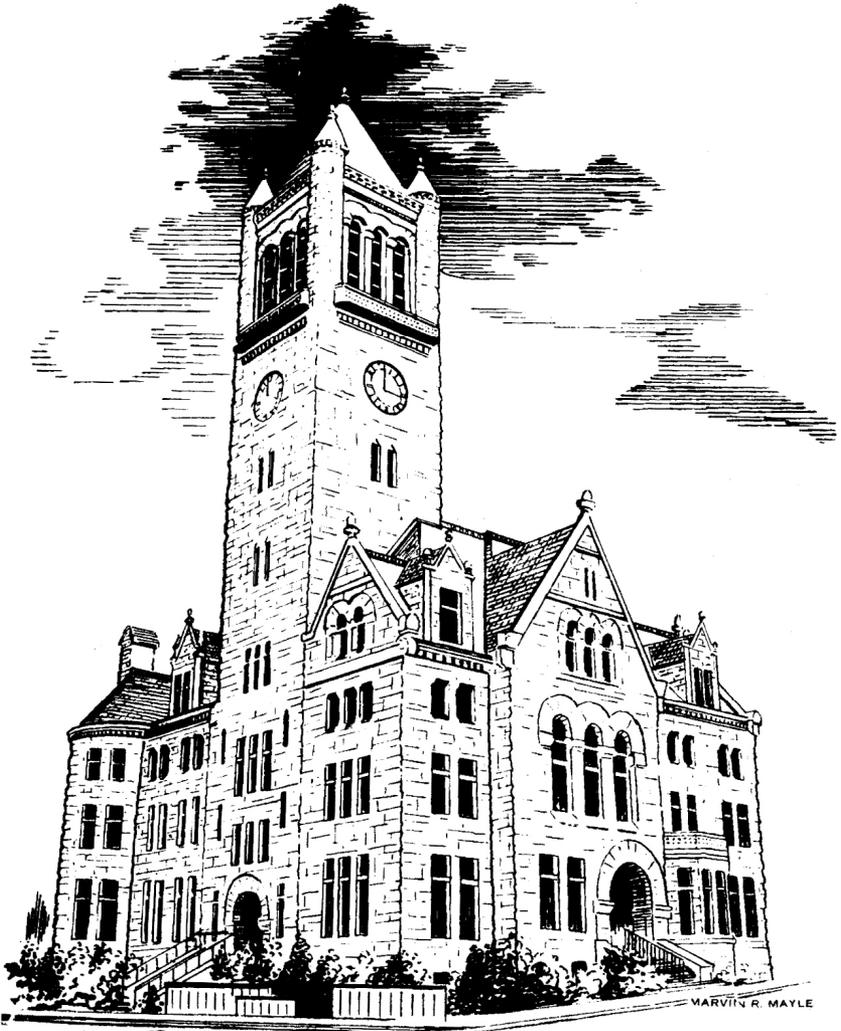


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

DONALD BAUMANN, late of Mount Pleasant, Fayette County, PA (3)

Executrix: Kristen Ann Lipps
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206 Weldon Street
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Attorney: Ernest P. DeHaas, III

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Attorney: Benjamin F. Goodwin

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Second Publication

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First Publication

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Fayette City, PA 15480

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Attorney: Jennifer M. Casini

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Personal Representatives: Jeffery W. Pritts and Jacquelyne R. Pritts
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Township, Fayette County, PA (1)
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Fayette County, PA (1)
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McClellandtown, PA 15458
Attorney: Vincent Tiberi

LEGAL NOTICES

IN RE: Change of Name of Mary Beth Myers

Notice Of Name Change Petition

TO ALL PERSONS INTERESTED:

Notice is hereby given that an Order of said Court authorized the filing of said Petition and fixed the 11th day of March, 2026, at 3:00PM o'clock, a.m. as the date and time and Courtroom No.1, Fayette County Courthouse, Uniontown, Pennsylvania, as the place for a hearing, when and where all persons may show cause, if any, why the request of the Petitioner should not be granted.

Pavina Law, LLC
Bryan L. Pavina Jr., Esquire
4 N. Beeson Blvd.
Uniontown, PA 15401
Attorney for Petitioner

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COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE

A DECADE OF EXPERIENCE E&O INSURED WILL TRAVEL ACCEPTING NEW CLIENTS

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

BERNARD M. ZSIROS and JUDITH A. :
 ZSIROS, his wife, :
 Plaintiffs, :
 v. :
 KEITH W. DILLINGER and SANDRA G. :
 DILLINGER, his wife, : No. 1572 of 2021
 Defendants. : President Judge Steve P. Leskinen

FINDINGS OF FACT and CONCLUSIONS OF LAW

LESKINEN, P.J. December 23, 2025

Upon consideration of the evidence presented in a non-jury trial held in the above-captioned Ejectment Action on February 26th, 2025, and March 31st, 2025, the Court hereby makes the following Findings of Fact and Conclusions of Law:

Findings of Fact:

1. Leo F. Caldwell and Helen U. Caldwell recorded a plan of lots dated October 10th, 1973, in Plan Book 11, Page 71 ("Plan"). {1}
2. The area in dispute in this matter is labeled "Alley" on the Plan, and measures approximately 20 feet in width by 160 feet in length ("Alley").
3. Plaintiffs, Bernard M. Zsiros and Judith A. Zsiros, were conveyed a 7.677 AC parcel of property shown in the Plan by Deed of Leo F. Caldwell and Helen U. Caldwell dated July 6th, 1978, and recorded in Deed Book 1238, Page 266.
4. This 7.677 AC parcel adjoins the northern boundary line of the Alley but does not include the Alley.
5. A Corrective Deed dated June 22nd, 2020, from Robert E. Jones, Jr. Executor of the Estate of Helen U. Caldwell to Bernard M. Zsiros and Judith A. Zsiros, conveyed Helen U. Caldwell's interests in the 9.503 AC parcel from which the 7.677 AC in the Plan derived, which had been conveyed to Helen U. Caldwell and Leo F. Caldwell by deed of Nellie F. Uphold by Deed dated October 19th, 1972, and recording in Deed Book 1135, page 791.
6. This 9.503 AC parcel includes the entire 7.677 AC parcel both Zsiroses purchased in 1978 and includes the Alley.

{1} All citations to plan books, deed books, and record books refer to records in the Office of the Fayette County Recorder of Deeds.

7. Defendants, Keith W. Dillinger and Sandra G. Dillinger, were conveyed a parcel approximately 45 feet in width and 167 feet in length by Deed of Martha Dulik dated August 22nd, 1989, and recorded in Deed Book 594, Page 9, and shown on the Plan as property of Martha Dulik and Rebecca Dulik.

8. The Dillinger Deed at Deed Book 594, Page 9, describes the northern boundary of the parcel being conveyed as running "to point of intersection with the North side of a twenty-foot alley to be opened by the said Charles R. Uphold, et ux; thence by said twenty-foot alley, South 25 degrees 31 minutes West 167 feet..."

9. The Dillingers testified that they believed the Alley was part of the parcel they purchased but acknowledge they did not review the deed description or obtain a survey to confirm the boundaries.

10. The Dillingers erected a "cyclone" fence in 1994, partially enclosing the Alley.

11. The relevant sections of the fence include one section along the back boundary line of the Dillingers' property and part of the Alley and one section running parallel to the side boundaries of the Alley, which did not go all the way to New Salem Road at the front of the Alley.

12. The Dillingers regularly used portions of the alley for parking vehicles and for their children to play. They also maintained grass, gravel, and other landscaping within the boundaries of the Alley.

13. The Dillingers erected a shed in 2014, which is entirely within the boundaries of the Alley.

14. The Dillingers erected a garage in 2018, which is partially on the property deeded to the Dillingers and partially on the alley.

15. The Dillingers moved portions of the fence in 2019.

16. Counsel for both Zsiroses sent a letter dated July 6th, 2020, to the Dillingers informing them of the encroachment of the shed, garage, and "the fence you recently erected," demanding that the Dillingers remove any encroachments within thirty days.

17. The Zsiroses initiated this matter by filing a Complaint in Ejectment on August 31st, 2021.

18. The parties do not dispute the chain of title set forth in the Complaint.

Conclusions of Law:

1. This Court has jurisdiction over the parties and of the subject matter and venue is proper in Fayette County as the property at issue is situated in Fayette County.

2. Zsiroses have presented prima facie evidence that they held an easement inter-

est in the Alley from 1978 to 2020 and then acquired the Alley in fee simple as of June 22nd, 2020, shifting the burden in this ejection action to the Dillingers, who have raised the defense of adverse possession. *Becker v. Wishard*, 202 A.3d 718, 722 (Pa. Super. 2019).

3. The 1978 deed to Zsiroses for the 7.677 AC parcel did not include the Alley but conveyed an easement interest in it by incorporating the Plan by reference. *Reed v. Reese*, 473 Pa. 321, 329 (1976).

4. The 1989 deed to the Dillingers also conveyed an easement interest in the alley for utility access by the express language of a prior deed in the chain of title; the deed from Charles R. Uphold and Nellie F. Uphold to George L. Hostetler and Helen L. Hostetler, dated March 26th, 1952, and recorded in Deed Book 748, page 580. The Dillingers also would have acquired an easement interest by the reference to the Alley as one of the boundaries of the property in the description in the deed, implying a right to use the Alley for access to the property. {2}

5. The Corrective Deed to the Zsiroses dated June 22nd, 2020, conveyed a fee simple interest in the Alley.

6. The Zsiroses held an easement interest in the alley from July 6th, 1978, to June 22nd, 2020, and acquired the alley in fee simple from June 22nd, 2020, to the present.

7. The Dillingers have held an easement interest in the alley from August 22nd, 1989, to the present.

8. Whether the Zsiroses used the easement is irrelevant to whether the easement was extinguished by adverse possession, as nonuse, no matter for what duration of time, cannot extinguish an easement. *Estojak v. Mazsa*, 522 Pa. 353, 363 (1989).

9. The Dillingers failed to produce credible, clear, and definitive proof that their use of the alley from September 1st, 2000, {3} until the placement of the shed in 2014, was sufficient to extinguish the Zsiros's easement by adverse possession.

10. Though the Dillingers produced clear and definitive proof of adverse possession sufficient to terminate the Zsiros's easement from 2014 to the present, this period falls short of the statutory requirement of twenty-one years required to establish adverse possession.

11. The Dillingers have not produced sufficient evidence to support the defense of laches.

{2} Though the Dillingers' property appears on the 1973 Plan (with a notation that it was the property of Martha and Rebecca Dulik by way of the Deed at Deed Book 1140, page 16), it was severed from the parent parcel prior to the recording of the Plan and therefore would not be considered a lot sold according to the 1973 plan of lots. See: *Potis v. Coon*, 496 A.2d 1188 (Pa. Super. 1985). See also: *Ulrich v. Grimes*, 94 Pa. Super. 313 (1928) as to deed calls naming an alley as a boundary carrying an implied covenant to use the alley.

Discussion:

"Ejectment is an action filed by a plaintiff who does not possess the land but has the right to possess it, against a defendant who has actual possession." *Siskos v. Britz*, 567 Pa. 689, 699 (2002). When a plaintiff in an ejectment action provides prima facie evidence of title to the property at issue, as is the case here where the chain of title is not in dispute, the burden of proof shifts to the defendant. *Becker*, at 722. The party claiming adverse possession must produce credible, clear, and definitive proof of acts signifying permanent occupation of the land done continuously for a twenty-one-year period. *Johnson v. Tele-Media Co. of McKean County*, 90 A.3d 736, 741 (Pa. Super. 2014).

Adverse Possession

"The standards for determining the acquisition of title to land by adverse possession and for determining whether an easement over property has been extinguished by adverse possession contain the same basic elements- in each situation, the possession that will acquire title or extinguish an easement must be actual, continuous, adverse, visible, notorious and hostile possession of the land in question for the prescriptive period of twenty-one years." *Estojak v. Mazsa*, 522 Pa. 353, 361 (1989). However, the conduct required to acquire title to land by adverse possession may not be sufficient to extinguish another's easement over that land. To extinguish an easement, the use must be visible, notorious, continuous, adverse, and hostile use of the land that is inconsistent with the use made and the rights held by the easement holder, not merely possession which is inconsistent with another's claim of title. *Id.* "The repudiation of the rights of other persons in a right-of-way must be manifested by words or acts which are inconsistent with or infringe upon the other persons' right to pass across the land whenever the necessity to do so arises." *Id.* at 363. The obstructing conduct must be inconsistent with the right to use and enjoy the easement. *Id.* Nonuse of the easement, no matter the duration of time, will not extinguish an easement. *Estojak*, at 364.

The extent of the Dillingers' use of the Alley increased over time. Assuming, for the purposes of this analysis, that the placement of the shed in 2014 and the placement of the garage in 2018 constituted sufficient use to extinguish the easement, this use was for less than the twenty-one-year statutory requirement. Therefore, the dispositive period of use in this matter is the period from September 1st, 2000, through the placement of the shed in 2014.

The Dillingers testified that during this time they used the Alley for parking, for their dogs to run around, and as a play area with a swing set. They planted and maintained grass, put down gravel for a parking area, and planted flowers and bushes. These uses do not necessarily infringe on the Zsiros's easement or deny the use of the easement, particularly as the Dillingers also have an easement interest in the Alley. *Me/lace v. Armstrong*, 469 Pa. 326, 330 (1976). The evidence presented was very limited as to the use of the property during the early 2000s and the testimony from the Dillingers as to this period lacked specificity. As an example, Mr. and Mrs. Dillinger both testified

{3} The Complaint in this matter was filed on August 31st, 2021, establishing the end date of the twenty-one-year period of time at issue.

that the family had continuously used the alley since 1989 to park their cars, and the family generally had five to seven vehicles (three vehicles were used by Mr. Dillinger and four by the children). (3.31.25 Transcript, pp. 8-9, 55-56.) However, Mrs. Dillinger also testified that their three children were born in 1986, 1989, and 1990, and got their cars when they were 16. (Tr. pp. 54, 63, 70.) The arithmetic suggests it is unlikely that the family had 5-7 cars in 2000, when the children would have been 14, 11, and 10. This is not noted to suggest that the Dillingers were intentionally inaccurate or imprecise in their testimony, but to highlight the difficulty of trying to speak generally about behavior over a period of twenty-one years as a means to establish that a particular use was continuous. The evidence presented lacks the specificity needed to determine whether the various uses of the Alley were visible, notorious, continuous, adverse, and hostile for the entire period at issue.

Similarly, as to the fence that the Dillingers erected in 1994 and revised in 2019, the Court cannot find that the Dillingers presented credible, clear, and definitive evidence of the location of the fence as it stood on September 1, 2000 with respect to the boundary lines of the Alley and whether it prevented any access by the Zsiroses or only partially obstructed it. At issue is an L-shaped portion of the fence. One face of this fence roughly follows the back boundary of the Dillinger's property and the back of the alley. The surveyor, Terry McMillen, testified that this back face of the fence sits approximately six inches into the Zsiroses' property to the north (the 7.677 AC parcel conveyed in 1978) and that he had to jump over the fence to place the pin marking the corner of the Dillingers' property where it meets the alley. (2.26.25 Tr. p.24.) The fence then makes a right angle towards New Salem Road and continues for an undetermined distance parallel to the length of the alley, but not all the way to the road in the front. Though there is no evidence of the actual length of this side face of the fence prior to the changes in 2019, the evidence is clear that it is (and was) possible to turn from New Salem Road directly onto the alley and continue down the Alley to the garage.

There was no definitive evidence as to whether the back face of the fence extends across the entire twenty-foot width of the Alley, and if not, how short it falls. The corner of the fence is shown in pictures admitted into evidence (including Plaintiffs' Exhibit 7, and Defendants' Exhibits R, S, and T) along with a flagged stick that appears to be a survey marker. However, this was not addressed by any witness, and it is impossible to calculate the distance between the marker and the corner of the fence due to the angle of the pictures. There was no testimony from the surveyor comparing the location of the corner of the fence to the corner of the Alley. A neighbor, Keith Golden, testified that there was a path to walk around the outside of the fence (though not big enough for a vehicle) but did not opine as to whether that path is within the confines of the alley or would require passing onto the neighbor's property. At best, Defendants have established that prior to the placement of the shed in 2014, it was possible to turn onto the Alley from New Salem Road and traverse the length of the Alley to the back fence, which partially blocked access from the Alley to the Zsiros's 7.677 AC parcel. Therefore, the Court cannot find that the Defendants offered credible, clear, and definitive proof that the fence was sufficiently inconsistent with the use of the easement to extinguish it.

Laches

The Dillingers pled (in the alternative) the affirmative defense of laches. "The application of the equitable doctrine of laches does not depend upon the fact that a certain definite time has elapsed since the cause of action accrued, but whether, under the circumstances of the particular case, the complaining party is guilty of want of due diligence in failing to institute his action to another's prejudice." *Wilson v. King of Prussia Enterprises, Inc.*, 422 Pa. 128, 133 (1966).

The Dillingers cite to *Harbor Marine Co. v. Nolan*, 366 A.2d 936 (Pa. Super. 1976) as an example of the courts applying the doctrine of laches in an ejectment action. However, *Harbor Marine*, is easily distinguished from the facts in this matter. In *Harbor Marine*, the Appellee held a deed to a former street that had been vacated by the City of Erie, while Appellant claimed title by operation of law claiming the City lacked the power to convey the property to Appellee. The Superior Court applied the doctrine of laches where a predecessor of Appellant represented to Appellee that their counsel had investigated the deed to the property and decided it was valid, and Appellant then waited approximately four years, admittedly knowing that Appellee was expending significant sums to develop the property, before filing the ejectment action. Neither party relied on adverse possession as the basis for their claim of title, but the trial court had held that laches required a lapse of time equal to that of adverse possession, which the Superior Court found to be in error.

In the instant action, the Dillingers made improvements on adjoining property they did not own, relying on the representation of the prior owner of their property as to the boundaries without reviewing their deed (which clearly stated the dimensions of the parcel) or obtaining a survey. There are no allegations that the Zsiroses made any affirmative representations to the Dillingers about the property boundaries. In fact, Mr. Dillinger denied ever having a conversation with either of the Zsiroses about the property boundaries prior to building the garage. Rather, the Dillingers claim the Zsiroses were aware that the fencing and the shed was on the Alley and took no action prior to the construction of the garage, and then "surreptitiously purchased the property in an apparent attempt to gain a strategic advantage in this litigation." (Defendants' Suggesting Findings of Fact and Conclusion of Law, ¶20). The Dillingers have no other theory on which they can claim title to the Alley (other than their easement interest) and ask the Court to apply the doctrine of laches based on the Zsiros' failure to act when they first realized there may be an encroachment on their easement.

This is simply a claim for adverse possession by another name. "Adverse possession is an extraordinary doctrine that permits one to achieve ownership of another's real property by operation of law. *City of Philadelphia v. Galdo*, 655 Pa. 233, 248 (2019). The rationale is that adverse possession supports encouraging those who diligently develop and improve the land against those who are content to hold title inactively for years. *Id.* The legislature set a requirement of twenty-one years of actual, continuous, exclusive, visible, notorious, distinct, and hostile possession of the land to acquire title by this means. *Baylor v. Soska*, 540 Pa. 435, 438 (1995). To grant the Dillingers relief under the doctrine of laches on these facts would negate the purpose of the statutory requirement of twenty-one years to establish title by adverse possession. 42 Pa. C.S.A. §5530.

The Superior Court held in *Williamstown Borough Authority v. Cooper*, 591 A.2d 711, 715 (Pa. Super. 1991) and *Glen Hope Borough v. Kitka*, 621 A.2d 1043, 1046 (Pa. Super. 1993), that the doctrine of laches should not succeed where an analogous claim of adverse possession would fail. The defense of laches should not be considered superior to the application of rules relating to adverse possession. *Id.* Though these two cases dealt with the prohibition against allowing adverse possession of governmental properties, the reasoning is relevant, and this Court adopts it here. The doctrine of Laches cannot be used to undercut the twenty-one-year requirement for adverse possession without additional supporting facts such as the express statements made by the adverse party in Harbor Marine. As there are no such factors here, the doctrine of laches does not apply. {4}

WHEREFORE, the Court issues the following Order:

{4} The corrective deed the Zsiros obtained in 2020 does not support the application of laches to this matter. Both sets of parties believed they owned the Alley in fee simple when in fact both only held an easement interest prior to the 2020 Corrective Deed. When the Zsiros discovered their error, they took steps to acquire a fee simple interest in the Alley. The Corrective Deed conveys any remaining interest in the larger 9.503 AC parcel held by Helen Caldwell, including the fee simple interest in the Alley. However, the Zsiros would have been entitled to bring this action based on their easement interest in the Alley even if they had not acquired the fee simple interest.

DECISION AND ORDER

AND NOW, this 23rd day of December, 2025, after a non-jury trial in the above captioned matter, the Court renders the following Decision and Order:

The Court finds that Plaintiffs, Bernard and Judith Zsiros, are the owners in fee simple of the real property designated as "Alley" on the plan of lots recorded by Leo F. Caldwell and Helen U. Caldwell dated October 10th, 1973, in Plan Book 11, Page 71, more particularly bounded and described as follows:

ALL that certain piece or parcel of land situated in Menallen Township, Fayette County, Pennsylvania, bounded and described as follows:

Beginning at a point at the southwesterly corner of property of Bernard M. Zsiros and Judith A. Zsiros and property now or formerly of Gerald W. Elliot et al. South 26 degrees 20 minutes 00 seconds West, 167 feet to an iron pin; thence North 63 degrees 28 minutes 00 seconds West, a distance of 20 feet to a nail; thence North 26 feet 20 minutes 00 seconds East, 166.81 feet to a set iron pin; thence South 63 degrees 28 minutes 00 seconds East, a distance of 20 feet to a set iron pin. Containing a total area of 0.08 Acres.

Being Identified as Part of Tax Map Number 22-19-0001

The ownership being under and subject to any exceptions, reservations, conditions, easements, rights of way, covenants, or other encumbrances of record.

The Court further finds that Defendants, Keith and Sandra Dillinger, hold an easement interest in the Alley for the purposes of utility access and ingress or egress to their property, but have not produced credible, clear, and definitive evidence of use of the Alley sufficient to extinguish the Zsiros's easement interest by adverse possession for the statutory period of twenty-one years pursuant to 42 Pa. C.S. §5527.1.

The Court ORDERS and DIRECTS that within ninety (90) days of the date of this Order, Defendants shall remove any fences or structures that obstruct any part of the 20' wide Alley.

Defendants are immediately and permanently ENJOINED from placing any fences, structures, vehicles, or other obstacles that obstruct the use of the Alley.

BY THE COURT:
STEVE. P. LESKINEN,
PRESIDENT JUDGE

ATTEST:
PROTHONOTARY

LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, March 25th** from **12:00 p.m. to 1:30 p.m.**
- Location: **Fayette County Courthouse - Courtroom Two**
- Discussion topic: **Municipal Law Update**
- Presenter: **Sarah S. Kefover, Esquire - McElroy Law Firm LLC**

CLE Credit

1.5 hours of Substantive CLE credit for the program.

Attendance Fees

Members of the FCBA - \$15

Attorneys admitted after January 1, 2021 - \$5

Non-members of the FCBA - \$40

**** All fees to be paid at the door ****

Lunch will be provided.

RSVP

If interested in attending, please call Leslie at the Bar office at 724-437-7994 or email to admin@fcbar.org on or before Monday, March 23rd.

