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THE NEWSLETTER OF THE WESTMORELAND BAR ASSOCIATION  
VOLUME XXV, NUMBER 2  
MAY 2013

**Survey of Judicial Candidates**

# Three Vie for County's Court of Common Pleas Nominations

*Editor's note: As in past judicial elections, we have made space available for all the candidates for the Court of Common Pleas of Westmoreland County to respond to a series of uniform questions, hoping that the effort enables our colleagues to learn a little bit more about those who seek a seat on the bench. The answers are solely the statements of the candidates and have not been edited or altered in any way. We also asked each candidate to submit an example of his or her legal writing, such as a brief or other law-related document, which best reveals that aspect of his or her professional ability. Those submissions can be viewed in their entirety on the WBA website at [www.westbar.org/2013judicialcandidates](http://www.westbar.org/2013judicialcandidates). These three candidates are running in the primary election on May 21, 2013. Voters will choose one Republican and one Democrat to face off in the November general election. All candidates have cross-filed.*

## Meagan Bilik DeFazio



**Municipality of your residence.**  
North Huntingdon Township

**Secondary schools, college(s) attended, degree(s) earned, and any honors received.**

St. Vincent College, B.S., *magna cum laude* in 3½ years

**Law school(s) attended, date of graduation, any honors earned or received, date of admission to the bar.**

Duquesne University School of Law

**Positions of employment since your admission to the bar and the dates of such employment.**

*continued on page 15*

## William J. McCabe



**Municipality of your residence.**  
Although I was born in Allegheny County, my family moved to North Huntingdon Township in

Westmoreland County when I was five years old. Since then, I have continuously resided in North Huntingdon Township, except for the first 8 years of my marriage, when my wife, Cynthia, and I and our two children, Sean and Katey, resided in the Arnold-New Kensington area.

**Secondary schools, college(s) attended, degree(s) earned, and any honors received.**

*continued on page 17*

## Harry F. Smail, Jr.



**Municipality of your residence.**  
Hempfield Township

**Secondary schools, college(s) attended, degree(s) earned, and any honors received.**

Greater Latrobe Area High School (1984); Honors Graduate, Student Council Representative, Forensics, Ski Club, Football, Track, Lead in the Senior class play – All About Agatha, Medical Explorers, Health Careers, Morning Announcements, Graduation – June 1984; Grove City College, Grove City, PA; Dual Degree: BA – Business Administration – Marketing;

*continued on page 19*

President's Message

# APTP Program Making A Difference

by John K. Greiner, Esq.

A significant number of Children's Bureau cases in our county involve a parent with substance addiction who places his or her children at risk. Often, the children must be removed from the home and placed in a foster care environment to ensure their safety and well being. The parent then faces termination of his or her parental rights.



An innovative program is now available to help persons facing termination of their parental rights break the cycle of addiction and regain custody of their children. The Accelerated Permanency Treatment Program began in 2011 through the vision and efforts of Judge Feliciani, with significant involvement from the Westmoreland County Children's Bureau and members of the Westmoreland Bar Association.

Candidates for this program are referred by Children's Bureau Case Workers to a panel which evaluates the candidate for participation. If the candidate is accepted into this program, he or she begins a five-phase

process, which generally takes twelve to eighteen months to complete. Participants must remain drug- and alcohol-free and complete each of the requirements for the particular phase in order to advance to the next phase.

A commitment to therapy and attendance of a required number of Alcoholics Anonymous or Narcotics Anonymous sessions during a two-week period is required. Participants undergo random drug and alcohol testing on a regular basis to ensure compliance.

Every two weeks, participants appear before the Court for an assessment of their progress. The program utilizes an incentive and sanction process in assessing each participant's progress. Rewards for meeting goals during each two-week period include gift cards used for family meals, household expenses, personal hygiene, and transportation. Funding for these rewards has been provided by the Westmoreland Bar Foundation and the Community Foundation of Westmoreland County. Those who do not meet the goals incur sanctions, which include a judicial reprimand, therapeutic essay, and/or increased case management and drug screens.

The program requires a significant commitment of time and effort not only from each participant, but also from the Court, Children's Bureau, staff, and our own WBA members to counsel the participants and monitor their progress. WBA members Kyle Baxter, Eric Dee, Mary Ann Grec, and Annaliese Masser each volunteer their time and talents.

Currently this program is limited to a total of ten participants. To date, four persons have graduated from the program, including three who participated in the graduation ceremony and reception on March 19, 2013.

Seeing a parent attain a lifestyle free of addiction and being reunited with his or her children is the most rewarding and satisfying aspect of this program for Judge Feliciani. It is his hope that the program can integrate inpatient treatment services and a community volunteer service component in the future. Another goal is to expand the program's ability to serve more participants in the future.

The Accelerated Permanency Treatment Program is making a difference for the families that it serves. We commend the efforts of all involved and hope that the program will continue to develop and expand to serve more in need of its benefits.

*Thank you again for the opportunity to serve as the President of the Westmoreland Bar Association. I look forward to working with each of you during this upcoming year. 🍀*



The Greiner family at the WBA Annual Meeting held April 1, 2013.

# Remembering James L. Liberto

*Editor's note: James L. Liberto died Saturday, January 12, 2013. He is survived by his wife, Sharon A. Simrell Liberto; children, Ellen Marie Liberto, Robert J. (Adelina) Liberto, Esq., Thomas W. (Trinidad) Liberto, and Angela C. (Joshua) Liberto Rex, Esq.; and grandchildren, Catherine, James, Natasha, Thomas, Dana, and Cristina. Donations may be made in Jim's honor to the American Brain Tumor Association ([www.abta.org](http://www.abta.org)).*

by Gary Falatovich, Esq.

No one taught me more in a courtroom than Jim Liberto. For those of us who began our careers on the Westmoreland County Children's Bureau Court Appointment List, Jim was a relentless and unassailable advocate for abused and neglected children. During his tenure as its solicitor, and as the agency's interim director, he effectively handled one emotionally trying case after another. No matter how difficult the case, Jim was always thoroughly professional, combining a measured disdain for those who would do harm to the innocent with compassion for those who were truly in need of services to reunite their families. An experienced litigator, Jim had a gift of turning defense testimony to his advantage. Although humble in the process, I knew Jim took some pleasure in that ability. After he saw fit to promote me to the "guardian's list," I was privileged to be a part of Jim's successful prosecution of the first "shaken baby" case in the Commonwealth.

In the years that followed, Jim and I collaborated on a number of matters, mostly personal injury cases involving one of his friends, relatives, or clients from Armstrong County. You couldn't go far in Kittanning or Ford City without meeting someone who was either related to Jim, was one of his friends, or one of his current or former

clients. Jim's personable approach, and his knowledge of the people and history in the Ford City/Kittanning, area made it easy for me to practice there. There is a certain warm, comfortable feeling derived from sitting in chambers, listening to your co-counsel and the judge reminisce about where they used to go to buy beer when they were teenagers.

Although Jim will always be respected as an attorney, I will remember him more as a caring and passionate person. He absolutely loved his wife, Sharon. He believed he was the luckiest guy on earth because he married his perfect woman. He beamed when his daughter, Angie, was born and was always proud to point out her many accomplishments. When Jim and Sharon could make it to our home in Greensburg for our Christmas parties, regardless of the size of the crowd, they always made it

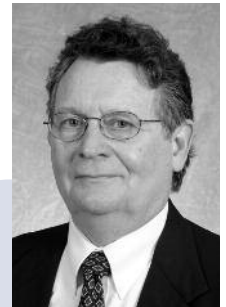
**Jim Liberto will be among those remembered at the Westmoreland Bar Association's 51st Annual Memorial Service to be held in Ceremonial Courtroom No. 3 at the Westmoreland County Courthouse on Wednesday, May 29, beginning at Noon. A complimentary luncheon reception will be held in Megan's Suite at The Palace Theatre immediately following the ceremony. Please plan on joining us to honor our colleagues.**

a point to spend time with my mother, who resides with us. My wife and I will always remember both of them for their kindness, warmth, and sincere sense of respect.

And Jim was, of course, diverse and eclectic. Beside his juris doctorate, Jim had an engineering degree, an MBA, and was a financial planner. He served our country during the Vietnam War. He was an active participant in the Duquesne Law Alumni Association. He loved his place at Crooked Creek and his Airstream. His office in Parnassus Station was filled with memorabilia, and he was always happy when he could fashion his cap over his large tuft of hair and drive his vintage Mustang to it.

Despite his accomplishments, Jim always had a sense of himself. He never forgot where he came from and treated all people the same. He was comfortable with his friends in the local American Legion and equally at ease in more formal professional affairs. Jim had the rare ability to seamlessly adjust to his company, and was always quick with a story, joke, or comforting comment.

I learned much from Jim Liberto over our thirty-year relationship. I only wish I had another thirty years to learn more, not necessarily about the practice of law, but how to lead life to the fullest, without complaints or excuses. That Jim lived and loved the way he did was his greatest accomplishment. 🍷



▲ Jim Liberto

the sidebar

the sidebar is published bimonthly as a service for members of the Westmoreland Bar Association. Letters to the Editor should be sent c/o WBA, 129 North Pennsylvania Avenue, Greensburg, PA 15601-2311, fax 724-834-6855, or e-mail [westbar.org@westbar.org](mailto:westbar.org@westbar.org). the sidebar welcomes submissions from members or non-members. Please submit to the Articles Editor, c/o WBA. Back issues from 2000 to the present and a comprehensive, searchable index are available online at [www.westbar.org/thesidebar](http://www.westbar.org/thesidebar).

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# New Leadership Elected, Awards Presented at Annual Meeting

At the Annual Membership Meeting of the Westmoreland Bar Association held on Monday, April 1, at Rizzo's in Crabtree, Pa., John K. Greiner assumed the



▲ John K. Greiner

office of president. A partner with the Greensburg law firm of Tremba, Jelley and Kinney, John is a lifelong resident of Westmoreland County.

A graduate of Saint Vincent College and the University of Pittsburgh School of Law, John has been a practicing attorney in Westmoreland County since 1985 and concentrates his practice in the areas of criminal litigation in the state and federal courts, estate planning and administration, and business law and planning.

He succeeds David DeRose, an associate in the Greensburg law firm of Quatrini Rafferty, and will serve a one-year term as President.

## OTHER ELECTION RESULTS

Harry F. Smail, Jr., was elected Vice President for the 2013–2014 term. Patrick T. Noonan and James P. Silvis were chosen to sit as Directors on the board. Other board members include President-Elect Joseph W. Lazzaro; Directors Lee R. Demosky, Maria E. Soohey, Timothy C. Andrews, and John M. Noble; Past President David S. DeRose; Treasurer L. Christian DeDiana; and Secretary/Executive Director Diane Krivoniak.

Judi Potoka Petrush was elected to the Membership Committee and Charles J. Dangelo was elected to the Building Committee. Both will serve five-year terms.

## AWARDS GIVEN AT MEETING

William J. McCabe was presented with the President's Award for Professionalism for his dedication to the practice of law, service to his community, and his integrity and civility as a lawyer (see story below).

Debra Cribbs was named Pro Bono Attorney of the Year



▲ Outgoing WBA President David S. DeRose passed the ceremonial gavel to incoming WBA President John K. Greiner at the Annual Meeting held on April 1.

in recognition of her noteworthy volunteer legal representation of indigent Westmoreland County residents (see story on page 7). 🐾

## William J. McCabe PRESIDENT'S AWARD FOR PROFESSIONALISM

William J. McCabe, a partner with DeBernardo, Antoniono, McCabe & Davis in Greensburg, was honored with the distinguished President's Award for Professionalism for his achievements in ethics and integrity; competence and dedication to the practice of law; civility; service to the bar and its members; and dedication to the improvement of the practice of law.

The President's Award for Professionalism is not an annual award, but is presented when the dedication and achievements of a WBA member who best exemplifies the highest standards of the profession with regard to the practice of law should be acknowledged. Previous winners of the President's Award are





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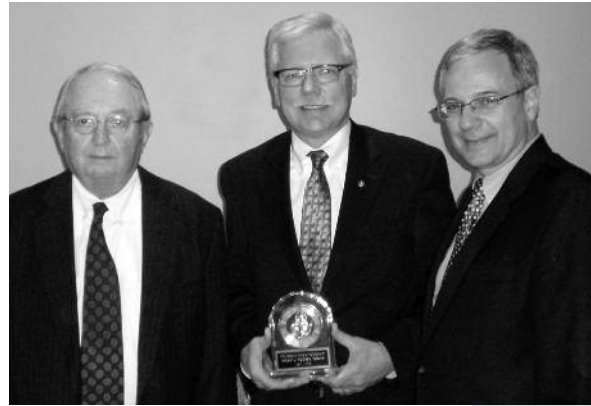
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• Supplemental Plans	Web <a href="http://www.rjswanninsurance.com">www.rjswanninsurance.com</a>

Reg Belden (1998), Jack Bergstein (1999), Dick Galloway (2000), John O'Connell (2002), Milt Munk (2003), Dan Joseph (2004), Vince Quatrini (2007), Bob Johnston (2008), Timothy J. Geary (2011), and Gene McDonald (2012).

**Q CONGRATULATIONS ON BEING HONORED WITH THE PRESIDENT'S AWARD FOR PROFESSIONALISM, BILL. WHAT DOES THE AWARD MEAN TO YOU PERSONALLY?**

**A** I am truly honored to be recognized by my peers in this way. I have been a member of the Westmoreland Bar Association for 32 years, and have seen a number of excellent lawyers recognized by this award—I'm humbled to be counted among them.

**Q WHAT DOES THE AWARD MEAN TO YOU PROFESSIONALLY?**



▲ 2002 President's Award recipient John M. O'Connell, Jr. (left), presented William J. McCabe (center) with the 2013 President's Award for Professionalism at the Annual Meeting. Also shown, outgoing President David S. DeRose (right).

**A** I'm happy to be a part of the mission of the WBA. This organization has influenced my career in countless ways. It has introduced me to mentors, colleagues, and friends, and helped me to become a better lawyer for my clients, and my firm. This award further cements my dedication towards the goals of the WBA, and I look forward to passing

along my experiences and lessons to the next generation of lawyers in the county.

**Q HOW DID YOU FEEL UPON LEARNING YOU WERE THE RECIPIENT?**

**A** At the Annual Meeting, it took me some time to realize that the member of the bar who John O'Connell was describing was me. When I finally realized it, I was overwhelmed that I was being awarded this prestigious honor, and certainly had a degree of disbelief.

**Q WHAT ADVICE CAN YOU GIVE TO FUTURE CANDIDATES FOR THE AWARD?**

**A** I am sure that the lawyers who have previously received the award did not seek to be considered for it—I know I never did. So my advice to younger WBA lawyers is to become active in the WBA, because doing so will enhance both your professional and personal life! 🍷

## WADDELL & REED'S TWIN THREAT IS TOPS...

—Barron's



In the 2012 Barron's "Best Mutual Fund Families" rankings (2/6/12), Ivy Funds is number one over the last five years for the second year in a row, while Waddell & Reed Advisors Funds rank second, for period ending 12/31/11, out of 53 firms ranked. And, across the last four years, either Ivy Funds or Waddell & Reed Advisors Funds consistently has occupied the top spot on the five-year ranking.

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Investment return and principal value will fluctuate, and it is possible to lose money by investing. Past performance is not a guarantee of future results.

Sales charges are not included in the calculation of returns, and the ranking period included time periods during which some funds' returns were affected by expense reduction arrangements. The Waddell & Reed Advisors Funds and Ivy Funds are distributed by Waddell & Reed, Inc., and Ivy Funds Distributor, Inc., respectively. Barron's rankings are based on asset-weighted returns in five categories: domestic equity, world equity (including international and global portfolios), mixed equity (stocks and bonds), taxable bonds and tax exempt funds. Rankings also take into account an individual fund's performance within its Upper peer group. Over the most recent one-year period, Ivy Funds ranked 25th and Waddell & Reed Advisor Funds ranked 19th, out of 58 firms. Over the most recent ten-year period, Ivy Funds ranked five and Waddell & Reed Advisor Funds ranked 18, out of 45 firms.

# Candid Camera: 2013 Annual Meeting



## Intellectual Property Law

Patents, Trademarks, Copyrights

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  - Registered over 300 Federal and Pennsylvania trademarks
  - Obtained patents in all major countries, including European Union, Japan, China, U.K., Germany, Brazil, Mexico, etc.

Bachelor's degree in Engineering from New York University  
 Master's degree in Electrical Engineering from Drexel University  
 J.D. from Temple University  
 Chemistry studies at University of Pittsburgh  
 Registered Professional Engineer (Pennsylvania)  
 Formerly Assistant Professor at Villanova University  
 Formerly Doctoral Candidate in Mathematics at Bryn Mawr College

# foundation focus

## Debra Cribbs Named Pro Bono Attorney of the Year



At the annual meeting of the Westmoreland Bar Foundation held on April 1, 2013, Debra Cribbs, an associate with DeBernardo, Antoniono, McCabe & Davis in Greensburg, was named the 2013 Pro Bono Attorney of the Year. This award is given to the attorney who has provided noteworthy volunteer legal representation to indigent Westmoreland County residents.

Debbie has been a Pro Bono volunteer since 2004. In 2012, she represented eleven clients in bankruptcy and debt counseling. “Debbie truly earned this award because her dedication to the program is tireless and is always met with enthusiasm,” says Iva Munk, Pro Bono Coordinator.

### Q CONGRATULATIONS ON BEING NAMED PRO BONO ATTORNEY OF THE YEAR, DEBBIE. WHAT DOES THE AWARD MEAN TO YOU PERSONALLY?

A Truth be told, I do Pro Bono work for selfish reasons—it makes me feel good to help people and be needed. It takes me back to all the reason I went to law school in the first place. Didn't we all go to law school hoping that we could make a difference in the world? I still maintain my optimism that there are people out there whose lives are better for having crossed paths with me. And, my daughters, Lauren and Becky, were able to come to the meeting to see me receive the award so I can't help but appreciate the opportunity to teach them by example. Hopefully, they were proud of Mom!



▲ *The Hon. Michele G. Bononi (left) presented Debra Cribbs (right) with the 2013 Pro Bono Attorney of the Year award at the annual meeting of the Westmoreland Bar Foundation held on April 1.*

### Q WHAT DOES THE AWARD MEAN TO YOU PROFESSIONALLY?

A With the income guidelines being so low to be eligible for services, the clients that I get from the Pro Bono Office would likely never have legal representation other than through the Pro Bono Office. Laurel Legal Services simply isn't able to handle all of the types of cases or the sheer volume of people who need help. These clients are simply struggling to survive—there's no cash left in their budgets to pay lawyers. I look at it as an opportunity for folks who will probably not come in contact with many attorneys to come away with a favorable impression of the profession.

### Q HOW DID YOU FEEL UPON LEARNING YOU WERE THE RECIPIENT?

A Well ... surprised! I made Iva check to make sure that I had really earned it because I don't feel that I did enough. The fact that the award was given on April Fools Day did give me pause, also. There are so many wonderful attorneys who volunteer their time and expertise that I am humbled and grateful to be recognized for doing something that I love. Throughout my life, I have been helped along by so many people and this is my chance to “pay it forward.” Judge Bononi gave me a lovely introduction and I can only hope that I'm half as good in person as I sounded in her remarks.

### Q WHAT ADVICE CAN YOU GIVE TO FUTURE CANDIDATES FOR THE AWARD?

A Years ago, I made the mistake of telling Iva that I have a soft spot for veterans and the elderly. She now has me convinced that anybody over the age of 24 qualifies as elderly and if they can sing even some of the words to the Star Spangled Banner, “that's close enough” to being a veteran. Be forewarned: Iva is very good at what she does. Seriously though, I can't encourage lawyers more to volunteer whatever time they can. The most interesting clients and the most interesting situations and issues have come to me through the Pro Bono Office. Just do what you can to help because it's the right thing to do. Iva and Rita are doing wonderful work for people in need, are great to work with, and the more volunteer lawyers they have to call on, the better. (Sorry Iva, I couldn't resist!)

### Q WHY ARE YOU INVOLVED IN THE PRO BONO PROGRAM?

A I can take someone who is at wit's end with stress ... maybe having marital trouble, can't sleep at night, or they may even be having health issues because of their financial problems, and I can give them almost immediate relief. I have the opportunity to really

*continued on page 8*

# foundation focus *continued from page 7*

make a difference in someone's life, one client at a time. How could I turn that down? 🌿

## Mount Katahdin or Bust

by Anthony W. DeBernardo, Jr., Esq.



▲  
Tony DeBernardo

Can you guess which 67-year-old Westmoreland Bar Association attorney voluntarily and otherwise free of distress has begun the 2,180-mile hike along the Appalachian Trail? He is walking alone as a thru-hiker which means he will walk the trail's entire length in a single season. His daily load consists of lightweight walking sticks and an 18- to 20-pound backpack that includes his food and nightly sleeping arrangements—a lightweight hammock. This person has otherwise never excelled in sports as illustrated by a body not unlike—well—a Judge.

No it's not me. I am not that crazy.

On April 18, 2013, Jim Antoniono put in at Springer Mountain, Ga. His trek will take him through parts of Georgia, North Carolina, Tennessee, Virginia, West Virginia, Maryland, Pennsylvania, New Jersey, New York, Connecticut, Massachusetts, Vermont, and New Hampshire, ending at Mt. Katahdin in Maine, with its 5,269-foot elevation. The majority of the trail is through wilderness, although some portions traverse towns, roads, and rivers. We know Jim will be safe, because Wikipedia assures us that the black bears and poisonous snakes he may encounter rarely attack the

hikers. Perhaps it's because, after a few weeks, his appearance and odor will be friendly only to the animals.

There is no good way of estimating how long Jim's journey will take. That is why thru-hikers talk of completing the 2,180 miles in one "season." Trail experts relate that when a hiker has completed 80% of the miles, he has extended only 20% of the energy needed to reach the end of the trail. The last 400 or so miles are so mountainous, that pulling oneself along sometimes requires hand-grasping of vegetation and rocks.

With Jim, the cause is always bigger than himself. While serving on the Board of the Westmoreland Bar Foundation, he became committed to helping the residents of Westmoreland County. Mock trials, pro bono representation, scholarships, and focused outreach programs are the Bar Foundation's stock and trade that are made possible by the tireless efforts of Westmoreland County judges, lawyers, and yes, lots of money.

The Westmoreland Bar Foundation recently learned that the IOLTA grant money that it depends upon to pay for our Pro Bono Program in the upcoming year will be significantly reduced, so Jim is asking WBA members to make a per-mile pledge of financial support to the Foundation for each mile of the Appalachian Trail that he successfully completes. So, if you pledge 10¢ a mile and Jim completes the entire 2,180-mile journey, your donation will be \$218; if you pledge 50¢ a mile, your donation will be \$1,090. Any donation you give will go a long way in supporting pro bono services and all of the other law-related educational programs that benefit Westmoreland County citizens. The good works of the Bar Foundation help separate our county from the rest, and contribute to Westmoreland County being that "shining city on a hill." (Oops ... sorry, Jim, for the Reagan analogy).

Contact Diane at the WBA with your per-mile pledge. We don't know if Jim will complete the entire 2,180 miles. What I do know is that if he doesn't, it will be because of events or circumstances beyond his control. Before Jim left, he was enthusiastic



▲  
Jim Antoniono at the head of the Appalachian Trail in Springer Mountain, Ga., on April 20, 2013. Jim plans to hike the entire length of the 2,180-mile trail in a single season, and is asking WBA members to make a per-mile pledge of financial support to the Westmoreland Bar Foundation for each mile of the Appalachian Trail that he successfully completes. You can keep up with his journey online at [grandpajimat.tumblr.com](http://grandpajimat.tumblr.com).



about matching the highest pledge. However, I convinced him we should wait and see exactly what the highest pledge may be. As for me, I'm in for a half buck a mile.

Modern technology allows us to keep track of Jim's exact location. He will signal nightly when he is done for the day and safely at rest. You can keep up with his journey online at [grandpajimat.tumblr.com](http://grandpajimat.tumblr.com). In the meantime, contact Diane with your pledge and MOUNT KATAHDIN OR BUST! 🐾

## Annual Scholarship Deadlines Approach

The Westmoreland Bar Foundation is accepting applications for three law school scholarships and one court reporting scholarship for Westmoreland County residents for the Fall school year. The deadline for submission for all scholarships is on or before June 19.

The Complete Court Reporting Service Scholarship will be awarded to a Westmoreland County resident who is enrolled in the court reporting program at the Community College of Allegheny County (CCAC). The law school scholarships are also for Westmoreland County residents who are enrolled at various law schools.

Applications are available through the schools' financial aid offices, or call the WBA at 724-834-6730, or visit [www.westbar.org/wbf\\_scholarships](http://www.westbar.org/wbf_scholarships). 🐾

## Greensburg Salem Mock Trial Team Does It Again



▲ The Greensburg Salem High School Mock Trial Team, coached by The Hon. Richard E. McCormick, Jr., and Eric Dee, repeated as Mock Trial champions by defeating Franklin Regional in the county-wide competition held in late February at the Westmoreland County Courthouse. This year's competitors included Derry Area High School, Kiski Area High School, Penn Trafford High School, Southmoreland High School, and Valley High School. The team went on to win Regionals, and came in second in the statewide competition held in Dauphin County in March. 🐾



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March 2013 Civil Trial Term

# Jury Trial Verdicts

by Beth Orbison, Esq., Thomas L. Jones, Esq., and Monique J. Lafontant Mears, Esq.

Of twenty-three cases listed for the March 2013 Civil Jury Trial Term, seven settled, twelve were continued, two were transferred off the list to be tried non-jury, and two jury trials were held.

**RED STAR BREWING  
COMPANY, INC., A PENNSYLVANIA  
CORPORATION, ET AL.  
V.  
THE WESTMORELAND  
CULTURAL TRUST, A/K/A  
THE WESTMORELAND TRUST  
NO. 6211 OF 2010**

*Cause of Action: Breach of Contract—  
Commercial Lease Agreement—  
Promissory Estoppel—Counterclaim*

This case involves a landlord/tenant dispute arising from a commercial lease agreement, entered into on August 7, 1997, between Plaintiffs/Tenant Red Star Brewing, and Defendant/Landlord Westmoreland Cultural Trust. The location of the leased property is the Old Train Station in the City of Greensburg. Plaintiffs allege that in 2009 and early 2010, because of various statements made by the Defendant and actions relied upon by the Plaintiffs, Plaintiffs believed that the lease agreement would be renewed for an additional five-year period of time, rather than



terminating in March 2010. When the lease was not renewed, Plaintiffs alleged that they were entitled to monetary damages as a result of being forced to vacate by March 31, 2010.

Defendant denied those allegations, maintaining that no such statements were made or actions engaged in that would extend the lease agreement beyond March 2010. Further, Defendant asserted a counterclaim against Plaintiffs for breach of contract, seeking monetary damages for costs associated with repairs that were caused by the Plaintiffs and discovered after they vacated the premises, as well as reimbursement for other outstanding bills and attorneys' fees.

*Plaintiff's Counsel:* Bernard P. Matthews, Jr., Gbg.

*Defendant's Counsel:* Patricia A. Monahan, Pgh., Michael E. DeMatt, Gbg.

*Trial Judge:* The Hon. Anthony G. Marsili

*Result:* Verdict (10-2) in favor of Plaintiff in the amount of \$180,000.00; and in favor of Defendant on the Counterclaim in the amount of \$2,986.02.

**EVELYN BARKER  
V.  
RANDY EATON  
NO. 5699 OF 2011**

*Cause of Action: Breach of Contract*

The Plaintiff and Defendant entered into a contract during the summer of 2009 for the construction of multiple retaining walls on Plaintiff's property, which is located in Leechburg, for a total construction contract price of \$34,975.00. Construction was completed in September 2009, and Plaintiff paid Defendant in full at that time.

Sometime thereafter, Plaintiff claimed that the construction of the walls was not in accord with the terms of the contract and that there were numerous problems with faulty workmanship. Plaintiff is seeking monetary damages for the cost of repairs.

Defendant denies all of the allegations, maintaining that he constructed the retaining walls in a workmanlike manner and in keeping with proper installation and construction standards.

*Plaintiff's Counsel:* Bradley King, Gbg.

*Defendant's Counsel:* Bernard P. Matthews, Jr., Gbg.

*Trial Judge:* The Hon. Anthony G. Marsili

*Result:* Verdict in favor of Defendant. 🍷

## LawSpeak

**Indenture:** "A single document that consisted of two identical copies of a contract, both signed, witnessed and, where relevant, sealed by the two parties. The document was then cut in two, not in a straight line, but in a wavy or indented one. If any dispute arose about the terms and conditions of service, both parties had to produce their copies, which could then be placed together to ensure that the indents matched and that the two were genuinely parts of the original indenture."

— Juliet Barker. *Agincourt: Henry V and the Battle That Made England.*

# To-Wit: Absolutely

by S. Sponte, Esq.

Oh, and it was music to my ears. I rose to my feet with confidence, nay, with supreme certainty, and addressed the court.

“Absolutely, Your Honor,” I said smiling. I then immediately sat back down. In these instances I find that a paucity of words serves best.

And what was not to smile about? Just minutes before, His Honor had interrupted opposing counsel as he argued in support of his motion for summary judgment and said, “But as your esteemed opposing counsel has tangentially posited without actually citing the case, our state Supreme Court’s recent decision in the case of *Smith v. Jones* completely undercuts your argument.”

His Honor then launched into a profoundly incisive dissertation on the various and sundry ways that the

precedent he inferred I had implied had rendered the motion completely devoid of merit. When he had finished, he looked directly at me and

**“At that instant, two things were both incandescently and terrifyingly clear to me. One, His Honor was very well prepared for this oral argument, and two, I had no idea what the hell he was talking about.”**

said, “(I)sn’t that right, Mr. \_\_\_\_\_?” Hence my rapturous response.

At that instant, two things were both incandescently and terrifyingly

clear to me. One, His Honor was very well prepared for this oral argument, and two, I had no idea what the hell he was talking about.

Now, don’t get me wrong, I’m the first one to appreciate having my legal position buoyed by precedent I didn’t know, couldn’t find, didn’t find, or never really understood; in addition, I’m never afraid to claim a knowledge that in actuality had eluded me like a greased pig. But the point remains that there is nothing more to be feared than a judge well prepared for oral argument.

Make no mistake, oral argument is the most petrifying of all professional experiences. To stand before the court to argue law is a bit like exploring the

*continued on page 12*



# G

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**Duke George**



**Daniel Joseph**

## To-Wit: Absolutely

*continued from page 11*

cosmos. It may well be absolute, but there is nothing absolute about it. The vastness of that universe is at once both grotesque and beautiful, a wondrous sight but with countless invisible asteroids of precedent lurking out there just beyond our awareness that can, upon impact, produce disastrous results.

It's a prospect that's always in the back of my mind. "But what about the case of *Jones v. Smith* decided fifteen minutes ago by the Supreme Court?" a judge may inquire of me, leaving me gasping for air and cursing the perspicacity of the judge's law clerk.

Such moments strip us naked, makes of us the fool, and are absolutely the cruelest moments in the practice of law. That's probably why I so enjoyed seeing opposing counsel now gasping for air as he sought to dodge the asteroid about to crush him and his besotted argument.

When it was my turn to argue, I simply rose and said, "Your Honor clearly has a solid grasp of the issues and I have nothing further to add."

He thereupon issued an order right from the bench dismissing the motion for summary judgment. It was justice; that by assuring my client of a jury trial and thus increasing settlement value by at least threefold was beside the point.

Anytime I can walk out of an oral argument with all my clothes on is a good day. My client, who had been sitting in the back of the courtroom observing the proceedings, joined me as I exited the courtroom.

"Boy," she said, "you sure are a smart lawyer."

"Absolutely," I replied in a swell of gaiety and misgiving. "Absolutely."

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### *Annual Ceremony Held*

## WBA Presents New Members to Bench, Bar



▲ *New members of the WBA were presented to the bench and bar on March 27, 2013. From left to right: Kristen C. Weidus, Timothy Miller, Erin M. Leonard-Salas, Erin N. Larimer, Maura S. Spillane, Tyler J. Jones, Zachary J. Kansler, and Shane M. Gannon.*

On Wednesday, March 27, 2013, the Westmoreland Bar Association presented its new members to the court.

Following a welcoming address by WBA President David S. DeRose, and an invocation by Harry F. Smail, Jr., each admittee was introduced to the court by a member of the association.

The new members presented to the court were: Shane M. Gannon, presented by Scott O. Mears, Jr.; Tyler J. Jones, presented by Mary Ann Petrillo; Zachary J. Kansler, presented by Timothy J. Kinney; Erin N. Larimer, presented by James M. Fox; Erin M. Leonard-Salas, presented by her father, Kevin P. Leonard; Timothy

Miller, presented by James R. Antoniono; Maura S. Spillane, presented by Abby De Blassio; and Kristen C. Weidus, presented by John K. Greiner.

Following the presentation to the court, Michael J. Stewart, II, and William J. McCabe greeted the new members on behalf of the Young Lawyers Committee and the Ned J. Nakles American Inn of Court, respectively. President Judge Gary P. Caruso then spoke on behalf of the court.

A luncheon buffet reception for the new admittees was held at The Rialto in Greensburg immediately following the ceremony. 🍷



### WBA Bench/Bar Conference

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Westmoreland Revisited

# Galusha Grow and America's Most Successful Stimulus Act

by The Hon. Daniel J. Ackerman

I must admit, it is a stretch to tie this Connecticut-born lawyer, businessman, Speaker of the U.S. House of Representatives, and a man with a name so strange that I must assure you that this is not a misplaced April Fools' article, to Westmoreland County; but it can be done.



▲  
The Hon. Daniel J. Ackerman

When Galusha Grow returned to the U.S. House of Representatives in the final decade of the nineteenth century after a thirty-one-year absence, he did so as a member at-large for Pennsylvania's 12th and 14th districts. His status came about as the result of the state's expanding population, which called for an increase in representatives, and the legislature's failure to pass an apportionment bill. So, from 1894 until 1903, Galusha Grow represented portions of most of the counties in the southwest corner of the commonwealth, including parts of Westmoreland County.

## WHAT'S IN A NAME?

Born on August 31, 1822, his parents chose to call him Aaron. His middle name, Galusha, was the idea of an aunt in Vermont, who was enamored with the governor of her state whose surname was Galusha. However, it was the boy himself, who, as he grew, decided to switch his middle and first names and go by Galusha.

The Grow family moved to Glenwood in Susquehanna County, Pa., when Galusha was eleven. An education at Amherst was followed by reading the law and resulted in his admission to the Susquehanna County bar in November of 1847. After fewer than three years in practice, the young bachelor lawyer was elected

to Congress in 1850, where he would serve five consecutive terms (1851–1863)—two as a Democrat and three as a Republican. The switch in parties was precipitated by his strong anti-slavery views and his opposition to the Kansas-Nebraska Act which allowed for slavery in the new territories if affirmed by popular vote.

## MR. SPEAKER

Grow's health was unstable, and one journalist described the Congressman as: "a tall, slightly built man with a bilious temperament and a somewhat querulous voice and manner ..." and added, "Grow is not a favorite with the members [of congress], but is a good parliamentarian and useful in his place. He dresses with scrupulous neatness and his gray and black locks are always arranged with a tonsorial skill suggestive of the barber shop." If this assessment was unbiased—and few are when the subject is a political leader—then the unpopular Grow, whose unvarnished abolitionist rhetoric led to a physical attack upon his person on the floor of

the House by a southern Congressman, must have swayed his colleagues by either his natty appearance or parliamentary dexterity, for they eventually elected him as the 28th Speaker of the House of Representatives.

Obtaining the position of Speaker, impressive as it was, was not Grow's principal achievement. Rather, he was important for taking a long-held belief and transforming it into legislation which was more successful than he could have imagined.

Coming from an extremely rural county, he had witnessed families struggling to clear the land, create farms, and pay off the debt they had incurred through the purchase of the land; and envisioned what

*continued on page 14*

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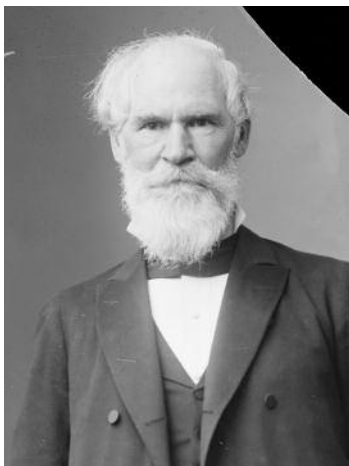
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## Galusha Grow *continued from page 13*

these hardy souls could do, for themselves and the country, if they had access to the vast stretches of the nation's undeveloped land and could obtain ownership solely through their own labor, without debt. The idea, however, had its opponents in the form of southern Congressmen who believed that if such a visionary idea were enacted into law, it would increase the likelihood of creating free states in the west and impede the expansion of slavery. The bill would have to await the election of Lincoln and the departure of those southern Congressmen before there would be sufficient votes to enact what would become known as the Homestead Act, which Lincoln signed into law on May 20, 1862.



▲ Galusha Grow, photographed between 1865 and 1880.

### GROW'S TRUE LEGACY: THE HOMESTEAD ACT

The Homestead Act was initially viewed by some as a war measure, a reward to be contemplated by soldiers fighting to preserve the union; but it was not limited, by any means, to those in the military, for it provided that any citizen, or person who simply declared an intention to become a citizen, twenty-one years of age, could receive title to 160 acres (or twice that amount in more arid climates) if they would construct a home and farm the land for five years (Union soldiers could subtract the time spent in uniform). For the few who had cash, title to the land could be acquired after only six months in residence by paying \$1.25 an acre. In the same year, and in the same spirit, the Morrill Act also became law, establishing land-grant colleges, which would eventually benefit future generations of those families who laid claim to formerly public lands.

In more than a century (homesteading ended in 1976 in the lower forty-eight states, and in 1979 in Alaska), four million settlers in thirty states would claim 270 million acres of land, an amount equal to a tenth of the nation's land mass, or two and a half times the area of California. The expansion of the country, as a result of the act, was fueled by people from all walks of life. Many were recent immigrants from Europe; some were freed slaves who founded black settlements on the Great Plains; and a full 10% of all claims were filed by single women.

The act was intended to foster immigration, for the five-year residency on the land coincided with the time needed for the foreign-born to become citizens; and the intent was realized: by 1870, 39% of the population of Montana and Wyoming, 34% of Dakota Territory, and 25% of Nebraska were comprised of those born abroad.

Industry prospered as well. Eighty thousand miles of railroad tracks were laid in the last third of the nineteenth century between the Missouri River and the Rocky Mountains. Railroads were also quick to publish pamphlets extolling the lush life which awaited those who would settle in areas that the atlases of the day designated as the "Great American Desert." Optimism was rampant and often overcame reason. The pseudoscience of the day suggested that lands were arid because they were not cultivated, and that the opening of the ground would create atmospheric changes conducive to rain, fostering the misconception that "rain follows the plow."

While not all homesteaders met with success, and many properties were abandoned as unproductive (the "Dust Bowl" of the 1930s comes to mind), the program was an enormous success. Speaking of the Homestead Act, John F. Kennedy said it was, "probably the single greatest stimulus to national development ever created." Galusha Grow's vision had borne abundant fruit.

Despite his legislative triumph in 1862, the ultimate proof of which lay years beyond, Grow's stance as a "Radical Republican" cost him his Congressional seat in that year's general election. He moved to Texas and was the president of the International Great Northern Railroad in Houston from 1871 to 1875. On stepping down from that position, he returned to Pennsylvania to reestablish his law practice. He retired in 1903 when he ended his term as an at-large Congressman, and died on March 31, 1907, at age 84. 🐾

### SOURCES

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**Survey of Judicial Candidates****Meagan Bilik DeFazio***continued from page 1*

Loughran, Mlakar & Bilik, 2000–present; Assistant Public Defender in Westmoreland County, 2001–2006; Western PA Gas Leasing Consultants, Member, 2012–present

**Membership in any law-related organizations in which you have been an active participant, describing your participation and length of membership.**

I am an Adjunct Instructor at Duquesne Law School, where I coach the Trial Moot Court teams in preparation for competition. I am a member of the Pennsylvania Bar Association and the Westmoreland Bar

Association. I am currently Board Vice President of CASA of Westmoreland, Inc. (Court Appointed Special Advocates) and have been a member of the Board of Directors since 2010. As a board member, I serve on the Public Relations Committee and have served as Chairperson for the Annual Leadership Breakfast.

**Membership in other organizations, including positions held and length of membership.**

I have been a member of the following community and charitable organizations: North Huntingdon Township Parks & Recreation Advisory Board (2010–present), United Way's Women's Leadership Council (2008–2010), Board of Directors and Past President of Westmoreland Walks, Inc.: Taking Steps Against Breast Cancer (2001–2010), Fundraising Committee for the Leukemia & Lymphoma Society's Annual Polo for the Cure event (2007–08), Norwin Lions Club (2009–present), Emilia Sammartino Lodge #2831, Order Sons of Italy in America

(2008–2012) and the Westmoreland County Commission for Women and Families (2008–2012)

**Describe your practice, identifying particular areas of expertise, if any, and how your practice breaks down by percentage in areas of real estate, personal injury, insurance defense, general litigation, family law, etc.**

Over the years, I have had the opportunity to develop a well-rounded general practice, having concentrated my practice in trial work for the first twelve years. However, with Marcellus drilling picking up in Westmoreland County and with my firm having experience in gas/oil for 25 years, my practice shifted in 2010 to Energy Law. My practice is currently focused in the areas of Gas & Oil and Civil Litigation. I would apportion my current practice as follows: 70% Gas & Oil, 20% General Civil, 10% Wills/Estates.

**If you claim litigation experience as a qualification, provide the**

*continued on page 16*

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**in Westmoreland County**  
**Philadelphia Magazine: Top Attorneys**  
**in Pennsylvania**

I would be happy to accept referrals on Personal Injury and Wrongful Death cases. Reasonable referral fees are paid in accordance with the Code of Professional Responsibility.

**Survey of Judicial Candidates****Meagan Bilik  
DeFazio***continued from page 15***names of three members of the bar who have sufficient knowledge and/or experience regarding your litigation skills.**Ned Nakles, Jr., Esq.  
Rachel M. Yantos, Esq.  
Christopher Nichols, Esq.**Identify your single-most significant professional accomplishment and provide pertinent details. You may omit any confidential information.**

From a young age, I knew that I wanted to be a lawyer. I remember going to court with my father as often as he would agree to take me from about 8 years old and on. I always had the highest respect for lawyers and for the legal system itself. Therefore, I am very proud merely to be part of this profession. I believe in the legal system and I believe that it can work, if we always respect the roles that we each play in it.

My father always told me that it is the representation of a truly innocent

person that will measure your courage and define you as a lawyer.

Several years ago, I had the opportunity to represent a very young African American man from Pittsburgh in an attempted homicide case. This was a case best described as a “drive-by” shooting that occurred here in Westmoreland County. From the moment I met this young man, he was steadfast in his innocence, pleading that he was the scapegoat in this shooting. I took this profession of innocence with a grain of salt until I could look into the case further. As I pounded the pavement looking to locate and interview witnesses, I started to piece the story together and I realized that this young man was telling the truth! He was innocent and I was now convinced that he was simply in the wrong place at the wrong time and that the true perpetrators were placing the blame on him.

This is where the pressure came in. It now hit me that, if my client was convicted, he was looking at serving 20 years in prison. That was simply not an option to me. However, as in any criminal defense case, it was up to me, and me alone, to convince this

jury that he was not guilty. My client sat quietly at the defense table each day during the trial and I could see it in his eyes that he was praying that I knew what I was doing. He had truly put his life in my hands. He had spent nearly one year in prison awaiting trial and he was depending on me to finally get justice for him. I prepared my case backward and forward, upside down and back again. I felt that, if I lost, it was not going to be for lack of preparation.

After days of testimony, the jury deliberated and rendered a verdict of NOT GUILTY after only 30 minutes. My client nearly collapsed with relief. Then, he leaned over and sobbed on my shoulder repeating the words, “It’s finally over.” I knew that he was referring to this nightmare that he had been enduring for more than a year. I was so thankful to have been given the opportunity to help him. I followed the Sheriff’s van to the county prison and I waited outside just so that I could see him finally walk out the front doors to freedom.

The next day, I got a phone call from the victim in that case. Remarkably, he wanted to congratulate me on the acquittal. After hearing the evidence, he did not believe that my client was the shooter, either, and he did not want an innocent man to stay in prison. I will never forget how proud I felt at that moment. Justice was served and I was part of it. This case has remained my most memorable professional accomplishment.

**where in the world  
ARE THE WBA MEMBERS?**

*Jerry Fajit (left) and Mike Stewart (right) found themselves on the same tour of Ireland in May 2012. The two colleagues enjoyed a hearty lunch (and perhaps a beer or two) at Dirty Nelly’s pub, established in 1620 in the shadows of the famous Bunnratty Castle. Built in 1425, the castle was restored in 1954 to its medieval splendor and contains furnishings, tapestries, and works of art which capture the mood of those times.*

**BUNRATTY, IRELAND**

**Submit an example of your legal writing, such as a brief or other law-related document, which you feel best reveals your writing and analytical skills. The example should be sent to the WBA with the understanding that it will be posted on its website ([www.westbar.org](http://www.westbar.org)) for viewing by our readers and the public. You may redact any confidential information as well as the names of any individuals or entities which you deem appropriate.**

View “Memorandum of Law” online at [www.westbar.org/pdf/DEFAZIOwritingsample.pdf](http://www.westbar.org/pdf/DEFAZIOwritingsample.pdf). 🐾



**Survey of Judicial Candidates****William J. McCabe***continued from page 1*

I attended St. Vincent College and graduated in 1977 with high honors and a Bachelor of Arts Degree in Political Science.

**Law school(s) attended, date of graduation, any honors earned**

**or received, date of admission to the bar.**

I attended law school at Duquesne University and graduated in 1980. I was admitted to practice in Pennsylvania in December of 1980.

**Positions of employment since your admission to the bar and the dates of such employment.**

Laurel Legal Services, Inc., Greensburg, PA- January 1981 to July 1981.

Private Law Practice, solo practice at 13 South Maple Avenue, Greensburg, PA- August 1981 to December 1981.

Assistant District Attorney, Westmoreland County District Attorney's Office- January 1982 to August 1986.

Private Law Practice, shareholder in the firm of DeBernardo, Antoniono, McCabe & Davis, P.C.- September 1986 to Present.

**Membership in any law-related organizations in which you have been an active participant, describing your participation and length of membership.**

- Member, Westmoreland Bar Association-since 1980.
- Served as Board Member, Vice President, President Elect, President (1992-1993) and Immediate Past President of the Westmoreland Bar Association.

- Board Member, Westmoreland Bar Foundation- since 2007.
- Delegate, House of Delegates, Pennsylvania Bar Association- 12 years.
- President, Ned J. Nakles Inn of Court-currently serving first year of two year term.
- Board Member, Ned J. Nakles Inn of Court, 3 years.
- Member, Ned J. Nakles Inn of Court, approximately 15 years.
- Chair, Planning Committee, Westmoreland Bar Association-approximately 7 years.
- Member, Planning Committee-since creation of Committee.
- Member, Westmoreland Academy of Trial Lawyers-since 2001.
- Member and past Chair, Criminal Law Committee, Westmoreland Bar Associations-multiple years.
- Member, Criminal Law Committee, Pennsylvania Bar Association-multiple years.
- Member and past Chair, Municipal Law Committee, Westmoreland Bar Association-multiple years.
- Member, Municipal Law Committee, Pennsylvania Bar Association-multiple years.
- Member, Westmoreland County Collegium of Municipal Solicitors-multiple years.
- Member, Pennsylvania Association of Criminal Defense Lawyers-approximately 10 years.

**Membership in other organizations, including positions held and length of membership.**

- Board Member, Westmoreland Cleanways, Westmoreland County, Pennsylvania-approximately 3 years.
- Member, Finance Council, St. Agnes Church, North Huntingdon, Pennsylvania-approximately 10 years.
- Member, Diocesan Finance Council, Diocese of Greensburg, Greensburg, Pennsylvania-approximately 6 years.
- Rotarian, Norwin Rotary, North Huntingdon and Irwin, Pennsylvania-4 years.
- Board Member-elect, Norwin Rotary, North Huntingdon and Irwin, Pennsylvania.
- Member, Greensburg Turkey Trot Committee-multiple years.
- Past President, Norwin High School Football Boosters, North Huntingdon, Pennsylvania-approximately 10 years.
- Past President, Norwin High School Field Hockey Boosters, North Huntingdon, Pennsylvania-approximately 3 years.
- Former Board Member, Central Westmoreland Habitat for Humanity, Greensburg, Pennsylvania-approximately 4 years.
- Member, Inner Circle, BNI, Greensburg, Pennsylvania-6 years.

*continued on page 18***Get Connected!**

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**Survey of Judicial Candidates****William J. McCabe***continued from page 17*

**Describe your practice, identifying particular areas of expertise, if any, and how your practice breaks down by percentage in areas of real estate, personal injury, insurance defense, general litigation, family law, etc.**

For 32 years, my law practice has focused on litigation matters. Currently, I handle litigation matters in the following areas: personal injury litigation (25%); civil and orphan's court litigation (25%); and criminal defense in both state and federal courts (25%). I also handle a variety of other miscellaneous legal matters (15%), and serve as solicitor for the Derry Township Municipal Authority (10%).

Earlier in my career, I practiced family law, and served for many years as solicitor for the Westmoreland County Sheriff's Office, and the North Huntingdon Township Municipal Authority.

**If you claim litigation experience as a qualification, provide the names of three members of the bar who have sufficient knowledge and/or experience regarding your litigation skills.**

Members of our bar who have sufficient knowledge and/or experience regarding my litigation skills are Ned J. Nakles, L. Christian DeDiana, Richard H. Galloway and Anthony W. DeBernardo.

**Identify your single-most significant professional accomplishment and provide pertinent details. You may omit any confidential information.**

My single-most significant and rewarding professional accomplishment

has been being awarded the President's Award for Professionalism at the Westmoreland Bar Association's Annual Membership meeting on April 1, 2013.

**Submit an example of your legal writing, such as a brief or other law-related document, which you feel best reveals your writing and analytical skills. The example should be sent to the WBA with the understanding that it will be posted on its website ([www.westbar.org](http://www.westbar.org)) for viewing by our readers and the public. You may redact any confidential information as well as the names of any individuals or entities which you deem appropriate.**

View "Written Closing Argument of Petitioner, Irma J. McDivitt" online at [www.westbar.org/pdf/MCCABE\\_writingsample.pdf](http://www.westbar.org/pdf/MCCABE_writingsample.pdf). 📄

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**Survey of Judicial Candidates****Harry F. Smail, Jr.***continued from page 1*

BA – Political Science – Pre-Law; Honors Graduate, Recipient of the Scottish Rite of Freemasonry Merit Scholarship and the Nation Association of Credit Unions Localized Academic Scholarship,

Outstanding Young Man of America (1989), Outstanding Young College Student of America (1988), Kappa Alpha Phi Fraternity (several elected positions), Student Government Association, Law Club, Economics Club, Management Club; Graduation – May 1988

**Law school(s) attended, date of graduation, any honors earned or received, date of admission to the bar.**

Duquesne University, School of Law, Evening Program (1993-1997) Worked full-time as a Westmoreland County Probation/Parole Officer while putting myself through law school. Outstanding Young Man of America 1996, 1998, Who's Who Among American Law Students 1994, 1995, 1996, 1997, Phi Delta Phi: International Legal Fraternity 1996–present, Student Bar Association Representative 1993–1994, 1995–1996, 1996–1997.

**Positions of employment since your admission to the bar and the dates of such employment.**

Blum, Reiss & Plaitano Attorneys at Law, Associate 1997-1998

Law Offices of Harry F. Smail, Jr., P.C. Attorneys at Law, Owner/President 1998–present  
Self made. Built practice with average 50% increase in case development over the past sixteen (16) years.

**Membership in any law-related organizations in which you have been an active participant, describing your participation and length of membership.**

- A. Westmoreland County Sheriff's Office, Solicitor  
Length of Service 2012–present
- B. Westmoreland County Clerk of Courts Office, Solicitor  
Length of Service 2010–present
- C. Adamsburg Rescue 14, Solicitor  
Length of Service 2011–present
- D. Westmoreland County Republican Committee, Solicitor  
Length of Service 1998–2004, 2008–present
- E. Westmoreland Bar Association  
Current Vice-President  
Director of the Board  
Chair of the Membership Committee  
Chair of the Young Lawyers Committee Board  
Young Lawyers Liaison  
Planning Committee Member  
Civil Law Committee Member  
Criminal Law Committee Member  
Family Law Committee Member  
ADR Committee Member  
Bench/Bar Committee Member  
Municipal Law Committee Member  
Real Estate Law Committee Member  
Elder Law Committee Member  
Business/Employment Committee Member  
Bankruptcy Committee Member  
Orphan's Court Committee Member  
Young Lawyer's Committee Member  
Membership Committee Member  
Length of Membership 1997–present
- F. Federal Criminal Justice Act  
Appointee  
Length of Service 2000–present
- G. Laurel Legal Services, Inc.  
Director of the Board  
Length of Service 2004–2011
- H. Allegheny Bar Association  
Member in good standing  
Length of Membership 1997–2007
- I. Pennsylvania Bar Association  
Young Lawyers Member  
1997–2000  
Member in good standing  
Length of Membership 1997–present
- J. American Bar Association  
Bar Leadership Institute Attendee (2013)  
Member in good standing  
Length of Membership 1994–2013
- K. Christian Legal Society  
Member in good standing  
Length of Membership 2009–present
- L. Mediation Counsel of Western Pennsylvania  
Member in good standing  
Length of Membership 2012–present
- M. National Association of Community Mediation  
Member in good standing  
Length of Membership 2012–present
- N. National Association of Criminal Defense Lawyers  
Member in good standing  
Length of Membership 2003–present
- O. Association of Trial Lawyers of America  
Member in good standing  
Length of Membership 1994–2006
- P. American Association for Justice  
Member in good standing  
Length of Membership 2006–present
- Q. Republican National Lawyers Association  
Member in good standing  
Length of Membership 2012–present
- R. Pennsylvania Trial Lawyers Association  
Member in good standing  
Length of Membership 1998–present
- S. Pennsylvania Association of Criminal Defense Lawyers  
Member in good standing  
Length of Membership 2008–present

*continued on page 20*

**Survey of Judicial Candidates****Harry F. Smail, Jr.***continued from page 19*

- T. Pennsylvania Association of Justice  
Member in good standing  
Length of Membership  
2012–present
- U. Western Pennsylvania Trial Lawyers Association  
Member in good standing  
Length of Membership  
2008–present
- V. American Inns of Court  
Member in good standing  
Length of Membership  
1998–present
- W. The Federalist Society  
Member in good standing  
Length of Membership  
1996–present
- X. Hempfield Area School District,  
Moot Court Coach  
Length of Service 2008–2010
- Y. Pennsylvania Association of Probation, Parole and Correction  
Member in good standing  
Length of Membership  
1990–1998
- E. East Suburban Citizen Advocacy  
Honorary Member  
Length of Membership  
2007–Present
- F. United Way of Central Westmoreland  
Board Member  
Length of Service 1999
- G. The Rotary Club of Mountain View  
Member in good standing  
Length of Membership 1998
- H. The Rotary Club of Greensburg  
Member in good standing  
Length of Membership  
1998–2002/2009–Present
- I. Brotherhood of the Fraternal Order of Elks  
Member in good standing  
Length of Membership  
1994–Present
- J. Westmoreland Lodge 518, F. & A.M.  
Member in good standing  
Length of Membership  
1998–Present
- K. Ancient Accepted Scottish Rite of F. & A. M. of the Valley of Pittsburgh  
Member in good standing
- Length of Membership  
2010–Present
- L. Westmoreland Cultural Trust  
Member in good standing  
Length of Membership  
2009–Present
- M. Westmoreland Museum of Art  
Contributor Member  
Length of Service 2009–Present
- N. Westmoreland Jazz Society  
Member in good standing  
Length of Membership  
2009–Present
- O. Westmoreland County Chamber of Commerce  
Member in good standing  
Length of Membership  
1999–Present
- P. Westmoreland County Republican Committee  
Committeeman 1998–Present  
Young Republicans, Chair  
1998–2000  
Solicitor 1998–2004, 2008–Present
- Q. Business Advisory Counsel of the National Republican Congressional Committee  
Honorary Chairman 2006
- R. National Rifle Association (NRA)  
NRA member in good standing 1993–Present  
NRA Golden Eagles member in good standing 2008–Present  
NRA Life member in good standing 2012–Present
- S. Firearm Owners against Crime  
Member in good standing  
Length of Membership  
2011–Present  
Recommended for Judge  
2013
- T. Fraternal Order of Police Lodge 62  
Associate member in good standing  
Length of Membership  
2012–Present
- U. Greensburg Country Club  
Member in good standing  
Length of Membership  
2007–Present

**Membership in other organizations, including positions held and length of membership.**

- A. Goodwill Industries  
Board Member  
Length of Service  
2000–2002
- B. Boy Scouts of America  
Director of the Board  
Length of Service  
2010–2011
- C. Girl Scouts of America  
Director of the Board  
Length of Service  
2010–2011
- D. YWCA of Westmoreland County  
Member in good standing  
Length of Membership  
2013–Present

**USI Affinity is proud to be  
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- Life
- Professional Liability
- Short-Term Disability
- Long-Term Disability

V. American Slovan Home (ASH Club)

Member in good standing  
Length of Membership  
2005–Present

W. Hilltop Club

Member in good standing  
2009–Present  
Golf League Member 2010–Present

**Describe your practice, identifying particular areas of expertise, if any, and how your practice breaks down by percentage in areas of real estate, personal injury, insurance defense, general litigation, family law, etc.**

My practice is a self-made entrepreneurial establishment, that through extreme work ethic, applied discipline, decisive business administration and conservative fiscal management, has increased by an average fifty percent (50%) share each year since inception sixteen (16) years ago. My practice is a hands-on litigation institution committed to favorable client outcomes based upon undaunted fortitude to overcome obstacles, including trial, to gain positive resolution. My practice is particularly adept in all Family Law areas in Common Pleas Court and Appeal. We have achieved distinct expertise in perfecting the use of case law to advocate outcomes securing the best interest, care and welfare of the children. In my criminal representation of clients on state, federal or appellate levels, I have achieved great success in mitigating or reserving prior outcomes through diligent investigation and procedural application. This drive to go the extra mile for every client, whether private, court appointed, reduced fee or pro bono, has rewarded my office with a reputation of client commitment that has permitted my practice's quite successful growth. My

practice areas breakdown in the following percentage fields:

Family Law	30%
Criminal Law	20%
Federal Law (including Criminal, Civil, Bankruptcy and Adversarial Proceedings)	10%
Civil Law	5%
Personal Injury	5%
Estate Law	5%
Real Estate	5%
Employment Law	5%
Business Law	5%
Elder Law	5%
Vehicle Law	5%

These percentages also include appellate work to the Pennsylvania Superior Court, Pennsylvania Supreme Court and the 3rd Circuit Court of Appeals, when necessary.

**If you claim litigation experience as a qualification, provide the names of three members of the bar who have sufficient knowledge and/or experience regarding your litigation skills.**

John K. Greiner, John M. Ranker, and Lee R. Demosky

**Identify your single-most significant professional accomplishment and provide pertinent details. You may omit any confidential information.**

My single most significant professional accomplishment is successfully protecting the individual rights of my clients in the face of extreme adversity. In the submitted writing hereafter included, I was able to vacate and remand for a new trial a sentence of four (4) to ten (10) years for an older defendant, Joseph Robert Tedeski. When I first met Mr. Tedeski, all hope of bringing the truth to the Court's attention had been exhausted with a belief that success could not be achieved on appeal. Through careful and detailed analysis of Mr. Tedeski's trial and preliminary proceedings, I was able to establish overzealous representations that did not reflect the true facts regarding the innocence of my client. I applied all of my energies to vindicating this man who I believed in and whose wife faithfully complied with all of my directives to achieve Mr. Tedeski's freedom. Some attorneys

never get to experience the true sense of professional accomplishment of winning on appeal and giving another human being the liberty that was wrongfully denied him. In my years of legal practice this situation rarely presents itself where you can take on the power of the Commonwealth and overcome it through the Superior Court to bring true justice to a wronged individual.

I was presented the opportunity to defend the first challenge to the Castle Doctrine in Pennsylvania in the Fall of 2011 when Dr. Charles Gallo was charged for defending himself within his own vehicle, a clearly protected area under the Castle Doctrine enacted earlier in 2011. Through the

*continued on page 22*

## HOW STRONG ARE YOUR ADVISOR'S STRATEGIES?



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**Survey of Judicial Candidates****Harry F. Smail, Jr.***continued from page 21*

effort and fortitude of a very cooperative client and the assistance of Attorney Karen Kiefer, the charges of Dr. Gallo were ultimately withdrawn at the Preliminary Hearing. Significant lawyering and preparation through skilled negotiation by parties, that would prefer confidentiality, prevailed so that another innocent man was not wrongly prosecuted. To be involved in two (2) cases where justice prevailed, presented experience that solidified why I entered this most Honorable profession. My love of the law has motivated my desire to enter the judiciary for the ability to inspire equality, equity, neutrality and a level playing field for all parties and counsel that may come before my Court. My experiences through these significant professional accomplishments has strengthened my belief that common sense and common respect must prevail for justice to be preserved.

**Submit an example of your legal writing, such as a brief or other law-related document, which you feel best reveals your writing and analytical skills. The example should be sent to the WBA with the understanding that it will be posted on its website ([www.westbar.org](http://www.westbar.org)) for viewing by our readers and the public. You may redact any confidential information as well as the names of any individuals or entities which you deem appropriate.**

View "Brief for Appellant, Joseph Robert Tedeski" online at [www.westbar.org/pdf/SMAILwriting/sample.pdf](http://www.westbar.org/pdf/SMAILwriting/sample.pdf). 🐾

**For links to the judicial candidates' bios, writing samples, and campaign websites, visit [www.westbar.org/2013judicialcandidates](http://www.westbar.org/2013judicialcandidates).**



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## Westmoreland Law Journal

Legal advertisements, estate notices, court opinions, and other important notices are published every Friday in Westmoreland County's **only** authorized legal periodical—the **Westmoreland Law Journal**. A yearly subscription is \$52 and can be received either in the mail, or as a PDF file in your e-mail. View sample issues online at [www.westbar.org/wlj](http://www.westbar.org/wlj) and call 724-834-7260 to start your subscription today.

**New Member Sketches**

**EMILY FREED** has been admitted as a participating member of the WBA. She earned a bachelor's degree in Sociology from Saint Vincent College, her J.D. from Faulkner University's Thomas Goode Jones School of Law, and resides in Murrysville.

**CHRISTOPHER E. VINCENT** has joined the WBA as a participating member. Chris earned his undergraduate degree in History from Dickinson College, and his J.D. from the University of Pittsburgh. He works with Keystone Collections Group in Irwin, and lives in Dormont. 🐾

**Lawyers' Exchange****(Free to all members of the WBA)**

**CONTRACT LAW** Writing and negotiating contracts. I will accept referrals. Also will do research and writing for attorneys. Sharon Wigle—724-420-0937.

*Looking for a special way to remember someone?*

**Births • Deaths • Marriages • Anniversaries  
Making Partner • Passing the Bar**

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.



# Actions of the Board

## JANUARY 16, 2013

1. Accepted Membership Committee report as presented.
2. Agreed to provide education about the court of common pleas election in May by organizing “meet the candidate” events.
3. Authorized the executive committee to establish the parameters of a judicial candidate questionnaire that will be circulated to all candidates asking them to provide a bio and to answer questions regarding their interest in being judge and what they deem to be their qualifications for the position.
4. Authorized an independent survey to inquire of the bar members whether or not they believe each of the judicial candidates are recommended or not recommended or whether that candidate is not known to the member.
5. Authorized the board to publicize the candidate survey results to all media outlets and to use their discretion to ensure that the results are not politicized.
6. Authorized Board Member Tim Andrews to draft a letter to the commissioners outlining the WBA request to raise court-appointed attorney fees to be in line with those of surrounding counties.
7. Conferred honorary membership status on Robert McVey, who, at age 94+, recently retired from his New Kensington practice as the oldest living known member of the Westmoreland County Bar Association.
8. Received an updated report from the ad hoc e-filing committee regarding their ongoing meetings with Prothonotary Christina O’Brien and Court Administrator Paul Kuntz.

9. Authorized the expenditure to rent two buses, if needed, to provide membership transportation to Gettysburg for the battlefield tour scheduled for June 8.

## FEBRUARY 28, 2013

1. Accepted Membership Committee report as presented.
2. Authorized the addition of \$15,000 to the WBA investment fund.
3. Authorized the expenditure of \$2,500 to the PBA specifically to the PBA PAC account.
4. Agreed to research appropriate agency to help with attorneys who need short-term assistance due to emergency health issues and agreed to have law practice management committee offer education to attorneys about these kinds of issues.
5. Agreed to get a second bid for roofer to install a roof hatch.
6. Approved the partnering of the documentary/CLE “Art of the Steal” with Community Foundation, with the Community Foundation to absorb all associated costs.
7. Agreed to support the YL this year with a bigger and better tent at the croquet event and to use the tent as a marketing event for the WBA.
8. Tabled the format for the judicial candidate survey until the March board meeting.
9. Heard report on e-filing: group had traveled to Allegheny County to review their e-filing system and learned that their program was customized for them and that we could not just purchase their program for implementation in Westmoreland County. The group also had a conference call with the existing purveyor to explore their e-filing component.
10. Agreed to solicit participation in Tim’s Walk on April 19 at 7 pm at Twin Lakes. 🌿

## BRIEFLY SPEAKING



**George Butler** began a two-year term as President of the Catholic Charities of the Diocese of Greensburg Board at its annual meeting held in April. Each year, Catholic Charities receives thousands

of calls for various forms of assistance and provides financial help for over 1,000 families and individuals, regardless of their religious affiliation. 🌿



The Pennsylvania Bar Association Conference of County Bar Leaders (CCBL) recently honored **Robert I. Johnston** with its Chief Justice John P. Flaherty Award. The award was

presented during the 47th Annual Seminar of the Conference of County Bar Leaders, February 21–23, in State College.

The Flaherty Award honors the work of an association member for supporting and promoting the projects and purposes of the CCBL and for efforts to improve the legal profession, the justice system and the community.

Bob was a founder and the first president of the Ned J. Nakles American Inn of Court and serves on its executive committee. He is a past president of the Westmoreland Bar Association and served as chair of the Alternative Dispute Resolution, Civil Litigation, Criminal Law and Lawyers Concerned for Lawyers committees.

Bob served on the PBA Board of Governors and serves on the Pennsylvania Bar Insurance Fund and Trust Board. He is a former chair of the PBA Professional Liability Committee and has traveled statewide to present malpractice avoidance programs.

The CCBL, whose membership includes leaders from county bar associations throughout the state and from the PBA, organizes a yearly educational conference focusing on the exchange of innovative bar association projects and ideas and on the development of mutually-beneficial relationships among bar leaders that improve the legal profession. 🌿



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## CALENDAR OF EVENTS

*All committee meetings and activities will be held at the WBA Headquarters unless otherwise noted. Visit [www.westbar.org](http://www.westbar.org) for more information about activities and CLE courses, or to **register online**.*

### MAY

- 8** Real Estate Committee, Noon  
Judicial Candidates Forum, 7 p.m., University of Pittsburgh at Greensburg, Ferguson Theater
- 9** Membership Committee, Noon
- 14** [CLE] A Quick Primer in Unemployment Compensation Claims & An Introduction to Veterans Disability Benefits, Noon to 1:15 p.m., 1 optional substantive credit
- 16** Elder Law & Orphans' Court Committees, Noon  
Dine Around: The Touchdown Club II, Latrobe, 6 p.m.
- 21** Family Law Committee, Noon

- 27** Courthouse closed in observance of Memorial Day
- 28** Criminal Law Committee, Noon
- 29** 51st Annual Memorial Service of the Westmoreland Bar Association, Noon, Westmoreland County Courthouse, Ceremonial Courtroom No. 3

### JUNE

- 8** Gettysburg Battlefield Tour, Gettysburg, Pa.
- 13** 27th Annual Bench/Bar
- 14** Conference, Oglebay Resort & Conference Center, Wheeling, W.Va.
- 14** Courthouse closed in observance of Flag Day

## 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](http://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.



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**The tradition  
continues!**

# WBA Bench/Bar Conference

Oglebay Resort & Conference Center, Wheeling, W.Va., June 13–14, 2013

The Bench/Bar Conference is a great opportunity to get to know your fellow lawyers and judges in a relaxed, friendly atmosphere. With golf, free CLE seminars, excursions, a vendor exhibit, and the Hospitality Suite, the Bench/Bar Conference will be an experience to remember. *Never been to a Bench/Bar Conference before? Then this is your year.* Oglebay is a fan-favorite for our “usual” attendees. *Why not make this the year to join us?*

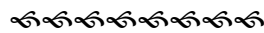
**Register online today at  
[www.westbar.org](http://www.westbar.org) or call 724-834-6730.  
*Hurry! Registration deadline is May 17!***

**Join us  
Thursday, June 13  
& Friday, June 14**

Please join us in remembering our friends and colleagues at the

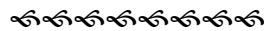


*Westmoreland Bar Association's*  
*51st Annual Memorial Service*  
*Westmoreland County Courthouse, Courtroom #3*  
*\*\*\*\*\* Wednesday, May 29, 2013 \*\*\*\*\**  
*At 12:00 pm*



*In remembrance of:*

*J. Raymond Ambrose*  
*Richmond H. Ferguson*  
*Donald R. Hacker*  
*Robert I. Johnston*  
*James L. Liberto*  
*Timothy J. McCormick*  
*Robert A. Nedwick*  
*Carol J. Sokolski*  
*H. Nevin Wollam*



Kindly notify the bar office in advance if you intend to share a special memory.

**Following the service, a complimentary luncheon will be held at the  
Palace Theatre's Megan Suite & Courtyard.**

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**2013 WBA Memorial Service Registration**

*Fax 724-834-6855 or return to WBA, 129 North Pennsylvania Avenue,  
Greensburg, PA 15601, or register online at [www.westbar.org](http://www.westbar.org).*

\_\_\_\_\_ I will attend the Memorial Service on **Wednesday, May 29, 2013** at 12 pm in Courtroom #3.

Name (please print) \_\_\_\_\_

# 2013-2014 Westmoreland Bar Association Committee List

## ACTIVITIES

Co-Chair - Joyce Novotny-Prettiman  
Co-Chair - Jessica L. Rafferty  
Rebecca A. Brammell  
Charles J. Dangelo  
David S. DeRose  
Aimee R. Jim  
Jon M. Lewis  
R. Jerry Little  
John M. Noble  
Kerri Ann Shimborske-Abel

## ADR

Chair - John M. Noble  
Dara A. DeCourcy  
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David S. DeRose  
The Honorable Anthony G. Marsili  
Joyce Novotny-Prettiman  
Harry F. Smail Jr.  
Susan N. Williams  
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Randall G. Klimchock  
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Philip V. McCalister  
Gino F. Peluso  
Corey J. Sacca  
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Harry F. Smail Jr.  
Gregory L. Taddonio

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Co-Chair - John M. Hauser III  
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Samuel R. Coury  
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Morrison F. Lewis Jr.  
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Harry F. Smail Jr.  
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Christopher P. Skatell  
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Patrick T. Noonan  
Rolf Louis Patberg  
Harry F. Smail Jr.  
Richard C. Thiele  
Paul J. Ward  
Sharon L. Wigle

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Jack L. Bergstein  
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B. Patrick Costello  
Stephen M. Crevak  
Eric H. Dee  
Michael D. Ferguson  
Shane M. Gannon  
James A. Horchak  
Daniel Joseph  
James S. Lederach  
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Ronald S. Lombard  
Larry D. Loperfito  
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Jessica L. Rafferty  
John M. Ranker  
David L. Robinson  
Dwayne E. Ross  
John N. Scales  
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Donald J. Snyder Jr.  
Cindy Stine  
Richard C. Thiele  
Kristen C. Weidus  
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Susan N. Williams  
Harvey A. Zalevsky

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Jeremy R. Boby  
Eric H. Dee  
Michael J. Drag  
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James M. Fox  
Shane M. Gannon  
The Honorable Rita D. Hathaway  
John M. Hauser III  
Daniel Joseph  
Henry L. Moore  
Judith Potoka Petrush  
Dennis E. Shean  
Harry F. Smail Jr.  
Allison E. Thiel  
Leslie J. Uncapher  
Sharon L. Wigle

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Co-Chair - M. Samuel Rosenzweig  
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James T. Boggs  
Linda Broker  
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William F. Caruthers II  
Peter P. Cherellia  
Barbara J. Christner  
James J. Conte  
George A. Conti Jr.  
B. Patrick Costello  
Samuel R. Coury  
K. Casey Crytzer  
Matthew A. Curiale  
Michael G. Dailey  
Sandra E. Davis  
David S. DeRose  
Terrance C. Ferguson  
Richard F. Flickinger  
James M. Fox  
Marilyn M. Gaut  
Dennis J. Gounley  
Peggy Henry Hooker  
James A. Horchak  
Stuart J. Horner Jr.  
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Ronald S. Lombard  
The Honorable Anthony G. Marsili  
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Bruce C. Tobin  
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## FAMILY LAW

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Co-Chair - Hope A. Aston  
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Eileen C. Billey  
Marla R. Blum  
The Honorable Michele G. Bononi  
Eric E. Bononi  
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William F. Caruthers II  
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Amy M. DeMatt  
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Allison E. Thiel  
Bruce C. Tobin  
Emily K. Trisoline  
Peter F. Troglia  
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Linda L. Whalen  
William J. Wiker  
Harvey A. Zalevsky

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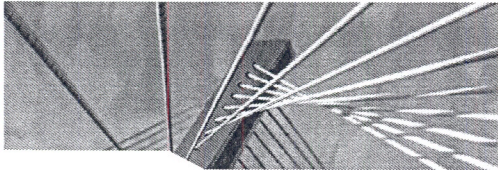
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Keeping income strong

## Premier Protection for Your Income

You've spent a significant amount of time, money and energy to become the professional you are today. That investment should be protected with comprehensive individual disability income insurance. If you become too sick or injured to work, disability income insurance can help replace your income better allowing you to maintain your lifestyle. Our ProVider Plus\* policy, including its premier options, is purposefully designed for high performance during and after a disability.

### Product Highlights:

- A definition of total disability that makes it possible for you to work in another occupation and still be eligible for disability benefits
- Graded premiums that help make the initial cost of coverage more affordable while you're beginning your career

### The Reality — We're Vulnerable

3 in 10 Americans suffer a disability lasting 3 months or longer before age 65<sup>1</sup> and the causes of disabilities are more common than you might think. According to a claims review conducted by the Council for Disability Awareness, common examples of long-term disabilities include:

- Neck and back pain; joint, muscle and tendon disorders; foot, ankle and hand disorders
- Cancer
- Heart and circulatory disorders, strokes
- Physical injuries

Source: Council for Disability Awareness (CDA), Long-Term Disability Claims Review, 2010.

### Keeping your income strong

- A ProVider Plus disability income insurance policy pays a monthly benefit if you become too sick or injured to work
- Industry-leading<sup>2</sup> coverage pays benefits for more sources of income, including
  - Base salary
  - Incentive compensation
  - Retirement contributions
- Flexibility to purchase additional coverage as your income increases
- Those who own or apply for ProVider Plus may be eligible for our Student Loan Protection Program<sup>3</sup>
- Our Special Limits for New Professionals Program helps you obtain high quality coverage without proof of income

**James T. Boggs, JD, CLTC**  
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\* Disability insurance policy forms I400, I500 and I600 are underwritten and issued by Berkshire Life Insurance Company of America, Pittsfield, MA, a wholly owned stock subsidiary of The Guardian Life Insurance Company of America, New York, NY. Product availability, provisions and features may vary from state to state.

<sup>1</sup> Life and Health Insurance Foundation For Education (LIFE), Disability Insurance: Who Needs It? 2009. Available online at: <http://lifehappens.org/disability-insurance/who-needs-it>.

<sup>2</sup> Ranked #1 in non-cancelable individual disability income insurance according to 2010 LIMRA International U.S. Individual Disability Income Insurance Annual Review Report, based on 2009 annualized premium.

<sup>3</sup> Student Loan Protection is available on Guardian policy AH55-A. Certain conditions and eligibility requirements apply.



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