



WBA Fights For Consumers In Real Estate Deals

On August 10, 2005, the Unauthorized Practice of Law (UPL) and Real Estate Committees held a special joint meeting to address the problem of non-attorneys performing real estate legal services in Westmoreland County. The committees focused on non-attorney closing agents who prepare real estate documents (without the issuance of title insurance) in violation of the unauthorized practice of law statute and case law in Pennsylvania. A person who practices law without a license in Pennsylvania commits a third-degree misdemeanor.



▲
Joe Lazzaro



▲
Aaron Kress

In response to the problem, UPL Committee members Joe Lazzaro and Aaron Kress prepared a notice that was mailed to all area title insurance companies, real estate title agents and settlement companies in early October (see box on right).

“The UPL problem impacts the members of our bar,” said Joe Lazzaro, “but we also see a serious consumer protection problem here.”

Joe explained that buying a home is probably the largest single investment an individual consumer will make in his or her lifetime.

“A purchaser can be seriously harmed when mistakes are made in the preparation of a right-of-way document or in other title instruments,” said Joe. “Having an attorney present is very important at the time of settlement. It is much less expensive than hiring an attorney later to try to fix the damage after closing.”

Pennsylvania law directs that title insurance companies and their agents prepare deeds and mortgages only when the transaction specifically involves the issuance of title insurance. The representation of the Buyer or Seller by a non-attorney preparing transaction documents where the closing agent is not issuing title insurance constitutes the unauthorized practice of law, which is a crime under Pennsylvania law.

The Unauthorized Practice of Law Committee of the Westmoreland Bar Association is concerned that certain title insurance companies, title agents and settlement companies prepare deeds and other documents affecting real estate even though they are not issuing title insurance. Similar violations occur when non-lawyer closing agents prepare rights-of-way, assignments, settlement agreements and other documents that are not incidental to insuring the real estate title.

Serious mistakes have been made in transactional documents under this practice. These mistakes harm consumers and individuals who had inadequate advice regarding the legal consequences of the transaction. As such, when title insurance is not being issued incident to the preparation of real estate documents, the agent may be prosecuted for his or her acts under the law. The first violation is a third-degree misdemeanor. Each violation thereafter is treated as a first-degree misdemeanor.

In addition to our local concern in Westmoreland County, the Office of the Attorney General of Pennsylvania is also aware of the detrimental effects of the unauthorized practice of law, and its resulting harm to consumers. As a result, the Attorney General is vigorously pursuing and prosecuting violators under both the Penal Code and the Consumer Protection Act.

In an effort to assure compliance with the respective laws, the Westmoreland Bar Association has issued this advisory to local real estate settlement practitioners. If you have any questions concerning permissible activities in your business, please contact the Westmoreland Bar Association for information of a general nature, or contact your attorney to review your specific situation or case.

Thank you for your attention to this very important matter.

President's Message

You Wanna Piece of Me?!

by James R. Silvis, Esq.

“Your lawyer in practice spends a considerable part of his life in doing distasteful things for disagreeable people who must be satisfied against an impossible time limit in which are hourly interruptions from other disagreeable people who want to derail the train; and for his blood, sweat, and tears, he receives in the end a few unkind words to the effect that it might have been done better, and a protest at the size of the fee.”

—William L. Prossner



Hey! Get your @??# off my #!@! Your #@!! looks like a !@!# that's been #!@! Leave me the #@!! alone or I'll !#@! you!

There! Now I've established myself as a very *au courant*, very now kind of guy—and it's scary.

If the word “restive” described the 60s and early 70s, “malaise” the late 70s and early 80s, and “private investor” the 90s, then “confrontation” is the defining word for our current times.

I can blame some of this on the treachery that is so endemic in reality TV shows and the hostile aggressiveness of television lawyers. Have you noticed that even on sports discussion shows, when talking about a subject as benign as Tiger Woods, one of the participants has to pick a fight and, 'til they're finished, the only thing missing is gunfire?

In fact, maybe the slow decline in the popularity of professional wrestling can be attributed to the fact that its fans can now see that kind of nastiness around them without any help from Vince McMahon. Even the political pundits don't seem to discuss issues or policy intelligently anymore. Rather, they engage in personal attacks and are incapable of conceding any merit to the adversary's point of view.

I fear that my two little recently born grandsons, whom I want to be kind, considerate, gentle and polite, will have no role models for these desirable traits once they walk out their front doors.

Recently, while waiting to present a motion, I was talking with a Westmoreland County lawyer about a particularly unpleasant case involving unreasonable clients. We had

been able to settle the case without the need for a trial. An Allegheny County lawyer standing nearby heard us talking and said he envied us. He felt that in his firm, once such a case was hashed out, he wouldn't be on speaking terms with the other lawyer.

I'm afraid, though, that some of our bar members and their clients may have “lost that lovin' feeling.” I'm occasionally a Master in divorce cases, and have noticed more lawyers are coming to hearings with an attitude rendering impossible any chance for a peaceful resolution.

One case several months ago involved a substantial marital estate. At one point during the hearing, I realized that it was costing the parties about \$1,000 an hour for attorneys' fees, Master's fees, court reporter's fees and the costs of expert witnesses. When I explained this, the wife made a reasonable offer of settlement. The husband, against the advice of counsel, folded his arms, and, pouting like a disaffected teenager, refused to negotiate. By God, he got his confrontation, and now must give his wife a recommended award that is far more than had been requested to settle the case.

“Agree, for the law is costly.”

—William Cumden

A friend of my wife recently asked her for the names of some “bulldog female divorce lawyers” for a friend of hers. So many people (after watching way too many trial shows on TV) expect their lawyers to spout vitriolic, inflammatory and, by the way, irrelevant statements. I've always believed that it's the job of a lawyer to solve problems, not to incite discord. Maybe it's because I'm old, but, I'm more likely to agree to terms with a Johnny Mathis than with a Johnnie Cochran.

Because we're a small, somewhat protected county, our lawyers, for the most part, still maintain a great degree of civility and cordiality. We consider each other as colleagues and not competitors. Please don't let that change.

I worry.

A handwritten signature in black ink, appearing to read "James R. Silvis".

AlterEgo: John N. Ward, Attorney

John N. Ward, Chairman of the United Way of Westmoreland County

by Beth Orbison, Esq.

In July 2005, Greensburg attorney John N. Ward assumed an important position in local charitable giving and volunteer work when he became the Chairman of the United Way of Westmoreland County.

No stranger to volunteer community activities, John arrived at his current post after years of community service in a variety of capacities and for diverse causes. He taught reading to adults during his involvement with the Westmoreland Reading Council/Literacy Council. As a member of the Greater Greensburg Jaycees, he helped with the Special Olympics, a post which John described as particularly gratifying and enlightening: “One of the greatest experiences of my life was to help physically and mentally challenged children engage in athletic activities.

There, I came to understand the real spirit of athletics—what’s important is the thrill of

participating, rather than the objective of winning.” He was also a member of the Mountain View Rotary Club for years, personally participating in activities like the “clean streets” project.

But he was looking for something else to do, and happened upon the United Way in 1996, when he was asked to fill the Secretary’s position on the board. His commitment to the organization, however, has not been limited to attending board and

committee meetings. He derives as much satisfaction, if not more, from his “field” work with the member agencies.

For example, each year the United Way has a “Day of Caring.” John has spent one of those days engaged in physical labor while working on a “Habitat for Humanity” home. He spent another day painting and pulling weeds at the ARC House, and on a third occasion he helped paint the interior of the Union Mission in Latrobe, a 60-day shelter for adult homeless men who are suffering from financial hardships.

John sees his volunteer activities as the natural expression of the character and personality traits that are common to many individuals who choose the law as their profession. “Most attorneys get into this business because we have the need and feel an

obligation to serve people in the community. In volunteer work, it can be gratifying to see immediate

results—you don’t always need to be compensated monetarily to derive satisfaction from the work you do. It’s one way to balance your life.”

In his nine years on the board, the United Way has undergone a significant transformation, both locally and nationally. John explains: “About three or four years ago, the United Way conducted a self-evaluation and concluded that we had a three-fold obligation: to assure that donations

were spent properly; to address the critical needs of the community; and to see measurable results. Then we conducted an investigative study in an effort to identify the needs of our communities. As a result of that assessment, we decided to focus on three critical objectives: helping children and youth succeed; supporting vulnerable and aging populations; and building strong neighborhoods and communities.”

The impact of this change upon member agencies is that each agency must now demonstrate how it addresses one of these three identified areas of community need in order to continue to receive donations through the United Way. Accordingly, an agency no longer receives funding as an entitlement, but as a grant; and in order to be eligible for a grant, the agency must demonstrate measurable results. In other words, the United Way-funded agency cannot simply rest on its laurels and assume that it will be funded indefinitely. In 2003, the United Way implemented a three-year step-down or phase-out plan for those agencies that were not fulfilling those objectives.

John speaks with enthusiasm about his hope for the future growth of the United Way. “We’re in a significant transition period, and it will take a lot of work. We want to raise the level of

continued on page 4



John Ward



Annual Red Mass Celebrated

The 38th annual Red Mass, sponsored by the Diocese of Greensburg and Saint Vincent Archabbey, College and Seminary, was celebrated Friday, September 30, 2005, at Saint Vincent Archabbey Basilica in Latrobe.

This year's speaker was Jim Towey, Assistant to the President of the United States and Director of the White House Office of Faith-Based & Community Initiatives. Towey's remarks focused on the lessons that can be learned from the life of the late Mother Teresa of Calcutta, whom he first met in 1985. He went on to serve for 12 years as her legal counsel, lived for a year in Mexico at one of her missions and worked full-time for a year in her Washington, D.C., home for persons with AIDS.

Towey said three things were important in Mother Teresa's life: her devotion to prayer, her role as a witness to God, and being a friend to the poor.

According to Towey, Mother Teresa used to say, "If you're too busy for prayer, you're too busy." She believed prayer calls us to seek truth about ourselves. "It is hard in the courtroom

to seek truth if you can't seek it within yourself," said Towey.

Integrity was also important to Mother Teresa, not just the appearance of devotion. Though the currents of our culture may work against integrity, Towey said, the legal profession is a great gift working to preserve integrity.

Finally, Mother Teresa believed the poor are a gift, not a burden, because they have the ability to transform our lives, said Towey. Although the recent hurricanes that hit the Gulf Coast painfully revealed how comfortable we have become with an underclass, they also gave us many opportunities to respond with generosity.

Towey ended by encouraging those present to "do little things with great love. Start at home, the law office, the courtroom. Transform the environment in which we live by embracing the poor. Renew the face of earth and America."



◀ Jim Towey, Assistant to the President of the United States and Director of the White House Office of Faith-Based & Community Initiatives, was the speaker for the 38th Annual Red Mass held at Saint Vincent Archabbey Basilica in Latrobe on Friday, September 30, 2005.

The Red Mass has a long history within the Catholic Church dating back to the 13th century when it marked the official opening of the new term for courts in most European countries. The participants would process into the church clothed in red vestments, signifying their plea for the Holy Spirit's guidance in pursuing justice in their daily lives.

John N. Ward

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community activism, we want more people involved in leadership positions, and we want a cross-section of people with a wide variety of skills and from various backgrounds to serve on the board so that we can better understand the needs of the communities in Westmoreland County and better serve them."

When John is complimented on the three-year commitment he has made to be Chairman of the United Way, he minimizes the significance of his role. "The United Way would not work without all of its volunteers. The real work is being done by the staff and the volunteers."

To learn more about the United Way of Westmoreland County or about how you may volunteer, visit their website at www.unitedway4u.org or call (724) 834-7170.

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Through The Looking Glass:

Off the Record with Court Reporter Kris Samloff

by Beth Orbison, Esq.

Since 1979, court stenographer Kris Samloff has sat quietly recording the questions posed by attorneys and the responses given by their witnesses. But don't be deceived into thinking that her silence means that she has nothing to say.

Kris good-humouredly laments that her job as a stenographer for preliminary hearings, depositions and domestic relations hearings is like that of the elevator operator—she never gets to hear the end of the story. But despite that minor drawback, she loves her job because she learns something from everyone she encounters, be it good or bad.

What follows are excerpts from a conversation that we had about being a court reporter, together with Kris's advice to attorneys who use a court reporter's services.



Q AT HEARINGS, COURT STENOGRAPHERS OFTEN APPEAR TO BE THE DETACHED AND IGNORED PERSON WHO IS OFF TO THE SIDE, OUT OF THE ACTION. HOW DO YOU EXPERIENCE THAT?

A *I have been a court reporter since 1979, and even after all of this time, I still find the work to be emotionally draining. Understand that court reporters are taught to be*

independent and neutral. We are trained to hide our reactions and mask our emotions during the taking of testimony. But I still find myself empathizing with the pain and unfortunate circumstances of the witnesses, and that can be exhausting. The cases involving children are the most difficult for me, and they stay with me.

Q WHAT HAS YOUR EXPERIENCE BEEN WITH THE ATTORNEYS IN WESTMORELAND COUNTY?

A *Westmoreland County has a good bar, people with good sensibilities—they know when they have a good case, but they also know when to give up. And*



▲ Kris Samloff

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Court Reporter Kris Samloff *continued from page 5*

court reporters are treated well in this county. I feel respected.

Q GIVEN THAT YOUR PRIMARY TASK IS TO PRODUCE AN ACCURATE RECORD OF TESTIMONY, WHAT ARE THE THINGS THAT YOU WILL DO TO ENSURE A GOOD RESULT?

A *I will often try to engage a witness in conversation before the deposition commences in order to get a sense of his speech patterns—whether he has an accent, talks slowly, mumbles, slurs his words, etc. Knowing what to expect helps me to get a clearer transcript.*

I'm also sensitive to the fact that I may be recording the words of a lay person who has never been in a courtroom setting or testified in a legal proceeding, and that can be very intimidating to the witness. Remember, too, that people who are deposed are often injured, hurt or involved in some form of an emotional crisis. Usually, they are not there because they want to be. So when I detect that the witness is extremely nervous, I'll tell him about how my machine works, and generally talk to him about the recording process. If I can develop a rapport with the witness, the witness will be more relaxed; that increases the likelihood that I'll get a good record, and the transcript will read more succinctly.

Q CAN YOU GIVE ATTORNEYS ANY TIPS THAT WOULD HELP YOU DO YOUR JOB BETTER?

A *An attorney can begin by preparing the witness for what to expect. One time I raised my hand to swear in a witness, and he raised his hand and said, "Hi!"*

Before the deposition begins, give me the caption of the case and a witness list. I create an individualized dictionary for each case, so to the extent that I am prepared ahead of time to anticipate frequently occurring names, places, medical terminology, etc., I can create shortcuts ("job defines") which enable me to record more accurately and efficiently.

Although this may seem obvious, start by asking the witness his name and to spell it for the record. You'd be surprised at the number of times an attorney forgets to elicit basic identifying information about his examinee.

And always instruct the witness to ask for clarification if he doesn't understand a question.

Finally, although a court reporter may appear to be able to sit stoically for an indefinite period of time, we really appreciate a break from time to time.

Q CAN YOU SUGGEST ANY RULES OF ETIQUETTE FOR ATTORNEYS? ARE THERE "PROCEDURAL RULES" FOR AN ATTORNEY TO FOLLOW IN ANTICIPATION OF AND DURING QUESTIONING?

A *Yes, there are a few basic rules to keep in mind. Don't begin talking before the witness has finished his response. And attorneys should not talk over each other. You want something that you can read and understand later.*

Being civil toward one another helps, too. One time I was at a doctor's office early in the morning to take his deposition when the attorneys began to engage in a heated argument. When one of them said, "Let's take it outside!" I couldn't believe what was happening.

Choosing a neutral setting for the taking of testimony—the bar association office, for example—avoids a perceived home field advantage. The atmosphere or tone that is set at the preliminary stages of litigation, during the depositions, for example, often establishes the tenor of the proceedings

throughout. If there is unnecessary discord and animosity reflected in the depositions, this atmosphere will be evident when the matter eventually comes before the presiding judge.

Q WHEN AN ATTORNEY IS SHOPPING FOR A COURT REPORTER, WHAT QUALITIES OR QUALIFICATIONS SHOULD HE LOOK FOR?

A *The most important quality that a court reporter needs to have is the ability to prepare a timely and accurate record. Accuracy is essential.*

Also, it is fair to ask a candidate whether she graduated from an accredited school (CCAC is the only accredited court reporter program in Western Pa.), and whether she is a member of the National Court Reporters Association. Membership in this professional organization is voluntary, but this organization has a disciplinary board, continuing education courses, and an ethics hotline for members, much like those services available to lawyers who are members of bar associations.

Finally, word of mouth and reputation are your best resources. [Editor's note: Kris has never had a business card.]

Q WHAT SHOULD AN ATTORNEY EXPECT TO BE THE TURNAROUND TIME FOR THE PRODUCTION OF A TRANSCRIPT?

A *It generally takes four hours to produce the final transcript of one hour of testimony.*

Q HAVE YOU EVER HAD DIFFICULTY GETTING PAID?

A *In the category of Accounts Receivable, I'm reminded of the sage advice of Tony Saulle, Judge Loughran's now-retired court reporter. He recommends holding twenty pages, in escrow, out of the middle of a transcript, until you are paid in full. Luckily, I've never had to do that.*

Q ANY FINAL THOUGHTS?

A *I would encourage anyone to go into this field. In this job, I've learned more about human nature than I have about anything else.*

Did You Know?

Back issues of the sidebar from December 1999 to the present are available on-line as Adobe Acrobat PDF files at www.westbar.org/html/publications.

A comprehensive, searchable PDF index is also available on-line. The index lists every article for every issue of the sidebar from Volume I, Number 1 (January/February 1988) to the present, and cross-references all articles and photos alphabetically by name.

Spotlight on Nevin Wollam



Editor's note: On July 1, 2005, after more than 50 years in practice, H. Nevin Wollam retired and closed his office in Greensburg. He served as president of the Westmoreland Bar Association in 1975 and was a member of the House of Delegates of the Pennsylvania Bar Association, as well as Chairman of the Municipal Law Section for many years.

In his capacity as Chair of the WBA's Historical Committee, Nevin has done considerable research on the history of the WBA and has compiled a list of all attorneys who have practiced before the Westmoreland County

Courts since the county's inception in 1773.

He is vitally interested in the genealogical and historical data of the Bar and of its members, past and present.



A true "Pennsylvanian," Nevin's ancestors came to America from Liverpool, England, in 1682 with a group of Quakers led by William Penn. They settled in Upton, Chester County, Pa., on land purchased from William Penn by Gilbert Wollam.

Q WHAT JOBS HAVE YOU HAD PRIOR TO BECOMING AN ATTORNEY?

A A&P store clerk; U.S. Army; Admissions Office and Library at W&J College.

Q WHICH WAS YOUR FAVORITE AND WHY?

A W&J Library. I like books and working with them.

Q WHAT IS THE FUNNIEST THING THAT HAS HAPPENED TO YOU AS AN ATTORNEY?

A There were so many incidents, it is difficult to pick one.

Q WHAT IS THE QUALITY YOU MOST LIKE IN AN ATTORNEY?

A Integrity.

Q WHAT IS YOUR FAVORITE JOURNEY?

A Trips to Ireland and England.

Q WHAT IS YOUR GREATEST REGRET?

A Besides not having the privilege of becoming a judge, not having the wisdom to learn more family history from my relatives before they passed on.

Q WHO ARE YOUR REAL-LIFE HEROES?

A My Army Lieutenant, William Acock; my W&J history professor,

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Spotlight on Nevin Wollam *continued from page 7*

Dr. Henry Sweet; Westmoreland County Judge Charles Copeland, Jr.

Q WHAT ADVICE WOULD YOU GIVE TO ATTORNEYS NEW TO THE PRACTICE OF LAW?

A Make your word your bond.

Q WHAT DO YOU CONSIDER YOUR GREATEST ACHIEVEMENT?

A Becoming an attorney at a time when it was a difficult achievement and an honor, and finding record of an ancestor, Gilbert Wollam, who came to Pennsylvania in 1682 with William Penn.

Q WHAT IS YOUR IDEA OF PERFECT HAPPINESS?

A Freedom from debt.

Q WHAT IS YOUR MOST TREASURED POSSESSION?

A My books.

Q WHAT IS IT THAT YOU MOST DISLIKE?

A TV talk show hosts who color public opinion to their liking.



Q WHAT IS YOUR GREATEST EXTRAVAGANCE?

A Overseas travel.

Q WHAT TALENT WOULD YOU MOST LIKE TO HAVE?

A To be a musician.

Q WHAT QUALITY DO YOU ADMIRE MOST IN YOUR FRIENDS?

A Honesty, loyalty and true friendship.

Q WHAT LIVING PERSON DO YOU MOST ADMIRE?

A My wife, Mary, who has an unerring perception of people and solutions to all of our problems.

Q WHAT IS YOUR MOTTO?

A "Never give up."

New Member Sketches

Lynda M. Dupre has been admitted as a participating member of the WBA. A graduate of Shadyside Academy, Middlebury College and the University of Pittsburgh School of Law, Lynda works for The Closing Specialists, a real estate closing company, and maintains a solo office in Ligonier.

Gary R. Polsinelli has joined the WBA as a participating member. A graduate of Pittsburgh Central Catholic, Gary earned his undergraduate degree from the U.S. Military Academy at West Point and his juris doctor degree from the University of Pittsburgh.

Gary is an associate with Paletta & Pagliari, P.C., in Lower Burrell, and recently returned from active duty in Iraq as a member of the Pennsylvania Army National Guard.



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Do you have news to share with the sidebar? Making Partner? Accomplishments? Marriage? Anniversary? Birth? Send us a fax (724.834.6855), an e-mail (westbar.org@verizon.net), or a note by any other means and we'll publish your news in the next available issue.

July 2005 Trial Term

Jury Trial Verdicts

by Rachel Huss, Esq., Charles J. Dangelo, Esq., and Jacquelyn A. Knupp, Esq.

Of thirty-five cases listed for the July 2005 Civil Jury Trial Term, five settled, eighteen were continued, one was continued generally, one moved to arbitration, one was transferred to non-jury, two non-suits were entered, one verdict was from last term, two verdicts were rendered, and four cases were held to the next term. The jury trial verdicts are summarized below.

DIANA PALOMBO

V.

**MUNICIPALITY OF MURRYSVILLE
NO. 1632 OF 2001**

*Cause of Action: Negligence—
Defect/Dangerous Condition of Road*

On March 14, 1999, the Plaintiff was driving her vehicle on School Road near Millstream Court in Murrysville, Pa., when she hit a patch of ice, causing her to lose control of her vehicle and strike a telephone pole. Plaintiff alleged that runoff water bypassed the catch basins and flowed across School Road, which caused an accumulation of ice on the road. Plaintiff averred that the Defendant knew or should have known of the dangerous condition of the roadway. Plaintiff underwent six surgeries relating to fractures of her right ankle and shin, had damage to the circulation of her right leg and sustained permanent and disfiguring scarring to the right leg.

Defendant denied the existence of a defect or dangerous condition of the roadway. Defendant raised the affirmative defense of governmental immunity pursuant to the Political Subdivision Tort Claims Act.

Plaintiff's Counsel: James C. Heneghan, Feldstein Grinberg Stein & McKee, Pgh.



Defendant's Counsel: Jennifer Keadle Mason, Mintzer Sarowitz Zeris Ledva & Meyers, Pgh.

Trial Judge: The Hon. Daniel J. Ackerman, President Judge

Result: Verdict in favor of the Defendant. Jury found no defect in the municipality's road that created a dangerous condition for motorists.

DENNIS T. POLLOCK

V.

**GREGORY D. BADER
NO. 6772 OF 2002**

*Cause of Action: Negligence—
Motor Vehicle Accident*

On November 15, 2001, Plaintiff stopped his motorcycle at a stop sign on Old William Penn Highway at the intersection with the Cozy Inn Cutoff in Murrysville, Westmoreland County. Plaintiff then proceeded in an easterly direction on Old William Penn Highway when Defendant, who was operating his automobile in a westerly direction on Old William Penn Highway, turned left onto Cozy Inn Cutoff, entering the intersection and striking Plaintiff's motorcycle. Plaintiff

argued that Defendant's turn signal was damaged prior to the accident and was not working at the time of the accident. Plaintiff alleged injuries, including a fractured nose and deviated septum, and three or four fractures to his cheek bones.

Defendant averred that traffic traveling from William Penn Highway onto Cozy Inn Cutoff (Defendant's direction of travel) was not controlled by a stop sign or other traffic control device. Defendant contended that Plaintiff failed to stop at the stop sign that controlled Plaintiff's direction of travel, causing the front of Plaintiff's motorcycle to strike the front passenger side of the Defendant's vehicle. Defendant denied negligence in causing the accident and argued that some of the injuries claimed by Plaintiff, apart from the fractures, were not related to this motor vehicle accident.

Plaintiff's Counsel: Sean P. Duff, Patberg, Carmody, Ging & Filippi, Erie

Defendant's Counsel: Scott O. Mears, Jr., Mears, Smith, Houser & Boyle, P.C., Gbg.

Trial Judge: The Hon. Daniel J. Ackerman, President Judge

Result: Molded verdict in favor of the Defendant. Jury found that Defendant was negligent in the operation of his automobile, but that Defendant's negligence was not a factual cause in bringing about the harm to Plaintiff.

LawSpeak

He did not care to speak ill of any man behind his back, but he believed the gentleman was an attorney.

— Samuel Johnson, Boswell, *Life of Johnson*, 1770.

The Great Annual “Things I Didn’t Know About Our Judiciary a/k/a Judges Can Be Weird, Too” Contest

There we were, the entire editorial board of *the sidebar*, staring into our coffee cups and trying to figure out what we could do to liven up this issue of *the sidebar*.

“Let’s do a ‘Pets and Their Owners’ contest,” one pretty lame member of the board offered. “That’s a sure winner.”

When that idea died for lack of support from the editor, we each in turn threw out some suggestions. “How’s about we run pictures of the more senior members of the bar and have contestants match them up with their sexual proclivities?” someone suggested. “Too easy,” someone else opined.

“Well then, what about ‘Judges and Their Favorite Foods?’” someone else offered. “Nah,” another board member said, “it’s always chipped chopped ham.”

“Oh, this is weird,” the assistant editor said, and that’s when it hit us all at the same time. “Why don’t we match up the judges and their weird little secrets? God knows there’s enough of them,” we all thought, and that was that.

So here they are, our twelve members of the board of judges and one weird little-known fact supplied by each. Match them up as best you can, send in your contest form ASAP, and you might have a shot at the grand, albeit only, prize—tickets for two for a Penguin hockey game of your choice this season, to be awarded to whomsoever has the most correct matches. If there is a tie, every winner will get two tickets, the same two tickets. You may have to double up on the seats, but it’s surely better than no tickets at all. And if you win and don’t like hockey, well, tough bungsies. That’s the only prize we got.

The more astute among you may note that there are more weird secrets listed here than there are judges. There’s a reason for that. Some of the weird secrets are fictional, made up, bogus. They have nothing to do with the truth. They only have to do with the editor’s secret suspicions, based on his years of experiences with these characters.

And some will also note we didn’t include senior judges or administrative judges. We asked them, yes we did, but to a man the information supplied was far too weird to publish, and would have,

undoubtedly, sent at least one of them to jail.

So there you have it. Match up the judge with the weird fact that pertains, and you, too, may have a shot at taking a puck in the teeth. Good luck, play fair, and remember, this is not the practice of law—cheating will not be tolerated.

MATCH THE WEIRD FACT WITH THE JUDGE AND WRITE THE LETTER IN THE CORRESPONDING CIRCLE ON THE ENTRY FORM TO THE RIGHT.

- A** *My nickname in high school was “Hair.”*
- B** *I have always dreamed of playing second base for the Pittsburgh Pirates.*
- C** *I love bluegrass music; the older, the better.*
- D** *My collection of unpaid parking tickets numbers into the thousands.*
- E** *In 1979, I chipped ham at the same Pittsburgh deli where Dennis Miller, the comedian, worked.*
- F** *I won a silver dollar in a Halloween parade for being Uncle Sam. My costume was red and white pants, a Peter Rabbit mask, and a shirt that said, “Peter Rabbit.”*
- G** *Although I have no musical talent or ability, I can play Antonin Dvorak’s “Hungarian Dance No. 5” on the piano.*
- H** *For years I’ve worn an ankle bracelet that says “Wherefore art thou, Bessie Mae?”*
- I** *I once shared a dressing room with Chubby Checker.*
- J** *I’m addicted to reality TV shows.*
- K** *In college, my nickname was “Ox.”*
- L** *I have only nine fingers.*
- M** *I really like being a judge, but I don’t know squat about the law.*
- N** *I was a weightlifter, before weightlifting was respectable.*
- O** *I was one of the regular panelists on a “Meet the Press”-type show on WQED-TV during the first few months that the station was on the air.*
- P** *My hair is real enough, but all my teeth are false.*

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Judge
Bell



Judge
Blahovec



Judge
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Judge
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Avoiding Burn-Out

Burn-out occurs when hard-working individuals become emotionally, psychologically or physically exhausted. Typically, these highly committed people lose their energy, interest and motivation.

A lawyer suffering from burn-out begins to procrastinate. He or she delays returning phone calls or e-mails, comes to work late, leaves early or sits at the desk for hours accomplishing little. Projects do not get started or finished. Deadlines are missed. An initial feeling of frustration or dissatisfaction with the job becomes exacerbated by decreased productivity and income. Problems increase and seem insurmountable.

You are at risk if:

- you find it difficult to say “no” to additional commitments or responsibilities
- you have been under intense and sustained stress and pressure for some time
- your high standards make it difficult to delegate to assistants or finish the project
- your expectations for yourself or others are unrealistic
- you lack a support system at work and at home

RECOGNIZE THE PROBLEM.

Watch for signs of stress such as forgetfulness, fatigue, sleeplessness, changes in appetite, increased illness (e.g., colds and headaches), withdrawal from social situations, increased irritability, impatience and moodiness.

BALANCE YOUR LIFESTYLE.

Workaholics, who are never satisfied with their work, need to add other interests to their lives. Find something enjoyable to do and stop trying to be the best at everything. Learn to relax.

BUILD POSITIVE SOCIAL SUPPORTS AND CONTROL NEGATIVITY IN YOUR ENVIRONMENT.

Seek out people who have a positive attitude. If you have to work with negative people, limit the amount of time you spend with them. Don't allow their negativity or emotionalism drain you.

WORK SMARTER.

Think before you act. Write down your goals and your plan to achieve them. Identify which are important and devote your time and energy to them. Drop or delegate unimportant tasks.

PLAN, PRIORITIZE AND PACE.

Use your calendar to plan and prioritize your day, week or month. Create a meeting agenda and stick to it. Start and end meetings on time. Schedule realistic breaks between working. Allow yourself enough time to get to places. Pressuring yourself with tight deadlines increases stress and reduces your effectiveness. Learn to pace yourself.

“NO” CAN BE A POSITIVE.

If you are overcommitted, say “no” the next time you are asked to do a favor that will raise your stress level. If possible, cut out activities that are causing you stress.

FOCUS ON THE POSITIVE.

Identify the problem then focus on the solution and how you will reap a positive outcome. Apply this to “problem” projects and people.

A HEALTHY LIFESTYLE HELPS.

The three pillars of good health are sleep, diet and exercise. Establish a regular routine of six to eight hours of



sleep each night, eat properly and get active. Next, share your feelings and seek support from family, friends, LCL, or a healthcare provider. Finally, find a way to help someone in need, be it pro bono work, community service or as an LCL volunteer.

CAREER CHANGE OR ATTITUDE ADJUSTMENT?

If you are burned out, a career change may help. But if the cause of your burn-out is an unrelenting demand for perfection, recognition or the need for power, then a career change is merely a temporary fix. You need to change “you” or you will repeat the cycle and suffer from burn-out once again.

BURNED OUT? CALL LCL.

We can help you to get to the underlying problem and assist you in making a change that will work. We offer referrals to career coaches, a free evaluation with a healthcare professional, peer support and self-help literature. Call 1-888-999-1941.

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To-Wit: Pops

by S. Sponte, Esq.

Despite my typically charming demeanor, I find that when I am obliged to get up at six a.m. to be suited, tied and on time for an eight thirty court appearance, I am not a happy camper. And when the reason for my appearance is the need to be in argument court to oppose a frivolous motion, well, that just further gladdens me to no end.

So it was that I recently put in an increasingly rare appearance in civil court, on this occasion to oppose a motion to stay my motion for judgment on the pleadings. I had spent many frustrating hours on the computer the night before, trying to find as many supporting cases as I could, and I had come up empty. It was well past midnight before I realized that the dearth of such cases was not a curse but rather a blessing. There is no such thing as a stay of a motion for judgment on the pleadings,

and the reason is pretty obvious. You see, if a judge actually hears the argument and then denies the motion for judgment on the pleadings, well, isn't that pretty much the same thing?

So surely you can imagine the paucity of my chipperness as I sat in the back of the courtroom, along with perhaps fifty other lawyers, all of us waiting for argument court to commence. Promptly at nine the judge took the bench and surveyed the throng.

"Well, as you know, it's our custom in this county to take arguments according to the seniority of counsel," he said, and of course I was instantly reminded that, yes, that is how we honor the aged, wizened, the doddering old colleagues in our county—by letting them go first. It is meant primarily as a sign of respect, but I always figured it had a pragmatic application as well. I just think it's wise to get the old bastards in and out of the courtroom before their faculties

and their bladders, either or both, inaugurate their first acts of betrayal for the day.

Having made his announcement, Judge surveyed the assemblage, and then said "Well, Mr. _____, you're senior here today, let's start with you." And for a minute there, a brief, terrifying minute, I thought he had filled in the blank with my name.

"Did you say me, Your Honor?" I asked incredulously.

"Yes, you're the senior-most member here. Are you ready?"

"Uh, can I get a recount?" I queried rather timidly.

He laughed, those in attendance laughed, everyone was amused. Yes, it was witty, a smart off-the-cuff retort, but of those assembled, there

continued on page 14



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To-Wit: Pops *continued from page 13*

was one not laughing and that would be me.

I could not be most senior, I simply could not be. Not me, I'm the contentious rebel, I'm still that fresh-out-of-law-school child of the Sixties, the firebrand determined yet to change the course of history. I'm still the defender of the weak, the slayer of dragons, I'm still Superman, The Lone Ranger, The Green Hornet. Okay, so maybe I limp and shuffle to the Batmobile a bit more than I used to, but still, I can't be senior.

I gathered myself together, I made my argument, I successfully resisted the temptation to refer to opposing counsel as "that young whippersnapper" and I left the courtroom with a mighty stride, a confident, shimmering demeanor, a conqueror's gait. Yet upon my exit I swore I could hear one of the spectators saying, "Nice argument, Pops."

Me, Pops? I hadn't thought so, but bodies rarely lie. Yes, I ache, I limp, I

wheeze, all telltale signs that most of the life I've been waiting for has already happened. We children of the Sixties, we're now *in* our sixties, alive

**I'm still Superman,
The Lone Ranger,
The Green Hornet.
Okay, so maybe I
limp and shuffle to
the Batmobile a bit
more than I used
to, but still, I can't
be senior.**

to be sure, but certainly kicking less. Oh, I still have a fire in my belly, but now it's mostly just indigestion.

Last night I had this dream about Clayton Moore, The Lone Ranger, of blessed memory. In pursuit of an outlaw, he tried to mount his great horse,

Silver. But betrayed by too many years in the saddle, he couldn't get his left leg high enough to get into the stirrup, and he strained his inner thigh muscle trying to do it. He reached for his lasso, but, talk about your nightmares, the damn thing went limp in his hand. Finally, in a fit of anger, he threw his pistol to the ground. It fired, the bullet ricocheted off a nearby rock and then careened into the gun hand of the outlaw, knocking his six shooter to the ground. Applause, applause, and he rode off into the sunset.

Well, if he can do it, so can I, even if I do need a mid-deposition nap now and again. Call me "Pops" if it amuses you, it won't phase me a bit. That's because I don't hear as well as I used to. Fortunately that deficit usually passes for nobility, applause, applause, but that will just have to be our little secret.

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Can't get enough Sponte? More articles are online at www.funnylawyer.com.



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Adventures in Law-Law Land

Chocolate for Easter

by Judge Irving L. Bloom

Back in the late 1960s at a location in northern Westmoreland County where our county threatens to become part of Cambria County, there was a little family-owned bar that had decided to close to the public for an evening right before Easter and have a private party.

This mom-and-pop operation sold tickets at \$10 a piece to 57 men to come to this private party. One ticket was to be drawn to see who got the door prize. The door prize was to be several minutes alone in the back room with the ecdyasiast (stripper, for you illiterates) who was to be the star of the show.

Unfortunately for this mom-and-pop, somebody's wife got wind of what was going to take place, complained to the State Police and the State Police raided the whole proceeding interrupting everybody's fun. The owners of the bar were arrested and charged with putting on an obscene exhibition in a licensed establishment and the stripper was charged with an obscene exhibition and solicitation of prostitution.

The ecdyasiast was a young lady in her early twenties who was supporting herself and her three-year-old son by stripping and hooking, while attending Duquesne University. Because she had very little money, if any, I was court-appointed to represent this fallen angel in her legal trials and tribulations.

When I met her, she gave me her history and background of being a single mother working her way through the university and told me how much she loved her son. She further described how on her way to this particular dancing engagement, she stopped at a candy store and

purchased a four-foot-high chocolate bunny for her son, since it was just one week before Easter. As she stripped to get ready to perform her ecdyasiastical show, she placed the chocolate bunny on the back of the bar among the whiskey bottles. The defense she wanted me to pursue was that *she* was not to be the door prize—the four-foot-tall chocolate bunny was to be awarded to the lucky ticket holder.

At the trial, the Commonwealth was represented by the late Assistant District Attorney Edward B. Doran. I, of course, was there representing the incipient ballerina. I put her on the witness stand and she testified extensively about how she was just exhibiting her artistic talents, and was not going to perform any acts of prostitution but was going to award the chocolate bunny to the lucky ticket holder.


After a day and a half of testimony, both sides rested. I got to my feet and extolled the praises of this wonderful mother who was supporting herself

and her son while going to the university by just doing a bit of dancing. Eddie Doran got up and his closing argument took about 30 seconds. It went as follows: "Ladies and gentlemen of the jury. Mom's in the kitchen cooking the food, Pop's behind the bar serving the booze, and Mr. Bloom would have you believe that 57 men paid \$10 for a chance on a chocolate bunny! Now really!!!"

Eddie turned in disgust after the last comment and went back to his chair and sat down.

The jury was out about five minutes and convicted all parties on all counts.

Afterwards, my client told me that she appreciated the vigorous defense I put up for her. Even though I was court-appointed, she intended in the future to pay me a cash fee for my efforts—as soon as she got on her back again.

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foundation focus

Meet Jo Ann Baker

Jo Ann Baker has joined the staff of the Pro Bono Program as a part-time legal secretary. Jo Ann's previous experience includes eight years in Senator Allen Kukovich's office and more than eighteen years as the voice behind Bruce Tobin.



▲ Jo Ann Baker

"Jo Ann's experience working in both the public and private sectors has proven to be a wealth of information and guidance not only for our clients, but for us as well," says Pro Bono Coordinator Iva Munk.

In her spare time, Jo Ann is an active supporter of animal rights and recently spent several weeks taking care of and finding homes for a litter of

abandoned kittens. She and her husband, Skip, live in Penn Township with their two cats and two dogs. They love to travel, especially to warm places, and frequently take short weekend jaunts. Though she may not admit it, Jo Ann reportedly is looking to join a support group for Gummi Bear addicts.



Pro Bono Thanks Volunteers, Board

The staff of the Pro Bono Program of the Westmoreland Bar Foundation thanks the

many Pro Bono volunteers who have given so generously of their time and expertise in serving the most needy in our communities, so far, this year.

Through the generosity of our participants, the Pro Bono Program is able to promote an understanding and appreciation of the law and those who serve it. The desire to help those in need remains the foundation of this most honored profession. To those who have answered this call, and to the WBF board members who make it possible, thank you. You are appreciated.

2005 PRO BONO PROGRAM VOLUNTEERS

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

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



Merry Mixer Fund-Raiser Benefits WBF

The Westmoreland Bar Foundation's Merry Mixer fund-raiser, held Thursday, October 13, at WBA Headquarters, was a unique blend of shopping and socializing for 100 attendees.

The fun-filled event showcased unique gift items from throughout the county including men's fashions,



◀ Merchants donated a percentage of their profits to the WBF.

Event Co-Chairs Janie Belden and Jo Millie.



Beijo handbags, tole painting, hand-drawn cards, floral designs, Pampered Chef housewares, Austrian crystal jewelry, and an assortment of delectable sweets.

Tickets for the event were \$15 each and all merchants donated a percentage of their profits to benefit the law-related education programs of the WBF.



▲ Judges Blahovec, Caruso and Driscoll (not shown) were honorary bartenders and servers for the evening.



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New LRS Program Scores

The Lawyer Referral Service has released its statistics for 2005 through the end of September. After two years of study, the program was completely revamped in January 2005 to implement the American Bar Association's recommended changes which were designed to improve the program as a whole and increase the



Lawyer Referral Service of the Westmoreland Bar Association

“quality” of the cases. Instead of being a free service, clients now

pay a \$30 administrative fee to the LRS before a referral is made. In exchange, the client is provided with a free half-hour consultation by the attorney to whom they are referred.

In addition, participating attorneys remit 15% percent of all fees in excess of \$500 generated on any referred case to the LRS. This provides a funding stream for LRS which permits increased marketing and helps alleviate the direct costs to the WBA.

| LRS STATISTICS: JANUARY–SEPTEMBER 2005 | |
|--|------------|
| Participating Lawyers..... | 67 |
| Number of Cases | |
| Total | 319 |
| Open | 112 |
| Closed | 207 |
| Fees Collected | |
| Attorney Registration..... | \$8,700.00 |
| Clients | \$5,400.00 |
| Attorney Percentage..... | \$3,364.73 |

To be a member of the LRS, an attorney must be a participating member of the WBA in good standing and be actively engaged in the practice of law. The annual fee for participation is \$125.

LRS PROGRAM NEEDS YOU

The LRS is in need of attorneys for the following panels:

- legal malpractice
- medical malpractice
- employee discrimination, harassment
- federal
- medical
- health/education
- product liability

- long term care
- civil rights

Attorneys from the following areas of the county are also needed:

- New Kensington
- Monessen
- Vandergrift
- Latrobe

2005 Pictorial Composite Posters Available

The 2005 pictorial composite posters have arrived. All WBA members who ordered one may pick it up at the bar office at their convenience, Monday through Thursday from 8:30 a.m. to 5 p.m. or Friday from 8:30 a.m. to 4:30 p.m. There are a few extra copies available on a first-come first-served basis for anyone who did not place an order; the cost is \$40.

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DEBRA L. HENRY COSTELNOCK has opened an office at 247 South Main Street, Greensburg, PA 15601; 724-836-6900; E-mail debrahenry@hotmail.com.

FERGUSON LAW ASSOCIATES has a new mailing address: 400 Main Street, Latrobe, PA 15650; E-mail fergusonlawyers@peoplepc.com.

Actions of the Board

AUGUST 30, 2005

- Accepted Membership Committee's recommendation: Lori Edwards, associate.
- Agreed to speak with Ginny Selesky at Court Administrator's office to discuss decrease in arbitration panels.
- Agreed to speak with Prothonotary Ron Diehl to discuss the new procedure for the paperwork for arbitrations.
- Agreed that Finance Committee should begin to work on 2006 budget by September.
- Discussed healthcare options for Bar Association/Foundation employees. Agreed to invite Bob Cagna from Colburn to meet with the board to explore all options.
- The Community Foundation of Westmoreland County has asked to sponsor a series of seminars on estate planning. Agreed that Westmoreland Bar Foundation should co-sponsor this along with The Community Foundation.
- Decided that Bar events should be included on civil court calendar (e.g., Bench/Bar, New Member Ceremony, Memorial Service).
- Agreed to invite the President and Vice President of PBA to Fall Gathering.
- Reported that Nevin Mindlin, PBA Legislative Manager, is confirmed for the October 7 Quarterly Meeting.
- Heard report from YL Chair Amber Leechalk on YL activities:
 - Good turnout for the Colburn CLE and happy hour.
 - YL Lunch 'n Learn is set for September with Lawyers Abstract.
- Agreed that no WBA member will be sent to the LRS national conference.
- Approved request for Judge Bloom and Beth Orbison, co-chairs of LCL Committee, to attend national LCL conference in Charleston, S.C.

SEPTEMBER 19, 2005

- Accepted Membership Committee recommendation: Kerri Shimbarske, participating.
- Learned that the arbitration issue may be with the Prothonotary's office since that office no longer provides a drop box for delivery to the Court Administrator's office.

- Agreed to ask Ron Diehl about this matter and also to inquire whether this is rule change or policy change.
- Asked Building Committee Chair David DeRose to call meeting in regards to some of the concerns of the finance committee (e.g., programmed thermostats, pricing gas companies).
- Reported the financial numbers for the LRS program for year-to-date. The program is in the black with a \$5,000 surplus.
- Agreed that a budget should be put together for the 2006 LRS program and should include specifics on the development of a LRS website.
- Learned that the Bench/Bar Conference committee voted to hold the 2006 Bench/Bar Conference at The Mountaineer Race Track and Gaming Resort in Chester, W.Va. Dates are June 15-17; board agreed that a "save the date" postcard should be mailed to members.
- Board agreed that the employees' healthcare coverage should be decided upon by January 2006 and material should be reviewed at the October board meeting.
- Reviewed the pricing of the "adoption/termination" publication fees in the law journal; no action taken. Further information requested for October board meeting.
- Agreed that John Scales, co-chair of the Centennial Courthouse Committee, be asked to keep the WBA board in the loop.
- Reviewed the agenda for the PBA UPL committee; no action taken.

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CALENDAR OF EVENTS

NOVEMBER

- 7** Bankruptcy, Noon
- 9** Membership, Noon
Municipal Law, Noon
- 11** Courthouse closed in observance of Veterans Day
- 15** Family Law, Noon
Board Meeting, 4 p.m.
- 16** Ned J. Nakles American Inn of Court, 5 p.m.
- 17** CLE Lunch 'n Learn Seminar: "The New Bankruptcy Act," Noon to 4:15 p.m., 4 optional substantive credits
- 23** CLE Lunch 'n Learn Seminar: "Mastering the Jury Selection Process," Noon to 1:15 p.m., 1 optional substantive credit
- 24** Courthouse closed in observance of Thanksgiving

- 25** Courthouse closed in observance of Thanksgiving

DECEMBER

- 3** Annual Holiday Dinner Dance, Greensburg Country Club
Please join us in honoring our hometown veterans, WBA members who have served in the military and have made tremendous sacrifices to protect our freedom.
- 5** Bankruptcy, Noon
- 8** Ned J. Nakles American Inn of Court, 5 p.m.
- 14** Membership, Noon
Real Estate, Noon
- 15** Elder Law and Orphans' Court, Noon
- 20** Family Law, Noon
- 26** Courthouse closed in observance of Christmas

LAWYERS CONCERNED FOR LAWYERS CORNER

- The 12-step recovery meeting, exclusively for lawyers and judges, is in downtown Pittsburgh every Thursday at 5:15 p.m. For the exact location, call Pennsylvania Lawyers Concerned for Lawyers at **1-800-335-2572**.
- LCL has a new website at www.lclpa.org. Attorneys and judges will find information on how LCL can help them, a member of their family or a colleague who may be in distress. It is confidential and easy to navigate. Visit it today.
- Lawyers Confidential Help Line: **1-888-999-1941**. Operates 24 hours a day.



Westmoreland Bar Association
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