PBA NEWS

Save the Date!
The 2020 PBA Civil Litigation Section Retreat will be held April 24-26 in Cape May, NJ. The retreat has been approved for five substantive and two ethics CLE hours. A listing of the currently scheduled events begins on page 16.

COMMITTEE NEWS

Judge Fisher Named Chair of the Judicial Conference Committee on Federal-State Jurisdiction

Congratulations to FPC Chair Hon. D. Michael Fisher, who Chief Justice John G. Roberts Jr. named as the new chair of the Committee on Federal-State Jurisdiction, one of the Judicial Conference’s committees. Judge Fisher’s three-year term began Oct. 1, 2019. The Committee on Federal-State Jurisdiction, which is comprised of eight federal judges and four state chief justices, serves as a liaison between federal and state courts and reports to the Judicial Conference on pending bills in Congress that will impact those courts.

The 26-member Judicial Conference is the policy-making body for the federal court system. The chief justice of the United States serves as its presiding officer and its members are the chief judges of the 13 courts of appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade. The conference operates through a network of committees created to address and advise on a wide variety of subjects such as information technology, personnel, probation and pretrial services, space and facilities, security, judicial salaries and benefits, budget, defender services, court administration and rules of practice and procedure.

Reminder: Next Committee Meeting – Feb. 17

The Executive Council will hold its next quarterly meeting on Feb. 17, 2020 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; 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 15.

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 fourth quarter of 2019:

- Joseph P.J. Burke, Luzerne County, Wilkes-Barre Law & Library Association
- Lydia Caparosa, Erie County, MacDonald Illig Jones & Britton LLP
- Kallie Crawford, Allegheny County
- Lewis Gardner, Allegheny County, GardnerFrankhouse LLP
- John Goldsborough, Chester County, McAndrews Mehalick Connolly Hulse Ryan and Marone PC
- Robert Korn, Montgomery County, Kaplin Stewart Meloff Reiter & Stein PC
- Jesse Lamp, Allegheny County
- Jesse Markley, Lancaster County, Law Office of James Clark
- Jennifer Migliori, Out of state, Duane Morris LLP
- Jane Penny, Dauphin County, Penny Legal LLC
- Yudelkys Rodriguez De Vargas, Lehigh County, Pennsylvania Immigration Resource Center
- Gregory Scott, Delaware County, Gregory
- Joseph Tate, Philadelphia County, Cozen O’Connor

We are delighted you have joined this vibrant and active committee! We hope you enjoy the benefits of FPC membership, including automatic receipt of four quarterly newsletters. Please consider participating in any of the FPC’s subcommittees – see below for subcommittee contact information. You can also contact

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Welcome New FPC Members!
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Executive Council members with any ideas on how the FPC can best pursue its mission of promoting communication and cooperation among members of the federal judiciary and lawyers who practice in federal courts and enhancing the knowledge and professional capabilities of lawyers who practice law in the U.S. District Courts in Pennsylvania.

SUBCOMMITTEES

Reports from the Chairs

Legislation –

In November 2019, the House Judiciary Committee held a hearing on the topic of snap removal. I was one of four witnesses.

Here is a link to my statement: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3489213

Here is a link that includes a video of the hearing as well as the other statements: https://judiciary.house.gov/legislation/hearings/examining-use-snap-removals-circumvent-forum-defendant-rule

Three of the four witnesses agreed that snap removal is contrary to the intent of Congress and that legislation is necessary to stop the practice. (The fourth witness, testifying on behalf of Lawyers for Civil Justice, argued that there is no “unfairness or injustice that would weigh in favor of revising statutory language that has served well since its enactment.”)

The members of the committee seemed interested in the “fix” that was proposed a few years ago in a law review article by five professors, including me. The fix is called the “snapback” (hence the title I’ve given to the SSRN version of my statement). Post-hearing discussions generated some very constructive suggestions for improving the fix, and a revised proposal (Snapback Version 2.0) was incorporated into my supplementary statement, which you can find here: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3513048

Thus far, no bill has been introduced, but stay tuned.

Prof. Arthur Hellman

Newsletter –

I notified the chair of the FPC that I have decided to step down as chair of the Newsletter Subcommittee. If you are interested in taking on this rewarding role and have questions about what it involves, feel free to contact me via email.

Susan Schwochau

FEDERAL PRACTICE NEWS

Save the Date!

The 2020 Third Circuit Bench and Bar Conference will be held May 13-15, 2020 at the Hilton at Penn’s Landing, Philadelphia. Pending approval, the event will carry up to 12 CLE credits, including two ethics credits.

Status of Judicial Vacancies

U.S. Court of Appeals, Third Circuit

There are no vacancies.

U.S. District Court, Eastern District of PA


A nomination has yet to be made to fill the vacancy created when Judge Lawrence Stengel retired (Aug. 31, 2018).

U.S. District Court, Middle District of PA

On Nov. 7, 2019, Jennifer Philpott Wilson’s nomination to fill Judge Yvette Kane’s seat was confirmed by yea-nay vote. Judge Wilson assumed office on Nov. 8, 2019.
U.S. District Court, Western District of PA
On Dec. 19, 2019, the nomination of Judge Robert J. Colville of the Court of Common Pleas of Allegheny County to fill Judge Arthur Schwab’s seat was confirmed by yea-nay vote. Judge Colville assumed office on Dec. 31, 2019.

A nomination has been made to fill one of the two remaining vacancies. On Dec. 2, 2019, William Scott Hardy was nominated to fill Judge Nora Barry Fischer’s seat. Hearings were held on Jan. 8, 2020.

A nomination has yet to be made to fill the vacancy created when Judge Peter Phipps was elevated (July 16, 2019).

UPCOMING EVENTS

Feb. 18, 2020 – The Federal Practice Committee of the Bar Association of Lehigh County will host a program presented by Chief Judge Sánchez titled “The State of the Federal Judiciary of the Eastern District of Pennsylvania and Introduction of New Judges” from 4-5 p.m. at the bar association’s offices in Allentown. Co-sponsored by the FPC, the program carries one substantive credit. A reception will follow. To register, call Nancy Devers at 610.433.6401 Ext: 16 or email cle@lehighbar.org. For more information go to http://lehighbar.org.

Mar. 20, 2020 – The Academy of Trial Lawyers of Allegheny County will hold its Annual Trial Advocacy in Federal & State Courts Program. “How to Effectively Drive Forward Your Trial Theme Consistently Throughout the Case-Opening Statement, Direct Examination, Cross-Examination and Closing Statement” carries three substantive credits and will be held in Pittsburgh. For more information go to https://www.atlac.org/cle-programs.

April 14, 2020 – An ethics program titled “Blame It on the Strain? Reasons for Attorney and Judicial Misbehavior and How to Address It 2020” will be held from 9-11 a.m. at the PBI Philadelphia Conference Center. The CLE carries two ethics credits. For more information go to https://www.pbi.org/Meetings/Meeting.aspx?ID=36168

April 28, 2020 – The Allegheny County Bar Association’s Federal Practice Section will be holding its annual two-credit CLE, “A View from the Bench: Third Circuit Judges Present Notable Cases of the Past Year” in Pittsburgh.

CASE SUMMARIES

Summaries of Third Circuit and Pennsylvania district court decisions issued between Oct. 1, 2019 and Dec. 31, 2019 involving issues of potential interest to FPC members.

THIRD CIRCUIT PRECEDENTIAL OPINIONS

Healthcare Real Estate Partners LLC v. Summit Healthcare REIT Inc. (In re: Healthcare Real Estate Partners LLC), 941 F. 3d 64 (3d Cir. 2019) (Bankruptcy) – Acting as petitioning creditors, some investors in the funds Healthcare managed succeeded in removing Healthcare from its manager position after they filed an involuntary bankruptcy petition against Healthcare, failed to serve it and obtained an order of relief from the bankruptcy court on the uncontested petition. Their newly installed fund manager then dissolved the funds. After the bankruptcy court granted Healthcare’s motion to vacate the order for relief, the creditors moved to dismiss the petition (having already obtained what they wanted). The bankruptcy court granted creditors’ motion, retaining jurisdiction and including in its order of dismissal a provision stating that “nothing herein shall limit [Healthcare’s] right to seek damages, including without limitation, fees and costs, pursuant to 11 U.S.C. § 303(i) or otherwise.” Healthcare filed a motion seeking § 303(i) damages and also instituted an adversary proceeding against the creditors, asserting § 362(k) claims for violation of the automatic stay that arose in the bankruptcy proceedings. The bankruptcy court dismissed the § 362(k) action concluding (1) it retained jurisdiction only over § 303(i) claims when it dismissed the petition, and (2) even if it could have retained jurisdiction over § 362(k) claims, it had discretion to limit the claims Healthcare could assert after the dismissal. The district court affirmed. The Court of Appeals concluded that the bankruptcy court erred in ruling it did not have jurisdiction: a § 362(k) action is an independent private cause of action over which the bankruptcy court had jurisdiction under § 157(b)(1). The bankruptcy court also erred in holding that it had the authority to limit what claims Healthcare could bring after the dismissal of the petition. The district court’s order was reversed, and the case remanded to the district court to reinstate Healthcare’s § 362(k) action. (Opinion author: Judge M. Greenberg)
Brown v. Sage, 941 F.3d 655 (3d Cir. 2019 [En banc]) (Statutes [PLRA]) - Federal prisoner Brown filed three separate Bivens actions alleging that his Fifth and Eighth Amendment rights had been violated by prison employees. He sought IFP status in each. Concluding that Brown had accumulated three strikes as a result of three cases in California federal district courts and that he did not show he was in imminent danger, the district court denied IFP status and dismissed each case. Brown appealed from all three and sought IFP status on appeal. A divided panel of the Court of Appeals initially granted Brown's IFP motions, but that decision was vacated when the court granted defendants' petition for rehearing en banc. The en banc court clarified the framework that courts may use in assessing IFP applications under the PLRA. Whereas previously it had been said that courts had to follow a "two-step" analysis (first IFP, then merits), the en banc court held a court has the authority to dismiss a case "at any time." 28 U.S.C. § 1915(e)(2). Thus, a court has the discretion to consider the merits of a case and evaluate an IFP application in either order or even simultaneously. Applying this "flexible" approach, the en banc court assessed whether Brown was barred from proceeding IFP under the three-strikes rule. Holding that for the purposes of § 1915(g), a prisoner has "brought an action" once he tenders or submits a complaint to the court, the court determined that Brown had three strikes and thus was barred from proceeding IFP in the consolidated appeals. (Judge M. Chagares writing for the en banc court)

U.S. v. Sepling, 944 F.3d 138 (3d Cir. 2019) (Habeas Corpus / Sentencing) – Sepling pleaded guilty to importing gamma butyrolactone (GBL), a Schedule I Controlled Substance analogue, and was released on bond pending sentencing. While released, Sepling was arrested and charged with conspiracy to import methylone. The attorney appointed for purposes of Sepling's new charges negotiated an agreement under which the government agreed to withdraw charges and that Sepling's involvement with methylone would be factored into the sentence he would receive for his prior GBL conviction as relevant conduct. No one — not the court, not the government attorney, and not Sepling's sentencing counsel — knew much, if anything, about methylone, a substance not listed in the guideline tables. This was clear in the sentencing transcript. As it happened, the relevant conduct involving methylone was the driving factor in the calculation of Sepling's base level and the district court's 102-month sentence. Sepling moved under 28 U.S.C. § 2255 to vacate the judgment of sentence, claiming that his sentencing counsel provided ineffective assistance by failing to investigate and educate himself and the court about methylone or MDMA, its guideline analogue. The district court denied relief. The Court of Appeals, noting the research available to sentencing counsel that illustrated the variety of fact- and policy-based arguments that could have been made to the court, concluded that sentencing counsel's failure to investigate or make any attempt to inform himself of methylone was constitutionally ineffective. Because Sepling also satisfied Strickland's prejudice prong, the court vacated the district court's denial and remanded the case for further proceedings. (Opinion author: Judge T. McKee)

U.S. v. Ludwikowski, 944 F.3d 123 (3d Cir. 2019) (Constitution [Fourth Amendment]) – Pharmacist Ludwikowski told two of his customers that he could no longer fill their oxycodone prescriptions. A few months later Ludwikowski received text messages threatening to reveal "dirt" on him and a letter threatening injury to him, his family and his employees if he did not meet a list of demands that included providing oxycodone. Ludwikowski contacted the FBI and agreed to go the local police station for an interview. He did so and was interviewed in a conference room by police and an FBI agent in three phases (with breaks in between) from around 10:15 a.m. until about 5:30 p.m. He drove himself home afterward. The two former customers were ultimately charged with extortion and pleaded guilty. Before the interview, the local police had opened an investigation into possible criminal activity at Ludwikowski's pharmacy. Three years after the interview, Ludwikowski was indicted on six counts of drug distribution, two counts of maintaining premises for drug distribution and conspiracy to distribute drugs. He moved to suppress statements he made during the last two phases of the interview; that motion was denied. A jury found him guilty on all but two of the nine charges. On appeal, Ludwikowski urged that his motion to suppress should have been granted because he was in custody and had not
been given *Miranda* warnings and that his statements were not made voluntarily. He also challenged the district courts’ admission of certain expert testimony. The Court of Appeals concluded that under the circumstances, (1) Ludwikowski was not in custody and therefore *Miranda* warnings were not required, and (2) his statements were voluntarily made. Rejecting Ludwikowski’s remaining challenge, the court affirmed the district court’s rulings. (Opinion author: Judge D.M. Fisher)

**In re: Avandia Mktg., Sales, and Prods. Liab. Litig., __ F.3d __, 2019 U.S. App. LEXIS 37485, 2019 WL 6873681 (3d Cir. Dec. 17, 2019) (Preemption [Impossibility preemption])** – Two health benefit plans alleged that GSK falsely marketed Avandia and concealed data with respect to its potential cardiovascular risks and side effects, thereby violating RICO and various state consumer-protection laws. The plans asserted that they would not have placed Avandia on their formularies if GSK had disclosed that Avandia not only did not reduce cardiovascular risk in type-2 diabetes patients (as marketed) but could also increase cardiovascular risk as compared to other, cheaper alternatives. GSK moved for summary judgment; the plans included in their opposition a Rule 56(d) declaration and later filed a supplemental Rule 56(d) declaration. The district court granted summary judgment in favor of GSK, finding that (1) the plans’ state-law consumer-protection claims were preempted by the Federal Food, Drug, and Cosmetic Act (FDCA); (2) the plans had failed to identify a sufficient “enterprise” for purposes of RICO; and (3) the plans’ arguments related to GSK’s alleged attempts to market Avandia as providing cardiovascular “benefits” were “belated.” Applying the guidance on impossibility preemption provided in *Merck Sharp & Dohme Corp. v. Albrecht*, 139 S. Ct. 1668 (2019), the Court of Appeals reversed the grant of summary judgment in favor of GSK, finding that (1) the plans’ state-law consumer-protection claims were preempted by the Federal Food, Drug, and Cosmetic Act (FDCA); (2) the plans failed to identify a sufficient “enterprise” for purposes of RICO; and (3) the plans’ arguments related to GSK’s alleged attempts to market Avandia as providing cardiovascular “benefits” were “belated.” The district court’s dismissal was reversed. (Opinion author: Judge S. Bibas)

New Jersey Wage and Hour Law because its timekeeping system defaulted to paying employees based on their work schedules rather than on the time they actually spent working. They also alleged that though American purported to have procedures to compensate employees for unpaid time (through obtaining approval from management), management regularly refused to pay employees for pre- and post-shift work and work done during meal breaks. Plaintiffs moved for class certification under Rule 23. The district court granted the motion and created three subclasses: (1) employees who “have been denied compensation for work performed before and after their shifts while on the clock,” (2) employees “who have been denied compensation for work performed during meal periods,” and (3) employees “who have been denied compensation for work performed before their shifts before clocking in and for work performed after their shifts after clocking out.” American appealed. The Court of Appeals agreed with American that the proper standards had not been applied: the district court in effect certified the class conditionally, it applied a “pleading” and “initial evidence” standard, and it failed to resolve conflicts in the evidence. The court reversed rather than remanded because (1) no additional discovery was needed to decide the certification issue and (2) based on its review of the record, it was clear that commonality and predominance requirements could not be met. Record evidence showed that plaintiffs would need to go through the process of proving that each individual employee actually worked overtime and was entitled to additional compensation, regardless of any common evidence about American’s timekeeping system. (Opinion author: Judge K. Jordan)

Orie v. District Attorney Allegheny County, __ F.3d __, 2019 U.S. App. LEXIS 38750, 2019 WL 7290845 (3d Cir. Dec. 30, 2019) (on panel rehearing) (Habeas Corpus / Civil Procedure) – After her first trial ended in a mistrial, Janine Orie was retried and ultimately convicted of theft of services, conspiracy to commit theft of services and several other counts, all stemming from her actions in conjunction with then-judge Joan Orie Melvin and another sister, then-Senator Jane Clare Orie. For some charges, she was sentenced to “[a] determination of guilty without further penalty,” for some others she was sentenced to one year “in a county intermediate punishment program,” and for the remainder she was sentenced to one year of probation. She filed a petition under § 2254, arguing that the Double Jeopardy Clause barred her retrial on certain charges. The district court referred the case to a magistrate judge, who produced a report and recommendation (R&R) that the case be dismissed because Orie challenged only convictions for which she had received no penalty and was thus not “in custody” for purposes of establishing habeas jurisdiction. No objections were filed, and the district court adopted the R&R. The district court denied Orie’s Rule 60(b)(1) motion claiming that there had been a communications mix-up that prevented her lawyer from filing objections. The Court of Appeals addressed three questions: (1) whether the district court erred in denying relief under Rule 60(b)(1); (2) whether Orie’s failure to timely object to the R&R affected the standard of review applicable to the R&R; and (3) whether it was error to dismiss the petition for lack of jurisdiction. The court concluded that under § 2254 and Nara v. Frank, 488 F.3d 187 (3d Cir. 2007), Orie’s request for relief under Rule 60(b)(1) was barred and thus the district court did not err in denying that motion. Orie’s attempt to gain de novo review was rejected; she failed to show that the district court reviewed de novo the matter at hand. Applying the plain error standard, the court concluded that the district court did not err in dismissing the petition for lack of jurisdiction. (Opinion author: Judge K. Jordan)

Monongahela Valley Hosp. Inc. v. United Steel, Paper and Forestry, Rubber, Mfg. Allied Indus. and Serv. Workers Int’l Union AFL-CIO CLC, __ F.3d __, 2019 U.S. App. LEXIS 38690, 2019 WL 7286693 (3d Cir. Dec. 30, 2019) (Labor / Arbitration award) – Under the collective bargaining agreement (CBA) between the hospital and the union, “[v]acation will, so far as possible, be granted at times most desired by employees; but the final right to allow vacation periods[,] is exclusively reserved to the Hospital.” At the end of 2016, bargaining unit member Konsugar requested vacation for the following year during the week of Dec. 25, 2017. The hospital denied her request because her working supervisor had asked for that same week off and both could not be away at the same time. Konsugar filed a grievance
alleging the denial of her requested vacation was a violation of the CBA, and arbitration ensued. The arbitrator ruled in favor of Konsugar, concluding that “notwithstanding the Hospital’s reservation of exclusive rights,” the CBA precluded the hospital from using “blackout” periods and prevented it from “deny[ing] senior employees in the bargaining unit their desired vacation[] when there is no operating need.” The hospital asked the district court to vacate the arbitration award on the grounds that “[t]he arbitrator’s decision and award exceeded his authority, ignored the plain language of the CBA, and ... failed to draw its essence from the language of the CBA.” The district court agreed with the hospital, granted its motion for summary judgment and vacated the award. The union appealed. The Court of Appeals agreed with the district court: the arbitrator ignored the plain language of the CBA and went far beyond the scope of his authority in adding an “operating need” requirement into the CBA. The district court’s order vacating the award was affirmed. (Opinion author: Judge T. Ambro)

EASTERN DISTRICT OF PA OPINIONS

EEOC v. Defender Ass’n of Philadelphia, ___ F. Supp. 3d __; 2019 WL 4917125 (E.D. Pa. Oct. 3, 2019) (Labor & Employment [ADA]) – Defender Association staff attorney Perez was diagnosed in August 2017 with major depressive disorder and post-traumatic stress disorder, which were caused, in part, by her work defending juveniles accused of sex-related crimes in the Juvenile Special Cases section (JSCS). In September 2017, Perez met with her supervisors and sought, pursuant to her therapist’s recommendations, medical leave until January 2018 and, upon her return, a transfer to a unit not involving sex-related criminal offenses. The supervisors agreed to Perez’s proposed January 2018 return date and asked that she remain in the juvenile unit, but not the JSCS. Perez agreed to this assignment and stated that she was excited to return to the juvenile unit in January 2018. On Oct. 24, 2017, Perez’s therapist prepared a memorandum that stated in part that “The plan is for Ms. Perez to return to her job in January 2018. I am unable to currently say at this time whether that is feasible, but if it is, I would recommend ...” (with recommendations following). Perez was told in November 2017 that her employment was terminated because her therapist’s memo was interpreted as not containing a definitive return date. The EEOC filed suit alleging that the Defender Association failed to provide Perez with a reasonable accommodation for her disability and terminated her employment in violation of the ADA. The association moved for dismissal under Rule 12(b) (6), arguing that the only accommodation request that it denied was Perez’s request for indefinite leave — a request that Perez made through her therapist’s memo — and that such a request was unreasonable as a matter of law. Reading the record in the light most favorable to Perez as the non-movant, Judge C. Rufe concluded the therapist’s statement was ambiguous and denied the association’s motion.

U.S. v. Scales, 2019 U.S. Dist. LEXIS 179946 (E.D. Pa. Oct. 16, 2019) (Constitution [Right to counsel, right to remain silent]) – Scales and several other individuals were charged with conspiring to, among other things, distribute methamphetamines. A Bucks County detective and a Special Agent with the Drug Enforcement Administration interrogated Scales shortly after his arrest. Scales was read his Miranda rights and, after several extended pauses, he said, “I guess I need my lawyer then, right?” A few minutes later, he said, “I ain’t trying to be smart or nothin’ but, y’all can just put me in the cell.” The recording device was then turned off. Scales later allegedly made some incriminating statements. Scales moved to suppress statements he allegedly provided after he said “I guess I need my lawyer then, right?” and those he allegedly made after he asked to be put in his cell. Judge M. Kearney conducted an evidentiary hearing, during which the testimony of the DEA agent, the sole government witness, changed on cross-examination. Based on the detective’s notes and an evaluation of the DEA’s agent’s credibility, the court concluded that after the detective turned off the recording device, he and the DEA agent did not put Scales in his cell and instead continued to question him. Considering both Scales’s words and the surrounding circumstances, the court concluded that Scales did not unambiguously invoke his right to counsel through the question, “I guess I need my lawyer then, right?” and declined to suppress later statements on that ground. But it also concluded that a reasonable officer in the circumstances would interpret “I ain’t trying to be
smart or nothin’ but, y’all can just put me in the cell” as an unequivocal invocation of an intention to remain silent. The court therefore granted Scales’s motion with respect to (1) statements made after he invoked his right to remain silent, (2) the detective’s post-interview report of events after the recording device off was shut off, and (3) any testimony about statements made by Scales after the recording device was turned off.

Brown v. Teva Pharms. Inc., __ F. Supp. 3d __; 2019 WL 5406218 (E.D. Pa. Oct. 23, 2019) (Snap removal) – Brown, a citizen of Florida, sued defendants, several of whom were citizens of Pennsylvania, under state law for injuries suffered from the insertion and removal of a Paraguard Intrauterine Device. Brown filed her complaint in the state court on Aug. 16, 2019 at 10:06 a.m. The defendants, before they were served, filed a notice of removal in federal court at 1:55 p.m. on the basis of diversity of citizenship. All defendants were served with a copy of the complaint at 2:15 p.m. At 4:11 p.m., the defendants filed their notice of removal on the docket of the state court. Brown moved for remand, arguing that under § 1446(d), removal by a defendant is not effective until the state court has a copy of the removal notice on its docket, and because defendants were served before removal was effective, Encompass Ins. Co. v. Stone Mansion Restaurant Inc., 902 F.3d 147 (3d Cir. 2018) (holding that removal by a forum defendant is allowed under § 1441(b)(2) if removal to the federal court occurs before the defendant has been served with the complaint), did not apply. Judge H. Bartle, after reviewing relevant Third Circuit opinions and the text of § 1446(d), agreed with Brown: because defendants were served before they filed a copy of the notice of removal in the state court, the forum defendant rule applied to bar removal. The motion to remand to state court was granted.

Villanueva v. Clark, 2019 WL 6698233 (E.D. Pa. Dec. 6, 2019) (Habeas corpus) – Villanueva, who is deaf and speaks only Spanish, was found guilty of numerous offenses involving the rape and sexual abuse of Ma. S, the nine-year-old daughter of his live-in girlfriend. Villanueva sought relief under § 2254 based on five claims: (1) appellate counsel was ineffective for failing to request that the trial court order a psychiatric evaluation of Ma. S.; (2) the trial court erred in excluding evidence that Ma. S’s older brother had sexually abused Ma. S. in the same manner that Villanueva was alleged to have abused her; (4) the trial court failed to recognize a Brady violation based upon the letter the Commonwealth provided to Villanueva three days into his trial; and (5) trial counsel was ineffective for providing unreasonable and illogical advice to Villanueva, which dissuaded him from testifying. Judge C. Rufe first denied claims (1), (2), (4) and (5). The remainder of the opinion dealt comprehensively with the third claim, which regarded the exclusion of evidence in violation of the Sixth Amendment’s Compulsory Process Clause. After holding that Villanueva had fairly presented this claim to the state courts, the court concluded de novo review was appropriate because Villanueva had rebutted the presumption in Johnson v. Williams, 568 U.S. 289 (2013), that the state court had adjudicated his federal claim on the merits. As to the merits, there was no dispute that Villanueva was deprived of the opportunity to present evidence in his favor. The court held that the exclusion of the evidence was sufficient to undermine confidence in the outcome of trial and that applying Pennsylvania’s Rape Shield Law to bar the relevant and potentially exculpatory evidence was disproportionate because it did not serve the purposes of the statute or “advance[e] the quest for truth.” Finding the error not harmless, the court granted Villanueva’s petition as to claim 3.

Andrews v. May, 2019 WL 7042419 (E.D. Pa. Dec. 20, 2019) (Civil Rights - §1983 [Prison Conditions]) – Warden May sought summary judgment on both of Andrews’s claims against him: (1) a §1983 claim that he violated Andrews’s constitutional rights by subjecting him to unsanitary, unsafe and inadequate prison conditions through triple-celling him (housing three inmates in a cell built for two) and (2) a claim of civil contempt that alleged violations of a settlement agreement between a former class of prisoners challenging the constitutionality of triple-celling and the City of Philadelphia. As to the §1983 claim, Warden May urged that Andrews (1) did not exhaust his administrative remedies before filing this lawsuit and (2) failed to demonstrate Warden May’s personal involvement in any alleged wrongdoing. As to the civil contempt claim,
Warden May asserted that he was entitled to summary judgment because there was no supporting evidence in the record. Judge G. Pratter concluded that because Andrews did not appeal the response to his grievance before filing his lawsuit, he failed to exhaust his administrative remedies. The court therefore granted Warden May’s motion in part, dismissing the $1983 claim with prejudice. It rejected May’s argument, however, as to the civil contempt claim, concluding that Andrews had set forth sufficient evidence to support a finding that May disobeyed a 2016 settlement agreement that addressed both conditions surrounding triple-celling and the use of lockdowns. Warden May’s motion was therefore denied as to the second claim.

Britax Child Safety, Inc. v. Nuna Int’l B.V., 2019 WL 7161687 (E.D. Pa. Dec. 23, 2019) (Patent [Claim construction]) – Britax alleged that defendants Nuna International B.V. and Nuna Baby Essentials (collectively, Nuna), infringed two of its patents for a specific design of a child car seat. The patents relate specifically to a child car seat with a “tensioning mechanism” for applying tension to a seat belt to more easily secure the seat within a vehicle in either a forward or rearward facing position. The parties disputed the proper construction of 12 claim terms in Britax’s two patents. Judge J. Leeson rejected Nuna’s proposed constructions of “tensioning mechanism,” “proximal end,” “distal end” and “pivot structure” — each of which would have imposed a “unitary” limitation. The court adopted Britax’s construction of “proximal end” and “distal end” but otherwise declined to construe the terms because their ordinary meaning would be clear to a person of ordinary skill in the art. Nuna also urged that eight terms of degree should be construed as indefinite because they did not inform a person of ordinary skill in the art as to their scope. As to these eight terms of degree, the court agreed with other courts that indefiniteness was more appropriately reserved for the summary judgment stage. As a result, the court engaged in claim construction analysis with respect to the terms Nuna alleged were indefinite, but made only preliminary findings as to indefiniteness in light of the intrinsic record. Ultimately the court found that each of the eight terms should be construed according to its plain and ordinary meaning, which was ascertainable in the context of the patent language. It was unable to conclude that the eight terms were indefinite based upon the intrinsic evidence and permitted Nuna to challenge the terms as indefinite after the close of discovery should a basis for such a challenge exist.

MIDDLE DISTRICT OF PA OPINIONS

A.H. v. Minersville Area School Dist., __ F.Supp.3d __, 2019 WL 4875331 (M.D. Pa. 2019, Oct. 2, 2019) (Statutes [Title IX] / Constitution [Fourteenth Amendment]) - A.H. is a transgender girl. She received a clinical diagnosis of gender dysphoria in the middle of the 2014-15 school year, when she was in kindergarten. She (through her mother) sued the district in 2017, alleging that the district’s policies and/or practices treated transgender students differently and as such violated Title IX and the Equal Protection Clause. The alleged discriminatory acts at issue were: (1) the decision that A.H. would use the unisex bathroom when she began first grade; (2) the decision that A.H. had to use the men’s bathroom or a family/unisex bathroom on the zoo field trip during her kindergarten year; and (3) the decision that, in the absence of a parent accompanying her, A.H. had to use the unisex/family bathroom on the zoo field trip in first grade. It was undisputed that as of April/May 2016 (near the end of first grade), A.H. was permitted to use the bathroom that conformed with her gender identity. The parties filed cross motions for summary judgment. Judge R. Mariani concluded, with respect to the claims involving the district’s policy regarding A.H.’s use of public restrooms at school-sponsored events, that the district singled-out A.H. and subjected her to intentionally discriminatory treatment when it purposely excluded her, or attempted to exclude her, from using public restrooms that all similarly situated students and classmates were permitted to use, i.e., the restroom corresponding with their gender identity. It also failed to demonstrate an exceedingly persuasive justification for its field trip policy as it related to A.H. and to show that the challenged classification served any important governmental objective. Triable issues of fact existed, however, as to whether the district had a “policy” requiring that A.H. only use the unisex bathrooms at school in first grade and whether any policy as applied to A.H. was agreed upon between the district and A.H.’s parents. Thus, the district court’s motion was denied as to both the Title IX and Equal Protection claims, and A.H.’s motion was granted.
in part (as to the field trip policy) and denied in part. The court entered a permanent injunction restraining the district and its agents and representatives from refusing or failing to permit A.H. from using the bathroom corresponding with her gender identity on field trips, even in the absence of her parent accompanying her.

*M'Bagoyi v. Barr*, __ F.Supp.3d __, 2019 WL 5450872 (M.D. Pa. 2019, Oct. 24, 2019) (Habeas Corpus [Alien detainee] / Federal court jurisdiction) – Petitioner was ordered removed in 2003, but had been released under an order of supervision due to ICE's inability to secure a travel document for his removal. In late 2016, his second wife filed a Form I-130 on his behalf, and this petition was approved in March 2018 (a petition filed in 2008 by his first wife had also been approved; she apparently passed away in 2013). After the 2018 approval, the petitioner and his spouse “began gathering the requisite documents to apply for a waiver of his removal order.” Before they could file that application, ICE revoked the petitioner’s order of supervision based on the issuance of a travel document, and he was taken into custody. In this action, petitioner asserted that his current detention (since Sept. 27, 2019) constituted a severe restraint on his individual liberty in violation of the Constitution or laws of the United States and that his arrest, detention and removal violate, and would violate, the INA, the APA and the Constitution’s due process guarantees. He sought from the court, *inter alia*, a stay of his removal until he exhausted the process of obtaining a provisional unlawful presence waiver, and an order releasing him from custody. Respondent asserted that the court lacked jurisdiction under 8 U.S.C. § 1252. Noting a split on the issue of whether § 1252 stripped a district court of jurisdiction where a petitioner sought a stay of removal and an order releasing him from custody until he exhausted the process of obtaining a provisional unlawful presence waiver, Judge M. Mannion ultimately agreed with those courts that found that § 1252 did not strip a district court of jurisdiction. The court reviewed the factors associated with injunctive relief and concluded that the petitioner had the right to a stay of removal while he completed the waiver process. It further decided that petitioner should be released from custody pending the completion of that process.

**B.W. v. Career Technology Center of Lackawanna County**, __ F.Supp.3d __, 2019 WL 5692770 (M.D. Pa. 2019, Nov. 4, 2019) (Statutes [Title IX] / Constitution [Fourteenth Amendment]) – Parents and natural guardians of male minor students alleged in eight separate cases that while their sons were students in their respective school districts during the 2016-17 school year, they were enrolled in the automotive technology program at the Career Technology Center (CTC) and were sexually assaulted and abused by a CTC teacher. On May 13, 2017, a referral was made to Pennsylvania’s statewide child abuse registry reporting the CTC teacher to the Pennsylvania ChildLine Registry. The CTC suspended the teacher (with pay) two days later, and he was subsequently forced to resign his teaching position. Plaintiffs asserted three claims alleging violations of Title IX and three claims alleging violations of the students’ constitutional rights under the Fourteenth Amendment (brought pursuant § 1983). In this detailed and comprehensive opinion, Judge M. Mannion addressed 14 Rule 12(b)(6) motions to dismiss filed by the school districts and the CTC in the eight cases. The court granted the motions in part and denied them in part. Plaintiffs had adequately pleaded facts to survive defendants’ motions with respect to (1) Count I, which asserted Title IX claims against the school districts and CTC for alleged physical sexual abuse of a student by a teacher prior to May 2017; (2) Count IV, which alleged that the CTC and school districts, through their policymaking officials, maintained and endorsed policies and practices that resulted in violations of the students’ Fourteenth Amendment due process rights; and (3) Count VI, which alleged that defendants failed to properly train their teachers and failed to supervise their teachers to prevent the known and pervasive sexual abuse and harassment that they and other male students were subjected to by the CTC teacher. Claims in Counts II (Title IX claims involving the post-May 2017 period), III (Title IX retaliation claims) and V (Fourteenth Amendment state-created danger claims) were dismissed with prejudice.

lumber mill), Young suffered an accident while using a 54-inch vertical band re-saw manufactured by McDonough. The re-saw weighed over 10,000 pounds and was over eight feet high, six feet wide and six feet long. Young’s injury — the traumatic amputation of four fingers of Young’s dominant left hand and in the functional loss of that hand — happened over 12 years after House Wood installed the re-saw on its property. Young sued McDonough under theories of negligent design and manufacturing, strict liability and breach of warranty. McDonough moved for summary judgment, arguing that Pennsylvania’s 12-year statute of repose on actions arising from improvements to real property shielded it from liability. Judge M. Brann concluded, based on McConnaughey v. Bldg. Components Inc., 637 A.2d 1331 (Pa. 1994), subsequent decisions and a summary judgment record showing McDonough played no part in the actual physical installation of the re-saw at House Wood, that McDonough did not fall within the class of people that the statute of repose covered. The court therefore denied its motion for summary judgment.

WESTERN DISTRICT OF PA OPINIONS

Stanford v. Walton, 2019 WL 5068666 (W.D. Pa. Oct. 9, 2019) (Civil Rights-§1983) – In his operative complaint, prisoner Stanford alleged that defendants violated his constitutional rights through (1) the conditions of his confinement in the RHU, where he was denied access to showers, recreation and clean linens from between eight and 20 days and subjected to constant illumination and isolation; (2) denying him medical treatment with respect to a purported toenail infection and mental healthcare in the RHU; (3) denying him psychological care, and (4) obstructing his ability to utilize the internal grievance process and limiting his access to legal materials and the law library while he was housed in the RHU. Defendants filed a motion for summary judgment, arguing that Stanford failed to exhaust his administrative remedies and that no genuine issue of material fact existed with respect to the claims against them. Defendants Westmoreland County Prison and the prison board filed a separate motion, arguing that summary judgment was proper because the Westmoreland County Prison and the prison board were not “persons” who could be sued under § 1983. Magistrate Judge M. Kelly first concluded that defendants had not satisfied their burden to prove that Stanford failed to exhaust his administrative remedies: they admitted that grievance forms were “not made available on any housing unit” and did not refute Stanford’s claim that those forms were unavailable to him. The court agreed that Westmoreland County Prison was a just a building and thus not a person subject to suit. Although the court acknowledged with respect to the prison board that a split of authority existed as to whether the board could be sued as a “person” under § 1983, it concluded that even if the board was a proper defendant, Stanford’s claims against it failed because he did not offer evidence that the board created any custom or policy that caused his alleged harm. After reviewing the summary judgment record with respect to Stanford’s four claims, the court ultimately concluded that Stanford had not made the requisite showings of the essential elements of those claims, and it therefore granted both of defendants’ motions.

CNX Gas Co., L.L.C. v. Lloyd’s of London, 2019 U.S. Dist. LEXIS 180063 (Oct. 17, 2019) (Federal court jurisdiction) – An accident occurred at a natural gas well operated by CNX in Ohio. After its initial claim under a control-of-well (COW) insurance policy it obtained through Lloyd’s was denied, CNX filed suit in state court for coverage. The complaint named as defendants only five of the COW policy’s underwriters; CNX did not explicitly identify other entities (numbering over 1,800) underwriting the COW policy because Lloyd’s kept them confidential. Defendants removed to federal court, asserting diversity jurisdiction. CNX sought remand; third parties – three of the other underwriters – sought to intervene. CNX’s motion to remand raised two overarching questions: (1) whether the complaint sufficiently pleaded all the entities that underwrote the COW policy as defendants rather than just the specific defendants identified in the caption; and (2) whether removing defendants met their burden to establish diversity jurisdiction over all of the entities sufficiently pleaded. Reviewing the complaint as a whole, Judge W. Stickman IV held that it adequately pleaded all of the entities that underwrote the COW policy as defendants in this case. As to whether defendants established diversity jurisdiction, the court, after describing the circuit split on the issue of whether a Lloyd’s syndicate is more like a trust
or more like a limited partnership, sided with the majority view: when a syndicate is sued, the citizenship of every entity comprising the syndicate counts, not merely that of the entity serving as lead underwriter. Here, removing defendants failed to identify and establish the citizenship of the 1,800 unidentified underwriters comprising the minority share of one of the COW policy’s syndicates. Defendants having failed to meet their burden, the court granted CNX’s motion to remand. The motion to intervene was declared moot (and also unnecessary, given the court’s ruling on the first question).

**Ostroski v. Chesapeake Appalachia LLC**, 2019 WL 6118353 (W.D. Pa. Nov. 18, 2019) (Action to vacate arbitration award) – The Ostroskis filed an Arbitration Complaint and Demand against Chesapeake Appalachia (ChesApp) and two related defendants, alleging the underpayment of natural gas royalties under an oil and gas lease they entered into with ChesApp. The arbitrator entered a final award in favor of defendants. The Ostroskis initiated an action seeking to vacate that final award, arguing that that the arbitrator “clearly strayed from interpretation and application of the oil and gas lease at issue and effectively dispensed her own brand of industrial justice.” Judge D.S. Cercone entered judgment in favor of defendants, concluding that there was more than adequate support in the lease for the arbitrator’s rulings and that there was no manifest disregard of either the lease or the law in the arbitrator’s award.

**Steelworkers Pension Trust v. Renco Grp. Inc.**, 2019 WL 6828420 (W.D. Pa. Dec. 13, 2019) (Stay of execution of judgment) – After the court entered judgment in plaintiff’s favor (in the amount of $17,774,771.00 in interest, attorney’s fees and costs), both plaintiff and defendants filed appeals. Plaintiff’s appeal was limited to the appropriate interest rate to which it claimed to be entitled – it sought the application of a higher interest rate than the one applied. Defendants had not, as of Dec. 13, 2019, sought to post a bond with respect to the monetary judgment entered against them. Defendants moved for a stay on execution of judgment, contending that plaintiff could not execute on the judgment because it, as the prevailing party, took an appeal to the Third Circuit. Magistrate Judge P. Dodge described the split of authority on the issue that defendants’ motion raised: whether the prevailing party’s appeal from the court’s judgment suspends the execution of the decree. The court rejected the minority view (that it does) and followed the approach taken by the majority of courts: a prevailing party who seeks on appeal merely to increase the amount of a judgment is not precluded from executing on the judgment during the pendency of the appeal. These courts would apply the minority view only where the prevailing party was challenging the underlying judgment itself. In this case, plaintiff was seeking on appeal an increase in the amount of the judgment but was not contesting the judgment itself, and thus execution was not inconsistent with the position it was taking on appeal. The court denied defendants’ motion without prejudice to seeking a stay pursuant to Rule 62(b).

**Cesare v. Champion Petfoods United States Inc.**, 2019 WL 7037585 (W.D. Pa. Dec. 20, 2019) (UTPCPL claims under the economic loss doctrine) – Defendants are nationwide sellers of premium-priced dry dog foods under the Orijen and Acana brand names. Plaintiffs sued on behalf of a putative class of Pennsylvania purchasers of defendants’ dog food, alleging that defendants had misrepresented their products to sell them at prices that were more than four times the prices of their competitors. The operative complaint set forth six counts under Pennsylvania law: (1) violation of the UTPCPL; (2) breach of express warranty; (3) breach of implied warranty; (4) fraudulent omission; (5) unjust enrichment; and (6) negligent misrepresentation. Defendants moved to dismiss all claims, raising a failure-to-state-a-claim argument applicable to all claims as well as numerous arguments applicable to specific claims. Addressing the global argument first, Judge C. Bissoon found that plaintiffs in their complaint had opened the door to the admissibility of a document attached to defendants’ motion, but decided that, even with the admission of that document, plaintiffs had pleaded sufficient facts to withstand dismissal of claims based on the alleged presence of heavy metals or on the ingredients in the products purchased. Turning to arguments regarding specific claims, the court noted a split of authority on whether **Werwinski v. Ford Motor Co.**, 286 F.3d 661 (3d Cir. 2002) (holding the economic loss doctrine precludes UTPCL and fraudulent
concealment claims for purely economic losses) remained binding law and concluded that, until the Third Circuit or the Pennsylvania Supreme Court ruled otherwise, it would continue to apply the economic loss doctrine to UTPCPL claims. Plaintiffs’ UTPCPL claim was therefore dismissed as barred by that doctrine. For separate reasons, the economic loss doctrine was also held to bar plaintiffs’ fraudulent omission claim and their negligent misrepresentation claim. The court rejected defendants’ arguments with respect to plaintiffs’ breach of express warranty, breach of implied warranty and unjust enrichment claims, and thus it granted defendants’ motion in part and denied it in part.

Habas Sinai Ve Tibbi Gazlar Istihsal A.S. v. Int’l Tech. & Knowledge Co., 2019 WL 7049504 (W.D. Pa. Dec. 23, 2019) (Service outside of a judicial district of the United States under the Hague Convention on Service Abroad) – In this breach-of-contract action, plaintiff alleged that defendants — Intekno U.S., a Pennsylvania corporation, and Intekno Turkey, a Turkish corporation — failed to deliver certain goods, forcing plaintiff to obtain them elsewhere at an increased cost. Plaintiff attempted to serve Intekno U.S. at the two addresses listed with the Pennsylvania Bureau of Corporations, but the process server confirmed that neither address was affiliated with Intekno U.S. Plaintiff later learned that Intekno U.S. did not have a physical location within the U.S.; that all Intekno U.S. business operations were conducted through its CEO, Halil Kulluk, and that Intekno U.S. did not have a registered agent for purposes of authorized acceptance of service in the U.S. Plaintiff moved for leave to serve Intekno U.S. by electronic mail upon Halil Kulluk, who was in Turkey. Magistrate Judge P. Dodge first concluded that because plaintiff was attempting to serve Intekno U.S. by serving Kulluk in Turkey, it had to proceed under Rule 4(h)(2). This in turn invoked Rule 4(f), which in turn brought the Hague Convention on Service into the analysis. Because Turkey had objected to service through means like “postal channels” and “judicial officers,” service by mail in Turkey was not permitted under the Hague Service Convention. The question thus became whether a court could order the use of methods not listed in the Hague Convention’s relevant provision. On this question, there was a split of authority, with some courts answering “yes” while others answering “no.” Here, the court concluded that the “no” side had the more persuasive argument and therefore it denied plaintiff’s motion.

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. D. Michael Fisher**, U.S. Court of Appeals Third Circuit, Allegheny
- **Hon. Nora Barry Fischer**, U.S. District Court for the Western District of Pennsylvania, Allegheny
- **Lydia Caparosa**, MacDonald Illig Jones & Britton LLP, Erie
- **Nancy Conrad**, White and Williams LLP, Lehigh
- **Philip Gelso**, Law Offices of Philip Gelso, Luzerne
- **Melinda Ghilardi**, Munley Law PC, Lackawanna
- **Jeremy Mercer**, Porter Wright Morris & Arthur LLP, Allegheny
- **Matthew Sullivan**, Matthew Sullivan LLC, Philadelphia
- **Tom Wilkinson**, Cozen O’Connor, Philadelphia

A special thank you also goes to Susan Etter, Diane Banks and Suzanne Crist of the Pennsylvania Bar Association.
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U.S. Court of Appeals
Third Circuit, Allegheny

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White and Williams LLP
Lehigh

Co-Vice Chair: Melinda Ghilardi
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• Jeremy Mercer, Porter Wright Morris & Arthur LLP, Allegheny
• Tom Wilkinson, Cozen O’Connor, Philadelphia

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

Newsletter Subcommittee:
• Susan Schwachau, 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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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 this newsletter (and the attached membership form) to them!
## 2020 PBA Civil Litigation Section Retreat
April 24-26, Cape May, NJ

### SCHEDULE OF EVENTS
(Current at time of printing but subject to change)

**Friday, April 24**

<table>
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<tr>
<th>Time</th>
<th>Event</th>
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<tr>
<td>11:00 a.m.</td>
<td>Coast Guard Graduation Ceremony, Coast Guard Training Center, Cape May</td>
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<tr>
<td>2:30 p.m. – 6:30 p.m.</td>
<td>Registration</td>
</tr>
<tr>
<td>3:00 p.m. – 4:00 p.m.</td>
<td>Conducting Complex Litigation - Assembling the Pieces of the Puzzle</td>
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As litigation becomes more complex, the challenges for the litigator become more daunting. Obtain tips from experienced judges and trial lawyers to help you successfully navigate those challenges.

Moderator: Brian Simmons, Buchanan Ingersoll & Rooney PC

Speakers:
- Hon. Stephanie Domitrovich, Erie County Court of Common Pleas
- Hon. Terrence R. Nealon, Lackawanna County Court of Common Pleas
- Hon. Mark A. Kearney, U.S. District Court Eastern District of PA
- Thomas R. Hurd, McElroy Deutsch Mulvaney & Carpenter LLP
- Kimberly Krupka, Gross McGinley LLP

**CLE Program:** 1.0 substantive credits

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<th>Time</th>
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<tr>
<td>4:00 p.m. – 4:15 p.m.</td>
<td>Break</td>
</tr>
<tr>
<td>4:15 p.m. – 5:15 p.m.</td>
<td>Ethical Issues in Complex Litigation – More Fuel for Sleepless Nights</td>
</tr>
</tbody>
</table>

Complex litigation creates unique ethical issues. Our experienced panel will examine some of the ethical challenges to look out for and how to deal with them.

Moderator: Thomas G. Wilkinson Jr., Cozen O'Connor

Speakers:
- Hon. Stephanie Domitrovich, Erie County Court of Common Pleas
- Hon. Terrence R. Nealon, Lackawanna County Court of Common Pleas
- Hon. Mark A. Kearney, U.S. District Court Eastern District of PA
- Thomas R. Hurd, McElroy Deutsch Mulvaney & Carpenter LLP
- Kimberly Krupka, Gross McGinley LLP

**CLE Program:** 1.0 ethics credits

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<th>Time</th>
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<tr>
<td>5:30 p.m. – 6:15 p.m.</td>
<td>Civil Litigation Section Council Meeting</td>
</tr>
<tr>
<td>6:30 p.m. – 7:00 p.m.</td>
<td>Cocktail Reception</td>
</tr>
<tr>
<td>7:00 p.m. – 10:00 p.m.</td>
<td>Dinner and Keynote Speaker: Captain Sarah “Kathy” Felger, Commanding Officer of Coast Guard Training Center, Cape May</td>
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**Saturday, April 25**

<table>
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<th>Time</th>
<th>Event</th>
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<tr>
<td>8:00 a.m. – 9:00 a.m.</td>
<td>Breakfast Buffet</td>
</tr>
<tr>
<td>9:00 a.m. – 10:00 a.m.</td>
<td>Inside View of Appellate Practice and Procedures</td>
</tr>
</tbody>
</table>

This appellate practice roundtable discussion will include a behind the scenes view of our appellate courts, practice tips for briefs and oral argument, and professionalism and civility among the bar. Don't miss this exclusive opportunity to get the inside scoop from distinguished members of our appellate bench.

Moderator: Pamela A. Van Blunk, Van Blunk Law LLC

Speakers:
- Hon. Carolyn H. Nichols, Superior Court of Pennsylvania
- Hon. Mary Hannah Leavitt, President Judge, Commonwealth Court of Pennsylvania
- Hon. Marjorie O. Rendell – US Court of Appeals for the Third Circuit

**CLE Program:** 1.0 substantive credit

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<th>Time</th>
<th>Event</th>
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<tr>
<td>10:00 a.m. – 10:15 a.m.</td>
<td>Break</td>
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<tr>
<td>10:15 a.m. – 11:15 a.m.</td>
<td>A Different Persuasion: Argument Before the Appellate Courts</td>
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</table>

In this second session, oral argument will be presented on two cases followed by discussion with our appellate bench, including practice tips on how to be persuasive before an appellate court. Take away insights from the judges about what they look for in oral arguments.

Moderator: Pamela A. Van Blunk, Van Blunk Law LLC

Speakers:
- Hon. Carolyn H. Nichols, Superior Court of Pennsylvania
• Hon. Mary Hannah Leavitt, President Judge, Commonwealth Court of Pennsylvania
• Hon. Marjorie O. Rendell – U.S. Court of Appeals for the Third Circuit
• Dean Rodney A. Smolla, Widener University, Delaware Law School
• Virginia Hinrichs McMichael, Appellate Law Group LLC
• Karl S. Myers, Stradley Ronon Stevens & Young LLP
• Sarah C. Yerger, Barley Snyder

**CLE Program: 1.0 substantive credit**

11:30 a.m. – 12:30 p.m. **Best Practices in Client Service – the Perspective of In House Counsel**
Fierce competition and rising client expectations have stepped up the demands on attorneys to provide exceptional service and value to clients. A panel of in-house counsel will relate their perspectives on extraordinary and not-so-extraordinary client service and offer tips on best practices for outside counsel.

Moderator: Nancy Conrad, White and Williams LLP

Speakers:
• Ellen D. Bailey, Deputy General Counsel, Stockton University
• David J. Felicio, Executive Vice President and Chief Legal Officer, Geisinger
• Sarah E. Pontoski, Associate General Counsel, NFI Industries

**CLE Program: 1.0 substantive credit**

9:15 a.m. – 9:30 a.m. Break

9:30 a.m. – 10:30 a.m. **Hot Topics in Litigation**

Enjoy this fast-paced session of litigation Hot Topics providing you with recent developments in a wide variety of practice fields, including general litigation, civil and equal rights, immigration, administrative law and court procedures from a panel of practitioners in their fields.

Moderator: Harold M. Goldner, Kraut Harris PC

Speakers:
• Hon. Marilyn Heffley, U.S. District Court Eastern District of PA
• Wendy Castor Hess, Landau Hess Simon Choi
• Anne N. John, John & John, PBA President
• Riley H. Ross III, Mincey Fitzpatrick Ross LLC
• Pamela A. Van Blunk, Van Blunk Law LLC

**CLE Program: 1.0 substantive credits**

Sunday, April 26

7:15 a.m. – 8:15 a.m. **Buffet Breakfast**

8:15 a.m. – 9:15 a.m. **Help! How Do I Get My Life Back?**
Join us for an interactive discussion using real-life scenarios about issues affecting your practice. Topics will include: substance dependency, mental health issues and stress, and work/life balance.

Speakers:
• Sara A. Austin, Austin Law Firm LLC
• Amy J. Coco, Weinheimer Haber & Coco PC
• Wesley R. Payne IV, White and Williams LLP
• Jay N. Silberblatt, Silberblatt Mermelstein

**CLE Program: 1.0 ethics credit**

2:00 p.m. Emlen Physick Estate Tour

7:00 p.m. – 9:00 p.m. **Evening Festivities Cape May Style: dinner buffet, lighthouse presentation, boardwalk games and music**

CLE credits: The retreat has been approved by the Pennsylvania Continuing Legal Education Board for 5 hours substantive and 2 hours ethics CLE credits.

*Speakers current at time of printing*
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 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.