

# FAYETTE LEGAL JOURNAL

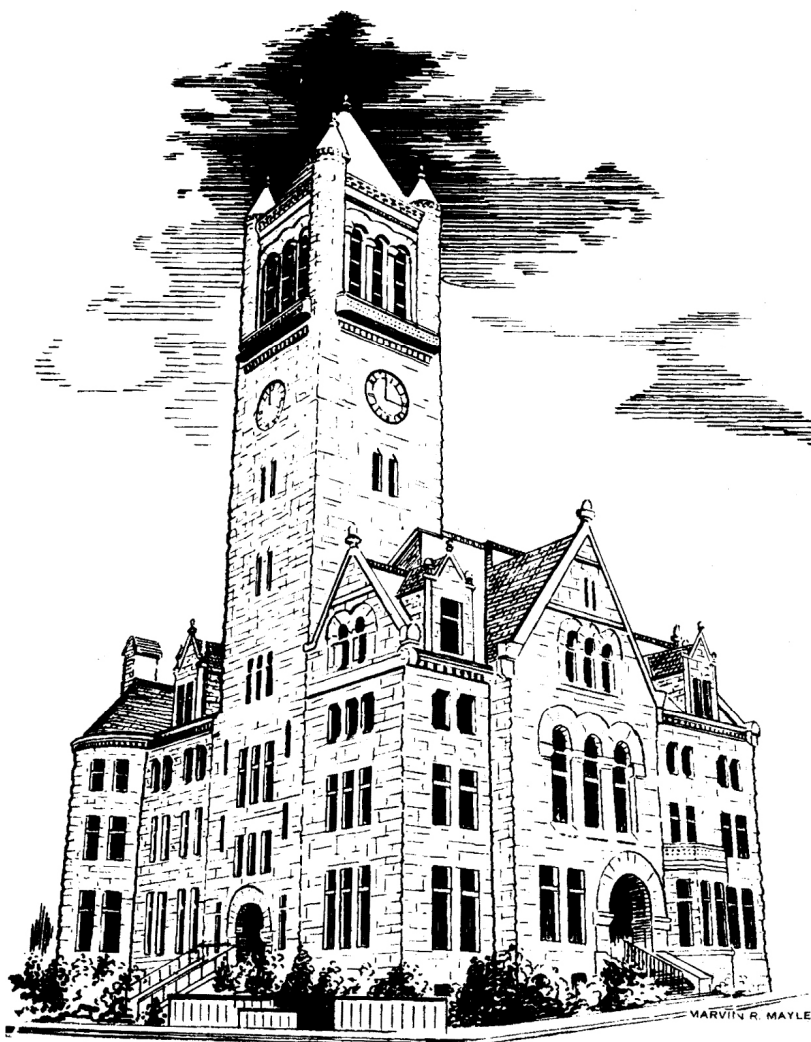
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## FAYETTE LEGAL JOURNAL

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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

**WILLIAM A. COLANTONI**, late of Ohiopyle, Fayette County, PA <sup>(3)</sup>

*Administratrix:* Maria Szakal  
c/o 11 Pittsburgh Street  
Uniontown, PA 15401  
*Attorney:* Thomas W. Shaffer

**MARJORY A. CONN, a/k/a MARJORY ANN CONN**, late of Bullsken Township, Fayette County, PA <sup>(3)</sup>

*Executor:* Christopher K. Conn  
1327 Chestnut Street  
Connellsville, PA 15425

**ALONZO KALP, JR.**, late of Saltlick Township, Fayette County, PA <sup>(3)</sup>

*Executrix:* Nancy Sue Green  
3027 State Route 31  
Acme, PA 15610  
c/o 101 North Church Street  
Mount Pleasant, PA 15666  
*Attorney:* Randall G. Klimchok

**YVONNE MORGAN, a/k/a YVONNE L. MORGAN**, late of Vandergift, Fayette County, PA <sup>(3)</sup>

*Executor:* Michael R. Cossell  
600 Speers Avenue  
Charleroi, PA 15022  
c/o 314 C Porter Avenue  
Scottdale, PA 15683  
*Attorney:* David G. Petonic

## Second Publication

**NORMA RAE ALLISON, a/k/a NORMA S. ALLISON**, late of Perryopolis Borough, Fayette County, PA <sup>(2)</sup>

*Executor:* Douglas C. Allison  
c/o Webster & Webster  
51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

**CHARLES ANSELL, JR., a/k/a CHARLES ANSELL**, late of Lower Tyrone Township, Fayette County, PA <sup>(2)</sup>

*Administratrix:* Kimberly Ansell  
c/o P.O. Box 760  
Connellsville, PA 15425  
*Attorney:* Carolyn W. Maricondi

**JOSEPH P. ARNOLD**, late of Connellsville Township, Fayette County, PA <sup>(2)</sup>

*Executor:* Daniel P. Arnold  
c/o Riverfront Professional Center  
208 South Arch Street, Suite 2  
Connellsville, PA 15425  
*Attorney:* Richard W. Husband

**SHIRLEY R. DENNIS**, late of North Union Township, PA <sup>(2)</sup>

*Co-Executrix:* Tammy L. Gray  
*Co-Executrix:* Marsha L. Widmer  
c/o Webster & Webster  
51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

**VIRGINIA K. GUYNN**, late of Dunbar Township, Fayette County, PA <sup>(2)</sup>

*Administrator:* Alicia Guyann  
c/o P.O. Box 760  
Connellsville, PA 15401  
*Attorney:* Carolyn W. Maricondi

**MARY L. KARWATSKY**, late of  
Connellsville, Fayette County, PA (2)  
*Executor:* David P. Karwatsky  
c/o Riverfront Professional Center  
208 South Arch Street, Suite 2  
Connellsville, PA 15425  
*Attorney:* Richard A. Husband

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**NANCY L. REARICK, a/k/a NANCY  
REARICK**, late of Dawson Borough, Fayette  
County, PA (2)  
*Executor:* James W. Rearick, Jr.  
c/o P.O. Box 760  
Connellsville, PA 15425  
*Attorney:* Carolyn W. Maricondi

---

**PAUL ANDREW STERMOCK, SR.**, late of  
Redstone Township, Fayette County, PA (2)  
*Administratrix:* Karlee Stermock  
c/o Adams & Adams  
55 East Church Street, Suite 101  
Uniontown, PA 15401  
*Attorney:* Jason Adams

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## First Publication

**JOSEPH J. CHERICHETTI**, late of Bullskin  
Township, Fayette County, PA (1)  
*Executor:* Joseph J. Cherichetti, Jr.  
402 Park Place  
Pittsburgh, PA 15237-3615  
c/o 120 South Third Street  
Connellsville, PA 15425  
*Attorney:* Stephanie A. Balest

---

**JACKLYN L. GARBUTT, a/k/a JACKLYN  
GARBUTT**, late of Saltlick Township, Fayette  
County, PA (1)  
*Administrator:* Oca Shirley  
Donald J. McCue Law Firm, P.C.  
Colonial Law Building  
813 Blackstone Road  
Connellsville, PA 15425  
*Attorney:* Donald J. McCue, J.D., P.E.

---

**MARGARET SMORE, a/k/a MARGARET  
K. SMORE, a/k/a MARGARET R. SMORE**,  
late of North Union Township, Fayette County,  
PA (1)  
*Executor:* Thomas James Moore  
c/o John & John  
96 East Main Street  
Uniontown, PA 15401  
*Attorney:* Simon B. John

---

**DELLA LORRAINE VENO**, late of South  
Union Township, Fayette County, PA (1)  
*Executor:* Timothy C. Veno  
c/o John & John  
96 East Main Street  
Uniontown, PA 15401  
*Attorney:* Anne N. John

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**DONALD J. VOGELSANG, a/k/a DONALD  
J. VOGELSANG, II**, late of Uniontown,  
Fayette County, PA (1)  
*Executor:* Stephen J. Vogelsang  
c/o DeHaas Law, LLC  
51 East South Street  
Uniontown, PA 15401  
*Attorney:* Ernest P. DeHaas, III

---

**ROSE ZABOROWSKI, a/k/a ROSE MARIE  
ZABOROWSKI**, late of Perry Township,  
Fayette County, PA (1)  
*Co-Executors:* William J. Zaborowski and  
Beth Ann Binnall  
2003 Middle Road  
Glenshaw, PA 15116  
c/o Reis Law Firm  
3439 Babcock Boulevard, Suite 300  
Pittsburgh, PA 15237  
*Attorney:* Charles Reis

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## LEGAL NOTICES

### NOTICE

Notice is hereby given that Articles of Incorporation were filed on December 3, 2018 with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania for the purpose of obtaining a Certificate of Incorporation of a domestic nonprofit corporation which was organized under the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania, (15 Pa. C. S. A. Section 5306, et. sec.) as from time to time amended. The name of the Corporation is Living Stone Church.

Nicholas M. Clark, Esq.  
HIGINBOTHAM LAW OFFICES  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
Telephone: 724-437-2800

ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER JEANETTE MORENCY A/K/A JEANETTE BROWN MORENCY, DECEASED

You are hereby notified that on October 17, 2018, Plaintiff, DITECH FINANCIAL LLC, filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of FAYETTE County Pennsylvania, docketed to No. 2264-OF-2018-GD. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 312 PROVINS AVENUE, MASONTOWN, PA 15461-1928 whereupon your property would be sold by the Sheriff of FAYETTE County.

You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

### NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the 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 A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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### NOTICE OF ACTION IN MORTGAGE FORECLOSURE IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA CIVIL ACTION – LAW

COURT OF COMMON PLEAS  
CIVIL DIVISION  
FAYETTE COUNTY  
No. 2264-OF-2018-GD

**DITECH FINANCIAL LLC**

**Plaintiff**

**vs.**

**FRANTZ MORENCY, JR, in his capacity as  
Heir of JEANETTE MORENCY A/K/A  
JEANETTE BROWN MORENCY,, Deceased  
UNKNOWN HEIRS, SUCCESSORS,  
ASSIGNS, AND ALL PERSONS, FIRMS,  
OR ASSOCIATIONS CLAIMING RIGHT,  
TITLE OR INTEREST FROM OR UNDER  
JEANETTE MORENCY A/K/A JEANETTE  
BROWN MORENCY, DECEASED**

**Defendants**

### NOTICE

To UNKNOWN HEIRS, SUCCESSORS,

JUDICIAL OPINION

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

COMMONWEALTH OF PENNSYLVANIA :  
v. :  
NATHAN YASEK, : No. 62 of 2018  
Defendant. : Honorable Steve P. Leskinen

OPINION AND ORDER

Leskinen, J. November 13, 2018

AND NOW, this 13th day of November 2018, upon review of the Writ of Habeas Corpus, prepared on behalf of Nathan Yasek (hereinafter Yasek), the Court HEREBY DENIES the Motion in its entirety.

BACKGROUND

On November 24, 2017, Yasek was dining with his girlfriend, Trisha Crozier (hereinafter Crozier), at Rizz's Restaurant located at 84 W. Main Street, Uniontown, Fayette County, Pennsylvania. Sometime after 9:30 P.M. Yasek and Crozier left Rizz's. Yasek and Crozier then walked to Yasek's truck situated in the parking lot adjoining Rizz's. Crozier entered the vehicle while Yasek urinated in the parking lot. Yasek opened the driver's side door and situated himself within the triangle shaped opening on the outside of the vehicle created by the open door and passenger compartment (hereinafter "V").

While Yasek was in the "V" of the vehicle, Timothy Durst (hereinafter Decedent), was walking along the sidewalk on the opposite side of Main St. with two (2) other persons. Evidently, Decedent saw Yasek, departed from his companions, and walked across Main Street toward Yasek's vehicle. Yasek told the police that the Decedent approached him from behind and punched him in the back of the head. Yasek said he then turned to face the Decedent and was struck again. At some point during the altercation Yasek pointed a firearm at the Decedent. According to Yasek, the Decedent stated "Oh, big bad mother fucker, you're going to pull a gun on me?". Yasek shot the Decedent two (2) times with his .45 caliber handgun. One bullet penetrated the Decedent's right chest and the other bullet penetrated the posterior edge of the left armpit. The decedent made his way to the front of the Defendant's vehicle and collapsed on the sidewalk, where he quickly passed away.

Lieutenant Kolencik provided testimony that his investigation was generally consistent with the Defendant's version of events. However, the Defendant had no bruises or marks on his face following the altercation. Lt. Kolencik concluded that all gunshots were probably fired within the "V" of the Defendant's vehicle.

## DISCUSSION

18 Pa.C.S. § 505 provides Pennsylvania's general principles of justification for the use of deadly force. As relevant here, the statute provides:

(a) Use of force justifiable for protection of the person --The use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

(b) Limitations on justifying necessity for use of force--

(2) The use of deadly force is not justifiable under this section unless the actor believes that such force is necessary to protect himself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat; nor is it justifiable if:

(i) the actor, with the intent of causing death or serious bodily injury, provoked the use of force against himself in the same encounter; or

(ii) the actor knows that he can avoid the necessity of using such force with complete safety by retreating, except the actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be.

(2.1) Except as otherwise provided in paragraph (2.2), an actor is presumed to have a reasonable belief that deadly force is immediately necessary to protect himself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat if both of the following conditions exist:

(i) The person against whom the force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered and is present within, a dwelling, residence or occupied vehicle; or the person against whom the force is used is or is attempting to unlawfully and forcefully remove another against that other's will from the dwelling, residence or occupied vehicle.

(ii) The actor knows or has reason to believe that the unlawful and forceful entry or act is occurring or has occurred.

(2.2) The presumption set forth in paragraph (2.1) does not apply if:

(i) the person against whom the force is used has the right to be in or is a lawful resident of the dwelling, residence or vehicle, such as an owner or lessee;

(ii) the person sought to be removed is a child or grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the protective force is used;

(iii) the actor is engaged in a criminal activity or is using the dwelling, residence or occupied vehicle to further a criminal activity; or

(iv) the person against whom the force is used is a peace officer acting in the performance of his official duties and the actor using force knew or reasonably should have known that the person was a peace officer.

... (2.5) Unless one of the exceptions under paragraph (2.2) applies, a person who unlawfully and by force enters or attempts to enter an actor's dwelling, residence or occupied vehicle or removes or attempts to remove another against that other's will from the actor's dwelling, residence or occupied vehicle is presumed to be doing so with the intent to commit:

- (i) an act resulting in death or serious bodily injury; or
- (ii) kidnapping or sexual intercourse by force or threat.

(3) Except as otherwise required by this subsection, a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used, without retreating, surrendering possession, doing any other act which he has no legal duty to do or abstaining from any lawful action.

...  
18 Pa.C.S. § 505.

"Although the castle doctrine has existed at common law in this Commonwealth essentially since its founding, it was not codified in Pennsylvania until 1972, with the enactment of 18 Pa.C.S.A. § 505." *Commonwealth v. Childs*, 142 A.3d 823,829 (Pa. 2016). In enacting section 505, the legislature sought "to codify existing case law pertaining to 'self-defense' and to cover in a single rule the law governing the use of defensive force." *Id.*, citing 18 Pa.C.S.A. § 505, Official Comment 1972. The legislature emphasized that section 505 made no substantial change to the existing law. *Id.*

Although revised in format, current section 505(b)(2)(ii) and former section 505 (b)(2)(ii)(A) both provide that a person may use deadly force if he or she believes that it is necessary to prevent death, serious bodily injury, kidnapping, or sexual intercourse compelled by force or threat, and that there is no duty to retreat from the person's dwelling or place of work unless that person is the initial aggressor or is assailed by a person who also works in the same place. The elements of a castle doctrine defense remained unaltered.

*Id.* at 830.

In the past, the Pennsylvania Supreme Court has held that the justified use of deadly force requires:

- a) the actor was free from fault in provoking or continuing the difficulty which resulted in the use of deadly force; b) the actor must have reasonably believed that he was in imminent danger of death or serious bodily injury, and that there was a necessity to use such force in order to save himself or others therefrom; and c) the actor did not violate any duty to retreat or to avoid the danger.

*Commonwealth v. Harris*, 665A.2d 1172, 1174 (Pa. 1995).

The "Castle Doctrine" is a specialized component of self-defense, which recognizes that a person has no duty to retreat from his home before using deadly force as a means of self-defense. *Childs*, 142 A.3d at 825. The "Castle Doctrine" was recently extended



by our legislature in 2011 to clarify that there is no duty to retreat from an occupied vehicle when the attacker has entered or is attempting to enter the vehicle. *Commonwealth v. Gray*, 91 A.3d 102 (Pa. 2014). The "Castle Doctrine" does not affect a person's right to use deadly force within his home, but rather creates an evidentiary presumption relevant to the evaluation of such a claim of self-defense. *Childs*, 142 A.3d at 824. Successfully asserting a justification defense such as the "Castle Doctrine" or self-defense at trial would have required some evidence to show that Appellant did not violate his duty to retreat or avoid the danger. *Commonwealth v. Rivera*, 108 A.3d 779, 791 (Pa. 2014).

Yasek makes a Habeas Corpus challenge to the charges filed against him and asks the Court to apply Pennsylvania's "Castle Doctrine". Yasek offers case law from sister states to support his position. Yasek mainly relies on *Newell v. State*, 49 So.3d 66 (Miss. 2010). Yasek also offers *State v. Douglas*, 768 S.E. 2d 232 (S.C. Ct. App 2014), *Thomas v. State*, 75 So. 3d 1112 (Miss. Ct. App. 2011), and *State v. Jones*, 786 S.E. 2d 132 (S.C. Ct. App. 2016) to this Court as persuasive authority to show that the decedent did not have to have a deadly weapon for Yasek to assert a "Castle Doctrine" defense.

In *Newell*, the defendant suspected his wife of cheating on him and went to the bar he thought she may be at to confirm his suspicions. *Newell*, 49 So.3d at 68. *Newell* saw two (2) men, Boyette and Hollis, standing near his wife's truck and asked if they knew her. *Id.* The men did not but an argument ensued. *Id.* *Newell* eventually walked away and returned to his truck. *Id.* Boyette followed *Newell* to his truck. *Id.* Boyette started beating on the truck and shouted that he would "[mess] [Newell] up!". *Id.* As *Newell* was entering the truck, Boyette closed the truck door on *Newell*'s leg. *Id.*

*Newell* was able to shut the door completely and was the only one inside his vehicle. *Id.* Boyette continued hitting *Newell*'s vehicle and yelled "I'm fixing to get you-[mess] up your world. I'm fixing to-get [yourself] out of that truck". *Id.* *Newell* was able to back up the vehicle, but he was still continuing to fear for his life. *Id.* at 69. *Newell* testified that Boyette "grabbed on the truck door, like opening the door, like he was either-from the look in his eyes, he was either going to-you know, he was going to try to open that door, just stand there beat-hitting on me when I was sitting in the door, or he was trying to snatch me out of the truck." *Id.*

*Newell* was able to push on the truck door and Boyette backed up just enough for *Newell* to slip outside of the vehicle. *Id.* *Newell* testified that "[Boyette] said 'I'm fixing to cut you up,'" and "when he grabbed at his pocket, that's when (*Newell*) reached under the... seat of the truck, pulled the pistol out, and shot him." *Id.* *Newell* fired a single shot. *Id.*

The Mississippi Supreme Court held, in relevant part, that the trial court committed reversible error by refusing *Newell*'s request for a jury instruction on the newly revised statutory presumption under the "Castle Doctrine." *Id.* at 78.

The facts that the decision in *Newell* was based upon differ greatly from the facts of the current case. *Newell* was actually inside the passenger compartment of his vehicle before he exited it. Boyette was actively trying to get inside the vehicle. Once *Newell*

exited the vehicle, Boyette made a direct threat to escalate the violence against Newell and reached toward his pocket. Then instantly, Newell reached for his firearm and fired a single shot. None of that is similar to the case at hand.

Even if Newell was controlling authority in this Commonwealth and was a case on point with the facts here, dismissal at this stage would not be proper. Based on Newell, a defendant who acted under similar circumstances would only be afforded a jury instruction on the applicability of the "Castle Doctrine".

In this case, the evidence is uncontroverted. Yasek possessed a firearm on the night in question and shot the Decedent. The Decedent's cause of death was due to injuries he sustained as a result of the gunshot wounds. The Commonwealth has made a prima facie case for the charges filed against Yasek. Yasek says that he was attacked and feared for his life, but a jury is not required to accept his testimony, even if it is uncontradicted.

There is a question as to whether Yasek was "occupying his vehicle". Yasek opened his truck door with the intention of gaining privacy to urinate, not to immediately enter the passenger compartment of the vehicle. There is no evidence the Decedent was trying to remove Yasek from the vehicle. Pursuant to 18 Pa.C.S. §505(b)(2.2)(i), the Decedent had the right to be present in the parking lot and there is no evidence that he ever attempted to enter Yasek's vehicle. This would negate the presumption that Yasek had the reasonable belief that deadly force was necessary to protect himself. The jury can be instructed as to the law and can decide whether Yasek's actions were justified.

For the reasons set forth above, the Court is not willing to accept the Defendant's invitation to extend the "Castle Doctrine" to the facts set forth above as a matter of law and dismiss the charges at this time. The reasonableness of the Defendant's actions or any justification therefor will be assessed by the finder of fact at trial.

Therefore, the Court enters the following:

#### OPINION AND ORDER

AND NOW, this 13th day of November 2018, upon review the Writ of Habeas Corpus, prepared on behalf of Nathan Yasek, the Court HEREBY DENIES the Motion in its entirety.

BY THE COURT:  
STEVE P. LESKINEN, JUDGE

ATTEST:  
Clerk of Courts

## LUNCH & LEARN SERIES

### FCBA LUNCH & LEARN SERIES

The Fayette County Bar Association's first presentation in its Lunch & Learn Series in 2019 will be:

- Date: Wednesday, January 16th from 12:00 p.m. to 1:30 p.m.
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topic: **What the Non-Bankruptcy Attorney Needs to Know about Bankruptcy**
- Presenter: Charles Zebley, Esquire

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1.5 hours of Substantive CLE credit for the program. The fees are as follows:

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- \$10 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2012

- No charge for attendance with CLE Credit

Non-members of the FCBA

- \$10 fee for attendance without CLE Credit
- \$20 fee for attendance with CLE Credit

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

A light lunch 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](mailto:cindy@fcbar.org) on or before Monday, January 14th.

-Professional Ethics Committee of the Fayette Bar Association

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