

Erie County Legal Journal

July 22, 2011

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Frank v. TeWinkle and Sciarrino AND Frank v. Stuczynski and Bernard

Erie County Legal Journal

*Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania*

Managing Editor: Heidi M. Weismiller
Administrator of Publications: Paula J. Gregory

PLEASE NOTE: NOTICES MUST BE RECEIVED AT THE ERIE COUNTY BAR ASSOCIATION OFFICE BY 3:00 P.M. THE FRIDAY PRECEDING THE DATE OF PUBLICATION.

All legal notices must be submitted in typewritten form and are published exactly as submitted by the advertiser. The Erie County Bar Association will not assume any responsibility to edit, make spelling corrections, eliminate errors in grammar or make any changes in content.

The Erie County Legal Journal makes no representation as to the quality of services offered by an advertiser in this publication.

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Erie County Bar Association

Calendar of Events and Seminars

TUESDAY, JULY 26, 2011

Intimate Partners/Legal Strangers: A Guide for Representing Unmarried Couples

PBI Video Seminar

Erie County Bar Association

9:00 a.m. – 1:30 p.m. (8:30 a.m. reg.)

\$129 (member) \$109 (admitted after 1/1/07)

\$149 (nonmember)

4 hours substantive

WEDNESDAY, JULY 27, 2011

Fundamentals of Civil Practice

PBI Groupcast Seminar

Erie County Bar Association

9:00 a.m. – 1:15 p.m. (8:30 a.m. reg.)

\$224 (member) \$204 (admitted after 1/1/07)

\$244 (nonmember)

Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee: \$199(member) \$179(admitted after 1/1/07) \$219(nonmember)

4 hours substantive

THURSDAY, JULY 28, 2011

A Conversation with the United States Trustee's Office

PBI Video Seminar

Erie County Bar Association

9:00 a.m. – 11:00 a.m. (8:30 a.m. reg.)

\$89 (member) \$99 (nonmember)

2 hours substantive

MONDAY, AUGUST 8, 2011

Bob Dylan and the Art of Taking Legal Ethics Seriously

PBI Video Seminar

Erie County Bar Association

9:00 a.m. – 10:00 a.m. (8:30 a.m. reg.)

\$49 (member) \$59 (nonmember)

1 hour ethics

TUESDAY, AUGUST 9, 2011

Pennsylvania Taxes – Update and Selected Topics

PBI Groupcast Seminar

Erie County Bar Association

9:00 a.m. – 1:15 p.m. (8:30 a.m. reg.)

\$254 (member) \$234 (admitted after 1/1/07)

\$274 (nonmember)

Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee: \$229 (member) \$209 (admitted after 1/1/07) \$249 (nonmember)

4 hours substantive

WEDNESDAY, AUGUST 10, 2011

The Nine Principles of Litigation, And Perhaps of Life

PBI Groupcast Seminar

Erie County Bar Association

8:30 a.m. – 3:30 p.m. (8:00 a.m. reg.)

Lunch is Included

\$354 (member) \$334 (admitted after 1/1/07)

\$374 (nonmember)

Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee: \$329 (member) \$309 (admitted after 1/1/07) \$349 (nonmember)

5 hours substantive / 1 hour ethics

THURSDAY, AUGUST 11, 2011

Litigating the Failed Real Estate Deal

PBI Video Seminar

Erie County Bar Association

9:00 a.m. – 12:30 p.m. (8:30 a.m. reg.)

\$129 (member) \$109 (admitted after 1/1/07)

\$149 (nonmember)

2 hours substantive / 1 hour ethics

TUESDAY, AUGUST 16, 2011

Legal Issues in Advertising

PBI Video Seminar

Erie County Bar Association

9:00 a.m. – 1:30 p.m. (8:30 a.m. reg.)

\$129 (member) \$109 (admitted after 1/1/07)

\$149 (nonmember)

3 hours substantive / 1 hour ethics

TUESDAY, AUGUST 16, 2011

Lincoln on Professionalism

PBI Groupcast Seminar

Erie County Bar Association

9:00 a.m. – 12:15 p.m. (8:30 a.m. reg.)

\$214 (member) \$194 (admitted after 1/1/07)

\$234 (nonmember)

Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee: \$189 (member) \$169 (admitted after 1/1/07) \$209 (nonmember)

3 hours ethics

2011 BOARD OF DIRECTORS

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ALAN FRANK, Plaintiff

v.

LAURIE C. TeWINKLE and ANTHONY SCIARRINO, Defendants

ALAN FRANK, Plaintiff

v.

JAMES J. STUCZYNSKI and BRUCE W. BERNARD, Defendants

PLEADINGS / PRELIMINARY OBJECTIONS

Demurrers should be sustained only where Plaintiff has clearly failed to state a claim upon which relief might be granted.

PLEADINGS / PRELIMINARY OBJECTIONS

Demurrers should not be sustained if there is any doubt as to whether a complaint adequately states a claim of relief under any theory.

PLEADINGS / PRELIMINARY OBJECTIONS

Only factual allegations in a complaint, and not legal conclusions, are to be considered to be true for purposes of ruling on a demurrer.

CHAMPERTY AND MAINTENANCE

ChamPERTY is an agreement between a litigant and a party unrelated to the litigation, in which the unrelated party helps pursue the claim in consideration for part of the proceeds of the litigation.

CHAMPERTY AND MAINTENANCE

There are three (3) elements to a champertous claim: (1) the unrelated party has no legitimate interest in the suit; (2) the unrelated party must expend its own resources in pursuit of the claim; and (3) the unrelated party must be entitled to share in the proceeds of the suit.

CHAMPERTY AND MAINTENANCE

Champertous agreements are repugnant to public policy.

CHAMPERTY AND MAINTENANCE

The common law prohibition against champerty continues to be a viable doctrine in Pennsylvania.

CIVIL PROCEDURE / STANDING

A plaintiff who sues on the basis of a champertous agreement is not a "real party in interest" and lacks standing to maintain such an action. Pa.R.C.P. 2002.

CHAMPERTY AND MAINTENANCE

Where a plaintiff comes to litigation on the basis of the assignment of a claim in which the assignor continues to maintain a contingent interest, the underlying assignment is champertous. The assignee is not a real party in interest and lacks standing to maintain the action.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY,
PENNSYLVANIA CIVIL ACTION - LAW

Nos. 13524-2010 and 13585-2010 respectively

Appearances: Alan Frank, *Pro Se* Plaintiff
 Patrick M. Carey, Esq., Attorney for Defendants Sciarrino
 and Tewinkle
 James R. Schadel, Esq. and Gregory J. Norton, Esq.,
 Attorneys for Defendants Stuczynski and Bernard

OPINION

Connelly, J., June 21, 2011

This matter is before the Court pursuant to Preliminary Objections filed by Bruce W. Bernard and James J. Stuczynski (hereinafter "Defendants Bernard and Stuczynski"). Alan Frank (hereinafter "Plaintiff") opposes. Also before the Court are Preliminary Objections filed by Laurie C. Tewinkle and Anthony Sciarrino (hereinafter "Defendants Tewinkle and Sciarrino"). Plaintiff opposes.¹ Finally, before the Court is Plaintiff's Motion Seeking a Determination as to the Necessity of Filing a Certificate of Merit.

Statement of the Facts

The instant matter stems from two separate lawsuits filed by Plaintiff, both alleging breach of contract. Plaintiff admits to being a former Pennsylvania attorney whose license has been suspended since July 15, 1988. *Plaintiff's Reply to Defendants Tewinkle and Sciarrino's Preliminary Objections*, ¶10. Through an advertisement for Overcharge Recovery Co., Plaintiff solicited the assignment of the claims of Arthur Voorhis (13524-2010) and Kenneth and Alexis Plonski (13585-2010). Following the assignments, Plaintiff initiated these lawsuits alleging Defendant Attorneys breached their contract with their clients by making unauthorized disbursements from settlements for attorney fees. *See Amended Complaints*.

Defendants allege Plaintiff is engaged in the unauthorized practice of law as evidenced by the advertisement and the "Assignment of Claims and Choses in Action" in which Plaintiff agrees to pay the assignors a percentage of the net proceeds recovered in the instant matters.

Defendants Sciarrino and Tewinkle filed Preliminary Objections alleging Plaintiff's failure to attach a copy of the Assignment and the settlement disbursement documents is in violation of Pa.R.C.P. No. 1019(i). *Defendants Sciarrino and Tewinkle, Preliminary Objections*, ¶13. Defendants Sciarrino and Tewinkle also allege Plaintiff has a lack of capacity to sue and the claims filed by Plaintiff constitute champerty and as such must be dismissed. *Defendants Sciarrino and Tewinkle's Preliminary Objections*, ¶¶1-29.

¹ The Court notes the above cases are related cases and have not been consolidated. However, as the parties present nearly identical arguments as to the Preliminary Objections, the Court will address both cases in one single Opinion.

Defendants Bernard and Stuczynski filed Preliminary Objections alleging Plaintiff failed to attach a copy of the Assignment, the written contract and the disbursement agreements. Defendants also allege Plaintiff cannot establish a breach of contract, Plaintiffs claim is champertous and void as against public policy, Pennsylvania law does not support this type of assignment and Plaintiff is not entitled to punitive damages. *Defendants Bernard and Stuczynski's of Preliminary Objections*, ¶¶ 1-21.

Plaintiff filed replies to the Preliminary Objections and Briefs in Support thereof. However, he did not file the Briefs with the Prothonotary, therefore, they are not included on the docket. Because the Briefs were filed with the Court and were served upon Defendants, the Court will still consider Plaintiff's arguments despite the fact the Briefs are not officially part of the record.

The Court will address the issues in light of the relevant Pennsylvania Law.

Analysis of Law

I. Legal Insufficiency of a Pleading (Demurrer) - Champerty

The question presented by a demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. *Eckell v. Wilson*, 597 A.2d 696, 698 (Pa. Super. 1991), *appeal denied*, 607 A.2d 253 (Pa. 1992). A demurrer should be sustained only in cases where the plaintiff has clearly failed to state a claim on which relief may be granted. *Id.* A demurrer should not be sustained if there is any doubt as to whether the complaint adequately states a claim for relief under any theory. *Id.* Only the factual allegations in a complaint are considered to be true for the purposes of a demurrer, not the pleader's conclusions of law. *Id.*

Defendants Sciarrino and TeWinkle and Defendants Bernard and Stuczynski both allege because Plaintiff "bought" litigation he had no interest in, is paying the fees associated with the litigation, and is retaining a percentage interest in the litigation, the purported assignment is a champertous contract that is not enforceable. *Defendants Bernard and Stuczynski Preliminary Objections*, ¶19; *See also Defendants Sciarrino and TeWinkle's Preliminary Objections*, ¶22. Defendants also allege public policy prohibits such an assignment as it constitutes the unauthorized practice of law. *Id.*

Plaintiff argues by assignment he became the exclusive owner of 100% of the proceeds of the suits. He avers the clients, Mr. Voorhis and Mr. and Mrs. Plonski have no interest in the instant litigation. Plaintiff contends he is merely a factor, not a champertor. *Plaintiff's Brief in Opposition to Defendants TeWinkle and Sciarrino's Preliminary Objections*, pp. 3-4.

Champerty is "an agreement between an officious intermeddler in a lawsuit and a litigant by which the intermeddler helps pursue the

litigant's claim as a consideration for receiving part of the judgment proceeds." *Black's Law Dictionary, Ninth Edition (2009)*. An assignment of a cause of action is not champertous in fact unless the agreement of assignment includes the proviso that the assignee will pay the assignor a share of the proceeds of the litigated matter. *See generally 15-83 Corbin on Contracts § 83.10 (2010)*.

There are three distinct elements contained in the definition of champerty. *Belfonte v. Miller*, 243 A.2d 150, 152 (Pa.Super. 1968). The party involved must be one who has no legitimate interest in the suit; he must expend his own money in prosecuting the suit; and, finally, he must be entitled by the bargain to a share in the proceeds of the suit. *Id.* "A champertous agreement is one in which a person having otherwise no interest in the subject matter of an action undertakes to carry on the suit at his own expense in consideration of receiving a share of what is recovered." *Richette v. Pennsylvania R.R.*, 187 A.2d 910, 920 (Pa. 1963).

Instantly, Plaintiff acquired an assignment of the clients' interests by paying cash for them. Absent these assignments, Plaintiff has no legitimate interest in the suits. Second, Plaintiff is spending his own money in prosecuting the suits as he is the *pro se* Plaintiff and as such is responsible for the filing fees and the costs associated with the pursuit of the instant cases. Finally, the assignments give Plaintiff an interest in the proceeds of the suits.² Both of the Assignments state in Paragraph Two "[a]s consideration for, and in full payment of said sale, transfer and assignment of all of said claims, causes and choses in action, [Plaintiff] hereby transfers to [clients] the sum of [redacted] ... [Plaintiff] hereby agrees to pay [clients] for said cooperation services an amount equal to [redacted] of the net proceeds [Plaintiff] recovers." *Defendants Bernard and Stuczynski's Preliminary Objections, Attachment; Defendants' Sciarrino and Tewinkle's Preliminary Objections, Exhibit 5*.

Plaintiff avers that in a champertous transaction, the champertor acquires a partial or non-exclusive interest in the litigation of another, thereby exposing the defending litigant to the risk of duplicitous liability to both the champertor and his assignor. Plaintiff argues that by virtue of the assignments, Plaintiff became the owner of 100% of the proceeds of the instant suit and no other persons have interest in the suit. *Plaintiff's Reply to Defendants Bernard and Stuczynski's Preliminary Objections, p. 2*.

² The Assignment at Docket 13585-2010 signed on July 29, 2010 by Plaintiff and Alexis and Kenneth Plonski states in Paragraph One the Plonskis "sell, assign and transfer all of their right, title and interest in any and all claims, causes or choses in action that [they] might have against any person, firm or corporation that received any portion of the proceeds of said verdict and settlement." Such a transfer was made for a sum of money, which Plaintiff has redacted in the assignment documents provided to the Court. The Assignment at Docket 13524-2010 signed on July 22, 2010 by Plaintiff and Arthur Voorhis includes the same language at Paragraph One.

However, a careful reading of the assignments reveals that each assignment provides in Paragraph Six³ "[Plaintiff] hereby agrees to pay Victim for said cooperation services an amount equal to [redacted] of the net proceeds [Plaintiff] recovers." *Defendants Tewinkle and Sciarrino's Preliminary Objections, Exhibit 5*. In spite of Paragraph Six, Plaintiff still avers that pursuant to Paragraphs One and Two (above) he is the owner of 100% of the proceeds of the instant actions.

Defendants Bernard and Stuczynski assert Plaintiff has not received an assignment, rather, he has agreed to "buy a claim" and retain only a percentage of that claim. *Defendants Bernard and Stuczynski's Brief in Support of Preliminary Objection, p. 4*. Defendants allege that such a deal is void as against public policy. *Id.*

A bargain to endeavor to enforce a claim in consideration of a promise of a share of the proceeds, or any other fee contingent on success, is illegal, if it is also part of the bargain that the party seeking to enforce the claim shall pay the expenses incident thereto unless such party already has or reasonably believes he has an interest recognized by law in the claim.

Belfonte v. Miller, 243 A.2d 150, 152 (Pa.Super. 1968).

The Commonwealth Court held in *Clark v. Cambria County Board of Assessment Appeals* the activity of champerty has long been considered repugnant to public policy against profiteering and speculating in litigation and grounds for denying the aid of the court. *Clark v. Cambria County Bd. of Assessment Appeals*, 747 A.2d 1242, 1245-46 (Pa. Cmwlth. 2000), *appeal denied*, 598 A.2d 1292 (Pa. 2002). The common law doctrine against champerty and maintenance continues to be a viable doctrine in Pennsylvania and can be raised as a defense. *Kenrich Corp. v. Miller*, 377 F.2d 312, 314 (3d Cir. 1967); *Westmoreland County v. Rodgers*, 693 A.2d 996 (Pa. Cmwlth. 1997). Moreover, a plaintiff who sues on what would be another's claim except for such champertous agreement will not be permitted to maintain an action as such a plaintiff is not a "real party in interest" as required by Pa. R.C.P. No. 2002 and would not have standing to maintain the action. *Clark*, 747 A.2d at 1246.

Pa.R.C.P. No. 2002 provides:

(a) Except as otherwise provided in clauses (b), (c) and (d) of this rule, all actions shall be prosecuted by and in the name of the real party in interest, without distinction between contracts under seal and parol contracts.

³ The Assignment at Docket 13585-2010 appears to be misnumbered, therefore the above statement begins at Paragraph Five and ends at Paragraph Six. See *Defendants Bernard and Stuczynski's Preliminary Objections, Attachment*.

(b) A plaintiff may sue in his or her own name without joining as plaintiff or use-plaintiff any person beneficially interested when such plaintiff

1. is acting in a fiduciary or representative capacity, which capacity is disclosed in the caption and in the plaintiff's initial pleading.; or
2. is a person with whom or in whose name a contract has been made for the benefit of another.

Pa.R.C.P No. 2002. To be a real party in interest one must not merely have an interest in the result of the action, but must be in such command of the action as to be legally entitled to give a complete acquittal or discharge to the other party upon performance. *Clark*, 747 A.2d 1242. A person cannot invoke the jurisdiction of a court to enforce private rights, or to maintain a civil action for the enforcement of such rights, unless that person has some real interest in the cause of action, or a legal right, title, or interest in the subject matter of the controversy. *Sierra Club v. Hartman*, 605 A.2d 309 (Pa. 1992).

In *Clark*, the Commonwealth Court held agreements between a non-interested third-party who solicited property owners for the purposes of providing services in the preparation and filing of tax assessment appeals and the property owners were champertous. *Clark*, 747 A.2d 1247. The Court agreed with the trial court's determination that the agreements were champertous because the third-party was not a person aggrieved by the assessments involved and therefore had no legitimate interest in the suit; the litigations were entirely financed by the third-party and not by the property owners; and that the third-party shared in the benefits of the appeals as the third-party received a portion (usually 100%) of the tax reduction for the first year. *Id.* The Court held because the agreements were champertous, the uninterested third-party was not the real party in interest and the trial court was without jurisdiction to hear the appeals. *Id.*

Similarly, Plaintiff is a third-party who was not aggrieved by the alleged wrongs of Defendants and therefore has no legitimate interest in the suit. Plaintiff is financing the litigation⁴ and should he prevail, Plaintiff will get a portion of the proceeds of the suits. Therefore, because the Assignments between Plaintiff and Arthur Voorhis and Kenneth and Alexis Plonski are champertous, they are void as against public policy.

Plaintiff is not the real party in interest and is without standing to pursue the instant matters. Therefore, the suits must be dismissed.

⁴ A close look at the dockets reveals Plaintiff paid all of the filing fees associated with Erie County Dockets 13585-2010 and 13524-2010.

The Court need not discuss the merits of Defendants' other Preliminary Objections nor the merits of the Necessity of Filing a Certificate of Merit as they have been rendered moot by instant cases' dismissal.

ORDER

AND NOW, TO-WIT, this 21st day of June, 2011, it is hereby **ORDERED, ADJUDGED and DECREED**:

1. Defendants Sciarrino and Tewinkle's Preliminary Objection in the Nature of a Demurrer is **GRANTED**. The action at Docket 13524-2010 is **DISMISSED**.
2. Defendants Stuczynski and Bernard's Preliminary Objection in the Nature of a Demurrer is **GRANTED**. The action at Docket 13585-2010 is **DISMISSED**.

BY THE COURT:

/s/ **Shad Connelly, Judge**

CHANGE OF NAME NOTICE
IN THE COURT OF COMMON
PLEAS OF ERIE COUNTY,
PENNSYLVANIA

Docket No. 12499 of 2011

IN RE: Kylie Briel Allen, a minor
Notice is hereby given that Jill
Kulyk, on behalf of Kylie Briel
Allen, filed a Petition in the above
named Court requesting an order
to change the name of Kylie Briel
Allen to Kylie Briel Allen-Kulyk.

The Court has fixed the 7th day of
September, 2011, at 8:45 a.m. in
Courtroom B of the Erie County
Courthouse, 140 W. 6th St., Erie,
PA 16501 as the time and place for
the hearing on said petition, when
and where all interested parties
may appear and show cause, if any
they have, why the prayer of the
Petitioner should not be granted.

Jul. 22

CHANGE OF NAME NOTICE
IN THE COURT OF COMMON
PLEAS OF ERIE COUNTY,
PENNSYLVANIA

Docket No. 12495-2011

IN RE: Robert Warren Campbell
Notice is hereby given that a
Petition has been filed in the above
named Court requesting an order to
change the name of Robert Warren
Campbell to Levi Robert Campbell.
The Court has fixed the 23rd day
of August, 2011, at 11:45 a.m. in
Courtroom I-217 of the Erie County
Courthouse, 140 W. 6th St., Erie,
PA 16501 as the time and place for
the hearing on said petition, when
and where all interested parties
may appear and show cause, if any
they have, why the prayer of the
Petitioner should not be granted.

Jul. 22

CHANGE OF NAME NOTICE
IN THE COURT OF COMMON
PLEAS OF ERIE COUNTY,
PENNSYLVANIA

Docket No. 12544-2011

IN RE: James Alan South

Notice is hereby given that a
Petition has been filed in the above
named Court requesting an order
to change the name of James Alan
South to James Alan Irons.

The Court has fixed the 24th day

of August, 2011, at 10:00 a.m. in
Courtroom A of the Erie County
Courthouse, 140 W. 6th St., Erie,
PA 16501 as the time and place for
the hearing on said petition, when
and where all interested parties
may appear and show cause, if any
they have, why the prayer of the
Petitioner should not be granted.

Jul. 22

LEGAL NOTICE

A Petition for Reinstatement to
the active practice of law has
been filed by DAN W. SUSI and
will be the subject of a hearing on
August 30, 2011 before a hearing
committee designated by the Board.
Anyone wishing to be heard in
reference to this matter should
contact the District IV Office of the
Disciplinary Board of the Supreme
Court of Pennsylvania, Suite 1300,
Frick Building, 437 Grant Street,
Pittsburgh, PA 15219, phone: 412-
565-3173, on or before August 19,
2011.

Elaine M. Bixler

Secretary of the Board

The Disciplinary Board of the
Supreme Court of Pennsylvania

Jul. 22

LEGAL NOTICE

MARSHAL'S SALE: By virtue of
a Writ of Execution issued out of the
United States Court for the Western
District of Pennsylvania and to me
directed, I shall expose to public
sale the property located at 66 South
Street, Union City, PA 16438 being
more fully described in Erie County
Deed Book 606, Page 368.

SAID SALE to be held at the **ERIE
COUNTY COURTHOUSE,
ROOM 209, ERIE, PA** at **9:00
a.m.** prevailing, standard time, on
JULY 29, 2011.

All those certain tracts of land,
together with the buildings, and
improvements erected thereon
described as Erie Index No. (42)
9-30-11 in Erie County, Assessment
Office, Pennsylvania. Seized and
taken in execution as the property
of Bryan W. Lasher and Susan E.
Lasher, at the suit of the United
States of America, acting through
the Under Secretary of Rural

Development, on behalf of Rural
Housing Service, United States
Department of Agriculture, to be
sold on Writ of Execution as Civil
Action Number 1:07-CV-248.
TERMS OF SALE: Successful
bidder will pay ten percent (10%)
by certified check or money order
and the remainder of the bid within
thirty (30) days from the date of the
sale and in the event bidder cannot
pay the remainder, the property will
be resold and all monies paid in at
the original sale will be applied to
any deficiency in the price at which
the property is resold. The successful
bidder must send payment of the
balance of the bid directly to the
U.S. Marshal's Office c/o Sheila
Blessing, Room 241, U.S. Post
Office & Courthouse, Pittsburgh, PA
15219. Notice is hereby given that
a Schedule of Distribution will be
filed by me on the thirtieth day after
the date of sale, and that distribution
will be made in accordance with
the Schedule unless exemptions
are filed thereto within ten (10)
days thereafter. Purchaser must
furnish State Realty Transfer Tax
Stamps, and stamps required by the
local taxing authority. Purchaser
shall furnish Marshal with Grantee
information at the sale. Marshal's
costs, fees and commissions are
to be borne by seller. Thomas M.
Fitzgerald, United States Marshal.
For additional information visit
www.resales.usda.gov or contact
Daniel Varland at 314-457-5489.

Jul. 1, 8, 15, 22

The Inside Secrets of ERISA Employee Benefit Disputes:

A THIRD PARTY ADMINISTRATOR PULLS BACK THE CURTAIN

Friday, July 29, 2011

Bayfront Convention Center

Registration/Lunch - 11:45 a.m.

Seminar - 12:15 - 1:15 p.m.

\$32 (ECBA member/non-attorney staff)

\$48 (nonmember)

This seminar has been approved
by the PA CLE Board for **1**
hour substantive law credit.

The Employee Retirement Income Security Act (ERISA) has been a source of confusion and frustration for both employers and employees (and their attorneys) since it was signed into law in 1974. Enacted to create uniformity in the regulation of employee benefit plans (including pension benefit, defined-contribution benefit, healthcare, and disability insurance plans), ERISA applies to both fully-insured employer groups and those that self-fund their employee benefit plans.

As rising costs drive more employers to consider a shift from the fully-insured to the self-funded model, it is important to understand the role of third-party plan administrators and the administrative process for filing claims and appealing adverse benefit determinations.

Presented by assistant counsel for the Insurance Services Division of UPMC and focusing primarily on healthcare and disability insurance plans, this seminar will provide an insurer's perspective on ERISA third-party administration and will allow you to better educate your clients – whether they be employers or employees - on the requirements of this important (but oftentimes overwhelming) area of law.



Presented by:

Ryan A. Christy, Esquire

Assistant Counsel

UPMC Health Plan

Ryan Christy is Assistant Counsel for the Insurance Services Division of UPMC, which consists of eight affiliated companies offering a variety of commercial, Medicare and Medicaid insurance and managed care products to over 1 million members in Pennsylvania, Ohio and West Virginia. Prior to joining UPMC in 2007, Ryan spent four years at MacDonald, Illig, Jones & Britton LLP, with a practice focusing on creditors' rights, real estate, and commercial litigation. Ryan is a 2000 graduate of Allegheny College and a 2003 graduate of the University of Pittsburgh School of Law.

Reservations due to the ECBA office no later than July 22.



Making Your Case with a Better Memory

ONE OF THE MOST PRACTICAL AND
USEFUL PROGRAMS YOU'LL EVER ATTEND...
AND A REFRESHING NEW CLE TOPIC.

Tuesday, August 2, 2011

Bayfront Convention Center

8:30 a.m. - 12:45 p.m. (Registration - 8:00 a.m.)

\$129 (ECBA members/non-attorney staff)

\$192 (nonmembers)

Approved by the PA CLE Board for
4 hours substantive law credits.

ERIE COUNTY BAR ASSOCIATION
ECBA
LIVE SEMINAR

Reservations due to the ECBA by July 29.

The benefits of improved memory are endless!

- Save time in court preparation
- Make polished presentations to jurors and judges without notes
- Become a better listener in the courtroom
- Cross-examine with confidence - no more missed opportunities because your memory failed you
- Remember names of jurors in trials and clients in other professional settings
- Develop better concentration
- Reduce stress, worry less about forgetting to make a crucial point

Join nationally recognized memory training consultant Paul Mellor for a half day session that will improve the way your mind retains facts. Learn techniques to improve your memory and learn how to apply these techniques to your everyday practice. Mellor's objective is to show you how a trained memory can increase your efficiency and productivity in all aspects of law. He will shred the myth that memory cannot be enhanced and help you lay a foundation for total recall.

**BONUS: INCLUDED IN THE SEMINAR REGISTRATION
ARE TWO OF PAUL MELLOR'S BOOKLETS; "MEMORY MAGIC" AND "HOW TO REMEMBER
NAMES", INCLUDING TECHNIQUES FOR REMEMBERING OVER 500 FIRST NAMES.**

Presenter

Paul Mellor is President of Success Links, a memory training company dedicated to helping improve the lives of people by improving their memory power. A finalist in the 2008 USA Memory Championship in New York City, Mellor remembered the names of over 90 people in less than 15 minutes, recalled in correct order over 100 single-digit numbers after a five minute study, and recalled the exact order of a shuffled deck of playing cards after less than a three-and-a-half minute review.

His popular seminars have been presented to attorneys throughout the United States, including to State Bar Associations in Arkansas, California, Colorado, Delaware, Hawaii, Illinois, Maine, Maryland, Missouri, Nebraska, Nevada, New Mexico, Ohio, Oregon, Oklahoma, Washington and Wisconsin. Presentations at the County level - in PA alone - have been made in Fayette, Pittsburgh, Philadelphia.... and now Erie. He has written extensively on memory improvement and has been quoted in *Newsweek*, *The Wall Street Journal*, and *USA Today*. He resides in Richmond, Virginia.



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Clerk of Records,
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the Orphans' Court Division, of the
Court of Common Pleas of Erie County, Pennsylvania

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **Monday, July 25, 2011** and confirmed Nisi.

August 18, 2011 is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

<u>2011</u>	<u>ESTATE</u>	<u>ACCOUNTANT</u>	<u>ATTORNEY</u>
169.	Casimiera T. Heynoski	Gladys Wood, Executrix	Ritchie T. Marsh, Esq.
170.	Anthony F. Giacobello	Madeline M. Wolf, Executrix	Gregory A. Karle, Esq.
171.	Helen C. Wright	Mary Ann Curtze, Executrix	
172.	Andrew E. Schaeffer		
	a/k/a Andrew Schaeffer	Suzanne Meyer, Executrix	Ronald J. Susmarski, Esq.

PATRICK L. FETZNER
Clerk of Records
Register of Wills &
Orphans' Court Division

Jul. 22, 29

ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same and all persons indebted to said estates are requested to make payment without delay to the executors or their attorneys named below.

FIRST PUBLICATION

**BEVERIDGE, WILLIAM S., JR.,
a/k/a WILLIAM S.
BEVERIDGE, III,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Co-Executors: William S. Beveridge, IV and Karen L. Rebar, c/o 504 State Street, 3rd Floor, Erie, PA 16501

Attorney: Michael J. Nies, Esquire, 504 State Street, 3rd Floor, Erie, PA 16501

**DeROOY, CAROL J.,
deceased**

Late of the Township of Millcreek, Commonwealth of Pennsylvania

Executrix: Linda M. Brooks, c/o Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

Attorney: Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

**DOUGHTY, EDWARD M., a/k/a
EDWARD DOUGHTY, a/k/a
ED M. DOUGHTY, a/k/a
ED DOUGHTY,
deceased**

Late of the Borough of Girard, County of Erie, State of Pennsylvania

Executor: Dennis D. Doughty, 110 Walnut Street, Girard, Pennsylvania 16417

Attorney: Grant M. Yochim, Esq., Steadman Law Office, 24 Main St. E., Girard, Pennsylvania 16417

**HAGER, JOSEPH J. JR.,
deceased**

Late of the Township of Harborcreek, Erie County, Pennsylvania

Administratrix: Carol A. Hager, 558 West Sixth Street, Erie, Pennsylvania 16507-1129

Attorney: Raymond A. Pagliari, Esq., 558 West Sixth Street, Erie, Pennsylvania 16507-1129

**KMECIK, STEPHEN G., a/k/a
STEPHEN KMECIK,
deceased**

Late of the Township of Springfield, County of Erie and Commonwealth of Pennsylvania

Executrix: Carol A. Struchen, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

Attorney: Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

**KOENIG, THEODORE A.,
deceased**

Late of the City of Erie, Commonwealth of Pennsylvania

Administrator: Timothy V. Koenig, c/o Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

Attorney: Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

**MANGANARO, SCOTT A.,
a/k/a TOMMY MANGANARO,
deceased**

Late of Millcreek Township
Executrix: Megan N. Rainbow, c/o Jeffrey D. Scibetta, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jeffrey D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**RESCH, MARGIT,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Marianna Z. Rhodes, 4131 W. Lake Road, Erie, PA 16505

Attorney: Greg Allison, Esq., Allison Law Associates, LLC, 600 Grant Street, Suite 660, Pittsburgh, PA 15219

**SCHAAF, WILL J.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Executor: William J. Schaaf, Suite 300, 300 State Street, Erie, PA 16507

Attorneys: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

**SIEMBIDA, HELEN R.,
deceased**

Late of the City of Erie, Commonwealth of Pennsylvania
Executrix: Elaine M. Kowicki, c/o Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

Attorney: Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

SECOND PUBLICATION

**BERARDUCCI, RONALD L.,
deceased**

Late of the City of Erie
Administratrix: Margaret E. Perkins, 1164 West 23rd Street, Erie, PA 16502
Attorney: Michael A. Fetzner, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**CARPENTER, JAMES ARTHUR,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Administratrix: Annetta M. Hochstetler, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

**GRAY, BERNARD F.,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Co-Administrators: James E. Gray and Michael J. Gray, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: James F. Toohey, Esquire, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**HANLIN, DAVID J.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Mary C. Hanlin, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508
Attorney: I. John Dunn, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**HEIDELBERG, BRENDA J.,
deceased**

Late of Erie, Erie County, Pennsylvania
Administrator: Lisa A. Heidelberg, 231 Short Street, Erie, PA 16507
Attorney: Michael J. Graml, Esq., 714 Sassafraas Street, Erie, PA 16501

**MUNDKOWSKY, LAVINA M.,
a/k/a LAVINA MUNDKOWSKI,
deceased**

Late of the Borough of Girard, County of Erie, State of Pennsylvania
Executrix: Linda Swift, 11951 Eureka Road, Edinboro, Pennsylvania 16412
Attorney: James R. Steadman, Esq., 24 Main St. E., Girard, Pennsylvania 16417

**NIEBAUER, ANTONINA C.,
a/k/a A. CLARA NIEBAUER,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executor: Donald A. Niebauer, 1412 Patterson Avenue, Erie, Pennsylvania 16508
Attorneys: MacDonald, Illig, Jones & Britton, LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**SAMOKAR, DEANNA M.,
deceased**

Late of the Township of Greene, County of Erie and State of Pennsylvania
Administratrix: Connie L. Sackett, c/o Howard A. Hain, Esq., 821 State Street, Erie, PA 16501
Attorney: Howard A. Hain, Esq., 821 State Street, Erie, PA 16501

**SANNER, MARION E.,
deceased**

Late of Millcreek Township, Erie County, Pennsylvania
Executor: David G. Sanner, c/o 120 West Tenth Street, Erie, PA 16501
Attorney: Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**SCHMITT, ROBERT J.,
deceased**

Late of Millcreek Township
Executor: Charles T. Schmitt, c/o 332 East 6th Street, Erie, PA 16507-1610
Attorney: Evan E. Adair, Esq., Williams and Adair, 332 East 6th Street, Erie, PA 16507-1610

**WASSINK, CLEOPHA B.,
deceased**

Late of the Township of North East, Erie County
Executrix: Judith E. Wilson, c/o James S. Bryan, Esq., 11 Park Street, North East, PA 16428
Attorney: James S. Bryan, Esq., Knox McLaughlin Gornall & Sennett, P.C., 11 Park Street, North East, PA 16428

**ZAREMBA, HENRY,
deceased**

Late of the City of Erie
Executor: Christopher Zaremba, 12 Newberry Drive, Endicott, New York, 13760-4341
Attorney: None

THIRD PUBLICATION

**CASALE, AIDEN JAMES,
deceased**

Late of Summit Township, Erie County, Pennsylvania
Executor: Heather Kolke, PO Box 9898, Erie, PA 16505
Attorney: None

**CHRISTENSEN, SHIRLEY M.,
deceased**

Late of the Township of Millcreek,
County of Erie, Commonwealth of
Pennsylvania

Executor: Gary R. Christensen,
167 Holly Drive, Fairview,
Pennsylvania 16415

Attorneys: MacDonald, Illig, Jones
& Britton LLP, 100 State Street,
Suite 700, Erie, Pennsylvania
16507-1459

**COONEY, JOHN PAUL, a/k/a
JACK COONEY,
deceased**

Late of the Township of Millcreek,
County of Erie, Commonwealth of
Pennsylvania

Executor: Kevin C. Cooney,
4400 Thoroughbred Loop, Erie,
Pennsylvania 16506

Attorney: None

**FISHER, REBECCA SUE, a/k/a
REBECCA DILORETTO
FISHER,
deceased**

Late of Erie County, Pennsylvania
Administratrix: Catherine A.
Fisher, c/o Peter J. Sala, Esquire,
731 French Street, Erie, PA 16501

Attorney: Peter J. Sala, Esquire,
731 French Street, Erie, PA 16501

**GALLAGHER, MARIAN V.,
deceased**

Late of the Township of
Greene, County of Erie, and
Commonwealth of Pennsylvania

Executor: Patrick R. Gallagher,
c/o 900 State Street, Suite 104,
Erie, PA 16501

Attorney: Thomas V. Myers,
Esquire, Nichols & Myers, P.C.,
900 State Street, Suite 104, Erie,
PA 16501

**GIBBENS, ALYCE E.,
deceased**

Late of the City of Erie, County
of Erie and State of Pennsylvania
Executrix: Sandra L. McConahy,
3204 Norcross Road, Erie, PA
16510

Attorney: Anthony A. Logue, Esq.,
2622 Parade Street, Erie, PA 16504

**HERTZOG, RITA A., a/k/a
RITA AGNES HERTZOG,
deceased**

Late of Erie County, Pennsylvania
Administratrix: Sheila Ann Kemp,
c/o Peter J. Sala, Esquire, 731
French Street, Erie, PA 16501

Attorney: Peter J. Sala, Esquire,
731 French Street, Erie, PA 16501

**JOHNSON, KEITH G.,
deceased**

Late of Fairview, Fairview
Township, Erie County,
Pennsylvania

Co-Executors: Gay J. Kilmer &
BNY Mellon N.A., c/o Thomas C.
Hoffman, II, Esq., 120 West Tenth
Street, Erie, PA 16501

Attorney: Thomas C. Hoffman, II,
Esq., Knox McLaughlin Gornall
& Sennett, P.C., 120 West Tenth
Street, Erie, PA 16501

**LINGENFELTER, MARGARET E.,
deceased**

Late of the Township of North
East, Erie County

Executrix: Lois McCormack, c/o
James S. Bryan, Esq., 11 Park
Street, North East, PA 16428

Attorney: James S. Bryan, Esq.,
Knox McLaughlin Gornall &
Sennett, P.C., 11 Park Street, North
East, PA 16428

**LOREI, ROBERT J.,
deceased**

Late of the Borough of Girard,
County of Erie and State of
Pennsylvania

Administratrix: Karen E. Lorei, c/o
Howard A. Hain, Esq., 821 State
Street, Erie, PA 16501

Attorney: Howard A. Hain,
Esquire, 821 State Street, Erie,
PA 16501

**MEERHOFF, EARL R.,
deceased**

Late of the City of Corry, Erie
County, Pennsylvania

Executor: Scott B. Meerhoff, 30
W. Frederick St., Corry, PA 16407

Attorney: William E. Barney, Esq.,
Attorney at Law, 200 N. Center St.,
P.O. Box 148, Corry, PA 16407

**ROBERTS, THEODORE R.,
a/k/a ROOSEVELT ROBERTS,
deceased**

Late of the City of Erie,
Pennsylvania

Administratrix: Robert Roberts, c/o
Jeffrey D. Scibetta, Esq., 120 West
10th Street, Erie, PA 16501

Attorney: Jeffrey D. Scibetta,
Esq., Knox McLaughlin Gornall
& Sennett, P.C., 120 West Tenth
Street, Erie, PA 16501

**ROHDE, WILLIAM FRITZ,
a/k/a WILLIAM F. ROHDE,
deceased**

Late of the City of Erie, Erie
County, Pennsylvania

Executrix: Lisa B. Ganz, 1225
Silver Drive, Erie, PA 16509

Attorney: None

**SANFORD, JOSEPHINE M.,
deceased**

Late of the City of Erie, County
of Erie and Commonwealth of
Pennsylvania

Executrix: Penny Jo Sanford, c/o
William J. Schaaf, Esq., Suite 300,
300 State Street, Erie, PA 16507

Attorneys: Marsh, Spaeder,
Baur, Spaeder & Schaaf, LLP,
Attorneys-at-Law, Suite 300, 300
State Street, Erie, PA 16507

**SHOEMAKER, GEORGE P.,
deceased**

Late of Fairview Township, County
of Erie and Commonwealth of
Pennsylvania

Co-Executors: Richard A.
Shoemaker and James Shoemaker

Attorney: Thomas J. Minarcik,
Esquire, Elderkin, Martin, Kelly
& Messina, 150 East 8th Street,
Erie, PA 16501

**SILVERTHORN, ROBERT T.,
deceased**

Late of the Borough of Platea,
County of Erie, State of
Pennsylvania

Co-Executors: Gary L. Silverthorn,
1853 Northwood Lane, Erie, PA
16509 and Robin L. Vanicek, 8811
Francis Road, Girard, PA 16417

Attorney: James R. Steadman,
Esq., 24 Main St. E., P.O. Box 87,
Girard, Pennsylvania 16417

**TAMMINEN, LEONA H.,
deceased**

Late of the Township of Summit,
Commonwealth of Pennsylvania
Executor: Laurie Mussett,
1016 West Gore Road, Erie,
Pennsylvania 16509

Attorney: Richard A. Vendetti,
Esq., Vendetti & Vendetti, 3820
Liberty Street, Erie, PA 16509

Notice is hereby given of the
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known the same in writing to them
or to their attorney, and all persons
indebted to the Decedent to make
payment to them without delay.

**REESE, JANICE P.,
deceased**

Late of Millcreek Township, Erie
County, Pennsylvania

Co-Trustee: Charles Reese, 226
Neck Road, Madison, CT 06443-
2720

Attorney: Charles B. Hadad,
Esquire, Feldstein Grinberg Stein
& McKee, 428 Boulevard of the
Allies, Pittsburgh, PA 15219



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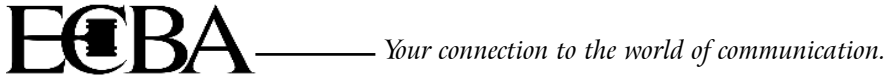


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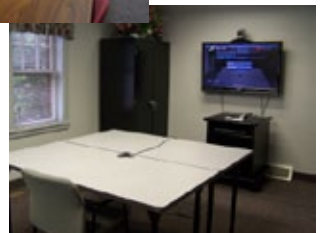
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Gregory Cancilla, EnCE, ACE

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