the seasons and my moods. But at least I have been able to keep this mind-bending method working for me.

This past year has been somewhat trying, but when I look back I realize that I have feelings of accomplishment and achievement. When I compare

my work schedule with that of the early years, I am probably doing four to five times more work than I did then and the pace feels like it is ten times more hectic.

I guess I am in this frame of mind now because I recently attended the new admittees ceremony. Many of them are new to the profession and had that look of excitement and anticipation on their faces. I really do wish them all the best and urge them to keep those feelings fresh for as long as

they can. I hope they will not take my current "burnout" whining too seriously because it is only that—

a temporary cloud passing overhead. I have been told many times that it is a symptom of this profession, but I do know that the sun will shine again and we all will laugh again. Wow,

this has been better than a therapy session!

I wish the new admittees all the best and urge them to keep that feeling of excitement and anticipation fresh as long as they can.

Looking for a special way to remember someone?

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Since 1991, the Westmoreland Bar Foundation has raised thousands of dollars to assist the poor, disabled, elderly and children in our community. Through the **Special Way to Remember** program, you can honor a colleague or loved one with a contribution to the Foundation. Your gift will help serve the needs of our own who have nowhere else to turn for legal services.

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 N. Pennsylvania Ave., Greensburg, PA 15601.



Nominations Announced for WBA Board, Committees

On Monday, April 2, 2001, the WBA will conclude the 2000–2001 operating year with a complimentary dinner meeting at the Latrobe Country Club. At that time, a new board member will be elected, committees will be recognized and outgoing Bar President Diane Murphy will be roasted by Jim Silvis and John O’Connell.

John Campfield will assume the Bar presidency at the conclusion of this meeting.



Incoming WBA President John Campfield

The Bar Foundation will meet ahead of the WBA annual meeting and Gary Falatovich, Chair of the WBF, will report on the activities of the past year. Election of new Bar Foundation Trustees will take place and the Attorney of the Year will be honored by the Pro Bono Program.

The Nominating Committee has recommended the following members for the Board of Directors and Membership and Building Committees.



**VICE PRESIDENT:
AARON M. KRESS**

Aaron M. Kress has served three years as a Director on the WBA board. He has been instrumental in Unauthorized Practice of Law litigation on both the local and state levels. A member of the WBA since 1959, Aaron practices in New Kensington.

**BOARD OF DIRECTORS:
REBECCA A. BRAMMELL**

Rebecca A. Brammell is a member of the Elder Law, Orphans’ Court and Small Firm/Solo Practice Committees. Becky is also an active member of the Westmoreland Bar Foundation, serving as a Trustee and Chair of the Outreach Committee. Admitted to the WBA in 1986, she is a solo practitioner in Penn Township.



Do You Know an Outstanding Young Lawyer?



Nominations are being accepted for the Outstanding Young Lawyer Award which will be given out at the annual meeting on April 2. The criteria for the award are: ethics and integrity; service to the Bar and its members; leadership; service to projects undertaken by the Young Lawyers’ Committee; overall participation in Bar-related activities; and community service. Nominations should include a short profile of the attorney and may be submitted to Harry Smail, who can be reached at (724) 836-2040.



**MEMBERSHIP COMMITTEE:
JOHN M. RANKER**

John M. Ranker was admitted to the WBA in 1994 and has served on the Young Lawyers Committee and as Chair of Stepping Out. He is also a participating attorney in the Pro Bono Program. John’s office is in Greensburg.

**BUILDING COMMITTEE:
RICHARD F. FLICKINGER**

President of the WBA from 1999–2000, Richard F. Flickinger is a member of the Building and Orphans’ Court Committees, and is Chair of both the Finance Committee and Past Presidents Senate. A WBA member since 1965, his office is in Ligonier.



And the Winner Is ... Les Mlakar!

We know that you have been waiting with bated breath to find out if we have a winner in the “Oh, You Beautiful Judge” contest, and who it might be. Well, you can now relax, for indeed we do, and it is none other than Les Mlakar. You know, if you had asked us at the outset to guess who the winner might be, even before we knew who, if anyone, would enter, we would have said “Les Mlakar.” Why? Because we know him, that’s why.

Out of all the several entrants, Les is the only one to get all the judges correctly matched up with their baby pictures. Oh, there was one entrant who claimed that they were all babies, every one of them, but we were obliged to exclude the entry from consideration



◀ Les gets to know his cow a little better.

because it wasn’t properly notarized. Otherwise we might have had a tie.

And what has Les won? Well, as we promised, we had some wonderful prizes to award. First, and most exciting, Les wins an all expenses paid “Cow for a Day.”

Yes, a cow of his very own for a whole day. Can’t you just hear the gnashing of teeth from those who now wish they had entered the contest?

Second, Les has won a gift certificate from the Court of Common Pleas of Westmoreland County that may be redeemed for one summary judgment on any case of Les’ choosing.*

“I’m just thrilled,” said Les when informed of his winnings.

“I cannot tell you how much I have longed for a cow. It’s like a dream come true for me.”

As for the gift certificate, Les was somewhat nonplussed. “Huh,” said Les, “what’s a summary judgment?”

** Excluding any case in which liability is based on a theory of res ipsa loquitor or any case of quo warranto in which the right of any Westmoreland County jurist to hold office is challenged. Not valid outside Westmoreland County.*



▲ Les receives his gift certificate from the Honorable Gary Caruso.

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How Did You Do?

HERE ARE THE ANSWERS TO THE FIRST ANNUAL “OH, YOU BEAUTIFUL JUDGE” CONTEST. THANK YOU TO ALL WHO ENTERED. FOR THOSE OF YOU WHO DIDN’T—NO COW FOR YOU.



1

Judge Ober



2

Judge McCormick



3

Judge Bell



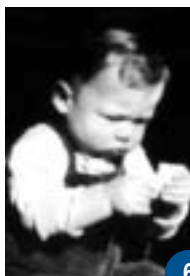
4

Judge Hathaway



5

Judge Kelley



6

Judge Driscoll



7

Judge Hudock



8

Judge Loughran



9

Judge Caruso



10

Judge Blahovec



11

Judge Pezze



12

Judge Marsili



13

Judge Ackerman

Depression and the Law

According to a 1990 Johns Hopkins University study, lawyers ranked number one on the list of occupations associated with depression. The major theory to explain why occupations might cause depression is stress—the discrepancy between the demands of a situation and the capacity of the individual or group to deal with it comfortably. Four factors contribute to depression in the legal profession:

1. **The adversarial nature of the profession.** The argumentative nature of our profession contributes to family breakups and overall distancing from friends and family. This isolation may send some lawyers on the road to depression.

2. **The level of objectivity needed to represent clients.** Zealous representation of clients and constant demands to be objective and “leave personal feelings out of it” cause lawyers to distance themselves from their true feelings. Often, this distancing spills over into personal lives, leaving lawyers alienated and uncomfortable communicating in their personal lives.

3. **The hierarchical nature of the profession.** Starting in law school, lawyers are taught to compete, strive to be the best, and meet high standards so they can get high-paying jobs. Those who reach the big firms are then pressured to meet high billable hour demands and strive to work ever faster and harder. Those who don’t “measure up” may feel like failures and believe that they will never succeed.

4. **Disillusionment with the profession.** Often young lawyers set out to help change the world, only to find that their jobs don’t let them do that. Sometimes, more experienced lawyers feel that practicing is not as fun as it used to be. Job environments have become stressful, and lawyers who come from the “never let ‘em see you sweat” school have nowhere to vent their difficulties and dissatisfaction.

CONFRONTING DEPRESSION

What can you do when depression strikes? First, learn to recognize its signs in ourselves and

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The Code of Civility: The Judge as Enforcer

by Judge Daniel J. Ackerman

In December, without fanfare, the Pennsylvania Supreme Court adopted a Code of Civility, 32 principles “designed to encourage judges and lawyers to meet their obligations toward each other and the judicial system in general.” The code addresses a wide variety of subjects, from judicial punctuality to acrimonious conduct between lawyers.

The importance of civility in the conduct of our affairs cannot be overemphasized. Where civility is part of the dispute resolution process, we can hope to approach the ideals of the Anglo-American judicial process. Without it, dispute resolution dissolves into warfare. As is stated in the preamble to the code, “The hallmark of an enlightened and effective system of justice is adherence to standards of professional responsibility and civility.” The code is clearly intended to preserve (some might say reclaim) the dignity and integrity of the judicial process.

I think we may take pride in the fact that one of our own, Judge Gary Caruso, made substantial contributions in the drafting of the Code of Civility.

The provisions of the code, as a directive from our supreme court, should be viewed on a level that is

equal to the Code of Judicial Conduct and the Rules of Professional Conduct. To be civil in our dealings with each other should not be a challenge. It will require only familiarity with the rules, self-control and a recognition of the need to treat others with the dignity and respect that we would hope to receive from them if our roles were reversed.

It falls to the judge to take the primary responsibility to see that the spirit of civility prevails. Not only must the judge adhere to those sections directed to the bench, but

The importance of civility in the conduct of our affairs cannot be overemphasized.

the judge must take the responsibility of seeing that lawyers comply as well. I would not expect that lawyers should need to raise objections based upon the code, for violations in the presence of the court will be obvious. While a judge should not be an activist in the interpretation of substantive law, he or she should be an activist in correcting *sua sponte* any transgression of the code occurring before the judge. This does not mean that judges will be filling their calendars with contempt hearings. The vast majority of infractions can be dealt with by the judge reminding counsel that uncivil conduct does not advance the judicial proceeding, but rather is a hindrance to the process. Where lawyers cannot get through a proceeding without rancor and personal accusation, the judge may

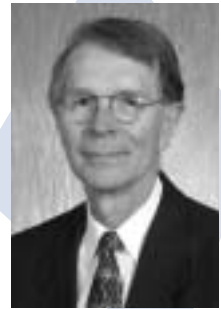
exercise the power of adjournment. That is, the judge may simply adjourn the proceeding with instructions to return at a later date when one might hope that counsel and the parties will proceed with courtesy.

The code does not identify sanctions for violations, but that does not mean that sanctions cannot be applied. In my opinion, the judge has inherent power to impose reasonable sanctions for any conduct that is disruptive or disparaging of the legal process.

The responsibility to enforce the requirements of the code should also be recognized by arbitrators, masters, hearing officers and any other person acting in a quasi-judicial role.

We all admire the advocate who is diligent and determined in the representation of their client, but zeal is not admirable if its cost is the loss of civility. Fortunately, nearly all the lawyers I see are diligent, civil and courteous. These are things that we all long to be and which we have the capacity to obtain. Stephen L. Carter, Professor of Law at Yale University, in his 1996 book, “Integrity,” observes:

“A person of integrity lurks somewhere inside each of us: a person we feel we can trust to do right, to play by the rules, to keep commitments. Perhaps it is because we all sense the capacity for integrity within ourselves that we are able to notice and admire it even in people with whom, on many issues, we sharply disagree.”



▲ Judge Daniel Ackerman

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Ceremony Introduces New Members to Court

On Friday, February 16, 2001, the Westmoreland Bar Association presented its new members to the court. Following a welcoming address by WBA President Diane Murphy, each admittee was introduced to the court by a member of the association.

After the presentation, Harry Smail¹ and Bob Johnston² greeted the new members on behalf of the Young Lawyers Committee and the Ned J. Nakles American Inn of Court, respectively. President Judge Charles H. Loughran spoke on behalf of the court.

The ceremony was followed by a luncheon at Bar headquarters.

The new members presented to the court are: Scott Avolio, J. Dustin Barr, Rosalie Bell, Megan Bilik, Karen Bononi, Derek Ferace, C. Christopher Hasson, Robin Holmes, Sarah



▲ Standing (L to R): Maria Soohey, Karen Stroka and David Miller. Seated (L to R): M. Farley Schlass, Anthony Rosner, David Puzak and Joyce Novotny-Prettiman.

Hough, Thomas Kratzenberg, Joseph Massaro, Jr., Amy Mears, David Miller, Joyce Novotny-Prettiman, David Puzak, Anthony Rosner, M. Farley Schlass, Maria Soohey and Karen Stroka.

NEW MEMBER SKETCHES

Scott Avolio, an attorney with Godlewski & Associates in

Greensburg, has joined the WBA as a participating member. He attended Jeannette Sr. High School, did undergraduate work at Saint Vincent College and earned his law degree from Duquesne University. He, his wife, Kim, and their son, Alexander, make their home in Jeannette.

Meagan Bilik, daughter of WBA member Edward Bilik, has been admitted as a participating member of the WBA. She is a graduate of Hempfield Area Sr. High School, Saint Vincent College and Duquesne University School of Law. Meagan is an associate at Loughran, Mlakar & Bilik in Greensburg.

Karen Bononi, sister of WBA member Eric Bononi, has been admitted as an associate member of the WBA. She is a graduate of Greensburg Central Catholic and Penn State

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▲ Standing (L to R): C. Christopher Hasson, Robin Holmes, Sarah Hough, Thomas Kratzenberg, Joe Massaro and Amy Mears. Seated (L to R): Scott Avolio, J. Dustin Barr, Rosalie Bell, Karen Bononi and Derek Ferace. Not shown: Meagan Bilik.

Ceremony Introduces Members *continued from page 7*

University. She earned an M.B.A. from Notre Dame and her law degree from the University of Pittsburgh. Karen lives in Pittsburgh and works at Williams Coulson.

Sarah Hough was accepted as a participating member of the WBA. The daughter of WBA member Ross Bash, Sarah is an associate in his offices in Delmont. A graduate of Greensburg-Salem Sr. High School, Dickinson College, and the University of Pittsburgh School of Law, she lives in Delmont with her husband, Justin.

Thomas J. Kratzenberg, a partner in Kratzenberg & Lazzaro, has been accepted as a participating member of the WBA. Tom is a graduate of Munhall High School and Duquesne University where he earned both his bachelor's and law degrees. He and his wife, Geraldine, have three children—Thomas, Karen and David—and live in Greensburg.

Joseph Massaro, Jr., a solo practitioner in Greensburg, has joined the WBA as a participating member. He attended Greater Latrobe High School, Saint Vincent College and Thomas Cooley Law School and lives in Greensburg.

Amy Mears, daughter of WBA member Scott Mears, Sr., has been admitted as a participating member of the WBA. She is a graduate of Greensburg-Salem Sr. High School and Washington & Lee University where she earned both her bachelor's and law degrees. Amy is an associate at Mears, Smith, Houser & Boyle in Greensburg.

Joyce Novotny-Prettiman was accepted as a participating member of the WBA. An associate at QuatriniRaffertyGalloway in Greensburg, Joyce is a graduate of Greater Latrobe High School, Seton Hill College, and Duquesne Law School. She lives in Greensburg with her husband, Daniel.

David Puzak, a solo practitioner in Youngwood, has joined the WBA as a participating member. He attended Laurel Highlands High School, did undergraduate work at Penn State and Indiana Tech and earned his law degree from Duquesne University. He and his wife, Debra, and their children, Philip, Eric and Jenna, make their home in Mount Pleasant.

Maria Soobey, an attorney with Aestique Medical Center in Greensburg, has been admitted as a participating member. Maria attended Derry Area High School, the University of Pittsburgh and Duquesne University School of Law. She and her husband, Michael, make their home in Latrobe with their children Alaina and Katrina.

Editor's note: New Member Sketches for Derek Ferace, C. Christopher Hasson, Robin Holmes, David Miller, M. Farley Schluss and Karen Stroka appeared in the May/June 2000 issue of the sidebar. Sketches of J. Dustin Barr, Rosalie Bell and Anthony Rosner were published in the September/October 2000 sidebar.



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Jury Trial Verdicts

NOVEMBER/DECEMBER TRIAL TERM

Plaintiffs and defendants shared success during the November/December 2000 Civil Division trial terms. Of the 103 cases slated for trial, 31 settled, 32 were continued, two were moved to Arbitration, one will be a summary jury trial, three were nonjury trials and 10 were tried to a verdict.

KERRY RICHARD BURROWS V. DAVID E. PLASKON NO. 5773 OF 1998

*Cause of Action: Negligence—
Motor Vehicle Accident*

The plaintiff brought this negligence action as a result of a motor vehicle accident that occurred on State Route 30 near the junction of State Route 48 on the morning of April 3, 1997. According to the complaint, the plaintiff stopped his vehicle because two vehicles were stopped in his lane of travel. The defendant, traveling behind the plaintiff, failed to stop and collided with the rear of plaintiff's vehicle. The plaintiff sought damages for soft tissue injuries.

The defendant asserted that he acted with due care, and raised comparative negligence, the statute of limitations, and the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL).

Plaintiff's Counsel: Bernard P. Matthews, Jr., Meyer, Darragh, Buckler, Bebenek & Eck, PLLC, Gbg.

Defendant's Counsel: Michael C. Maselli, Law Office of Marianne C. Mnich, Pgh.

Trial Judge: The Hon. Charles H. Loughran, President Judge

Result: Verdict for Plaintiff in the amount of \$5,000.

MUSTAFA MOHAMED V. GIANT EAGLE, INC. NO. 7962 OF 1995

Cause of Action: Negligence—Duty of Owner/Occupier of Land to Invitee—Arbitration Appeal

On March 1, 1994, the plaintiff was a business invitee at defendant's store in New Kensington. As he exited the front of the building, he was struck by the electronically operated automatic door. The plaintiff asserted that the defendant was negligent in failing to properly maintain and repair or monitor the maintenance and repair of the automatic door; in failing to

inspect/warn of the condition; and in failing to make safe the condition with knowledge of the same.

Alleged injuries included aggravation of glaucoma in the right eye, and injuries to the neck, back and right leg and knee.

The defendant, in new matter, asserted that it acted with reasonable, ordinary and prudent care and skill with respect to the inspection, operation and maintenance of the store. Defendant also contended that plaintiff's alleged damages and injuries may have resulted from negligent acts or

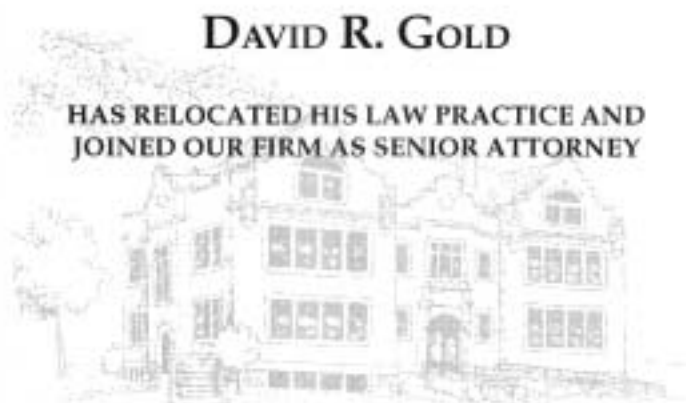
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Jury Trial Verdicts *continued from page 9*

conduct of third parties or entities not the agents, servants or employees of the defendant, and that such acts constituted an intervening or superseding cause.

Plaintiff's Counsel: Irving M. Green, John D. Ceraso, New Kensington

Defendant's Counsel: James F. Rosenberg, Marcus & Shapira LLP, Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Verdict for Defendant.

**JANICE KEITH AND HAROLD KEITH, HER HUSBAND
V. ADIB H. BARSOUM, M.D., AN INDIVIDUAL, AND
ADIB H. BARSOUM, M.D., P.C., A PENNSYLVANIA PROFESSIONAL CORPORATION
NO. 3967 OF 1991**

Cause of Action: Negligence—
Medical Malpractice—
Loss of Consortium

The defendant performed surgery on the plaintiff for a herniated disc

on July 10, 1989. Four months later, a second surgery was performed by another surgeon on an area of the spine directly below the first surgical site. In this professional negligence action, plaintiff alleged that defendant negligently performed a non-indicated surgical procedure despite reports of three radiologists which plaintiff maintained indicated a contrary diagnosis. Additionally, plaintiff contended that defendant was negligent in failing to discover or consider the spinal stenotic lesion at the level immediately below his chosen surgical site, which necessitated further surgery. Her husband claimed loss of consortium.

The defendant maintained that surgery was necessitated based on his clinical assessment, diagnostic evaluation and plaintiff's symptomatology. Furthermore, defendant contended that he was aware of the stenotic lesion at the time of the surgery, but did not address it surgically because it was not symptomatic. In new matter, the

defendant raised the statute of limitations, contributory negligence and assumption of the risk, and that plaintiff's alleged injuries and damages were caused or contributed to by the conduct of others over which the defendant had no control.

Plaintiffs' Counsel: Thomas S. Barry, Pgh.

Defendant's Counsel: Robert W. Murdoch, Zimmer Kunz Professional Corporation, Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

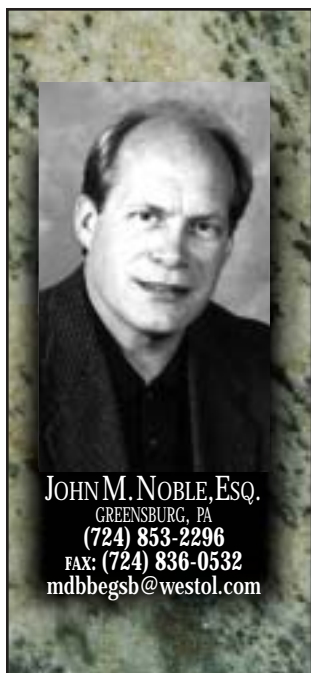
Result: Verdict for Defendant.

**DAVID A. SADECKY AND
JUDITH A. SADECKY, HIS WIFE
V. JOHN W. THROWER, INC.,
A CORPORATION
NO. 7062 OF 1998**

Cause of Action: Negligence—
Loss of Consortium

On June 18, 1998, the plaintiff purchased concrete from the defendant to be poured as a garage floor at the plaintiff's residence. As the defendant began to pour the concrete, plaintiff realized that they were "losing" the concrete and got onto his knees to save it. Although plaintiff claimed he was wearing pants, rubber gloves and 13-inch-high rubber boots, the plaintiff's knees were burnt by the "hot" batch of concrete, which allegedly sat too long in the mixing truck before its arrival. Plaintiff suffered caustic burns to his left and right legs, and suffered permanent disfigurement and scarring. His wife claimed loss of consortium.

The defendant denied all allegations of liability and negligence. In new matter, defendant raised the contributory negligence of the plaintiff, assumption of the risk, and the plaintiff's failure to mitigate damages by seeking proper treatment.



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Plaintiffs' Counsel: John E. Quinn, Evans, Portnoy & Quinn, Pgh.

Defendant's Counsel: Mark L. Reilly, Pgh.

Trial Judge: The Hon. Charles H. Loughran, President Judge

Result: Molded verdict for Plaintiff in the amount of \$17,850. 51% causal negligence attributed to defendant. No damages awarded to wife on the consortium claim.

**LYNN M. JELOVICH
V. JOSEPH A. HOUSLEY
NO. 2129 OF 1997**

*Cause of Action: Negligence—
Motor Vehicle Accident—
Arbitration Appeal*

The plaintiff brought this negligence action as a result of a motor vehicle collision that occurred at the intersection of Routes 51 and 981 in Rostraver Township. The plaintiff, traveling south on Route 51, was in the left hand turning lane of the intersection, which was controlled by a traffic light. According to the complaint, the plaintiff proceeded to make a left hand turn onto Route 981 when the light indicated a green arrow. As she was turning, plaintiff was struck by the defendant, who was traveling north on Route 51. The plaintiff alleged soft tissue injuries.

In new matter, the defendant raised comparative negligence and the MVFRL, including but not limited to the "limited tort" provisions.

Plaintiff's Counsel: Charles A. Frankovic, Pribanic & Pribanic, P.C., Pgh.

Defendant's Counsel: Michael C. Maselli, Law Office of Marianne C. Mnich, Pgh.

Trial Judge: The Hon. Charles H. Loughran, President Judge

Result: Verdict for Defendant.

**THOMAS M. NAMEY AND
WENDY NAMEY, HIS WIFE V.
KARL W. SALATKA, M.D.
NO. 1064 OF 1997**

*Cause of Action: Negligence—
Medical Malpractice—
Loss of Consortium*

On August 17, 1993, the plaintiff underwent a colonoscopy performed by the defendant during which a lesion was found. While performing endoscopic surgery to remove the lesion, the defendant perforated the plaintiff's sigmoid colon. The plaintiff averred, *inter alia*, that the defendant was negligent in performing endoscopic and invasive surgery that was medically unnecessary, and in undertaking surgical techniques involving endoscopic surgery and repair when the defendant had insufficient knowledge, experience and training. Injuries alleged included a perforated sigmoid colon, infections and surgeries, including a colostomy and subsequent reversal of a colostomy. His wife claimed for loss of consortium.

The defendant raised the affirmative defenses of contributory/comparative negligence, assumption of the risk and the statute of limitations. Defendant also asserted that the negligence of others, including but not limited to plaintiffs, was an intervening and superseding cause of any alleged injury and loss.

Plaintiffs' Counsel: Joseph D. Talarico, Talarico,

Paladino & Berg, Pgh.

Defendant's Counsel: Korry Alden Greene, Grogan Graffam McGinley, P.C., Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Verdict for Defendant.

**DOUGLAS BUCHER V. J.A.
DAVIS, INC. AND EASTGATE
SHOPPING CENTER, INC.
NO. 6117 OF 1997**

*Cause of Action: Negligence—
Duty of Owner/Occupier
of Land to Invitee*

On January 23, 1996, the plaintiff was employed by defendant supermarket to clean two exhaust fans on the roof at night. When plaintiff stepped from a hatch onto the roof and took a few steps, he fell approximately four and one-half feet to the bottom of the two-tiered roof. As a result, plaintiff fractured his right shoulder and

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ABSTRACTS

REAL ESTATE & MORTGAGE CLOSINGS

Jury Trial Verdicts *continued from page 11*

injured his right knee. Plaintiff sued defendant for failing to warn a business invitee of the dangerous condition created from inadequate lighting and the lack of a railing or other markings indicating the significant drop.

Defendant supermarket denied that it breached any duty of care owed to the plaintiff or that it was otherwise negligent. In new matter pursuant to Pa.R.C.P. 2252, defendant asserted a claim against the owner/lessor of the premises for indemnification.

Plaintiff's Counsel: John A. Adamczyk, Pgh.

Counsel for Defendant J.A. Davis, Inc.: Gary M. Scoulos, Meyer, Darragh, Buckler, Bebenek & Eck, Pgh.

Counsel for Defendant Eastgate Shopping Center, Inc.: Mark L. Reilly, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for Plaintiff against Defendant J.A. Davis, Inc., in the amount of \$16,000.00. 80% causal negligence attributed to defendant. Verdict in favor of Defendant Eastgate Shopping Center, Inc., on the indemnification claim.

IN RE: CONDEMNATION BY THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, OF RIGHT OF WAY FOR STATE ROUTE 1048, SECTION 009, IN THE TOWNSHIP OF BELL

CONDEMNEE: P.L.T.M., INC. V. COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION NO. 6680 OF 1996

*Cause of Action: Eminent Domain—
Appeal from Board of View*

In this condemnation proceeding, a portion of plaintiff's property, located in Bell Township, was taken by the Pennsylvania Department of Transportation (PennDOT) for the Salina Bypass Project. The public highway was located and relocated through the land of the plaintiff. The right of PennDOT to condemn the property for a public purpose was not disputed. In its petition for appointment of viewers, plaintiff asserted that defendant created damage by the taking and altering of plaintiff's access to the property, causing the market value of the property to depreciate. In this appeal from the board of view, the sole task for the jury was to determine the amount of damages entitled to plaintiff.

Plaintiff's Counsel: Donald J. Snyder, Jr., McDonald, Snyder & Williams, P.C., Latrobe

Defendant's Counsel: Walter F. Cameron, Jr., Senior Assistant Counsel, Office of Chief Counsel, Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: The jury found a fair market value of P.L.T.M., Inc.'s entire property interest prior to condemnation of \$248,000.00, and a fair market value of \$205,000.00 after condemnation, resulting in an award of \$43,000.00.

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LAW SPEAK

Of relative justice, law may know something; of expediency it knows much; with absolute justice it does not concern itself.

—Dr. Oliver Wendell Holmes

To-Wit: Breach of Code

by S. Sponte, Esq.

Code of Civility Enforcement Officer
State Judicial Office Building
Harrisburg, Penna.

Dear Sir:

Your recent inquiry took me a bit by surprise. Heretofore I had not been aware that there even existed a formal Code of Civility for lawyers and judges.

And thank you for sending me a copy of the Code as well. I have now read it in its entirety, but before I respond, point by point, to the issues you raise in your letter, let me say that I for one am ever so grateful to now have such a brilliant resource to assist me in my daily endeavors.

This is, after all, an adversarial business, and I am more adversarial than most. The tension and strife generated daily in the practice of law carries with it a concomitant urge to lash out at any tormentor. It's not just me, I think it's part of human nature.

God knows I have always tried to treat my colleagues with a civility that sometimes borders on outright cordiality, however difficult or feigned the effort may be, but I also know that sometimes during the course of every single day that I have been in practice for more than thirty years now, I have given in to temptation to abuse. I can do better, I know I can. Nonetheless, and I know that I speak for my entire species when I say this, please accept my apology for this inherent shortcoming.

Now then, let's get down to specifics, shall we. With regard to your Item One, yes, I did indeed refer to opposing counsel as a clown, and yes, it was quoted in the newspaper. And yes, I admit that when opposing counsel called me to protest, I did tell him I had been misquoted, that I had not called him a clown, but rather that I had called him a pathetic clown.

I make no attempt to justify my conduct. I understand it makes no difference whether or not he deserved it. It was, well, rude, yes, and perhaps a tad insensitive. But honestly, his oral argument was so

amusing, I figured that "clown" just simply had to be the effect he was going for.

If it makes your committee feel any better, let me tell you that several weeks ago I wrote him a long and heartfelt letter of apology. I am enclosing a copy for your files. And now that I know about this Code thing, I will mail it to him first thing in the morning, deleting all references to his lineage, his IQ and his law school class rank.

Regarding Item Two, once again I have to admit to my conduct. But I think if you had been there when His Honor called me a bonehead in front of my clients, you might be a little less judgmental.

In case you don't already know, let me tell you that it was a rear end collision case. If I had done some more discovery I might have known beforehand that there were several independent witnesses who saw my plaintiff leap from the driver's seat to the passenger seat of his own car after rear ending the car in front of him.

Now how he thought he could explain the absence of a driver in his car is beyond me. And why I put his doctor on the stand when I knew that he would testify that the only injury my plaintiff sustained was a wicked black and blue mark on his buttocks incurred while trying to clear the gearshift knob, well, that was beyond me, too.

But still, His Honor was way off base here. At least he could have waited until we were in chambers, like he normally does, before making with the gratuitous insults.

Perhaps in retrospect it was not such a good idea to retaliate by secreting a starter's pistol into his briefcase, and maybe it wasn't all that funny the next morning when he went through the metal detectors and was immediately pinioned to the ground by a security guard serving his first day on the job. Let me remind you though that it did get a hearty and appreciative laugh from many of the bar members who witnessed His Honor, duct tape securely fastened over his



I have always tried to treat my colleagues with a civility that sometimes borders on outright cordiality, however difficult or feigned the effort may be.

continued on page 14

To-Wit: Breach of Code

continued from page 13

mouth, being led away in cuffs.

As for Item Three, okay, well, maybe that was in bad taste.

I was certain that the witness who positively identified my client as the perpetrator had serious vision problems and I was also certain that as I stood in the rear of the courtroom she could never see how many fingers I was holding up.

When she got it right three times in a row, I admit I lost my composure, and it was just at that point in the trial transcript where I said "Now how many, you old biddy," that I made an inappropriate gesture. She got that one right, too.

I trust that you now have all the information you have requested. I apologize profusely for my transgressions, and I assure you that I will cooperate in any way with the Committee on Civility to try and improve my behavior in such matters.

Very truly yours,
S. Sponte, Esq.

Okay, Pat, type it up and send it out. I hope this gets those bastards off my back.

(DICTATED BUT NOT READ)

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Reminder

Have you paid your 2001 membership dues to the Westmoreland Bar Association? If not, dues must be remitted before March 1, 2001. Members who do not pay by this date will be dropped from the rolls of both the local and state bars.

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- Motions in limine

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Make Networking Work for You and Your Clients

Editor's note: The author is the chair of the Young Lawyers Division of the Philadelphia Bar Association. This article is reprinted from the Philadelphia Bar Reporter and is used with permission.

by James E. Elam IV

Most people see my efforts to encourage them to attend the monthly happy hours sponsored by the YLD as my way of filling an otherwise empty room. To the contrary, see it for what it is—opening your eyes to a fantastic opportunity. The YLD happy hour—like alumni functions, lunches with college friends or any other forum in which you interact with others—are opportunities to network and promote yourself and your practice. Regardless of the nature of your business, the ability to generate and sustain new business will eventually be the means by which your success is measured.

The rule of thumb is that a contact made today generally can result in business for you in about five years. That means, young lawyer, that you had better start now if you are looking to make partner. Even beyond the goal of partnership, having contacts in your field of expertise can mean benefits in many ways.

For example, having contacts at a firm on the other side of litigation may mean a less treacherous path during the course of litigation. It may also ease tension at the settlement table and lead to relaxed deadlines. Knowing your opposing counsel on a personal level also is a reminder that practicing law

should not be a personal fight, but rather two lawyers/firms doing their jobs. Networking has other benefits. Being familiar with opposing counsel in a transaction may mean less tedious proceedings during the execution of that transaction. It may also allow you to

further serve your client by finding him or her financing for a loan, venture capital, or a buyer/seller for a business. Clients often need services beyond what you may offer. They won't forget that you referred them to an accountant or

continued on page 19

Lawyers' Exchange*

(*Free to all members of the Bar)

LAW BOOKS FOR SALE Complete sets of Purdon's Pennsylvania Statutes Annotated, Dunlap-Hanna Pennsylvania Forms and Pennsylvania Keystone Lawyer's Desk Library of Practice, all with supplements current through 2000. Also Pennsylvania Vehicle Code Annotated with 2001 supplement. Price negotiable. Contact Thomas P. Cole, II—(724) 836-4390.

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OFFICE SPACE Approximately 2,000 square feet of new office space. Move-in condition. PaineWebber building, lower level. Separate entrance. Handicap accessible. Ideal for attorneys or other professionals. Phone (724) 836-7448.

OFFICES FOR RENT Newly renovated and beautifully decorated buildings. New Kensington. Includes new cherry desks, credenza, phone system, waiting and conference rooms, etc. Support services available (photocopier, fax, storage, etc.). Also, I'm overloaded with cases and need more attorneys to refer criminal, domestic, workers' comp, bankruptcy, SS disability, estate and others. If you need satellite or permanent office, this is your answer. Must be neat, organized, diligent. Call Gary Alexander directly at (412) 849-1200.

Actions of the Board

MINUTES JANUARY 16, 2001

- Voted to accept Membership Committee. Participating members: Amy Mears, Joyce Novotny-Prettiman; Associate, Karen Bononi, James Horchak.
- Approved the recommendations of the Building Committee to recarpet first floor of Bar headquarters.
- Agreed to postpone the Legislative Gathering, scheduled for February 9 and instead hold the quarterly meeting along with Attorney Greene's CLE on February 1.
- Reviewed the appointments for the LLS Board: Michele Bononi, Amy Cunningham and Beth Orbison.
- Agreed to bill no-shows for annual holiday dinner/dance.
- Decided that President and Executive Director should determine submission for recognition awards from state bar.
- Agreed to publish information on the courthouse AS400 access to county information in *sidebar* to inform members about this program.
- Accepted recommendation of Activity Committee to hire the band "City Heat" for the 2001 holiday dinner/dance at Greensburg Country Club.
- Reported that the Activity Committee scheduled the next bar picnic for 2002 at Idlewild.
- Reported that Annual Meeting was relocated from Greensburg Country Club to Latrobe Country Club on Monday, April 2 at 4:30 PM. The Greensburg facility reconstruction will not be completed by this date.
- Voted to extend invitation to Rachel Yantos to represent the WBA at the Pennsylvania Bar Association's New Admittee Ceremony.

On The Move ...

BRIAN CAVANAUGH has joined Stewart, McCormick, McArdle & Sorice at 229 South Maple Avenue, Greensburg, PA 15601.

ROBERT DOMENICK has a new mailing address: Suite 2, 57 Lincoln Highway East/Route 30, Jeannette, PA 15644.

MAUREEN GRACE has left the Child Support Advocates Office and is now the Solicitor for the Children's Bureau. Her mailing address is 2 North Main Street, Suite 303, Greensburg, PA 15601; Phone (724) 830-3324; Fax (724) 830-3364.

KATHLEEN KEMP has relocated to 4373 Old William Penn Highway, Murrysville, PA 15668. She can be reached by phone at (724) 733-4349 or by fax at (724) 325-7577.

CHRIS SKATELL has new offices located at the Eastgate Shopping Plaza, 1160 East Pittsburgh Street, 2nd Floor, Suite 14A, Greensburg, PA 15601. His new phone number is (724) 853-0224. Send faxes to (724) 836-4872.



free* live cle seminar

Thursday, March 29, 2001
WBA Headquarters
1:00 to 4:15 p.m.

Special Education/ADA 3 Optional Substantive Credits

Guest Speakers: Charles W. Jelley, Esq., and Ned J. Nakles, Jr., Esq.

This seminar will focus on the practical effects of special education rules and regulations as they affect school districts, school solicitors, school boards and parents of children with disabilities. In particular, the session will provide the participants with the basic knowledge of special education discrimination rules as they apply to school age children. Obtain basic knowledge of:

- Special education regulations
- Section 504 of the Rehabilitation Act and the Americans With Disabilities Act discrimination provisions as they apply to school-age children
- Specialized provisions under the IDEA.

- 1:00–2:00 p.m. (Session 1)** Basic introduction to special education rules and regulations
2:00–3:00 p.m. (Session 2) Description of the discipline procedures under the IDEA, how they affect school districts and school children
3:15–4:15 p.m. (Session 3) A review of the discrimination provisions under Section 504 of the Rehabilitation Act and the Americans With Disabilities Act

Please call the Bar office at (724) 834-6730 to register.

* Seminars are free for those who do not wish to receive CLE credits.

Mark Your Calendars



Our own Reg Belden will assume the Presidency of the Pennsylvania Bar Association on Thursday, May 10, 2001, at the PBA Annual Meeting. This event is a milestone for the WBA: Reg is only the second member of the WBA to be elected to the presidency of the state bar. Notably, his father was the first.

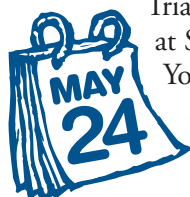
The PBA Annual Meeting is scheduled for the Omni William Penn in Pittsburgh (formerly the Westin William Penn).

Because the 2001 state meeting is in our backyard, it should be easy and convenient for members of the WBA to be a part of the evening festivities welcoming and honoring Reg. Dinner for those attending any other portion of the annual meeting is \$80. Dinner only is \$110. The cocktail reception begins at 6:30 p.m. with dinner and dancing scheduled for 7:30 p.m.



▲
Reg Belden

Look for your invitation from the PBA in early March and plan to celebrate this historic event!



In honor of The Honorable Gary Caruso, current president of the Conference of State Trial Judges, and in honor of Reg Belden, incoming president of the PBA, the WBA, the Ned J. Nakles American Inn of Court and the Westmoreland Academy of Trial Lawyers will hold a reception and dinner at Seton Hill College on May 24, 2001.

You will be receiving more information in the future, but for now, mark your calendars and plan to be there. It will be an outstanding event.



▲
The Honorable Gary Caruso

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foundation focus



Working Women's Closet Drive Underway

The Westmoreland Bar Foundation is again partnering with the YWCA of Westmoreland County to collect items for the Working Women's Closet. This time the closet is in need of women's gently used interview-appropriate purses and shoes.

In 2000 the WBA successfully collected over 200 women's business outfits to help stock the YWCA's closet. These contributions go to women who are changing careers or are actively trying to enter or re-enter the work force after graduating from high school or college or participating in job training or welfare programs.

There is a particular need for women's shoes in sizes 7 through 9. Any contributions of shoes or purses can be dropped off at the Bar office.



to help students learn about the law. Easy-to-use lessons for every grade level have already been prepared. The theme of Pennsylvania's second annual statewide Law Day effort is "Celebrate Your Freedom: Rights + Responsibilities = Freedom."

Bring your knowledge and enthusiasm about the law to students. It's a gift worth sharing! If you are interested in visiting a school, call the Law Day Hotline at 1-877-329-7621.

Second Annual Book Drive Gives Kids a Head Start to Reading

The WBF held its second annual book drive during the month of February to benefit Westmoreland County Head Start, a federally funded children and family development program. WBA members and Courthouse employees were encouraged to place new or gently used children's books in bins placed in the Courthouse lobby. The books were delivered to the Jeannette Head Start center by The Cat in the Hat himself just in time for "Read Across America Day," an annual National Education Association event that shows children reading is important ... and fun! The WBF plans to continue collecting books through the end of March.



◀ Foundation Trustees Janie Belden, Jo Millie and Becky Brammell are chairing the drive for the YWCA's Working Women's Closet.

Be a Part of Law Day 2001

Each year on May 1, the Pennsylvania Bar Association, along with bar associations across the commonwealth, takes part in the nationwide observance of Law Day. The PBA and WBA are asking its members to go back to school for one hour during the week of May 1, 2001,



Depression and the Law

continued from page 5

others. Second, learn self-care in order to prevent stress, burnout and depression. Third, learn how to approach those we believe are suffering from depression and learn about healthy treatment options. After all, depression *can* be treated with medication and therapy. Get educated!

If you or a colleague is suffering from depression, call Lawyers Concerned for Lawyers Confidential Helpline: 1-888-999-1941.

COMMON SYMPTOMS OF DEPRESSION

1. Noticeable weight loss or weight gain or a noticeable shift in eating habits
2. Change in sleeping patterns—wanting to sleep all the time or suffering from broken sleep or insomnia
3. Constant feelings of lethargy—low energy and fatigue
4. Listlessness and irritability
5. Feelings of hopelessness, worthlessness, pessimism, and guilt
6. Suicidal thoughts
7. Concentration and memory problems
8. Overall achiness
9. Excessive crying
10. Isolation from friends and family

Adapted from Oregon Attorney Assistance Program, January 2000

Make Networking Work

continued from page 15

financial advisor that solved a problem for them. Clients may need family law counseling, workers' compensation counseling, or guidance in some other field in which you do not have expertise but one of your contacts does. Further, the unwritten benefits of knowing a judge, for example, can be worth far more than your hourly rate to a client. The ability to offer a good referral speaks volumes about your practice.

In this volatile market, networking can also provide career options for you, allowing you to see other opportunities that may be available for you. Learning about other opportunities can also help you

determine the market value for your services. Like the old saying goes, knowledge is power.

Please do not take this to mean that you can network your way to a successful legal career. Networking and learning to be a good lawyer are not mutually exclusive. You still have to master the fine art of being a good practitioner. But that's only one part of success. A good lawyer, besides drafting great contracts and briefs, should be able to achieve results outside of the margins.

So stop by the next YLD happy hour. Who knows who you'll run into?

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CELEBRATE YOUR FREEDOM!



The Pennsylvania Bar Association and Westmoreland Bar Association are bringing together judges, lawyers and schools this year to help children learn how their rights and responsibilities truly "equal" our country's freedom. The theme of Pennsylvania's second annual statewide Law Day effort is **Celebrate Your Freedom: Rights + Responsibilities = Freedom.**

To help students celebrate their freedom, we are asking judges and lawyers to visit a classroom during the month of May. Easy-to-use lessons for every grade level have been prepared. Please consider sharing your knowledge and enthusiasm about the law with students.

For more information or to register for Law Day, call the Law Day toll-free hotline, 1-877-329-7621.

Rights + Responsibilities = Freedom

CALENDAR of Events

MARCH

- 14 Membership—Noon
Inns—5 p.m.
- 15 Elder Law and Orphans'
Court—Noon
- 16 St. Paddy's Day Party—4 p.m.
- 20 Family Law—Noon
Board Meeting—4 p.m.
- 21 Young Lawyers—Noon
- 29 CLE: "Special Education/
ADA"—1 to 4:15 p.m.

APRIL

- 2 Annual Meeting, Latrobe
Country Club—4:30 p.m.
- 11 Membership—Noon
- 13 Courthouse Closed
- 17 Family Law—Noon
Board Meeting—4 p.m.
- 18 Young Lawyers—Noon
- 19 Elder Law and Orphans'
Court—Noon
Inns—5 p.m.

TOP TEN

Top Ten Rules of Civility for the Practice of Law

1. When addressed by the court, you must stop talking at once. Gestures, however, are still permitted.
2. Please, no more salacious remarks about the lack of content in opposing counsel's briefs.
3. The making of disparaging remarks about opposing counsel's gender will not be tolerated inside the courtroom.
4. Unless you are a member of the Family Law Bar, or writing to one, salutations such as "Dear Bozo" and "You Pitiful Muttonhead" will no longer be tolerated.
5. Treat every paying client with the utmost respect.
6. Older members of the bar are entitled to respect. They're friends with all the judges.
7. Speaking ill of a colleague in the media may result in sanctions. Shooting them surely will.
8. When opening or closing to a jury, you may not refer to opposing counsel as "my distinguished colleague" if, at the same time, you are pointing a twirling finger at your head.
9. If a jury returns a verdict in your client's favor, it will be considered bad form to scream like Tarzan and jump for the chandelier.
10. A discreet and courteous handshake between counsel at the conclusion of every courtroom encounter is encouraged. The use of Joy Buzzers is not.



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