Next Federal Practice Committee Meeting Nov. 19

The next Federal Practice Committee Meeting will be held on Nov. 19, 2015 from 9:15 a.m. to 10:45 a.m. This will be a joint meeting of the Executive Council and the full committee. Committee members can attend in person at the Red Lion Hotel Harrisburg East, (formerly Holiday Inn Harrisburg East), 4751 Lindle Road, Harrisburg, PA 17111 or by conference call.

Please be sure to register on the PBA web site. There is no cost to attend the meeting.

“A Dialogue with the Judges of the Northern Tier: Advice and Guidance on Federal Practice”

On Thursday, Sept. 10, 2015, the PBA Federal Practice Committee co-sponsored a CLE program held at the Barristers’ Club in Allentown. The program, “A Dialogue with the Judges of the Northern Tier: Advice and Guidance on Federal Practice,” was highly successful, with approximately 180 people attending and receiving very practical tips and information on federal court procedures and working with federal judges.

The program was followed by a networking reception and dinner. This was a joint effort of the Federal Practice Committees of the bar associations of Lehigh and Northampton Counties, The Judge Donald E. Wieand Barristers Inn, the PBA Federal Practice Committee, and the Federal Bar Association, Eastern District of Pennsylvania Chapter.

Committee Operating Procedures Approved by PBA Board of Governors

On Sept. 17 the PBA Board of Governors unanimously approved our proposed Committee Operating Procedures. Thank you to everyone who contributed to the development and adoption of the Operating Procedures, particularly our Co-Vice Chairs, Nancy Conrad and Melinda Ghilardi, who took the lead in preparing the draft procedures. The approved operating procedures are provided on pages 13-18.
for your reference. As you review the operating procedures, you will note there are a number of opportunities for you to step into leadership roles on the Executive Council and various subcommittees (please see pages 15-16). Please respond to our committee liaison, Susan Etter, if you are interested in serving in any of these capacities. We will review your interest as we move forward with the implementation of the Operating Procedures over the next few months. Your willingness to serve in a leadership capacity for the committee is essential to our continued growth, success and ability to provide quality services to each of our members.

All cases are linked to Casemaker.

THIRD CIRCUIT PRECEDENTIAL OPINIONS

Neale v. Volvo Cars of North America, LLC, 794 F.3d 353 (3d Cir. 2015). (Class Action) – In this challenge to the district court’s certification of six statewide classes, the Court of Appeals squarely held that unnamed, putative class members need not establish Article III standing. Instead, the “cases or controversies” requirement is satisfied so long as a class representative has standing, whether in the context of a settlement or litigation class. Although the Court rejected defendants’ standing argument, it vacated the district court’s decision because the district court erred in not providing a complete list of the class claims, defenses and issues for each of the six statewide classes (what Wachtel v. Guardian Life Insurance Co. of America, 453 F.3d 179 (3d Cir. 2006) requires) and in not analyzing predominance in the context of plaintiffs’ actual claims (instead erroneously assuming that Sullivan v. DB Investments, Inc. (Sullivan II), 667 F.3d 273 (3d Cir. 2011) (en banc) governed the outcome of the case).

In re Community Bank of Northern Virginia Mortgage Lending Practices Litigation, 795 F.3d 380 (3d Cir. 2015). (Class Action) – The Court of Appeals affirmed the district court’s class certification order, rejecting appellant’s arguments that 1) there was a fundamental class conflict that undermined the adequacy of representation provided by class counsel; 2) the district court conditionally certified the class; and 3) the putative class did not meet the ascertainability, commonality, predominance, superiority, or manageability requirements of Rule 23 of the Federal Rules of Civil Procedure.

Devon Robotics, LLC v. DeViedma, 798 F.3d 136 (3d Cir. 2015). (Arbitration) – In this appeal from a denial of a motion for summary judgment, the Court of Appeals rejected defendant’s argument that, because the denial was the equivalent of an order denying a petition to compel arbitration, the Court had jurisdiction under the Federal Arbitration Act. Holding that whether an order constitutes an order that is appealable under § 16 of the FAA is to be determined by examining the label and the operative terms of the district court’s order as well as the caption and relief requested in the underlying motion, the Court concluded that the order here could not be construed as a denial of a petition to compel arbitration and dismissed the appeal.

In re SemCrude L.P., 796 F.3d 310 (3d Cir. 2015). (Bankruptcy) – In this direct appeal from the bankruptcy court, the Court of Appeals concluded that a group of former limited partners’ state-court claims of negligent representation, fraud, and breach of fiduciary duty against SemCrude’s founder and former CEO were derivative of the claims rightfully belonging to, and earlier released by, SemCrude’s Litigation Trust. As a result, the Court reversed the bankruptcy court’s order denying the former CEO’s motion to enjoin the state-court action and directed the bankruptcy court to enter a permanent injunction forbidding the claims from proceeding in state court.

Stevens v. Santander Holdings USA Inc., 799 F.3d 290 (3d Cir. 2015). (Labor & Employment (ERISA)) – The Court of Appeals dismissed this appeal from the district court’s order remanding to ERISA plan administrators for lack of jurisdiction, making clear that regardless of delay or resource costs, it would generally consider such remands non-final because, in the ordinary case, they contemplate that the plan administrator will engage in further proceedings. The Court also made clear that it would interpret a district court’s remand order to a plan administrator in an ERISA case as including a reservation of the court’s jurisdiction over the case so that, after a determination by the administrator on remand, either
party may seek to reopen the district court proceedings and obtain a final judgment.

_National Association for the Advancement of Multijurisdiction Practice v. Castille_, 799 F.3d 216 (3d Cir. 2015). (Constitution) – Plaintiffs challenged Pennsylvania Bar Admission Rule 204, which allows experienced attorneys to be admitted to the Pennsylvania bar without taking the Pennsylvania bar exam provided they are members of the bar of a “reciprocal state,” contending that the Rule violates the Equal Protection and Privileges or Immunities Clauses of the Fourteenth Amendment, the First Amendment, the Privileges and Immunities Clause of Article IV, and the Dormant Commerce Clause. The Court of Appeals affirmed the district court’s grant of summary judgment to defendants, upholding the Rule.

_Spady v. Bethlehem Area School District_, 800 F.3d 633 (3d Cir. 2015). (Civil Rights-§1983) – Plaintiff sued the school district and her son’s gym teacher after her son died of “dry drowning” several hours after having been submerged for a brief time during swim class. In the teacher’s appeal from a denial of summary judgment on qualified immunity grounds, the Court of Appeals rejected plaintiff’s broad definition of the constitutional right at issue and defined the right in accord with the facts of the case. Canvassing the cases, the Court found none that would have informed a reasonable gym teacher that the failure to assess a student who briefly goes under water for the possibility of dry drowning violated that student’s constitutional right under the state-created-danger theory of liability. The Court vacated the district court’s order and instructed that court to grant summary judgment to the gym teacher.

_Washington v. Secretary Pennsylvania Department of Corrections_, 801 F.3d 160 (3d Cir. 2015). (Habeas Corpus) – The Supreme Court vacated the Court of Appeals’ August 2013 affirmance of the district court’s grant of relief in this case and remanded for further consideration in light of _White v. Woodall_, 134 S. Ct. 1697 (2014). Upon that consideration, the Court of Appeals again affirmed, explaining that unlike the circumstances in _White_, this case was properly categorized as an unreasonable application case, not an unreasonable-refusal-to-extend case. The Court held that the state court reasonably applied _Bruton_, _Richardson_, and _Gray_ when it permitted the admission into evidence of a confession by a non-testifying codefendant that redacted petitioner’s name and replaced it with the generic terms describing petitioner and his role in the charged crimes.

_In re Search of Electronic Communications_, No. 14-3752, — F.3d —, 2015 WL 5131568 (3d Cir. Sept. 2, 2015). (Constitution) - The Government obtained a warrant to search the Gmail account of a U.S. Congressman, who in turn challenged the unexecuted search warrant in the district court primarily on Speech or Debate Clause grounds. The district court denied the Congressman’s motion to invalidate the unexecuted search warrant. The Court of Appeals dismissed for lack of jurisdiction the Congressman’s appeal regarding his Speech and Debate Clause claims, concluding that the district court’s denial was not a collateral order and did not fall within the Perlman doctrine. Jurisdiction could also not be supported by Fed. R. Crim. P. 41(g) because no property had been taken. The Court exercised jurisdiction over the Congressman’s claim that the filtering procedure proposed was insufficient to protect attorney-client communications and attorney work product, and remanded that claim because the first-level review involved a non-attorney.

_Schmigel v. Uchal_, 800 F.3d 113 (3d Cir. 2015). (Torts/Professional Malpractice) – The district court’s grant of defendant’s motion to dismiss plaintiff’s medical malpractice action was reversed because the Court of Appeals concluded that fair notice to plaintiff, a condition precedent to dismissing an action for failure to comply with Pennsylvania’s certificate-of-merit (COM) requirement is, like the COM requirement itself, substantive law that a court sitting in diversity must apply.

_Lincoln Benefit Life Co. v. AEI Life, LLC_, 800 F.3d 99 (3d Cir. 2015). (Civil Procedure) – The district court dismissed the underlying declaratory judgment action on subject-matter grounds because the plaintiff had not alleged
the citizenship of each member of each defendant LLC. The Court of Appeals vacated the order, holding that a plaintiff need not affirmatively allege the citizenship of each member of an unincorporated association in order to get past the pleading stage. Instead, if the plaintiff is able to allege in good faith, after a reasonable attempt to determine the identities of the members of the association, that it is diverse from all of those members, its complaint will survive a facial challenge to subject-matter jurisdiction. If the defendant thereafter mounts a factual challenge, the plaintiff is entitled to limited discovery for the purpose of establishing that complete diversity exists.

**Zahner v. Secretary Pennsylvania Department of Human Services**, Nos. 14-1406, 14-1328, — F.3d —, 2015 WL 5131367 (3d Cir. Sept. 2, 2015). (Preemption/ Statutes) – In this case involving a dispute over whether the purchase of annuities made plaintiffs ineligible for Medicaid, the Court of Appeals affirmed the district court’s ruling that federal law preempted Pennsylvania’s law making all annuities assignable (and thus excluded from the statute’s safe harbor for certain annuities), but reversed its ruling that plaintiffs’ purchases of short-term annuities were sham transactions intended only to shield resources from Medicaid calculations, a ruling that permitted defendant to count their cost as resources in calculating Medicaid eligibility. Under the Court’s comprehensive analysis, the annuities fell within the statute’s safe harbor.

**Reyes v. Netdeposit, LLC**, No. 14-1228, — F.3d —, 2015 WL 5131287, (3d Cir. Sept. 2, 2015). (Class Action) – Plaintiff sought to represent a class that may include tens of thousands of claimants with potential civil RICO claims arising from defendants’ operation of a sham enterprise. The Court of Appeals vacated the district court’s order denying class certification, concluding that the district court erred in (1) imposing a burden of absolute proof on plaintiff at the certification stage; (2) failing to consider all relevant evidence and arguments, including relevant expert testimony of the parties; and (3) confusing testimony and failing to carefully scrutinize the relevant, disputed testimony. The case was remanded so that the district court, applying the proper burden of proof, could determine whether evidence supported the commonality and predominance requirements.

**Munroe v. Central Bucks School District**, No. 14-3509, — F.3d —, 2015 WL 5167011 (3d Cir. Sept. 4, 2015). (Constitution/First Amendment) – The Court of Appeals affirmed the district court’s grant of summary judgment to the school district in this First Amendment retaliation case, concluding that plaintiff’s personal blog posts at issue, which included various expressions of hostility and disgust against her students and characterizations of her students that the Court described as “despicable,” was likely to cause—and, in fact, did cause—disruption. Thus, under Pickering, the speech did not rise to the level of constitutionally protected expression because the school district’s interest outweighed plaintiff’s interest, as well as the interest of the public, in her speech.

**Brand Marketing Group LLC v. Intertek Testing Services, N.A., Inc.**, No. 14-3010, — F.3d —, 2015 WL 5255078 (3d Cir. Sept. 10, 2015). (Torts/Intellectual Property) – The Court of Appeals affirmed the district court’s judgment, concluding that (1) Pennsylvania’s economic loss doctrine does not bar negligent misrepresentation claims only where the defendant provides information directly to plaintiff; (2) while § 552B prohibits a plaintiff from recovering the benefit of its bargain with the defendant in a negligent misrepresentation case, it allows such a plaintiff to recover the lost benefit of a contract formed with an entity other than the defendant; and (3) the Pennsylvania Supreme Court’s decision in Hutchinson ex rel. Hutchison v. Luddy, 870 A.2d 766 (Pa. 2005), generally permits a plaintiff to undertake the additional burden of proving the heightened culpability required to sustain a punitive damages claim in negligence suits—and in negligent misrepresentation cases specifically. The Court also rejected defendant’s challenges to the compensatory damage award and to the jury verdict, and concluded that there was sufficient factual basis to support an instruction regarding punitive damages to the jury and that the punitive damage award did not violate the constitution.
In re ICL Holding Co., Inc., No. 14-2709, — F.3d —, 2015 WL 5315604 (3d Cir. Sept. 14, 2015). (Bankruptcy) – After rejecting arguments that the Government’s appeal from the district court’s affirmance of the bankruptcy court’s approval of a §363 sale of debtor’s assets to a group of secured lenders was constitutionally, statutorily or equitably moot, the Court of Appeals affirmed, concluding that (1) when the secured lender group, using that group’s own funds, made payments to unsecured creditors, the monies paid did not qualify as estate property; and (2) the professional fees and wind-down expenses the lender group put into escrow did not qualify as property of the estate because the group purchased all of debtor’s assets, including its cash, by crediting $320 million owed by debtor to the secured lenders. Because neither the payments to unsecured creditors nor the escrowed funds became part of the estate, even assuming the rules forbidding equal-ranked creditors from receiving unequal payouts and lower ranked creditors from being paid before higher ranking creditors apply in the § 363 context, neither was violated here.

In re Chocolate Confectionary Antitrust Litigation, No. 14-2790, — F.3d —, 2015 WL 5332604 (3d Cir. Sept. 15, 2015). (Antitrust) – Plaintiffs alleged that chocolate manufacturers – an oligopoly – violated §1 of the Sherman Act. The district court granted summary judgment to defendants. Because plaintiffs proffered sufficient evidence to support parallel pricing, the Court of Appeals focused on whether there was sufficient evidence of “plus factors” indicative of a conspiracy to defeat summary judgment. The Court rejected plaintiffs’ argument that a contemporaneous antitrust conspiracy in the Canadian market supported the existence of an antitrust conspiracy in the U.S., holding that a conspiracy elsewhere, without more, generally does not tend to prove a domestic conspiracy, especially when the conduct observed domestically is just as consistent with lawful interdependence as with an antitrust conspiracy. After reviewing the balance of the plaintiffs’ evidence, the district court’s judgment was affirmed.

United States v. Lewis, No. 10-2931, — F.3d —, 2015 WL 5438474 (3d Cir. Sept. 16, 2015) (en banc). (Criminal Law & Procedure) – Defendant argued that he was charged and convicted of a different crime (use and carrying a firearm) than that for which he was sentenced (brandishing a firearm). The en banc Court avoided the issue whether the alleged Apprendi error was structural, and concluding that the error was a pure sentencing error, analyzed whether that error was harmless, i.e., whether the sentence would have been different had defendant been sentenced for using or carrying, rather than brandishing. Concluding the answer to that question was yes, the Court vacated the district court’s sentence and remanded for resentencing.

Goldman, Sachs & Co. v. Athena Venture Partners, L.P., No. 13-3461, — F.3d —, 2015 WL 5692548 (3d Cir. Sept. 29, 2015). (Arbitration) – Following an arbitration panel’s award to plaintiff, defendant discovered that one of the panel members, who had disclosed one charge of unauthorized practice of law, had failed to make disclosures regarding numerous other regulatory complaints against him. The district court agreed with defendant that as a result of the failure to disclose, the award should be vacated and a new hearing held. The Court of Appeals reversed, adopting a “constructive knowledge” approach to waiver under which a party is precluded from challenging an award on malfeasance grounds - ranging from conflicts-of-interest to non-disclosures - that the party could have reasonably discovered during the arbitration hearings. Because the defendant could have conducted an investigation at the time the panel member made the single disclosure, the defendant waived its right to challenge the arbitration award.

In re Revel AC, Inc., No. 15-1253, — F.3d —, 2015 WL 5711358 (3d Cir. Sept. 30, 2015). (Bankruptcy/Civil Procedure) – The Court of Appeals provided reasoning for its February 6, 2015 order reversing the district court’s denial of a lessee’s motion to stay the sale of debtor’s assets “free and clear of existing tenancies and/or possessory rights, irrespective of any rights a tenant may hold under 11 U.S.C. § 365(h), including, but not limited to, all possessory rights.” After concluding it had jurisdiction over the appeal because a stay denial is appealable under § 158(d)(1) where it is all but assured that a statute will render an appeal moot absent a stay, the Court provided the analysis that courts are to conduct in balancing the four interconnected factors that
determine whether to grant a stay pending appeal. Under the described analysis, if the movant makes a sufficient showing that (a) it can win on the merits (significantly better than negligible but not greater than 50%) and (b) will suffer irreparable harm absent a stay, courts are to “balance the relative harms considering all four factors using a ‘sliding scale’ approach.”

**United States v. Nagel**, Nos. 14-3184, 14-3422, — F.3d —, 2015 WL 5712253 (3d Cir. Sept. 30, 2015). (Fourth Amendment/Sentencing) – The Court of Appeals affirmed the district court’s denial of one defendant’s motion to suppress evidence obtained from offices of the company in which the defendant was CEO and a shareholder, concluding that the defendant did not show (1) a personal connection to the places searched or to the items seized (employee computers and a network server) or (2) that he attempted to keep the place and items private. The Court vacated both defendants’ sentences, however, concluding that in a disadvantaged business enterprises (DBE) fraud case, regardless of which application note is used, the district court should calculate the amount of loss under § 2B1.1 by taking the face value of the contracts and subtracting the fair market value of the services rendered under those contracts.

**Summaries of notable district court decisions involving federal practice issued between July and September, 2015.**

**Eastern District of PA Opinions**

**Parks, LLC v. Tyson Foods, Inc.,** et al., 2015 WL 4545408 (EDPa 7/28/15)

**Background:** Plaintiff is Parks, LLC produces, markets, and sells processed meat products through license agreements. Defendants Tyson Foods, Inc. and its subsidiary Hillshire Brands Company also produce and sell processed meat products and possess rights over the well-known “Ball Park” trademark. Defendants began selling and advertising a new product called “Park’s Finest” and described in radio and television ads as “Park’s Finest from Ball Park.” Plaintiff initiated suit against Defendants, alleging violations of the federal Lanham Act and Pennsylvania state law and sought a preliminary injunction based on its false-advertising Lanham Act claim.

**Holdings:** Plaintiff failed to demonstrate entitlement to a preliminary injunction because it failed to establish a reasonable likelihood of success on the false-advertising claim. The “Park’s Finest” packaging and advertisements, in context, did not communicate a materially false statement. Therefore, Plaintiff was required, but failed, to show that Defendants’ message caused actual deception in, or had a tendency to deceive, a substantial portion of the intended audience. Accordingly, the Court held that Plaintiff failed to show a reasonable likelihood of success on the merits of the false-advertising claim, and that it need not address the remaining requirements for a preliminary injunction.


**Background:** Police received six calls reporting a male vandalizing cars in a densely populated residential area in Philadelphia in the early hours of New Year’s Day. The fifth caller reported that several gunshots were fired. The sixth caller reported a person with a gun jumping on cars. Defendant Officers Panarello and McDevitt were dispatched after the fifth call. Plaintiff was acting aggressively, shouting obscenities, and making quick movements. He refused to remove his hands from his pockets. A crowd of civilians was present. Officer Panarello moved behind Plaintiff and fired a Taser at him without warning, which caused Plaintiff to fall from the roof of the car. Plaintiff continued to resist after he fell, but was arrested and handcuffed. EMTs could not take Plaintiff’s vital signs because he was combative. Toxicology reports confirmed Plaintiff was under the influence of PCP and he admitted to having smoked marijuana and consumed two beers before the incident. The fall from the car led to a spinal injury and paraplegia in Plaintiff.

**Holdings:** Use of the Taser was reasonable based on the totality of the circumstances and summary judgment for Officer Panarello was appropriate. Plaintiff produced no record evidence sufficient to create a material dispute of fact as to what occurred prior to firing of the Taser, or that Plaintiff resisted and struggled after he was on the ground. Accordingly, officers did not act unreasonably in handcuffing Plaintiff. Additionally, Officer Panarello was
entitled to qualified immunity because the constitutional use of Tasers in like circumstances was not sufficiently clear that any reasonable officer would have recognized Panarello’s conduct as unlawful. The City was entitled to summary judgment because Plaintiff failed to demonstrate any Fourth Amendment violation by officers acting in accordance with City policy or custom, or that the City failed to implement appropriate Taser policies or to train its officers on those policies.


**Background:** This case arose from two beatings Plaintiff allegedly suffered while incarcerated at the Northampton County Prison. Plaintiff alleged that he was first beaten on April 3, 2011 by corrections officers, filed a grievance against those officers, and was beaten on April 24, 2011 by another prisoner. Plaintiff alleges that the second attack was coordinated and facilitated by corrections officers in retaliation for the grievance and that a corrections officer allowed the other prisoner out of his cell to attack Plaintiff. Plaintiff asserts Monell liability against the County on a failure-to-train theory, and asserts supervisory liability under § 1983 against the County’s Executive, Director of Corrections, Acting Warden at the County prison, and a Deputy Warden.

**Holdings:** The record evidence was sufficient to deny summary judgment and warrant trial on, among others, Plaintiff’s claim for Monell liability against the County, and his claim against the County’s Executive, Director of Corrections, Acting Warden, and a Deputy Warden under Section 1983 for failure to supervise corrections officers. A reasonable juror could rely on two prior civil suits against the County – one filed in 2010 and the other in 2011, where County prisoners alleged that corrections officers unlocked cells to facilitate inmate attacks – to conclude that the County and its Executive, Director of Corrections, Acting Warden and Deputy Warden were aware of the risk of such conduct by corrections officers, were deliberately indifferent to that risk and the need to train and supervise guards to prevent such occurrences, and that such deliberate indifference caused the attack by Serrano on Plaintiff.


**Background:** Plaintiff attorney filed employment-discrimination suit against Defendant law firm under the ADA and PHRA. Defendant firm and an individual Defendant moved to dismiss all claims. The Court granted that motion in part, leaving only Defendant law firm in the action. Defendant law firm then filed a motion to compel arbitration pursuant to Plaintiff attorney’s employment agreement. Plaintiff opposed, arguing that Defendant waived its right to compel arbitration, largely through its litigation of the action up to the filing of the motion to compel arbitration.

**Holdings:** Defendant law firm did not waive its right to seek arbitration. Applying the six nonexclusive factors provided by the Third Circuit in Hoxworth v. Blinder, Robinson & Co., 980 F.3d 912 (3d Cir. 1992), the Court concluded that Plaintiff would not suffer prejudice if her remaining claims were arbitrated. Defendant’s 9 ½-month delay in seeking to compel arbitration weighed in favor of waiver, but less strongly because that delay was explained by the motion to dismiss involving an individual Defendant not subject to the arbitration clause. The limited nature of merits- and non-merits-based motion practice prior to the motion to compel weighed against a finding of waiver. Finally, a finding of waiver was not warranted because Defendant promptly asserted the arbitration clause as an affirmative defense after the Court dismissed the individual Defendant, the motion to compel was filed prior to the Rule 16 conference with the Court, and almost no discovery had taken place prior to the motion to compel arbitration.


**Background:** Michael Kantor filed suit against Hiko Energy, LLC, a retail electricity supplier, in the E.D.Pa. in September 2014 and asserted claims under Pennsylvania law on behalf of himself and other Pennsylvania consumers. Hiko moved to dismiss Kantor’s action in its entirety, strike the class allegations, or, alternatively, to stay the case pending completion of proceeding then ongoing before the Pennsylvania Public Utility Commission. Two-and-a-half months after its motion to dismiss or stay was denied, Hiko
filed the motion to transfer venue to Kantor’s action to the S.D.N.Y. pursuant to 28 U.S.C. § 1404(a) for convenience of the parties and witnesses, and in the interest of justice. At that time, three other putative class actions by consumers from a variety of states under multiple states’ laws against Hiko had been consolidated and were pending in the S.D.N.Y.

**Holdings:** Venue was also proper in the S.D.N.Y., so the Court assessed the relevant public and private interests to determining how to exercise its discretion. It found that was not warranted. Plaintiff’s choice of forum received substantial weight, particularly because he advanced only claims under Pennsylvania law on behalf of Pennsylvania consumers and there was a strong public interest in favor of litigating such claims in the Commonwealth. Moreover, the harm to Kantor and the putative class members occurred in Pennsylvania. Transfer would not promote convenience and justice because Hiko could readily transmit its records to Pennsylvania electronically; Hiko could compensate employee-witnesses required to come to Pennsylvania for trial (Kantor’s lawyers agreed to go to New York to take depositions) but Kantor, an individual consumer, would have to rely largely on third-party witnesses located in Pennsylvania.

**Church Mutual Insurance Company v. Alliance Adjustment Group, et al.**, — F.Supp.3d —, 2015 WL 5334358 (EDPa 9/14/15)

**Background:** This case involves an alleged insurance-fraud scheme. Defendant Adjuster entered two contingent-fee contracts with a non-party-insured church under which he was entitled to 25 percent of any insurance proceeds recovered on behalf of the insured church from its insurer Plaintiff Church Mutual. The Adjuster filed two claims and, based on its investigation, Church Mutual denied coverage entirely on the first claim and paid $7,500 of $1,500,000 requested on the second claim. Defendant Adjuster hired Defendant Lawyers, who initiated a coverage claim against Plaintiff Church Mutual. Depositions taken in the coverage case thoroughly belied the insurance claims which had been filed by Defendant Adjuster, supported by Defendant Contractors, and that were then being pursued by Defendant Lawyers. The church obtained new counsel and dismissed the coverage case. Plaintiff Church Mutual, in turn, brought this insurance-fraud action against Defendant Adjuster, Contractors, and Lawyers – all three groups sought dismissal of the complaint.

**Holdings:** The Court rejected Defendant Adjuster’s argument that they had no obligation to ensure the accuracy of their information (and thus Plaintiff Church Mutual could not justifiably rely upon that information) because the Church Mutual would independently investigate all claims. The statutory insurance-fraud claim was pleaded with adequate particularity under Fed. R. Civ. P. 9, and reliance was not a necessary element for such a claim (and, alternatively, Church Mutual relied on Defendant Adjusters’ representations as the starting point for its own claim investigation). Church Mutual stated a plausible civil conspiracy that adjusters and lawyers agreed to pursue fraudulent insurance claims with the assistance of the contractors on a contingent fee basis and share any profits gained. The negligent misrepresentation and statutory fraud claims against Defendant Lawyers were barred by Pennsylvania’s judicial process privilege, but that privilege did not bar the adequately-pled civil conspiracy claim.

**Middle District of PA Opinions**


**Background:** Consumer brought action against debt collector alleging violation of the Fair Debt Collection Practices Act (FDCPA) stemming from debt collector’s placement of two-dimensional barcode on letter visible through glassine window in envelope, which, when scanned, revealed consumer’s name, address, and account number. Consumer moved for summary judgment.

**Holding:** The District Court, William J. Nealon, J., held that placement of barcode in visible location violated FDCPA. Motion granted.
Bruno, et al., v. Bozzutto’s, Inc. __ F. Supp.3d __, 2015 WL 5098952 (MDPA 8/31/15)

**Background:** Owner of supermarket filed suit against wholesale supplier for breach of purchase supply agreement, promissory estoppel, negligence, and negligent and fraudulent misrepresentation. After supplier’s motions to dismiss and for sanctions based on spoliation of evidence were granted in part, 850 F.Supp.2d 462, supplier’s subsequent motion for sanctions was also granted in part, 2015 WL 1862990, and date for Daubert hearing and briefing schedule was set, owner moved for reconsideration.

**Holdings:** The District Court, Matthew W. Brann, J., held that: 1) motion for reconsideration of initial sanctions order would be denied as untimely; 2) supermarket owner engaged in spoliation of evidence by destroying paper copies of supermarket’s invoices and other business records; 3) spoliation sanctions were warranted based on destruction of computer and electronic business records; and 4) District Court’s scheduling order was appropriate. Motion denied.


**Background:** Insureds filed state court action alleging that insurer breached its contract and acted in bad faith by failing to pay for losses arising from fire to their residence and subsequent garage theft. After removal, insureds filed additional complaints against insurer for failure to pay for damage to their well, and to recover for mold and mildew damage to their new home. Insurer moved in limine to preclude evidence of damages relative to mold and mildew claim.

**Holdings:** The District Court, Malachy E. Mannion, J., held that: 1) exclusion of evidence pursuant to local rule was warranted, and 2) exclusion as discovery sanction was warranted. Motion granted.


**Background:** Former elementary school principal filed § 1983 action against school district, six school board members, and president of teachers’ union, alleging violation of her Fifth and Fourteenth Amendment due process rights with respect to her demotion, suspension and termination, retaliation for exercising her First Amendment rights in challenging her suspension and termination, and civil conspiracy to violate her constitutional rights. Defendants moved to dismiss for failure to state a claim.

**Holdings:** The District Court, Malachy E. Mannion, J., held that: 1) complaint failed to sufficiently state municipal liability claims against school district under Monell except with respect to First Amendment retaliation claim and conspiracy claim under § 1983 and school board members could not be sued in their official capacity, but they could be sued for punitive damages in their individual capacity; 2) principal suffered no loss of pay or benefits in connection with her demotion, suspension, and suspension with intent to discharge, and she was afforded all the process she was due before her termination; 3) due process was not violated by 60-day delay in termination hearing between time school district presented its case and when former principal was allowed to present her side, and the post-deprivation process provided was constitutionally adequate; 4) former principal’s name-clearing hearing constituted ample process and obviated her Fourteenth Amendment stigma-plus claim; 5) principal could proceed on her First Amendment retaliation claim against school district and school board members in their individual capacity; 6) principal had insufficiently pleaded that prior restraint on her speech could plausibly concern matters of public interest; and 7) § 1983 conspiracy claim against district defendants and teachers’ union president could proceed regarding only First Amendment retaliation claims. Motions granted in part, denied in part.

Nicholas Knopick v. UBS AG, et al., __ F.Supp.3d __, 2015 WL 5822723 (MDPA 9/30/15)

**Background:** American investor, who resides in the MDPA, incurred investment losses while Defendants, who maintain their principal places of business in Switzerland, were managing his money. When opening accounts with Defendant, investor signed documents that included forum selection clauses providing that Swiss law shall govern disputes and contract interpretation. Defendants moved to dismiss for lack of jurisdiction and failure to state a claim.
Holdings: The District Court, Yvette Kane, J., held that: 1) the forum selection clauses were enforceable; and 2) American investor had not established that enforcing the forum selection clauses would contravene a strong Pennsylvania public policy. Motion granted.

WESTERN DISTRICT OF PA OPINIONS


Background: Plaintiffs filed a pre-trial statement identifying a witness, an executive officer of one of the plaintiffs, who had not been disclosed in plaintiffs’ initial disclosures or in any discovery response. Defendants filed a motion in limine to preclude the witness’s testimony at trial.

Holding: The District Court, Terrence F. McVerry, J., denied defendants’ motion in limine. Defendants could not claim surprise because they were aware of the identity of the witness and could have noticed his deposition, depositions conducted by defendants involved questions regarding the witness, and documents produced during discovery revealed the identity of the witness. Further, the addition of witness at this stage would not disrupt the administration of the trial, and defendants did not and could not demonstrate bad faith on the part of plaintiffs. Finally, the evidence proposed to be given by witness is highly relevant to plaintiffs’ alleged damages.


Background: Petitioner sought to vacate his sentence pursuant to 28 U.S.C. §2255, arguing that his trial counsel was ineffective for (i) failing to file a Brady motion demanding photographs of the original crime scene; (ii) failing to calculate accurately potential sentencing guideline range during plea negotiations, which petitioner contends would have altered his decision not to enter a guilty plea; and (iii) failing to object to egregious prosecutorial misconduct.

Holding: The District Court, Terrence F. McVerry, J., denied the motion to vacate. The Court held: (i) that filing a Brady motion was unnecessary because the government eventually provided the requested photographs, and counsel used the photographs at trial; (ii) while defense counsel had miscalculated the potential sentencing range, the error did not prejudice petitioner because, in light of the petitioner’s nine prior adult convictions, the error was not so erroneous as to render her performance deficient, and because petitioner demonstrated an intent to challenge the case “until [he] can’t challenge no more [sic]”; and (iii) there was no prosecutorial misconduct to which defense counsel could object.


Background: Plaintiffs submitted to defendant a written request for “Tier II” information concerning hazardous material under the Emergency Planning & Community Right-to-Know Act (“EPCRA”) (42 U.S.C. §11001, et seq.). “Tier II” information is not required to be collected from all facilities, but is collected only in certain instances. The request sought all “Tier II” information in defendant’s possession for all facilities located in 67 listed counties. Defendant did not provide the information because the request did not identify specifically the facilities for which plaintiffs were seeking information, as required by the EPCRA. Defendant moved to dismiss complaint under Rule 12(b)(6).

Holding: The District Court, Joy F. Conti, C.J., granted defendant’s motion to dismiss because plaintiffs failed to comply with the plain language of EPCRA, which requires plaintiffs to identify specifically the facilities for which the “Tier II” information is sought. Plaintiffs argued that they were not required to identify specific facilities because of an EPCRA provision requiring provision of all “Tier II” information in defendant’s possession. Plaintiffs’ reliance on that provision was misplaced because the provision only applies to in-person requests, not written requests.


Background: Defendants in litigation pending in the Eastern District of Pennsylvania issued subpoena to a third party located in the Western District. The third party was
affiliated with plaintiffs in the Eastern District. Defendants moved the Western District to enforce compliance with the subpoenas.

**Holding:** The District Court, Joy F. Conti, C.J., transferred enforcement of the subpoena to the Eastern District Court *sua sponte*. Rule 45(a)(2) states that enforcement of a subpoena is proper in the court in which compliance is required, but allows that court to transfer enforcement to the issuing court if the court finds “exceptional circumstances.” The Court found exceptional circumstances here because (i) the third party and plaintiff are owned by the same individuals; (ii) plaintiff is relying upon license issued to the third party in order to establish the common law trademark rights it is seeking to enforce; (iii) any burden on the third party is outweighed by the potential of action by the Western District to disrupt the Eastern District’s management of discovery in that case.


**Background:** The plaintiffs filed a motion to remand based upon “judicial economy, consistency, availability of evidence, etc.”

**Holdings:** The District Court, Terrence F. McVerry, J., denied the plaintiffs’ motion. The plaintiffs originally filed their action in Court of Common Pleas of Lawrence County. The defendant timely removed the case to the Western District of Pennsylvania based upon the parties’ diversity of citizenship. The defendant filed a motion to remand the case so that it could be consolidated with other actions involving the same parties and similar issues. The plaintiffs’ only justification for why the case should be remanded was “judicial economy, consistency, availability of evidence, etc.” The Court held that none of those were valid reasons for remanding a case and denied the motion.


**Background:** The defendant filed a motion to transfer venue, notwithstanding the fact that the parties’ contract contained a choice of venue provision.

**Holdings:** The District Court, Kim R. Gibson, J., denied the defendant’s motion. The case involved a loan between the plaintiff and defendant. After the defendant defaulted on the loan, the plaintiff filed a lawsuit in the Western District of Pennsylvania. The defendant sought to have the case transferred to the Middle District where the defendant’s bankruptcy action was pending. The defendant argued that the case should be transferred so that the defendant’s estate could be administered comprehensively in a single forum. However, the party’s agreement contained a choice of venue clause which read, in part, “[the borrower consented to the] exclusive jurisdiction of any state or federal court in the commonwealth of Pennsylvania in a county or judicial district where the bank maintains a branch.” The Court held that a forum selection clause is presumptively valid unless the party objecting to its enforcement establishes (i) that it is the result of fraud or overreaching; (ii) that enforcement would violate a strong public policy of the forum; or (iii) that enforcement would result in the particular circumstances of the case, in litigation in a jurisdiction so seriously inconvenient as to be unreasonable. The Court found that the defendant failed to establish that any of those considerations were applicable.


**Background:** The defendant filed a motion to dismiss and to compel arbitration or transfer venue.

**Holdings:** The District Court, Cathy Bissoon, J., granted the defendant’s motion. The plaintiff sued the defendant for misclassifying him as an independent contractor and for discriminating against him on the basis of age. The defendant sought to compel arbitration under the terms of the parties’ agreement. The plaintiff claimed that his retaliation claims were outside the scope of the parties’ arbitration agreement. The Court held that whether a dispute falls within the scope of an arbitration clause depends upon the relationship between (i) the breadth of the arbitration clause and (ii) the nature of the given claim. Importantly, any doubts as to whether a certain dispute falls within the scope of an arbitration clause is resolved in favor of arbitration. Moreover, in determining whether certain disputes or claims fall within the scope of a given arbitration clause.
clause, courts consider “the factual underpinnings of the claim rather than the legal theory alleged in the complaint.” The Court found that the plaintiff’s retaliation claims were intertwined inextricably with his prior employment and termination and, therefore, were within the scope of the parties’ arbitration agreement.


Background: The defendant filed a motion to dismiss on grounds that the Third Circuit’s unpublished predictive rulings were binding on the Court.

Holdings: The District Court, Arthur J. Schwab, J., granted the defendant’s motion. The issue before the Court was whether the defendant’s Uninsured Motorist Waiver form which deviated slightly from the statutory requirements was valid and enforceable under Pennsylvania law. The defendant argued that the Court was bound by an unpublished decision by the Third Circuit concerning an identical waiver form. The plaintiff argued that the Court was bound by Pennsylvania Superior Court case law. The Court held that predictive rulings (i.e. decisions predicting how the Pennsylvania Supreme Court would rule on an issue) by the Third Circuit are generally binding on district courts. However, when the Pennsylvania intermediate appellate courts have ruled to the contrary and their decisions have not been overruled by the Pennsylvania Supreme Court, district courts are no longer compelled to follow the Third Circuit’s predictions. The Court found that, unlike the Third Circuit’s decision, none of the cases cited by the plaintiff concerned an identical waiver form. Therefore, the Court held that because of the factual dissimilarity, the Pennsylvania Superior Court had not ruled contrary to the Third Circuit’s decision. Therefore, the Court held that it was bound to follow the Third Circuit’s opinion.


Background: The defendant filed a motion to dismiss pursuant to Rule 12(b) for improper service of process. Defendant also filed a motion to compel discovery as a result of insufficient initial disclosures.

Holdings: The District Court, Kim R. Gibson, J., denied defendant’s motion to dismiss, but granted its motion to compel discovery. The Court held that plaintiff had shown good cause under Rule 4(m) for its failure to serve original process upon defendant. “In determining whether good cause exists, courts examine the reasonableness of the plaintiff’s efforts to effectuate service; prejudice to the defendant caused by the lack of timely service; and whether the plaintiff moved for an enlargement of time to effectuate service.” The Court found that plaintiff’s efforts to serve defendant were “exhaustive,” and that defendant had not been prejudiced because he received actual notice of the complaint. The Court granted defendant’s motion to compel discovery, requiring plaintiff to disclose addresses and telephone numbers of persons with relevant information, a description of information those persons are likely to have, and a computation of damages. But, the Court did not impose sanctions because the failures were not “willful or in bad faith.”


Background: The defendants filed a motion to dismiss due to the plaintiff’s failure to allege facts that demonstrate that he has standing to assert the claims against the defendants.

Holdings: The District Court, Cathy Bissoon, J., granted the defendants’ motion. The lawsuit involved the public revelations that the United States government has been collecting data concerning the telephone and internet activities of American citizens located within the United States. The plaintiff sued claiming that the government’s bulk data collection programs violate the Fourth Amendment of the United States Constitution. The Court granted the defendants’ motion because the plaintiff could not show that any of his communications were being collected under the government’s programs. The Court distinguished this case from those in which plaintiffs have been able to establish, through leaked documents or detailed insider accounts, that their information had been included in the government’s data collection programs. The Court found that the plaintiff merely relied upon publicly available information and failed to identify facts from which the Court could reasonably infer that his own communications were involved.
PENNSYLVANIA BAR ASSOCIATION  
Federal Practice Committee  

*******  
OPERATING PROCEDURES  

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ARTICLE I  
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 will 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. 

ARTICLE II  
MEMBERS  

Section 1. The members of the Committee shall be appointed by the President-Elect of the PBA for a term coincident with his or her term as President and/or upon the advice and counsel of the Chair or Co-Chairs of the Committee. The Committee Chair or Co-Chairs are authorized to make timely recommendations to the PBA’s President-Elect respecting such appointments.
Section 2. Subject to annual appointment of the Committee member by the President-Elect of the PBA for his or her term as President, the term of office for each member shall be renewed annually, unless the member terminates membership.

Section 3. Any member appointed to the Committee who is an attorney licensed to practice in the Commonwealth of Pennsylvania shall be a member of the PBA.

ARTICLE III
COMMITTEE MEETINGS

Section 1. Meetings of the members of the Committee shall be held at such time and place as the Executive Council, as defined in Article IV hereof, may determine, during which meeting members shall transact such business as may properly be brought before the meeting.

Section 2. Special meetings of the Committee may be called by the Chair upon approval of the Executive Council. If the Executive Council does not respond to the calling of the meeting or objects to the calling of the meeting, it shall be held at such time and place as the Chair may determine.

Section 3. Members may participate in said meeting by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other.

Section 4. Written notice of any meeting of the members, specifying the place, date, hour and the general nature of the business of the meeting, shall be delivered to each member by electronic mail, or such other means as may be permitted by the Association bylaws.

ARTICLE IV
EXECUTIVE COUNCIL

Section 1. The business and affairs of the Committee shall be delegated to and vested in its Executive Council subject to the provisions of the Constitution and By-Laws of the Association and the Operating Procedures of this Committee.

Section 2. The Executive Council shall hold regular meetings and is hereby empowered to act on behalf of the full membership of the Committee as hereinafter set
forth. Any action taken by the Executive Council in accordance with its delegated authority shall be valid and as though it has been authorized by the full membership of this Committee.

Section 3. All members of the Executive Council shall be members of the Committee.

Section 4. The Executive Council shall consist of: The Chair or Co-Chairs of the Committee, the Vice-Chair or Co-Vice Chairs of the Committee, the Secretary, the Chairs of the Standing Subcommittees, the Chairs of the Ad Hoc Subcommittees, if any, and three members-at-large.

Section 5. Vacancies on the Executive Council shall be filled by the Chair or Co-Chairs and the Vice Chair or Co-Vice Chairs of the Committee. The Executive Council shall, in the event of a vacancy in the office of Chair, fill the vacancy.

Section 6. The Committee Chair or Co-Chairs and Vice Chair or Co-Vice Chairs shall appoint the three members-at-large with due regard to having representation on the Executive Council from as many Zones of the PBA as practicable, taking into account the Zones represented by the current membership of the Executive Council, as well as from a wide cross-section of the legal community. The term of office for any member-at-large is one year, although said term may be renewed provided that the above-stated standards for appointment are met.

Section 7. The Executive Council of the Committee shall hold meetings at such time and place as may be deemed necessary, including during the Committee/Section Day Meetings.

Section 8. The Executive Council may invite any member of the Committee to participate in any of its meetings in a non-voting manner.

Section 9. Special meetings of the Executive Council may be called by the Chair or Co-Chairs on notice to each of its members, either personally or by electronic mail.

Section 10. At all meetings of the Executive Council, at least a majority of the Executive Council members in office shall be necessary to constitute a quorum for the transaction of business, and the acts of a majority of the Executive Council members present at a meeting at which a quorum is present shall be the acts of the Executive Council. If a quorum shall not be present at any meeting of Executive Council members, the members present at the meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be
present. One or more members of the Executive Council may participate in an Executive Council meeting by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear one another.

Section 11. The minutes of the Executive Council’s meetings shall be supplied to all Executive Council members promptly after each meeting.

Section 12. In the event that a Chair or the Co-Chairs of a subcommittee are unable to attend a meeting of the Executive Council, said Chair or Co-Chairs are authorized to designate a member from his or her subcommittee to attend such meeting on behalf of said subcommittee chair, provided that said Chair or Co-Chairs gives timely notice of said appointment to the person chairing the Executive Council meeting.

ARTICLE V
SUBCOMMITTEES

Section 1. The Executive Council shall appoint certain Standing Subcommittees by resolution adopted by a majority of the Executive Council.

Each subcommittee shall consist of two or more members of the Committee who request membership in such subcommittee or who are recommended by a subcommittee Chair or Co-chair and shall, to the extent provided in the resolution establishing said subcommittee, manage specific affairs of the Committee.

The term of office for any Chair or Co-Chair of a Standing or Ad Hoc subcommittee is two (2) consecutive years although said term may be extended as warranted.

Section 2. The Executive Council may, from time to time and in its discretion, appoint other subcommittees, including Ad Hoc Subcommittees as the business of the Committee may require by resolution adopted by a majority of the Executive Council.

Section 3. Each subcommittee shall keep records of its proceedings and shall report in writing at least annually to the Executive Council.

Section 4. The Executive Council shall establish the following standing subcommittees: Newsletter Subcommittee; Local Rules Subcommittee; Educational Programs Subcommittee; Nominations Subcommittee, Legislative Subcommittee and Outreach and Diversity Subcommittee.
ARTICLE VI
OFFICERS

Section 1. The officers of the Committee shall be a Chair or Co-Chairs, a Vice Chair or Co-Vice Chairs, and a Secretary.

The term of office of each officer shall be reviewed on an annual basis and subject to extension.

Section 2. The Chair or Co-Chairs, and Vice Chair or Co Vice-Chairs, of the Committee shall be appointed by the President-Elect of the PBA for a term coincident with his or her term as President, upon the timely advice and counsel of the out-going Chair or Co-Chairs of the Committee and the Executive Council.

Section 3. Subject to annual appointment of the Committee members by the President-Elect of the PBA in each designated year, the officers of the Committee shall hold office until their successors are chosen and qualify. Any officer, except the Vice Chair or Co-Vice Chairs, may be removed at any time by the Chair or Co-Chairs.

THE CHAIR

Section 4. The Chair or, if there shall be more than one, the Co-Chairs, shall preside at all meetings of the members of the Committee and of the Executive Council. The Chair or Co-Chairs shall have general and active management of the Committee, and shall see that all orders and resolutions of the Executive Council are carried into effect.

The Chair or Co-Chairs are authorized to appoint the Chair or Co-Chair of each subcommittee and the three members-at-large on the Executive Council. Said appointments are to be made as soon as possible after the Chair or Co-Chairs are appointed and take office (or after the Ad Hoc Subcommittee is approved by the Executive Council); provided, however, that if the Chair and/or Co-Chairs fail to make such appointments within 30 days of the later of appointment or taking office, the Executive Council is authorized to do the same.

THE VICE CHAIR

Section 5. The Vice Chair or, if there shall be more than one, the Co-Vice Chairs shall, in the absence or disability of the Chair or Co-Chairs, perform the duties and
exercise the powers of the Chair or Co-Chairs, and shall perform such other duties and have such other powers as the Executive Council may from time to time prescribe.

The Vice-Chairs shall be responsible for promoting and maintaining membership in the Committee by serving on and chairing such subcommittees and undertaking such functions as the Chair or Co-Chairs shall designate and otherwise aiding the Chair or Co-Chairs in the administration of the Committee.

THE SECRETARY

Section 6. The Secretary shall be selected by the Nominations Subcommittee in accordance with its practices and procedures.

The Secretary shall attend all meetings of the Executive Council and the Committee and cause to be recorded all proceedings of these meetings. He or she, or his/her designee, shall provide written notice of all meetings of the Executive Council and the Committee and shall perform such other duties as may be prescribed by the Executive Council or its Chair or Co-chairs.

ARTICLE VII
AMENDMENTS

Section 1. These Operating Procedures may be altered, amended or repealed by a majority vote of the Executive Council.

Section 2. All proposed changes shall be published to the members of the Committee. Committee members shall be given at least 10 days to respond in writing with comments. The Executive Council will consider all timely comments from Committee members before voting on the amendments and submitting them to the PBA Board of Governors for approval.

Section 3. These Operating Procedures shall be distributed to the Committee members for review and re-evaluation every three years. Committee members shall be given at least 10 days to respond in writing with comments. The Executive Council will consider all timely comments from Committee members before voting on any revisions and submitting them to the PBA Board of Governors for approval.
The Standing Sub-Committees

Newsletter Subcommittee:

Local Rules Subcommittee:

Educational Programs Subcommittee:

Legislative Subcommittee:

Nominations Subcommittee:

The Nominations Sub-committee shall make recommendations for the appointment of the Chair or Co-Chairs of the Committee (and Vice-Chair or Co-Vice Chairs as the case may be). These recommendations are to be submitted to the Executive Council for approval. The process by which the Nominations Sub-committee makes such recommendations shall include a timely call for nominations and a process of active recruitment.

The Nominations Sub-committee is also authorized to make recommendations for the appointment of the Secretary. This recommendation is to be submitted to the Chair or Co-Chairs and the Executive Council for its information and approval.

Outreach and Diversity Subcommittee:

The Outreach and Diversity Subcommittee works to create a culture within the Federal Practice Committee and the PBA that effectively values diversity and fosters inclusion consistent with the Association’s Diversity Policy.

The Outreach and Diversity Subcommittee aims to promote the full and equal participation of lawyers of all backgrounds in the Committee, the PBA, the legal profession and the justice system in general.

In order to achieve this mission, the Outreach and Diversity Subcommittee will engage in proactive outreach to encourage lawyers of all backgrounds to join the Committee, encourage (recruit, retain and engage) lawyers of all backgrounds to participate fully in the Committee and the PBA, and assist lawyers of all
Federal Practice Committee Leadership

PBA President William Pugh V has appointed the following people to lead the PBA Federal Practice Committee:

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

Co-Vice Chair:
Melinda Ghilardi
Federal Public Defenders Office, Scranton

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

Judicial Vacancies

U.S. Court of Appeals, Third Circuit
• There are two vacancies.
• The nomination of U.S. District Judge Luis Felipe Restrepo of the Eastern District of Pennsylvania is set to go before the full U.S. Senate for a confirmation vote. Restrepo's nomination was approved by the Senate Judiciary Committee on July 9. The Senate confirmation vote has not yet been scheduled.

U.S. District Court, Western District of PA
• On July 30, 2015, President Obama nominated Judge Susan P. Baxter, Judge Robert J. Colville and Judge Marilyn J. Horan to fill the three vacancies in the United States District Court for the Western District of Pennsylvania.

U.S. District Court, Eastern District of PA
• On July 30, 2015, President Obama nominated Judge John M. Younge to fill the vacancy in the United States District Court for the Eastern District of Pennsylvania.

Thank you

A sincere thank you to the following Federal Practice Committee members for their work and contributions to this edition of the PBA Federal Practice Committee newsletter:

Hon. D. Michael Fisher, U.S. Court of Appeals Third Circuit, Pittsburgh
Kevin H. Conrad, White and Williams LLP, Center Valley
Nancy Conrad, White and Williams LLP, Center Valley
Melinda Ghilardi, Federal Public Defenders Office, Scranton
Philip Gelso, Law Offices of Philip Gelso, Kingston
Susan Schwochau, Pittsburgh
Jeremy A. Mercer, Fulbright & Jaworski LLP
Michael Gaetani, Fulbright & Jaworski LLP
Joshua Snyder, Fulbright & Jaworski LLP

*Unanimously approved by the Board of Governors, September 17, 2015.*