COMMITTEE NEWS

Federal Practice Institute Set For Oct. 25, 2019

Offered in conjunction with the University of Pittsburgh School of Law, the FPC’s Federal Practice Institute will be held from 9:00 a.m. to 5:00 p.m. on Oct. 25, 2019. Carrying 6 CLE credits (including 1 ethics credit), the institute is billed as providing lawyers with all the tools needed to succeed in federal court. Using a hypothetical case, federal judges and seasoned practitioners will explore the latest developments affecting federal practice. Topics include:

• Selection of forum
• Removal
• Attempts at remand
• Jurisdiction
• Initial case assignment
• TRO and PI practice
• Early neutral evaluation
• Case management
• Electronic discovery
• Pretrial orders
• Motions in limine
• Jury selection
• Bankruptcy filing
• Collateral appeals from preliminary orders
• Preservation of record for appeal

To learn more – including about the faculty, parking and hotel options, and how to also get tickets to the Pitt homecoming football game (against the Miami Hurricanes) – or to register, go to http://www.pbi.org/Meetings/Meeting.aspx?ID=33150.

FPC Members Begin Their New Leadership Terms on the PBA Board of Governors

Numerous FPC members began new leadership terms on the PBA Board of Governors at the conclusion of the May 17, 2019 House of Delegates Meeting in Lancaster. FPC members who are among the officers and board members now on the Board of Governors are:

• Anne N. John – PBA president;
• Kathleen D. Wilkinson, PBA vice president;
• Jennifer Menichini, chair, PBA Young Lawyers Division;
• Melinda C. Ghilardi, PBA Unit County governor; and
• Colin O’Boyle, chair-elect, PBA Young Lawyers Division.

Congratulations to all!

FPC Members Nancy Conrad and Sharon R. López Receive Awards for Their Contributions

Two FPC members, Nancy Conrad and Sharon R. López, received awards during the PBA’s Annual Meeting in recognition of their many contributions.

On May 15, the PBA Commission on Women in the Profession (WIP) presented its annual Anne X. Alpern Award to FPC Co-vice Chair Nancy Conrad. The award, named for Pennsylvania’s attorney general in 1959 and the first woman state attorney general in the nation, is presented to a female lawyer or judge who demonstrates excellence in the legal
profession and who makes a significant professional impact on women in the law. In addition to successfully balancing an employment law practice with the demands of parenting, Conrad has mentored and helped women lawyers identify ways to achieve their goals and their own work/life balance, served as a resource through her involvement in several other women-focused organizations and provided guidance to assist women lawyers to succeed. Over the last 20 years, she has also provided leadership in the legal community, shared legal scholarship through presentations and articles, and given back to her community.

On May 16, the PBA Gay, Lesbian, Bisexual and Transgender (GLBT) Rights Committee presented its 2019 David M. Rosenblum GLBT Public Policy Award to Sharon R. López, who served as the 123rd PBA president. The award, named for an active member of the PBA GLBT Rights Committee and a staunch proponent of civil rights who passed away in 2014, honors individuals who have effected change resulting in a positive impact for the LGBT community and who have used his or her position of leadership to inspire others to act and promote civil rights and equality. An ally of the LGBT community, López was honored for being unapologetically vocal about her support of that community and being a tireless advocate for equality. Among her many contributions as PBA president are the creation of the Membership Enhancement Blue Ribbon Panel on Millennials, Mothers and Minorities in the Profession, an appointed group of PBA members who continue to identify new approaches to increase association membership through outreach, marketing and mentorship, and influencing the creation of the GLBT Committee’s Transgender Name Change Task Force addressing name change rules for transgender persons.

**Marie Milie Jones Named the FPC Co-vice Chair for the Western District**

Joining Nancy Conrad (Eastern District) and Melinda Ghilardi (Middle District), FPC member Marie Milie Jones is now the co-vice chair of the FPC for the Western District. A founding partner of JonesPassodelis, a boutique litigation and counseling firm in Pittsburgh, Jones counsels business and public entity clients in risk management principles and handles litigation in federal and state court in the employment and civil rights fields. She also handles commercial disputes for individual and business clients. She is active in multiple community enterprises and serves as an independent director for the publicly traded Federated Investors Inc. She recently concluded a lengthy period of service on the Duquesne University board of directors, including eight years as board chair from 2009-2017.

Jones is a graduate of Duquesne University’s College of Liberal Arts and Sciences and its School of Law. Ms. Jones is a member of the Allegheny County Academy of Trial Lawyers, past president of the Pennsylvania Defense Institute, a member of DRI, The Voice of the Defense Bar, the Federation of Defense & Corporate Counsel and the Association of Defense Trial Attorneys. She was selected as a Pennsylvania Super Lawyer from 2004 to 2018 (including a feature article in 2005).

Jones has received numerous awards and recognitions, including an honorary doctor of laws degree from Duquesne University, recognition for partnership at the 30th Anniversary dinner of the Pennsylvania Counties Risk Pool, the Greensburg Central Catholic Distinguished Centurion Achievement Award, the Allegheny County Bar Association Professionalism Award, the Catholic Diocese of Pittsburgh Manifesting the Kingdom Award, The Equestrian Order of the Holy Sepulchre of Jerusalem, the Duquesne University Law Alumni Meritorious Service Award, Duquesne University Women of Distinction Award, the St. Thomas More Award, the Susan B. Anthony Award, being named an Oakland Catholic Leading Lady, being named the Friend of County Government by the County Commissioners Association of Pennsylvania and induction into the Century Club of Distinguished Alumni of Duquesne University.

**FPC Executive Council Approves Strategic Plan**

The FPC Strategic Planning Committee presented to the full Executive Council the proposed strategic plan for the FPC at the council’s May 16 meeting. After discussion and some amendments to the plan, it was approved by the full council. The approved strategic plan is attached to this newsletter. On behalf of the FPC, Chair Hon. D. Michael Fisher thanks the members of the strategic planning committee, Co-vice Chair Nancy Conrad and Executive Council member at-large Anne John, for their hard work over many months to produce this comprehensive plan.
Reminder: Next Committee Meeting – Aug. 19, 2019

The Executive Council will hold its next quarterly meeting on Aug. 19, 2019 at 4:00 p.m.

All FPC members are invited to participate in Executive Council meetings as nonvoting members (see Article IV Section 8), so please mark your calendar and join us if you can. The call-in number is 1-877-659-3786 and the passcode is 6677829609#.

If you have any items of concern, please email the committee chair, co-vice chairs or subcommittee chairs. Contact information can be found on page 14.

Welcome New FPC Members

The FPC continues to grow! On behalf of the FPC, Chair Hon. D. Michael Fisher sends a warm welcome to new members joining in the second quarter of 2019:

- Eugene Bederman, Montgomery County, Law Offices of Eugene Bederman PC
- Grace M. Deon, Bucks County, Eastburn and Gray PC
- Mary C. Kilgus, Lycoming County, Kilgus Law Offices LLC
- John D. Maida, Out-of state
- Tristan O’Savio, Lackawanna County, U.S. District Court Middle District of PA
- Matthew F. Sullivan, Philadelphia County, Matthew Sullivan LLC
- Devin A. Winklosky, Allegheny County, Porter Wright Morris & Arthur LLP
- Sarah C. Yerger, Dauphin County, Barley Snyder

Welcome to this vibrant and active committee! We hope you will enjoy the benefits of FPC membership, including receipt of quarterly newsletters. Please consider participating in any of the FPC’s subcommittees – see pages 13-14 for subcommittee contact information. Contact Executive Council members with any ideas on how the FPC can best promote communication and cooperation among members of the federal judiciary and lawyers who practice in federal courts and enhance the knowledge and professional capabilities of lawyers who practice law in the U.S. District Courts in Pennsylvania.

SUBCOMMITTEES

Reports from the Chairs

Nominations:

The reappointments of at-large members to the FPC Executive Council – Anne John, Tom Wilkinson and Jeremy Mercer – were approved in May.

- Brett Sweitzer

FEDERAL PRACTICE NEWS

Status of Judicial Vacancies

U.S. Court of Appeals, Third Circuit

- On July 16, 2019, Judge Peter Joseph Phipps’s nomination to fill Judge Thomas Vanaskie’s seat was confirmed by yea-nay vote. Judge Phipps was sworn in on July 19.

U.S. District Court, Eastern District of PA

- On May 2, 2019, Joshua Wolson’s nomination to fill Judge James Knoll Gardner’s seat was confirmed by yea-nay vote. Judge Wolson assumed office on May 28.
- Nominations have been made to fill one of the four remaining vacancies. On Jan. 23, 2019, Philadelphia Court of Common Pleas Judge John Milton Younge was again nominated to fill Judge Mary McLaughlin’s seat. That nomination was placed on Senate Executive Calendar on Feb. 7, 2019.
- A nomination has yet to be made to fill the vacancies created when Judge Legrome Davis assumed senior status (Sept. 28, 2017), when Judge Lawrence Stengel retired (Aug. 31, 2018) and when Judge Joel Slomsky assumed senior status (Oct. 9, 2018).

U.S. District Court, Middle District of PA

- On May 13, 2019, Jennifer Philpott Wilson, a partner at Philpott Wilson LLP, was nominated to fill Judge Yvette Kane’s seat. That nomination was placed on Senate executive calendar on June 27, 2019.
U.S. District Court, Western District of PA
• On July 10, 2019, J. Nicholas Ranjan’s nomination to fill Judge Kim Gibson’s seat was confirmed by yea-nay vote.
• Nominations have been made to fill three of the five vacancies. On Mar. 5, 2019, Judge Robert J. Colville of the Court of Common Pleas of Allegheny County was nominated to fill Judge Arthur Schwab’s seat, and Stephanie L. Haines, assistant United States attorney in the U.S. Attorney’s Office for the Western District of Pennsylvania, was nominated to fill Judge David Cercone’s seat. Both nominations were placed on the Senate executive calendar on May 9, 2019. On May 13, 2019, William Shaw Stickman IV, a partner at Del Sole Cavanaugh Stroyd LLC, was nominated to fill Judge Joy Flowers Conti’s seat. The nomination was placed on the Senate executive calendar on June 27, 2019.
• A nomination has yet to be made to fill the vacancies created when Judge Nora Barry Fischer assumed senior status (June 13, 2019) and when Judge Peter Phipps was elevated (July 16, 2019).

Chief Judge D. Brooks Smith swears in Judge Phipps on July 19.

UPCOMING EVENTS
• Sept. 20: Induction, Hon. Joshua D. Wolson. 2:30 p.m., Ceremonial Courtroom, U.S. Courthouse, 601 Market Street, Philadelphia
• Oct. 2: One-hour CLE/Admission Ceremony and Meet the New Judges. 3:00 p.m., Delaware County Courthouse and Bar Association, Media, Pa. RSVP: Delaware County Bar Executive Director Bill Baldwin
• Oct. 25: Federal Practice Institute. Details: PBI website (see announcement on p.1)
• Oct. 30: One-hour CLE and Meet the New Judges. 8:30 a.m. Montgomery Bar Association, Norristown, Pa. RSVP: Cary L. Flitter, Esq., Federal Court Committee Chair, 610-266-7863.

CASE SUMMARIES
Summaries of Third Circuit and Pennsylvania district court decisions issued between April 1 and June 30, 2019 involving issues of potential interest to FPC members.

THIRD CIRCUIT PRECEDENTIAL OPINIONS
Robinson v. First State Community Action Agency, 920 F.3d 182 (3d Cir. 2019) (Labor & employment [ADA] / Waiver) – In 2014, Robinson sued her former employer alleging violations of the Americans with Disabilities Act (ADA) and arguing, from at least the summary judgment stage on, that First State wrongfully denied her reasonable accommodations because it regarded her as dyslexic. A jury found in her favor on the reasonable accommodation claim, but not on her wrongful termination claim. First State moved for a new trial, urging that the district court erred in admitting certain testimony and in mentioning the statutory damage cap for Robinson’s claims in its jury instructions. The district court denied the motion. First State appealed, raising both those claims of error and, for the first time, the argument that jury instructions were erroneous because the 2008 amendments to the ADA invalidated Robinson’s “regarded as” case theory. The Court of Appeals held that First State waived its new (albeit correct) argument due to its continued acquiescence to Robinson’s case theory prior to and through trial, its encouragement of the adoption of the very jury instruction
to which objected on appeal, and its failure to include the new error in its post-trial briefing. Finding no error in the district court’s rulings on First State’s post-trial motion, the court affirmed the district court’s judgment. The court also corrected an apparent misunderstanding regarding whether a district court following the “Third Circuit Model Jury Instructions” could commit error if those model instructions were incorrect, noting that a model jury instruction itself is neither law nor precedential. (Opinion author: Judge J. Fuentes)

**U.S. v. Rowe**, 919 F.3d 752 (3d Cir. 2019) (Criminal law & procedure) – Rowe was charged in a one-count indictment with distribution and possession with intent to distribute 1,000 grams of heroin from about February 2016 through June 25, 2016. The government’s theory at trial was that because Rowe distributed or possessed with intent to distribute a total of 1,000 grams or more of heroin during the indictment period (based on evidence of multiple smaller distributions during that period), a 1,000-gram verdict was justified. The jury returned a general verdict finding Rowe guilty of the offense in the amounts of both 1,000 grams or more and 100 grams or more. He was sentenced to 151 months, based on a PSR calculation that his offense involved at least 10 kilograms of heroin. The Court of Appeals held that separate acts of distribution of controlled substances were distinct offenses as opposed to a continuing crime, and it described when a defendant’s possession of 1,000 grams of heroin begins and when it ends. Because the government did not present sufficient evidence of either the distribution of 1,000 grams or of possession with intent to distribute 1,000 grams of heroin, Rowe’s conviction as to the 1,000 grams of heroin was vacated. Rowe’s sentence was also vacated because the district court abused its discretion by basing its determination on the PSR’s unsupported drug weight assertions. The Court of Appeals reversed in part. The court declined to extend Twombly’s antitrust pleading rule to breach of fiduciary duty claims under ERISA: To the extent that the district court required plaintiffs to rule out lawful explanations for defendants’ conduct, it erred. After describing in detail the elements of a fiduciary-duty claim under ERISA, the court concluded that plaintiffs had adequately pleaded a breach of fiduciary duties in two counts (Counts III and V). As to plaintiffs’ prohibited transaction counts, the court declined to recognize a per se rule that every furnishing of goods or services between a plan and party in interest is a prohibited transaction under § 1106(a)(1), holding that absent factual allegations that support an element of intent to benefit a party in interest, a plaintiff does not plausibly allege that a prohibited transaction has occurred. Plaintiffs did not include such factual allegations and, for this and other reasons, they failed to state a plausible claim for prohibited transactions. (Opinion author: Judge D.M. Fisher; one judge dissenting in part)

**In re: Avandia Mktg., Sales Practices & Prod. Liab. Litig.**, 924 F.3d 662 (3d Cir. 2019) (Civil procedure / Access to judicial documents) – While briefing GSK’s motion for summary judgment, the parties filed documents under seal pursuant to a protective order. After plaintiffs – two health benefit plans – appealed the district court’s grant of summary judgment to GSK, GSK sought to keep some of the summary judgment records under seal by filing a motion in the district court. The district court unsealed its own summary judgment opinion but maintained the confidentiality of the remaining documents. A short time later, GSK again moved to maintain under seal additional standards) – Representing a class of participants in the university’s employee pension benefit plan, plaintiffs sued the university and its appointed fiduciaries for breach of fiduciary duty in violation of 29 U.S.C. § 1104(a)(1) (three counts), prohibited transactions in violation of 29 U.S.C. § 1106(a)(1) (three counts), and failure to monitor fiduciaries (one count). They alleged, inter alia, that defendants failed to use prudent and loyal decision-making processes regarding investments and administration, overpaid certain fees and failed to remove underperforming options from the retirement plan’s offerings. The district court dismissed the entire complaint for failure to state a claim. The Court of Appeals reversed in part. The court declined to extend Twombly’s antitrust pleading rule to breach of fiduciary duty claims under ERISA: To the extent that the district court required plaintiffs to rule out lawful explanations for defendants’ conduct, it erred. After describing in detail the elements of a fiduciary-duty claim under ERISA, the court concluded that plaintiffs had adequately pleaded a breach of fiduciary duties in two counts (Counts III and V). As to plaintiffs’ prohibited transaction counts, the court declined to recognize a per se rule that every furnishing of goods or services between a plan and party in interest is a prohibited transaction under § 1106(a)(1), holding that absent factual allegations that support an element of intent to benefit a party in interest, a plaintiff does not plausibly allege that a prohibited transaction has occurred. Plaintiffs did not include such factual allegations and, for this and other reasons, they failed to state a plausible claim for prohibited transactions. (Opinion author: Judge D.M. Fisher; one judge dissenting in part)
summary judgment records, and the district court again granted that motion in part. Plaintiffs appealed the two post-judgment sealing orders. The Court of Appeals described in detail the three distinct standards associated with challenges to the confidentiality of documents. Although the plaintiffs had invoked the common law right of access, the district court assessed GSK's motions by applying the Rule 26 standard governing protective orders. It committed an error of law when it conflated the factors articulated in Pansy v. Borough of Stroudsburg, 23 F.3d 772 (3d Cir. 1994), with the common law right of access standard. Because the district court failed to apply the strong presumption of public access with which the common law right of access standard begins, the orders were vacated, and the case was remanded to allow that court to conduct the required document-by-document review under the correct legal standard. The court declined to tackle the contours of the First Amendment right of public access (underlying the third standard). (Opinion author: Chief Judge D.B. Smith; one judge dissenting in part)

U.S. v. Trant, 924 F.3d 83 (3d Cir. 2019) (Criminal law & procedure) – Trant had a heated encounter with Ashby at a gas station in St. Thomas that ended with each man displaying his pistol to the other. Months later, a federal grand jury charged Trant with one count of possession of a firearm by a convicted felon. Before trial, the government and Trant stipulated that he had a prior felony conviction. During trial, after the government rested its case, Trant moved under Rule 29(a) for a judgment of acquittal. The district court, noting that the trial record lacked evidence that Trant was a convicted felon, asked the government about that evidence. The government admitted it had forgotten to move for admission of the stipulation and then proceeded to misrepresent what had actually occurred during trial. The government moved to reopen its case-in-chief, the district court granted that motion, and Trant was eventually found guilty and sentenced. On appeal, in addition to arguing that the record lacked the necessary evidence to support his conviction, Trant asserted that the district court erred by granting the government's motion to reopen its case-in-chief and by restricting his cross examination of Ashby. The Court of Appeals set forth a standard that is to govern motions to reopen and when deciding such motions. The court made clear that, although its standard was based its suppression-hearing case law, the statement from that case law that “courts should be extremely reluctant to grant reopenings” did not apply to a district court's consideration of a motion to reopen at trial. The court concluded that the district court did not abuse its discretion in granting the government’s motion because Trant was not prejudiced by the reopening of the government’s case-in-chief. Rejecting Trant's remaining challenges, the court affirmed the judgment of conviction. (Opinion author: Chief Judge D.B. Smith)

Mauthe v. Optum Inc., 925 F.3d 129 (3d Cir. 2019) (Statutes [TCPA third-party based liability]) – Optum and OptumInsight (together, Optum) maintain a national database of health care providers that contained providers' contact information, demographics, specialties, education and related data. They market, sell and license the database typically to health care, insurance and pharmaceutical companies, who use it to update their provider directories, identify potential providers to fill gaps in their network of providers and validate information when processing insurance claims. To update and verify their database, Optum sends unsolicited faxes to health care providers listed in the database, requesting them to respond and correct any outdated or inaccurate information. The faxes advise recipients that “[t]here is no cost to you to participate in this data maintenance initiative. This is not an attempt to sell you anything.” Mauthe alleged that he received an unsolicited advertisement via fax from Optum in violation of the TCPA and included in his complaint a supplemental state law claim for common law conversion. The district court granted summary judgment to defendants on the TCPA claim and dismissed without prejudice the conversion claim. Concluding that the fax could not be seen as an “advertisement” in a traditional sense, the Court of Appeal assessed Mauthe's claim based on “third-party based liability” and set forth what a party seeking to establish such liability under the TCPA must show. Assessing Mauthe's claim, the court concluded that it did not meet the standard for third-party based liability or any other theory of liability under the TCPA. Because the district court did not err in its summary judgment decision on the only federal claim, it
Blake v. JP Morgan Chase Bank N.A., __ F.3d __, 2019 WL 2518497, 2019 U.S. App. LEXIS 18370 (3d Cir., June 19, 2019) (Statutes [RESPA] / Class action [Tolling of the statute of limitations]) – In 2005 and 2006, Blake and Orkis took out mortgages from JP Morgan to buy homes. JP Morgan referred each of them to specific mortgage insurers, who then reinsured with Cross Country Insurance, a subsidiary of JP Morgan. In 2013, Blake and Orkis filed a putative class action against JP Morgan under the Real Estate Settlement and Procedures Act (RESPA), alleging a scheme to refer homeowners to mortgage insurers in exchange for streams of kickbacks, which were funneled through its subsidiary as insurance premiums. JP Morgan moved to dismiss the suit as barred by RESPA's one-year statute of limitations; plaintiffs urged (1) that each kickback was a separately accruing wrong with its own limitations period; and (2) a class action filed in 2011 raising the same claims and having Blake and Orkis as class members, which continued until November 2013, tolled the limitations period under American Pipe & Construction Co. v. Utah, 414 U.S. 538 (1974). The district court accepted only the first argument and dismissed the action because the separate-accrual rule only got them part of the way through the seven-year gap. The Court of Appeals held that the separate-accrual rule applied because RESPA forbids the discrete act of giving or taking a kickback. Blake and Orkis alleged that JP Morgan accepted kickbacks until at least the end of 2010, so their suit would have been timely if filed in 2011. The court agreed that American Pipe could not be used to bridge the gap between 2011 and 2013; under China Agritech, Inc. v. Resh, 138 S. Ct. 1800 (2018), courts may not toll new class actions just because there was a prior timely class action. As to Esschem's alleged continued use of Heraeus's trade secrets between September 2011 and September 2014 under the separate accrual rule. The Court of Appeals concluded any misappropriations prior to September 2011 were time-barred because Heraeus had sufficient facts in March 2011 to make it reasonably aware of both that Esschem (1) used Heraeus's trade secrets without Heraeus's consent, and (2) knew or had reason to know that Biomet owed a duty to Heraeus to maintain their secrecy. As to Esschem's alleged continued use of Heraeus's trade secrets between September 2011 and September 2014, the court held that under Pennsylvania law, the separate accrual rule applied to continuing misappropriations. The court described the distinction between a “continuing misappropriation” subject to the separate accrual rule and the “continuing violation doctrine” as the district court appeared to have conflated the two concepts. The grant of summary judgment was affirmed in part and reversed in part. (Opinion author: Judge C. Krause)

Heraeus Medical GmbH v. Esschem Inc., __ F.3d __, 2019 WL 2556820, 2019 U.S. App. LEXIS 18636 (3d Cir., June 21, 2019) (IP – Trade secrets [PUTSA]) – Heraeus, a German company, develops and produces Palacos, a bone cement used in joint replacement surgeries. Biomet, one of Heraeus's major competitors, uses the same copolymers to make its bone cement as Heraeus and buys those copolymers from Esschem. Believing it obtained Heraeus's trade secrets from Biomet, Heraeus in September 2014 sued Esschem, claiming inter alia misappropriation of trade secrets under the Pennsylvania Uniform Trade Secrets Act (PUTSA). The district court granted Esschem's motion for summary judgment, concluding that all claims were time-barred. On appeal, Heraeus argued that (1) it did not discover sufficient facts to state a claim against Esschem until December 2011, and (2) even if the limitations period began to run before September 2011 (beyond PUTSA's three-year limitations period), Esschem would still be liable for each time it used the trade secrets to manufacture the copolymers between September 2011 and September 2014 under the separate accrual rule. The Court of Appeals concluded any misappropriations prior to September 2011 were time-barred because Heraeus had sufficient facts in March 2011 to make it reasonably aware of both that Esschem (1) used Heraeus's trade secrets without Heraeus's consent, and (2) knew or had reason to know that Biomet owed a duty to Heraeus to maintain their secrecy. As to Esschem's alleged continued use of Heraeus's trade secrets between September 2011 and September 2014, the court held that under Pennsylvania law, the separate accrual rule applied to continuing misappropriations. The court described the distinction between a “continuing misappropriation” subject to the separate accrual rule and the “continuing violation doctrine” as the district court appeared to have conflated the two concepts. The grant of summary judgment was affirmed in part and reversed in part. (Opinion author: Judge C. Krause)

DiFlavis v. Choice Hotels Int'l, Inc., 2019 U.S. Dist. LEXIS 58924 (E.D. Pa. Apr. 4, 2019) (Pleading joint employer & collective action under the FLSA) – DiFlavis, a former housekeeper at a Choice Hotel in Essington, alleged that Choice Hotels (franchisor) and Rama Construction (franchisee and owner and operator of the Choice Hotel at which DiFlavis worked), as joint employers, had a pattern or practice of failing to pay housekeepers for overtime hours worked at their hotels. Choice Hotels moved to dismiss the complaint under Rule 12(b)(6) or, in the alternative,
to strike DiFlavis’s collective and class action allegations pursuant to Rule 12(f). Judge G. Pratter denied the Rule 12(b)(6) motion, rejecting Choice Hotels’ argument that one clause in its franchise agreement alone conclusively demonstrated the lack of a joint employer relationship and concluding that DiFlavis’ joint employer allegations were sufficient to survive such a motion. The court also denied the Rule 12(f) motion, determining that Choice Hotels had not met the high standard required for a motion to strike at this early stage in the litigation.

Doe v. Casino, 2019 U.S. Dist. LEXIS 63526 (E.D. Pa. Apr. 12, 2019) (Title VII claims based on sexual orientation claims) – Doe, an African-American female who identifies as a lesbian, filed a Title VII employment discrimination suit against her former employers (Parx Casino, Greenwood Gaming and Entertainment, and Greenwood Table Games Services), alleging that they subjected her to a hostile workplace environment and wrongfully terminated her based on her sexual orientation. Defendants moved to dismiss, urging that both claims failed because Doe had only alleged discrimination on the basis of sexual orientation, which, according to the Third Circuit’s decision in Bibby v. Philadelphia Coca Cola Bottling Co., 260 F.3d 257 (3d Cir. 2001), Title VII does not prohibit. Judge J. Slomsky described in detail cases involving sexual orientation discrimination and discrimination based on gender stereotyping, noting that the same alleged actions survived or failed a motion to dismiss based on the how the plaintiff’s complaint was framed. Compelled to follow Bibby, the court dismissed the complaint, but did so without prejudice to provide Doe with the opportunity to file a new complaint filed that plausibly alleged impermissible gender stereotyping based on sex.

Kirksey v. Ross, 372 F. Supp. 3d 256 (E.D. Pa. 2019) (Civil Rights-§1983) – In this civil rights case, five women alleged that Ross, a former city of Chester police officer, sexually assaulted them at different times between 2015 and 2017. In each alleged instance of sexual assault, Ross was in uniform, and in some cases he and the victim were at the police station. Plaintiffs also alleged that the city of Chester’s customs or policies led to a failure to screen during Ross’s hiring and rehiring and to a failure to discipline him. The city filed a motion to dismiss the operative complaint, urging that (1) two plaintiffs’ claims were time-barred; (2) three plaintiffs’ claims had to be dismissed because Ross was not acting under color of law; and (3) all plaintiffs failed to state viable causes of action under Monell. Judge E. Robreno described in detail the reasons for the court’s rejection of each of the city’s arguments and denied the motion to dismiss.

Park v. Temple Univ., 2019 U.S. Dist. LEXIS 70165 (E.D. Pa. April 25, 2019) (Constitutional due process in educational setting) – Dr. Park, DDS, was admitted in 2014 to a graduate program in periodontology at Temple’s Kornberg School of Dentistry, but he did not disclose in his application papers that he had surrendered his California dental license after admitting to charges brought by the state’s Dentistry Board that he had forged a certificate of residency from a university he never attended. After he was admitted to Temple’s program, Dr. Park also voluntarily surrendered his Texas dental license after admitting that he submitted a dental license application in Texas “with false information.” After Temple learned of the surrendered licenses in 2016 and met with Dr. Park, his actions were reviewed by an Honor Board panel, which conducted two hearings and, although recommending probation after the first hearing, recommended expulsion after the second. After he was expelled, Dr. Park sued Temple and the dean and associate dean of the Kornberg School, alleging that defendants violated his right to procedural due process and including in his complaint claims for breach of contract and unjust enrichment against Temple and for defamation against all defendants. He argued that the dean’s bias against forgers and forgery biased the disciplinary procedures against him, including the dean’s decision to bring charges under the honor code and to cause a second hearing to occur. In this opinion, Judge M. Kearney describes in detail why summary judgment was granted to defendants on all claims against them.

associated regulations when it called his personal cellphone number for a telemarketing purpose despite his number being on the National Do Not Call Registry, without having a written policy, available on demand, for maintaining a do-not-call list, and after Shelton requested that he not receive calls. The case went south for Fast Advance when it did not respond at all to Shelton's requests for admissions, leading the court subsequently to grant Shelton's motion to confirm that all requests for admission were admitted and to preclude Fast Advance from offering at trial any evidence contrary to those admissions. On the day trial was to begin, Judge C. Kenney rejected, based on those admissions, Fast Advance's argument that Shelton lacked standing, and with that issue decided, the parties agreed that only one issue remained and it was for the court to decide: whether the violations of the TCPA and its regulations were willful and knowing. The court, based on the requests for admissions and Fast Advance's failure to raise several arguments at all (e.g., that a cellphone is not a "residential telephone"), concluded that Fast Advance violated the TCPA and that those violations were knowing and willful. Shelton was entitled to judgment on all counts. The court awarded $33,000 in damages, reflecting $1,500 per call in violation.

_Latham v. Weyerhaeuser Co._, 2019 U.S. Dist. LEXIS 85711 (E.D. Pa. May 21, 2019) (Effect of a settlement offer on diversity jurisdiction) – Filing his complaint against Weyerhaeuser and another defendant in state court (in Philadelphia) in December 2018, Latham claimed that he was injured while working at a Weyerhaeuser lumber distribution center in Easton, Pennsylvania. Defendants removed the case to federal court in January 2019, and Latham's counsel, presumably in accord with Local Rule 53.2.3.C, certified in February 2019 that "to the best of [his] knowledge and belief the damages recoverable ... exceed the sum of $150,000 exclusive of interest and costs." In May 2019, Latham sent defendants an email with a demand of $70,000. He moved to remand the case to state court, arguing that the amount in controversy was less than the $75,000 jurisdictional threshold "given that in light of discovery, [he] formally reduced his demand to settle all of his claims against defendants to $70,000." Because events subsequent to removal that reduce the amount recoverable do not oust the court of jurisdiction, Judge G. Pappert denied Latham's motion. The court did, however, take Latham's position in his motion to remand as an indication that Latham was no longer certifying that the damages sought in the case exceeded $150,000, and thus referred the case to compulsory arbitration in accordance with Local Rule 53.2.3(A).

**MIDDLE DISTRICT OF PA OPINIONS**

_United States v. Bradley_, 370 F.Supp.3d 458 (M.D. Pa. 2019) (Successful motion to suppress statements and evidence) – Trooper Johnson stopped the car Bradley was driving due to excessive speed and weaving and bobbing within the lane it was traveling. He asked Bradley to exit the car and get into his patrol car, which Bradley did. After Johnson asked numerous questions, checked Bradley’s documents and told Bradley that he was letting him off with just a warning, another trooper arrived and stood just outside the passenger side of the patrol car. Johnson then asked numerous additional questions, including whether Bradley had any cocaine in the car. After he stated there was, Bradley was given _Miranda_ warnings. He then answered more questions about the cocaine. Bradley, charged with a single count of possession with intent to distribute cocaine, moved to suppress his pre- and post-_Miranda_ statements and the physical evidence derived therefrom. Judge J. Jones III concluded that, from at least the time that the second trooper arrived at the scene, Bradley was subject to custodial interrogation and that Johnson clearly should have provided him with warnings. As a result, any admission Bradley made during that period had to be suppressed. Further, because the initial failure to warn Bradley was deliberate, and because (1) Johnson neglected to cure his failure to administer _Miranda_ warnings and (2) Bradley’s post-_Miranda_ admission was inextricably intertwined with, and derived from, his pre-_Miranda_ admission, Bradley’s post-_Miranda_ admission also had to be suppressed. Because Bradley’s pre- and post-_Miranda_ admissions had to both be suppressed, the physical evidence derived as a result of those statements also had to be suppressed. Thus, Bradley’s motion was granted in full.
**UPMC Pinnacle v. Shapiro**, __ F. Supp. 3d __, 2019 WL 1787651 (M.D. Pa. Apr. 24, 2019) (Ripeness in the context of a declaratory judgment action) – This case involved Attorney General Shapiro’s efforts to modify and extend the 2014 consent decree between UPMC and Highmark Health, under which patients insured by Blue Cross/Blue Shield would have in-network access to UPMC doctors and facilities until the decree’s June 30, 2019 expiration date. The decree provided that a party seeking modification to it could petition the Commonwealth Court for approval of the modification. The attorney general filed such a petition, and while it was pending, UPMC filed a complaint in federal court seeking a declaration that Attorney General Shapiro’s proposed modifications to the 2014 Consent Decree were preempted by the Medicare Act, the Affordable Care Act, the ERISA and the Sherman Anti-Trust Act and also challenged those proposed modifications on several constitutional grounds (e.g., they amounted to a regulatory taking). The attorney general filed a motion to dismiss under Rule 12(b)(6), urging that the claims were not ripe: UPMC faced no threat of enforcement (and therefore no ripe controversy) until the Commonwealth Court accepted the attorney general’s proposed modifications or until his intended changes were supported by the force of law. Judge J. Jones III concluded that, even taking all of UPMC’s allegations as true that Attorney General Shapiro’s stated intentions to act may present a threat of harm, UPMC had failed to demonstrate that that threat was “real” rather than “uncertain” or “contingent.” The court declined to review UPMC’s claim until such time that Attorney General Shapiro either acted or was, at minimum, patently authorized to act under a reasonable reading of a duly passed statute or the common-law, and it therefore granted the motion to dismiss, without prejudice. [Note: On June 24, UPMC and Highmark inked a 10-year, private contract to preserve access to both systems for a majority of patients in a 29-county region of Western Pennsylvania].

**WESTERN DISTRICT OF PA OPINIONS**

**Brunner v. Clark**, 2019 U.S. Dist. LEXIS 58929 (W.D. Pa. Apr. 5, 2019) (Habeas corpus) – After filing his PCRA petition, Brunner’s appointed counsel filed a motion to withdraw pursuant to Turner/Finley. The state court granted counsel’s motion to withdraw and issued a Notice of Intent to Dismiss pursuant to Pa. R. Crim. P. 907, which notified Brunner that he had the right to, among other things, “proceed without counsel by notifying this Court of the reasons why this petition should not be dismissed.” Brunner did not file a response. Brunner’s § 2254 petition raised three grounds for relief; respondents argued that all three grounds for relief were procedurally defaulted. Brunner urged there was cause to excuse any procedural default because his PCRA counsel was ineffective in failing to raise Brunner’s trial counsel’s and direct appeal counsel’s ineffectiveness in failing to raise the issues he included in his § 2254 petition. Magistrate Judge M. Kelly agreed that Brunner had raised none of his claims before the state courts. Because it was a question of first impression, the court, in assessing Brunner’s “cause” arguments, addressed at some length whether the rule of Com. v. Pitts, 981 A.2d 875 (Pa. 2009) (holding that a PCRA petitioner alleging the ineffectiveness of PCRA counsel who files a Turner/Finley no-merit letter must file a response to the Rule 907 notice of intent and in that response assert the ineffectiveness of PCRA counsel or else face waiver of the claim under state law) could support a procedural default finding. Concluding that Brunner’s claim of cause was itself procedurally defaulted and that he also failed to show a miscarriage of justice, the court denied his petition.

**Parish v. UPMC Univ. Health Ctr. of Pittsburgh**, 373 F. Supp. 3d 608 (W.D. Pa. 2019) (Labor & employment [Gender and pregnancy discrimination under Title VII]) – Beginning in 2013, residents’ performance in UPMC’s Ophthalmology Residency Program was reviewed and evaluated semiannually by a five-member Clinical Competency Committee (CCC). Dr. Parish entered the program as a first-year resident in July 2013. She gave birth to her first child in the beginning of her second year of residency. In February 2015, she was placed on probation, and in May of that year, she was required to repeat multiple rotations. Her evaluations up to that point were mixed: some positive reviews of her performance on some rotations and several negative reviews, with multiple doctors repeatedly observing patient risk issues with her performance. In July 2015 – after another incident involving a patient – the CCC voted to terminate
Dr. Parish’s participation in the program, and she was terminated the next month. She filed suit against UPMC, two doctors on the CCC (neither of whom participated in the vote to terminate) and the head of the Ophthalmology Department, alleging pregnancy and gender discrimination, retaliation, hostile work environment and that the individual defendants had aided and abetted discrimination. Judge M. Hornak granted the defendants’ motion for summary judgment, concluding (1) Dr. Parish had not met her prima facie burden on either a stand-alone gender or a pregnancy discrimination claim; (2) even if she had made out such a claim, she could not prevail because she did not produce evidence showing that UPMC’s reason for its actions (unsatisfactory performance) was a pretext for discrimination; (3) her retaliation claims failed because she could not rebut the non-retaliatory reasons for the alleged adverse actions; and (4) Dr. Parish failed to allege facts in her complaint to satisfy the necessary elements of a hostile work environment claim. Because the court concluded that the discrimination and retaliation claims against UPMC failed, there was no discrimination or retaliation for the individual defendants to aid and abet.

Corsale v. Sperian Energy Corp., 374 F. Supp. 3d 445 (W.D. Pa. 2019) (Contract [Energy Supply]) – Corsale and Taylor switched from their local utilities to Sperian Energy for their electric supply and afterward paid 6% to 135% more than they would have had they stayed with their local utilities. They filed a putative class action against Sperian alleging that they “incurred excessive charges for electricity” because of Sperian’s deceptive conduct, improper pricing practices and price gouging. Their complaint asserted claims for breach of contract, unjust enrichment and a claim under Pennsylvania’s Unfair Trade Practices and Consumer Protection Law (UTPCPL). Sperian moved to dismiss under Rule 12(b)(6). After determining that the “updated terms and conditions” governed and that the initial “terms and conditions” did not, Judge M. Horan dismissed the breach of contract claim because (1) that claim did not plead the breach of any specific duty imposed by the governing contract, and (2) the language of the governing contract permitted discretion in setting rates and did not create a duty to tie rates to “market fluctuations and conditions,” much less to “wholesale market prices and conditions.” Because an enforceable contract existed, the unjust enrichment claim had to be dismissed. Finally, the facts as alleged in the complaint did not support plaintiffs’ allegations that Sperian’s actions were deceptive as to the possibility that rates could be higher than those of the local utility or with respect to its fees. Although a reading of the complaint suggested there were facts that might support an allegation that Sperian violated the UTPCPL by engaging in a bait-and-switch tactic, such a claim was not sufficiently pleaded. The entire complaint was dismissed, and plaintiffs were given leave to amend only their UTPCPL claim.

McDonald v. Wells Fargo Bank N.A., 374 F. Supp. 3d 462 (W.D. Pa. 2019) (Statutes [Pennsylvania Commercial Code] / Choice of law / Class certification / Intervention) – At the heart of this case was Wells Fargo’s repossession and sale of a 2002 GMC Sierra, which Patricia McDonald purchased from an Ohio dealer and financed for her son, Rick. Patricia’s account went into default nearly three years after she died in late 2009, someone having made payments in the intervening period. After obtaining letters of administration for her mother-in-law’s estate in late 2015, Liane McDonald filed a putative class action against Wells Fargo, asserting that the repossession and deficiency notices sent to Patricia (after she had died) were deficient and alleging violations of sections of Article 9 of the Pennsylvania Commercial Code and the now-repealed Motor Vehicle Sales Finance Act (MVSFA). The complaint also included a claim of conversion based on the deficient notices. The parties cross-moved for summary judgment on the estate’s Article 9 and conversion claims. The estate also moved for class certification. Eight putative members of the class moved to intervene. In this lengthy and complex opinion, Judge M. Kearney (sitting by designation) addressed numerous issues, including whether a contractual choice-of-law-provision would be enforced, whether Ohio’s or Pennsylvania’s law applied, whether a debtor existed at the time Wells Fargo repossessed and sold the GMC Sierra, and whether the statute of limitations or gist of the action doctrine barred the conversion claim. The court concluded that Pennsylvania law applied. Although the estate failed to show that the challenged notices violated § 9614 or § 9616, Wells Fargo’s motion for summary judgment was denied with respect to the estate’s claims (1) under § 9610 premised
on alleged violations of the MVSFA in two notices and on Wells Fargo’s failure to recant the minimum bid price in one notice and, (2) for conversion premised on alleged violations of the MVSFA. The estate’s summary judgment motion was denied in full. Because the estate did not show the typicality, predominance and superiority elements needed for class certification, its motion for class certification was denied, and, as a result of that decision, the intervenors’ motion was also denied.

**Latham v. Williams**, 2019 U.S. Dist. LEXIS 72102 (W.D. Pa. Apr. 30, 2019) (Habeas corpus [applicability of § 2255’s savings clause to statutory interpretation based sentencing claims]) – After being found guilty of one count of conspiracy to distribute and possess with intent to distribute 50 grams or more of crack cocaine, a Michigan district court imposed a mandatory life sentence based on its finding that Latham had previously been convicted of two felony drug trafficking crimes. Latham unsuccessfully challenged his sentence both on direct appeal and through a prior § 2255 petition. The Sixth Circuit denied his application to file a second § 2255 petition to raise his claim that one of his state-court convictions did not qualify as a felony drug offense and that his mandatory life sentence was in error under *Mathis v. United States*, 136 S. Ct. 2243, 195 L. Ed. 2d 604 (2016). He then filed in the WDPA (where he is now incarcerated) a petition under § 2241 raising his *Mathis* claim. He also sought a sentence reduction from the Michigan court under the First Step Act. After providing a detailed description of the bounds of § 2255’s savings clause (which, if applicable, would permit a court to entertain a § 2241 petition), and the circuit splits on issues of its application and of whether the savings clause applies to sentencing claims based on statutory interpretation, Judge S.P. Baxter followed Third Circuit precedent and dismissed Latham’s petition for lack of jurisdiction.

**Reinig v. RBS Citizens N.A.**, 2019 U.S. Dist. LEXIS 106278 (W.D. Pa. Jun. 25, 2019) (Motion to decertify an FLSA collective action) – After the district court certified an FLSA collective action in 2016, plaintiffs in this case moved for class certification under Rule 23. Citizens opposed class certification and moved to decertify the FLSA collective action. It lost on both motions, and it appealed the class certification decision under Rule 23(f). After the Third Circuit issued its decision, *Reinig v. RBS Citizens N.A.*, 912 F.3d 115 (3d Cir. 2018) (vacating the class certification order but holding that Rule 23 certification was not “inextricably intertwined” with an FLSA collective action certification so as to permit it to exercise pendent appellate jurisdiction over the district court’s denial of the motion to decertify the FLSA collective action), Citizens renewed its motion to decertify the FLSA collective action. Treating Citizens’s motion as one for reconsideration, Judge A. Schwab denied it without prejudice, concluding that the motion raised neither an “intervening change in controlling law,” “new evidence,” a “clear error of law” nor “manifest injustice.”

**FROM THE WEB**

Tom Wilkinson, an at-large member of the FPC Executive Council, brings the following article to our attention:

“Amazon.com Deemed to Be a ‘Seller’ Capable of Being Sued Under Pennsylvania Products Liability Law,” an article posted July 8, 2019, by Daniel E. Cummins on his Tort Talk site at [http://www.torttalk.com](http://www.torttalk.com)

**OPEN FORUM**

No submissions this quarter.
Federal Practice Committee Leadership

Chair: Hon. D. Michael Fisher
U.S. Court of Appeals
Third Circuit, Pittsburgh

Co-Vice Chair: Nancy Conrad
White and Williams LLP
Center Valley

Co-Vice Chair: Melinda Ghilardi
Munley Law PC
Scranton

Co-Vice Chair: Marie Milie Jones
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At-large Members:

Anne John, John & John, Fayette
Jeremy Mercer, Porter Wright Morris & Arthur LLP, Allegheny
Tom Wilkinson, Cozen O’Connor, Philadelphia

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Educational Programs Subcommittee:
• Kathleen Wilkinson, Wilson Elser Moskowitz Edelman & Dicker LLP, Philadelphia

Legislative Subcommittee:
• Prof. Arthur Hellman, Univ. of Pittsburgh School of Law, Allegheny

Local Rules Subcommittee:
• M. Jason Asbell, Gibbel Kraybill & Hess LLP, Lancaster

Newsletter Subcommittee:
• Susan Schwochau, Allegheny

Nominations Subcommittee:
• Brett G. Sweitzer, Defender Association of Philadelphia, Philadelphia

Outreach and Diversity Subcommittee:
• Jennifer Menichini, Joyce, Carmody & Moran PC, Lackawanna
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Thank You
The chair of the FPC Newsletter Subcommittee extends a sincere thank you to the following Federal Practice Committee members and their associates for their contributions to this edition of the PBA Federal Practice Committee newsletter:
- Hon. M. Kearney, U.S. District Court for the Eastern District of Pennsylvania, Philadelphia
- Lydia H. Caparosa, MacDonald Illig Jones & Britton LLP, Erie
- Philip Gelso, Law Offices of Philip Gelso, Luzerne
- Melinda Ghilardi, Munley Law PC, Lackawanna
- Jeremy Mercer, Porter Wright Morris & Arthur LLP, Allegheny
- Emily Paulus, White and Williams LLP, Lehigh
- Tom Wilkinson, Cozen O’Connor, Philadelphia

A special thank you also goes to Susan Etter and Diane Banks of the Pennsylvania Bar Association.

Do you have colleagues or other friends who practice in Pennsylvania’s federal courts and who might be interested in joining the FPC? Be sure to forward to this newsletter (and the attached membership form) to them!
The Federal Practice Committee shall promote communication and cooperation between lawyers who practice in federal courts and members of the federal judiciary, and shall provide an opportunity to identify and address the differences between the local district court rules and orders of court that affect practice of law in the Eastern, Middle and Western Districts. The committee shall enhance knowledge and professional capabilities of lawyers who practice law in the United States District Courts in Pennsylvania, and shall promote the welfare of attorneys and judges employed by the government of the United States. The committee may review and make recommendations concerning federal legislation and proposed changes to the Federal Rules of Civil Procedure, Criminal Procedure, Federal Rules of Bankruptcy Procedure and Federal District Court Rules.

Why Join? Benefits of Membership

• Access to a Listserv and professional network of other federal practitioners.
• Learn about new court decisions and federal practice rules that affect your clients and work.
• Ask questions and share information with other attorneys and judges who work in the federal courts.
• Make your voice heard on legislation and rules changes that impact your daily work.
• Attend CLE programs that focus on issues that are directly related to your practice area.
• Participate in two committee meetings each year and other subcommittee meetings as scheduled. All meetings are available for attendance by telephone to maximize your time and convenience.
• Develop your leadership skills and share your expertise with others.
• Be a mentor or mentee to other federal practitioners.
• Be actively engaged in advancing and strengthening the profession.

Complete this form and fax to 717-238-7182.
Or, go to www.pabar.org and click the Login button at the top of the screen. Enter your username and password to log in to your account.
Click on your name at the top of the screen to reach your Member Dashboard, then Update My Profile, then Update My Information. Scroll down to My Committees, select Federal Practice and click on Update Profile.
Vision: To be a vital and important organization that represents and includes the Federal Court practitioners in the Pennsylvania Bar Association.

Mission Statement: The mission of the Federal Practice Committee (the Committee) is to promote communication and cooperation between lawyers who practice in federal courts and members of the federal judiciary, and to provide an opportunity to identify and address the differences between the local district court rules and orders of court that affect practice of law in the Eastern, Middle and Western Districts.

The Committee will enhance knowledge and professional capabilities of lawyers who practice law in the United States District Courts in Pennsylvania and the Court of Appeals for the Third Circuit, and will promote the welfare of attorneys and judges employed by the government of the United States.

The Committee will work to increase diversity and inclusion in the legal profession through the development of educational programs and other initiatives.

The Committee may review and make recommendations concerning federal legislation and proposed changes to the Federal and Local Rules of Appellate, Bankruptcy, Civil and Criminal Procedure, Federal Rules of Evidence and the U.S. Sentencing Guidelines.

Introduction: The Strategic Planning Committee of the PBA Federal Practice Committee was tasked with identifying and evaluating strategic goals for the Committee and implementation strategies for those goals. Four strategic areas from the PBA Strategic Plan were identified. The strategic areas themselves are interconnected, as are the goals under each area. Each strategic area and goal is important to the success of the others.

The strategic areas are:

I. Member Services and Growth – To remain an active and vital Committee within the Pennsylvania Bar Association, the Committee must continue to retain and recruit new members. Growth in membership and member benefits are fundamental to the Committee’s future.
II. Diversity and Inclusion – PBA serves diverse stakeholders and communities across the Commonwealth. Promoting diversity and inclusion will be a catalyst for engagement and participation of Committee members.

III. Strategic Relationships – The Committee must have strong relationships with other PBA committees and sections, as well as the courts and judiciary, county bar associations, law schools, affinity bar associations and other outside entities in order to grow and succeed.

IV. Branding/Marketing – In order to sustain its position and image in the PBA community, the Committee must communicate to all attorneys that membership is of value to federal court practitioners. The Committee must also continue to promote the exceptional work of the Committee and its members to the general public.

Goals:

I. Member Services and Growth

Goal 1  Develop and administer a comprehensive survey to be used every five (5) years to assess needs/preferences of the Committee members.

Goal 2  Identify strategies for the analysis, enhancement and engagement of Committee members and new Committee members.

Goal 3  Identify strategies for the analysis, enhancement and engagement of County Bar Association Federal Practice Committees.

Goal 4  Identify strategies for the analysis, enhancement and engagement of the Young Lawyers Division and law student membership.

Goal 5  Plan and present CLE programs and other educational and practical training programs consistent with the scope of the committee’s mission. These programs will be developed to enable knowledge and professional development opportunities for federal court practitioners by providing education, networking and business opportunities including:

- Quarterly Newsletter
- Educational Programs, including the Supreme Court Review, Federal Practice Institute and Civil/Criminal procedure CLEs.
- Legislative Updates

II. Diversity and Inclusion

Goal 1  Enhance and promote the diversity and inclusion efforts of the PBA.
Goal 2  Promote diversity and inclusion in the Committee counsel nomination process.

III. Strategic relationships

Goal 1  Create strategies and coordinate programs to enhance relationships with groups that include:

- Pennsylvania Bar Institute;
- County Bar Associations, including County Bar Federal Practice Committees;
- PA State Conference of Trial Judges;
- Judiciary;
- Young Lawyers Division and other sections/committees;
- Law Schools; and
- other appropriate organizations.

Goal 2  Identify Committee liaisons for each group.

IV. Branding/Marketing

Goal 1  Create a strategic approach to improve member awareness of the Committee and its benefits.

Goal 2  Identify trends and developments and analyze their appropriateness for implementation by the Committee.

Goal 3  Create a process for benchmarking programs, benefits and services with other organizations and share information with the PBA membership development committee for regular feedback.

Goal 4  Create professional networking and business opportunities for members.