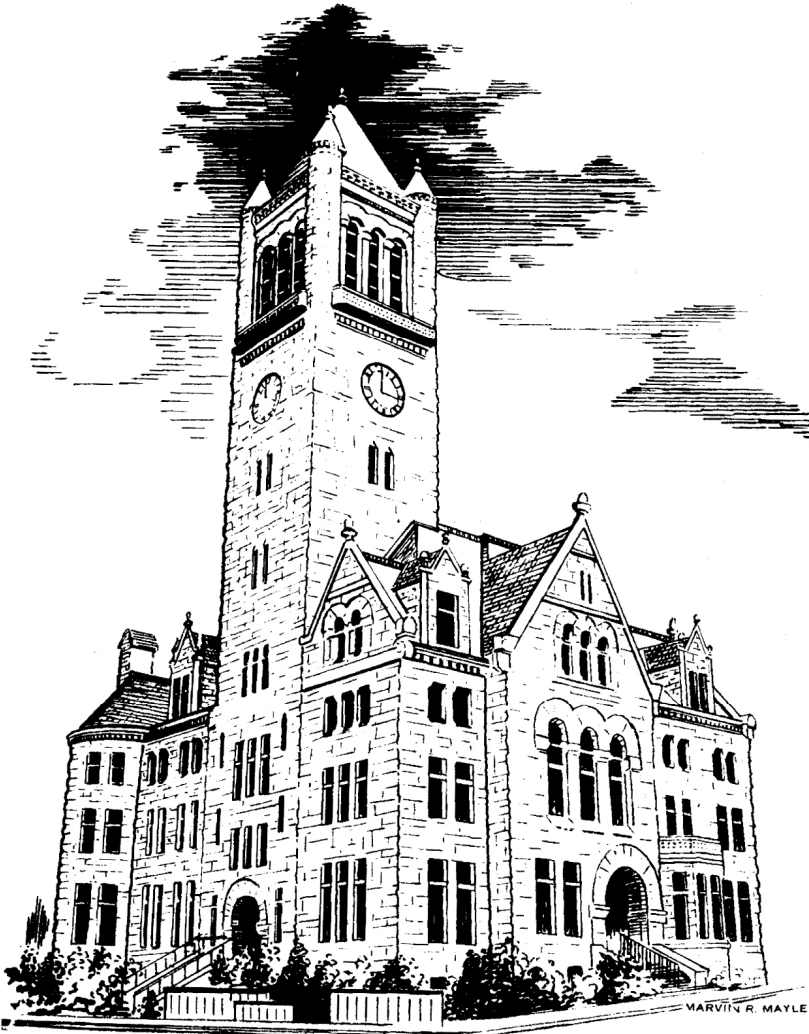


FAYETTE LEGAL JOURNAL

VOL. 82

FEBRUARY 16, 2019

NO. 7



FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 45 East Main Street, Suite 100, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at www.fcbar.org no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

Co-Editors: Garnet L. Crossland and Melinda Deal Dellarose

Cover Design by Marvin R. Mayle, 207 Lick Hollow Road, Hopwood, PA

FAYETTE COUNTY BAR ASSOCIATION Board of Directors

President: James E. Higinbotham, Jr.
President Elect: Louise D. Monaghan
Vice-President: Gretchen A. Mundorff
Secretary: Timothy J. Witt
Treasurer: Vincent J. Roskovensky, II
Past President: Gary N. Altman

Executive Director: Garnet L. Crossland

Directors
 Jennifer M. Casini
 Jeremy J. Davis
 Benjamin F. Goodwin
 Robert A. Gordon
 Sheryl R. Heid
 Margaret Zylka House
 Wendy L. O'Brien
 Douglas S. Sholtis
 Charles O. Zebley, Jr.

ETHICS HOTLINE

The Ethics Hotline provides free advisory opinions to PBA members based upon review of a member's prospective conduct by members of the PBA Committee on Legal Ethics and Professional Responsibility. The committee responds to requests regarding, the impact of the provisions of the Rules of Professional Conduct or the Code of Judicial Conduct upon the inquiring member's proposed activity. All inquiries are confidential.

Call (800) 932-0311, ext. 2214.

LAWYERS CONCERNED FOR LAWYERS

Our assistance is confidential,
non-judgmental, safe, and effective

To talk to a lawyer today, call:
 1-888-999-1941
 717-541-4360

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

DONNA L. CIARLO, late of Washington Township, Fayette County, PA (3)

Personal Representative:

Christopher Ciarlo

c/o 105 Kangaroo Hill Road
Irwin, PA 15642

Attorney: Wayne McGrew

**ROBERT LEWIS MALLICK, a/k/a
ROBERT MALLICK**, late of South Union Township, Fayette County, PA (3)

Executor: Charlotte Stickle

c/o P.O. Box 727

Uniontown, PA 15401

Attorney: Bernadette K. Tummons

Second Publication

BETTY ANN DURATZ, late of Redstone Township, Fayette County, PA (2)

Personal Representative: Carla DellaPenna

321816 Skidmore Drive

Greensburg, PA 15601

c/o Davis & Davis

107 East Main Street

Uniontown, PA 15401

Attorney: James T. Davis

RONALD G. GALIDA, late of South Union Township, Fayette County, PA (2)

Administratrix: Cheri C. Sanzi

c/o DeHaas Law, LLC

51 East South Street

Uniontown, PA 15401

Attorney: Ernest P. DeHaas, III

ORVAL GLENN GALLENTINE, III, late of Bullskin Township, Fayette County, PA (2)

Administrator: Orval Glenn Gallentine, Jr.

c/o 815A Memorial Boulevard

Connellsville, PA 15425

Attorney: Margaret Zylka House

ANNE C. HELISEK, late of Franklin Township, Fayette County, PA (2)

Personal Representative: Peter M. Helisek

c/o P.O. Box 953

Uniontown, PA 15401

Attorney: Ricardo J. Cicconi

**EVELYN JANOS, a/k/a EVELYN M.
JANOS, a/k/a EVELYN MARIE JANOS**, late of Luzerne Township, Fayette County, PA (2)

Administrator: Victoria William

c/o 22 Bierer Avenue

Uniontown, PA 15401

Attorney: Mary Lenora Hajduk

LORETTA J. LAZARAN, late of Uniontown, Fayette County, PA (2)

Personal Representative:

Rose Ann Franty Joseph

c/o P.O. Box 952

Uniontown, PA 15401

Attorney: Ricardo J. Cicconi

ROBERT J. UMBLE, late of Georges Township, Fayette County, PA (2)

Executor: Robert J. Umbler, Jr.

28 Blueberry Drive

Morgantown, WV 26508

c/o P.O. Box 430

Smithfield, PA 15478

Attorney: Robert Grimm

First Publication

ANTHONY L. CATALDI, late of
Connellsville, Fayette County, PA (1)

Executrix: Heather Stoffa
c/o Molinaro Law Offices
P.O. Box 799
Connellsville, PA 15425
Attorney: Carmine V. Molinaro, Jr.

KARL E. DOUBLE, late of Connellsville,
Fayette County, PA (1)

Administrator: Kristen Double
c/o 815 A Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Zylka House

JAMES ODELL HART, late of Luzerne
Township, Fayette County, PA (1)

Personal Representative: Dorothy Yvette
Murray, f/k/a Dorothy Yvette Hart
424 Penncraft Road
East Millsboro, PA 15433
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Jeremy J. Davis

**ROBERT E. HIGINBOTHAM, a/k/a
ROBERT E. HIGINBOTHAM, SR.**, late of
Redstone Township, Fayette County, PA (1)

Personal Representative: Robert E.
Higinbotham, Jr.
c/o George & George, LLP
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

AUGUSTINE JEROME, late of Fairchance,
Fayette County, PA (1)

Executor: Douglas Jerome
c/o P.O. Box 622
Smithfield, PA 15478
Attorney: Charity Grimm Krupa

**CECILIA M. KESSLER, a/k/a CECILIA M.
KOKOT KESSLER**, late of Bullsken
Township, Fayette County, PA (1)

Personal Representative:
Richard L. Kessler
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Charles W. Watson

**GARNET MCNATT, a/k/a GARNET
GRACE MCNATT**, late of North Union
Township, Fayette County, PA (1)

Administratrix: Sherry D. McKenzie
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

**STANLEY SOBEK, JR., a/k/a STANLEY S.
SOBEK, JR.**, late of Jefferson Township,
Fayette County, PA (1)

Executrix: Judith M. Sobek
3A 1st. Avenue West
Glen Burnie, MD 21061
c/o 300 Fallowfield Avenue
Charleroi, PA 15022
Attorney: Richard C. Mudrick

**MARGARET WHETZEL, a/k/a
MARGARET ANN WHETZEL**, late of
Redstone Township, Fayette County, PA (1)

Personal Representative: James Roscoe
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

LEGAL NOTICES**NOTICE OF ACTION IN MORTGAGE
FORECLOSURE**

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW
NO.: 2018-02588

PNC BANK, NATIONAL ASSOCIATION,
Plaintiff,
vs.

Elmer E. Smith, individually and as believed
Heir to the Estate of Sharon L. Smith; Unknown
Heirs and/or Administrators of the Estate of
Sharon L. Smith, Defendants

TO: Unknown Heirs and/or Administrators of
the Estate of Sharon L. Smith

You are hereby notified that Plaintiff, PNC
Bank, National Association, filed an Action in
Mortgage Foreclosure endorsed with a Notice to
Defend, in the Court of Common Pleas of
Fayette County, Pennsylvania, docketed to No.
2018-02588, seeking to foreclose the mortgage
secured by the real estate located at 322
Cemetery Road, Perryopolis, PA 15473.

A copy of the Action in Mortgage Foreclosure
will be sent to you upon request to the Attorney
for the Plaintiff, Manley Deas Kochalski LLC,
P. O. Box 165028, Columbus, OH 43216-5028.
Phone 614-220-5611.

You have been sued in court. If you wish to
defend against the claims in this notice, you
must take action within twenty (20) days after
this publication, by entering a written
appearance personally or by attorney and filing
in writing with the court your defenses or
objections to the claims set forth against you.
You are warned that if you fail to do so the case
may proceed without you and a judgment may
be entered against you by the court without
further notice for any money claimed in the
complaint or for any other claim or relief
requested by the plaintiff. You may lose money
or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO

YOUR LAWYER AT ONCE. IF YOU DO
NOT HAVE LAWYER OR CANNOT
AFFORD ONE, GO TO OR TELEPHONE THE
OFFICE SET FORTH BELOW TO FIND OUT
WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
P.O. Box 186
Harrisburg, PA 17108
(800) 692-7375

Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, March 4, 2019, at 9:30 A.M.

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2618-0396	PAULINE ESPER	Constance Johnson and Paul Mongell Jr, Co-Executors

Monday, March 18, 2019, at 9:30 A.M.

in Courtroom No. 1 of the **Honorable STEVE P. LESKINEN**, or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Notice is also hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, March 4, 2019, at 9:30 A.M.

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2618-0325	JOAN A. BARCHETTI	Christopher Scott Barchetti, Executor
2614-0691	ELIAS GESTINE RAFAIL a/k/a ELIAS G. RAFAIL	Robert Elias Rafail, Executor

Monday, March 18, 2019, at 9:30 A.M.

in Courtroom No. 5 of the **Honorable JOSEPH M. GEORGE, JR.** or his chambers, 3rd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JUDICIAL OPINION

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

VICKIE FISHER,	:	
Plaintiff,	:	
vs.	:	
ARI E. PRESSMAN, M.D.; MON-VALE	:	
ORTHOPEDECS INC., a Pennsylvania	:	
Corporation t/d/b/a THE ORTHOPEDIC	:	
GROUP, a Pennsylvania registered fictitious name,	:	No. 551 of 2018, G.D.
Defendants.	:	Honorable Nancy D. Vernon

OPINION AND ORDER

VERNON, J. February 5, 2019

Before the Court are Preliminary Objections of Defendants, Ari E. Pressman, M.D.; Mon-Vale Orthopedics Inc., a Pennsylvania Corporation t/d/b/a The Orthopedic Group, a Pennsylvania registered fictitious name, to the Complaint filed by Plaintiff, Vickie Fisher and the Preliminary Objections of Plaintiff Fisher to Defendants’ Preliminary Objections.

The instant action arises out of alleged medical malpractice where Plaintiff avers that Defendant Pressman caused her to suffer permanent nerve injuries while undergoing a right carpal tunnel release-endoscopic procedure on March 29, 2016. Following a Writ of Summons, Plaintiff filed a Complaint on May 9, 2018. By letter dated May 29, 2018, counsel for Defendants requested “a reasonable enlargement of time within which to review the records and, thereafter, meet with Dr. Pressman.” See, Plaintiff’s Preliminary Objections Exhibit B. In response, Plaintiff’s counsel replied by letter dated June 6, 2018,

“I have no objection to granting a reasonable extension of time; however, I usually don’t agree to undefined open-ended extensions. Therefore, I am willing to grant a 30 day extension of time for you to file a responsive pleading to the Complaint. Of course, if you find that you need more time, kindly advise and I am sure that any reasonable request can be accommodated.”

See, Plaintiff’s Preliminary Objections Exhibit C. Thereafter, Defendants served Preliminary Objections on Plaintiff on July 10, 2018, and filed of Record with the Prothonotary on July 13, 2018.

Plaintiff now objects to the timeliness of Defendants’ preliminary objections reciting the same were forty-three days late pursuant to Pennsylvania Rules of Civil Procedure or four days delinquent pursuant to the extension granted by Plaintiff. Plaintiff requests this Court to strike Defendants’ preliminary objections as untimely filed.

The Pennsylvania Rules of Civil Procedure provide that all pleadings subsequent to the complaint must be filed within twenty days after service of the preceding pleading.

Pa.R.C.P. 1026. This Rule, however, may be interpreted as permissive rather than mandatory. *Gale v. Mercy Catholic Med. Ctr. Eastwick, Inc., Fitzgerald Mercy Div.*, 698 A.2d 647 (Pa. Cmwlth. 1997). It is left to the sound discretion of the trial court to permit a late filing of a pleading “where the opposing party will not be prejudiced and justice so requires.” *Id.* at 649.

The Rules of Civil Procedure permit the parties by agreement to extend the time for filing pleadings. Pa.R.C.P. 1003. Plaintiff granted a thirty-day extension on June 6, 2018. Thus, according to the agreement of parties, a responsive pleading was due on or before July 6, 2018. Plaintiff’s allegation that the pleading was forty-three days late is belied by her own record.

For the Court’s consideration are whether Defendants’ objections dated July 10, 2018, filed at the Prothonotary on July 13, 2018, should be stricken when due on or before July 6, 2018. In this determination, the Court considers the record where Plaintiff’s counsel offered to Defendants, “if you find that you need more time, kindly advise and I am sure that any reasonable request can be accommodated.” Plaintiff objecting to a four-day delinquent filing, after offering additional extensions upon requested, is patently unreasonable even in the face of Defendants not requesting the extension. Plaintiff suffered no prejudice by a four-day delay and her preliminary objection will be summarily overruled.

Turning now to Defendants’ preliminary objections, Defendants object certain subparagraphs at Counts I and III of Plaintiff’s Complaint for insufficient specificity and failure to conform to law or rule of court in violation of Pa.R.C.P. 1019(a) and 1028(a)(3).

In ruling on preliminary objections, the Court must accept as true all well-pleaded, material and relevant facts. *Mellon Bank v. Fabinyi*, 650 A.2d 895, 899 (Pa. Super. 1994). “[C]onclusions of law, unwarranted inferences from the facts, argumentative allegations or expressions of opinion” need not be accepted as true. *Myers v. Ridge*, 712 A.2d 791, 794 (Pa. Cmwlth. 1998).

The issue before us demands a consideration of the requisite specificity of pleadings. Rule 1019(a) requires that “the material facts on which a cause of action or defense is based shall be stated in concise and summary form.” Pa.R.C.P. 1019(a); see also, *Laurson v. General Hospital of Monroe County*, 393 A.2d 761 (Pa. Super. 1978). Pleadings in a “fact pleading” jurisdiction, such as Pennsylvania, serve several functions: not only must pleadings put an opponent on notice of what he will be called upon to meet at trial, they must also frame the issues in an action so that the proof at trial may be restricted to those issues. See, *Connor v. Allegheny General Hospital*, 461 A.2d 600 (Pa. 1983).

The purpose of 1019(a) is to require the pleader to disclose the “material facts sufficient to enable the adverse party to prepare his case.” *Baker v. Rangos*, 324 A.2d 498, 505 (Pa. Super. 1974), citing *Landau v. Western Pennsylvania National Bank*, 282 A.2d 335, 339 (Pa. 1971). The term “material facts” has been defined as “those facts essential to support the claim” raised in the matter. *Baker v. Rangos*, 324 A.2d 498, 505 (Pa. Super. 1974). A pleading therefore must do more than simply give the adverse party

fair notice of what his claim or defense is and the grounds upon which it rests; it should, instead, formulate the issue by fully summarizing the material facts. *Id.*

Furthermore, pleadings are to be construed against a pleader on the theory that he has stated his case as best he can; any conflicts or ambiguities are to be interpreted against him. See, *Philadelphia v. Pachelli*, 76 A.2d 436 (Pa. Super. 1950). A trial court has broad discretion in determining the amount of detail that must be averred in a pleading because the standard of pleadings set forth in Rule 1019 does not lend itself to precise measurement. *United Refrigerator Co. v. Applebaum*, 189 A.2d 253, 255 (Pa. 1963).

In support of their preliminary objections, Defendants argue the applicability of *Connor v. Allegheny General Hospital*, 461 A.2d 600 (Pa. 1983). *Connor* has been used by the Pennsylvania courts to preclude general allegations in complaints. *Connor* stands for the proposition that general averments in a complaint should be remedied by preliminary objections, which operate to have the offending averment stricken and later amended. The court in *Connor* reasoned that this should result in eliminating surprise on the eve of trial.

“[I]n determining whether a particular paragraph in a complaint has been stated with the necessary specificity, such paragraph must be read in context with all other allegations in that complaint. Only then can the court determine whether the defendant has been put upon adequate notice of the claim against which he must defend.” *Paz v. Commonwealth, Department of Corrections*, 580 A.2d 452, 456 (Pa. Cmwlth. 1990).

At the time set for hearing, Defendants withdrew their objection to Paragraph 17(k) (i) and (t). Defendants’ remaining preliminary objections in the nature of a motion to strike or, in the alternative, a motion for a more specific pleading, object to Paragraph 9 (b), (k), (r) and (s) and Paragraph 17(j)(i) and (v) of the Complaint as contrary to the pleading requirements of Pa.R.Civ.P. 1019(a). These paragraphs allege that Defendants’ care fell below or deviated from acceptable standards of care during the surgical procedure as follows:

Paragraph 9 directed to Defendant Pressman:

- (b) In failing to know and/or utilize accepted and proper principles of history-taking in the care and treatment provided to Plaintiff;
- (k) In performing the subject surgery on Plaintiff when Defendant Pressman was not appropriately educated, trained and experienced;
- (r) In not being appropriately knowledgeable in regard to the relevant medical literature concerning the subject surgery and the complications thereto, including, *inter alia*, complications secondary laceration of the median nerve; and
- (s) Failure to exercise the due care and caution required under the circumstances.

Paragraph 17 directed to Defendant Mon-Vale Orthopedics Inc. t/d/b/a The Orthopedic Group:

- (j) In using improper surgical techniques during the subject surgery including, *inter alia*, as follows:

- (i) Failing to take meticulous care to identify and protect the median nerve before undertaking division of structures in the carpal tunnel; and
- (v) Failure to exercise the due care and caution required under the circumstances.

At Paragraph 9(b), Defendants allege Plaintiff failed to specify what accepted and proper principles of history were not taken into account, when they were not taken into account, and who they were not taken into account by. At Paragraph 9(k), Defendants allege Plaintiffs failed to plead any facts establishing how education, training, or experience relates to the standard of care and treatment provided by Dr. Pressman. Similarly, at Paragraph 9(r), Defendants object to lack of specificity as to how Dr. Pressman was not knowledgeable on relevant medical literature; and at Paragraph 9(s) as to specific facts how Dr. Pressman failed to exercise due care and caution.

With regard to Defendant Mon-Vale Orthopedics Inc. t/d/b/a The Orthopedic Group, the objection at Paragraph 17(j)(i) is to the standard of care being recited as “meticulous” and at Paragraph 17(v) insufficient facts as to how Defendant The Orthopedic Group failed to exercise the undefined “due care and caution.”

The objections raised by Defendants are well-made, and we are in agreement with Defendants that these paragraphs must be stricken pursuant to Rule 1019(a). The offending subsections of these paragraphs do not properly apprise Defendants of the asserted claims, fail to specify material facts essential to support the claims, and contain only general allegations. Accordingly, the preliminary objection is sustained and Paragraph 9(b), (k), (r) and (s) and Paragraph 17(j)(i) and (v) of the Complaint are stricken. Plaintiff shall be provided thirty (30) days to file an Amended Complaint if she so elects.

WHEREFORE, we will enter the following Order.

ORDER

AND NOW, this 5th day February, 2019, upon consideration of the Preliminary Objections of Defendants, Ari E. Pressman, M.D.; Mon-Vale Orthopedics Inc., a Pennsylvania Corporation t/d/b/a The Orthopedic Group, a Pennsylvania registered fictitious name, to the Complaint filed by Plaintiff, Vickie Fisher, it is hereby ORDERED and DECREED that the Preliminary Objections are SUSTAINED. It is further ORDERED and DECREED that the Preliminary Objections of Plaintiff Fisher to Defendants’ Preliminary Objections are OVERRULED in accordance with the foregoing Opinion.

BY THE COURT:
NANCY D. VERNON, JUDGE

ATTEST:
Prothonotary

ESSENTIALS OF ESTATE ADMINISTRATION

The Essentials of Estate Administration Practice in Fayette County

The Fayette County Bar Association will present the Essentials of Estate Administration Practice in Fayette County:

- Date: **Wednesday, February 20th from 9:00 a.m. to 12:00 p.m.**
Location: Commissioners Meeting Room
Public Service Building
22 East Main Street
Uniontown, Pennsylvania
Panelists: Charles W. Watson, Esquire,
Honorable Judge Steve P. Leskinen,
Honorable Judge Joseph M. George, Jr.,
Jeffrey Redman, Register of Wills

Topics will include: Probate vs. Non-probate Assets, Notices, Deadlines/Critical Dates, Payment Priorities, Fiduciary Responsibilities, Control of Funds, Fees/Costs, Estate, Inheritance and Income Taxes, Closing an Estate and Post-death Planning Opportunities, etc.

All attendees will receive digital copies of some relevant forms including personal representative interview sheet, sample will, and accounting, etc.

CLE Credit - 3.0 hour of Substantive CLE credits.

The **costs** to attend are as follows:

- No charge – Attorneys admitted to practice in Pennsylvania after January 1, 2012
- \$30 – Members of the FCBA admitted to practice in Pennsylvania before January 1, 2012
- \$20 – Paralegals/legal assistants of FCBA members
- \$50 – Non-members admitted to practice in Pennsylvania before January 1, 2012

Registration from 8:30 to 9:00. A light breakfast will be provided.

If interested in attending, please call Cindy at the Bar office at 724.437.7994 or by email to cindy@fcbar.org on or before Monday, February 18th.

*Quality... Experience... Results...
It's what your clients deserve.*

Medical Malpractice • Auto Accidents • Personal Injury



GISMONDI
& ASSOCIATES

412-281-2200

www.gislaw.com

700 Grant Bldg., 310 Grant St., Pgh., PA 15219