

# FAYETTE LEGAL JOURNAL

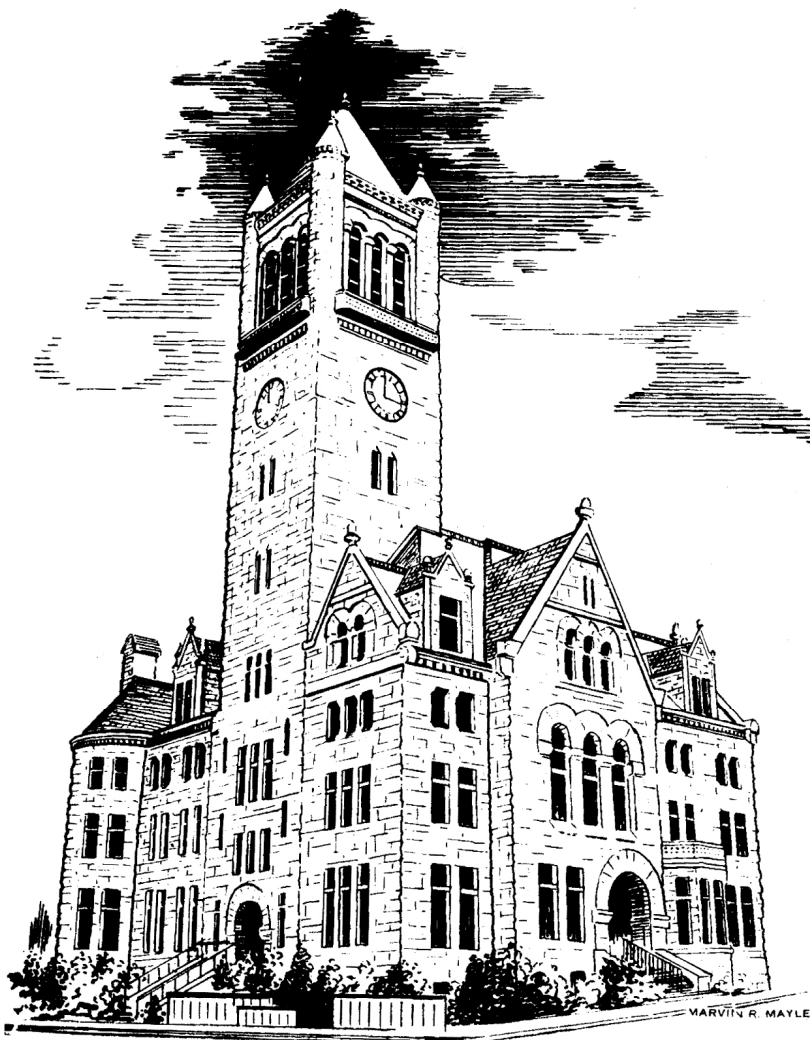
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## FAYETTE LEGAL JOURNAL

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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

**EMMETT BRUCE BAKER, JR., a/k/a  
BRUCE BAKER**, late of Hopwood, Fayette  
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*Executor:* James Scott Baker  
c/o P.O. Box 727  
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*Attorney:* Bernadette K. Tummons

**BETTY LINCOLN, a/k/a BETTY LOUISE  
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County, PA (3)

*Personal Representative:* Susan Frazee  
c/o P.O. Box 622  
Smithfield, PA 15478  
*Attorney:* Charity Grimm Krupa

**CLARENCE E. NICHOLSON**, late of  
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*Executrix:* Lois E. Nicholson  
c/o P.O. Box 727  
Uniontown, PA 15401  
*Attorney:* Bernadette K. Tummons

**AUDREY SNYDER**, late of Belle Vernon,  
Fayette County, PA (3)

*Executor:* Rebecca Smith  
403 Harmony Church Road  
Belle Vernon, PA 15012

**MARY JEAN YANNACCI**, late of Fayette  
City, Fayette County, PA (3)

*Administrator:* Stanley J. Welsh  
110 Watson Drive  
Monongahela, PA 15063  
c/o Bassi, Vreeland & Associates, P.C.  
P.O. Box 144  
111 Fallowfield Avenue  
Charleroi, PA 15022  
*Attorney:* Bradley M. Bassi

### Second Publication

**FLOYD G. CRAGGETTE, a/k/a FLOYD  
GILBERT CRAGGETTE**, late of  
Connellsville, Fayette County, PA (2)

*Executrix:* Helen Bailey  
c/o Proden & O'Brien  
99 East Main Street  
Uniontown, PA 15401  
*Attorney:* Wendy L. O'Brien

**NANCY DOMINA, a/k/a NUNZIA  
DOMINA**, late of Connellsville, Fayette  
County, PA (2)

*Executrix:* Mary Grace Rulli  
c/o Molinaro Law Offices  
P.O. Box 799  
Connellsville, PA 15425  
*Attorney:* Carmine V. Molinaro, Jr.

**BERTON PAUL KRUMANACKER, a/k/a  
BERTON P. KRUMANACKER, a/k/a PAUL  
KRUMANACKER**, late of Connellsville,  
Fayette County, PA (2)

*Executor:* Donald Lee Krumanacker  
c/o Molinaro Law Offices  
P.O. Box 799  
Connellsville, PA 15425  
*Attorney:* Carmine V. Molinaro, Jr.

**ROY W. TAYLOR**, late of Connellsville,  
Fayette County, PA (2)

*Co-Executors:* Eric D. Taylor and  
Heather L. Taylor  
c/o Molinaro Law Offices  
P.O. Box 799  
Connellsville, PA 15425  
*Attorney:* Carmine V. Molinaro, Jr.

First Publication

**WILLIAM ALLEN, a/k/a WILLIAM L. ALLEN**, late of North Union Township, Fayette County, PA (1)  
*Personal Representative:* Tania Bosley  
c/o Davis and Davis  
107 East Main Street  
Uniontown, Pa 15401  
*Attorney:* Gary J. Frankhouser

**DAVID YALE CURTIS**, late of Acme, Fayette County, PA (1)  
*Executor:* Dean Scott Jones  
67 Spruce Peak Road  
Acme, PA 15610  
c/o 1227 South Braddock Avenue  
Pittsburgh, PA 15218  
*Attorney:* Kathleen Schneider

LEGAL NOTICES

NOTICE

RE: Change of Name of  
Olivia Marie DeBord, a minor:

To Whom It May Concern:

Be advised that the Court of Common Pleas of Fayette County, Pennsylvania, will hear the Petition for the Change of Name of Olivia Marie DeBord, a minor, on March 18, 2020, at 1:30 a.m. in Courtroom No. 5. All interested individuals may attend at that date and time.

**DAVIS & DAVIS**  
BY: Samuel J. Davis, Esquire  
107 East Main Street  
Uniontown, PA 15401

NOTICE

RE: Change of Name of  
Madelyn Aariah DeBord, a minor:

To Whom It May Concern:

Be advised that the Court of Common Pleas of Fayette County, Pennsylvania, will hear the Petition for the Change of Name of Madelyn Aariah DeBord, a minor, on March 18, 2020, at 1:30 a.m. in Courtroom No. 5. All interested individuals may attend at that date and time.

**DAVIS & DAVIS**  
BY: Samuel J. Davis, Esquire  
107 East Main Street  
Uniontown, PA 15401

NOTICE

RE: Change of Name of  
Joshua Hudson DeBord, a minor:

To Whom It May Concern:

Be advised that the Court of Common Pleas of Fayette County, Pennsylvania, will hear the Petition for the Change of Name of Joshua Hudson DeBord, a minor, on March 18, 2020, at 1:30 a.m. in Courtroom No. 5. All interested individuals may attend at that date and time.

**DAVIS & DAVIS**  
BY: Samuel J. Davis, Esquire  
107 East Main Street  
Uniontown, PA 15401

IN THE COURT OF COMMON PLEAS OF  
FAYETTE COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION  
NO.44 ADOPT 2019

IN RE: ADOPTION OF  
ELENA KELLAM

NOTICE

TO: Ethan Stafford and Unknown Father

A petition has been filed asking the Court to put an end to all rights you have to your child, Elena Kellam. The court has set a hearing to consider ending your rights to your child. That hearing will be held in Courtroom No. 4 of the Fayette County Courthouse, Uniontown, Fayette

County, Pennsylvania, on Thursday, February 13, 2020 at 1:30 p.m. You are warned that even if you fail to appear at the scheduled hearing the hearing will go on without you and your rights to your child may be ended by the court without your being there.

YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

PENNSYLVANIA BAR ASSOCIATION  
100 SOUTH STREET  
PO BOX 186  
HARRISBURG, PA 17108  
(800) 932-0313

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ACTION OF MORTGAGE FORECLOSURE  
COURT OF COMMON PLEAS  
FAYETTE COUNTY, PA  
CIVIL DIVISION - LAW  
No. 2567 of 2019

21ST MORTGAGE CORPORATION, et. al.  
"Plaintiff"

vs.

RUDOLPH V. SMITH and YMA Y. SMITH  
"Defendants"

TO: RUDOLPH V. SMITH and YMA Y. SMITH

BY ORDER DATED JANUARY 14, 2020,  
PLAINTIFF WAS AUTHORIZED TO SERVE  
ITS COMPLAINT UPON YOU BY  
PUBLICATION.

You are hereby notified that on November 18, 2019, Plaintiff filed a Mortgage Foreclosure Complaint with Notice to Defend, against you, docket No. 2567 of 2019 wherein the Plaintiff seeks to foreclose its mortgage on your property located at 826 First Street, f/k/a 1314 First Street, LaBelle, Fayette County, PA, seeking to

sell through the Sheriff of Fayette County. The Complaint seeks recovery on the mortgage in the amount of \$105,776.84 plus per diem interest of \$9.32 per day from November 17, 2019, plus costs of suit.

### NOTICE TO DEFEND

You have been sued in Court. If you wish to defend, against the claims set forth in the Complaint, you must take action within twenty (20) days after this complaint and notice are served, 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 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 PAPER 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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Thomas A. Capehart, Esquire, ID #57440  
Gross McGinley, LLP., Attorney for Plaintiff  
33 S. 7th Street, PO Box 4060  
Allentown, PA 18105-4060  
(610) 820-5450

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JUDICIAL OPINION

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

COMMONWEALTH OF  
PENNSYLVANIA

vs.

FRANCISCO JUNIOR SANTOS,  
Defendant/Appellant.

:

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:

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No. 214 of 2019  
Honorable Nancy D. Vernon

OPINION IN SUPPORT OF JURY VERDICT

VERNON, J.

January 21, 2020

Following a trial by jury, Appellant, Roy Cummings, was found guilty of Aggravated Assault [Count 3 – 18 Pa.C.S.A. §2702(A)(3)], Simple Assault [Counts 5 and 6 - 18 Pa.C.S.A. §2701(A)(1)], Criminal Mischief [Count 7 - 18 Pa.C.S.A. §3304(A)(5)], and Disorderly Conduct Engage in Fighting [Count 8 - 18 Pa.C.S.A. §5503(A)(1)]. Appellant was acquitted of two counts of Assault by Prisoner and one count Aggravated Assault. Appellant was sentenced to a term of incarceration of three to six years on Count 3 - Aggravated Assault and no further penalty was imposed for the remaining convictions. Appellant has appealed to the Superior Court and this Opinion is in support of the jury verdict and sentence imposed.

- On appeal, Appellant raises the following issues:
1.

Whether the evidence presented at trial was legally and factually sufficient to prove that the Defendant intentionally or knowingly committed an assault upon the alleged victims.
2.

Whether the evidence presented at trial was legally and factually sufficient to prove that Defendant intentionally or knowingly committed an assault upon the alleged victims where the jury returned inconsistent verdicts of not guilty on Counts 1 and 2 – Assault by Prisoner, and Count 4 – Aggravated Assault, yet found the Defendant guilty of Aggravated Assault at Count 3.

STATEMENT OF THE CASE

Andrew Zapotosky was employed as a Corrections Officer at State Correctional Institution at Fayette on September 14, 2018, where he was stationed in the dining hall during the breakfast mealtime. N.T., 10/9-10/2019, at 16-17. Policy does not permit an inmate to return to the dining hall once he exits. Id. at 18. Officer Zapotosky observed Appellant exit the dining hall and then returned inside. Id. Officer Zapotosky approached Appellant as to why he returned to the dining hall and Appellant responded that he lost his I.D. card. Id.

Appellant is handicapped and uses a wheelchair. Id. at 20. Officer Zapotosky looked for the I.D. card in the dining hall but did not locate it. Id. Officer Zapotosky summoned the sergeant about the missing I.D. card to get Appellant issued a temporary one. Id. at 20-21. As Sergeant Harvey was walking towards Appellant, he stood up and punched Officer Zapotosky once with a closed fist in the face. Id. at 21. An alert was

sent to other corrections officers to respond to the scene and Officer Zapotosky was escorted to the medical department. *Id.* at 22-23. The inside of Officer Zapotosky's lip was cut and he suffered a concussion. *Id.* at 23.

Officer Zapotosky testified that he continues to suffer headaches, that he undergoes treatment with a chiropractor, and that his eyeglasses were broken. *Id.* at 27.

Sergeant Jason Harvey observed Appellant and Officer Zapotosky exit the dining hall and the Officer summoned for him. *Id.* at 38. As Sergeant Harvey approached, he watched Appellant stand up from his wheel chair and strike Officer Zapotosky with a closed fist. *Id.* at 38.

Sergeant Harvey responded by attempting to restrain Appellant on the ground and calling for assistance. *Id.* at 39. Sergeant Harvey struggled to get Appellant into the proper position for a restraint when Appellant slid underneath him and bit the sergeant's torso. *Id.* at 40-41.

### DISCUSSION

Appellant first claims the evidence presented at trial was legally and factually insufficient to prove that he intentionally and knowingly committed an assault upon the alleged victims. The Court disagrees.

Initially, we note Appellant does not identify which elements of which counts that he alleges to be lacking. With such a blank, indistinct, and vague Concise Statement, this Court is left with mere speculation as to what specifically Appellant complains of on appeal as insufficient. Nonetheless, we will examine the sufficiency of the evidence of his convictions for Aggravated Assault on Andrew Zapotosky and Simple Assault of Jason Harvey and Andrew Zapotosky.

When a party challenges the sufficiency of the evidence, the critical inquiry on review does not require a court to ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt. *Commonwealth v. McCurdy*, 943 A.2d 299, 301 (Pa.Super. 2008). Instead, it must determine simply whether the evidence believed by the fact-finder was sufficient to support the verdict. All of the evidence and any inferences drawn therefrom must be viewed in the light most favorable to the Commonwealth as the verdict winner. *Id.* at 301-302. While it is true that the Commonwealth must prove every essential element of a crime beyond a reasonable doubt, it is well established that the Commonwealth may sustain this burden by means of wholly circumstantial evidence. *Commonwealth v. Richardson*, 357 A.2d 671, 673 (Pa.Super. 1976). The Commonwealth need not preclude every possibility of innocence or establish the Appellant's guilt to a mathematical certainty. *Commonwealth v. Williams*, 871 A.2d 254, 259 (Pa.Super. 2005).

Further, any doubts regarding an appellant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that no probability of fact may be drawn from the combined circumstances. The trier of fact while passing upon the credibility of the witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence. *Commonwealth v. Robertson-Dewar*, 829 A.2d 1207, 1211 (Pa.Super. 2003).

With the above principles in mind, we now consider whether the Commonwealth presented enough evidence to sustain Appellant's convictions of one count of Aggravated Assault and two counts of Simple Assault.

Appellant was convicted of an Aggravated Assault upon Corrections Officer Zapotosky. The Crimes Code defines Aggravated Assault, 18 Pa.C.S.A. §2702(a)(3), as “A person [who] [...] attempts to cause or intentionally or knowingly causes bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c), in the performance of duty.” Corrections Officer Zapotosky, by way of his employment, so qualifies as an officer of a correctional institution as an enumerated person pursuant to the statute. 18 Pa.C.S.A. §2702(c)(9).

When Appellant punched Officer Zapotosky in his face with a closed fist, he committed an Aggravated Assault. Accordingly, the evidence was sufficient for the jury to return a guilty verdict on this count.

As to the Simple Assault convictions, Section 2701 of the Crimes Code defines that a Simple Assault occurs when a person “attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another.”

The Commonwealth presented evidence believed by the jury, sufficient in kind and quality, that Appellant committed Simple Assaults on Officer Zapotosky and Sergeant Harvey when he punched the Officer in the face and when he bit the Sergeant. As such, this issue is without merit.

Next, Appellant claims that the convictions of Aggravated Assault of Officer Zapotosky and Simple Assaults of Officer Zapotosky and Sergeant Harvey were inconsistent verdicts with the jury’s acquittal of Appellant on the charges of Assault by Prisoner (Count 1 and Count 2) and Aggravated Assault of Sergeant Jason Harvey (Count 4). The Court disagrees that the verdicts were “inconsistent” in as much as the Court believes the jury’s verdicts properly reflect the evidence presented by the Commonwealth. Nonetheless, we will adopt the Supreme Court’s rationale of “inconsistent verdicts”:

We refuse to inquire into or to speculate upon the nature of the jury’s deliberations or the rationale behind the jury’s decision. Whether the jury’s verdict was the result of mistake, compromise, lenity, or any other factor is not a question for this Court to review. See *Commonwealth v. Campbell*, 539 Pa. 212, 651 A.2d 1096 (1994) (discussing *United States v. Powell*, 469 U.S. 57, 58, 105 S.Ct. 471, 83 L.Ed.2d 461 (1984)). We reaffirm that an acquittal cannot be interpreted as a specific finding in relation to some of the evidence, and that even where two verdicts are logically inconsistent, such inconsistency alone cannot be grounds for a new trial or for reversal. Furthermore, the “special weight” afforded the fact of an acquittal plays no role in the analysis of inconsistent verdicts, because, by definition, one of the verdicts will always be an acquittal.

*Commonwealth v. Miller*, 35 A.3d 1206, 1213 (Pa. 2012)

Wherefore, it is respectfully submitted that the entire appeal is without merit and should be denied.

BY THE COURT:  
NANCY D. VERNON, JUDGE

ATTEST:  
Clerk of Courts





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|-------------|--|
| February 11 | <b>A View From the Workers' Comp Bench</b><br>9:00 a.m. to 11:00 a.m.<br>2 substantive     |
| March 4     | <b>Civil Litigation Update</b><br>9:00 a.m. to 4:15 p.m.<br>5 substantive/1 ethics         |
| March 24    | <b>Handling the Workers' Comp Case</b><br>9:00 a.m. to 4:15 p.m.<br>5 substantive/1 ethics |



## CRIMINAL JUSTICE TRAINING



A training for County Criminal Justice Leaders and Practitioners has been scheduled for **Friday, February 21, 2020, at 1:00 PM**, in the conference room of the Public Safety Building, 22 East Main Street, Uniontown, to address the important issues listed below. Attendance is free.

2.0 Substantive CLE credits

**RSVP is required to District Court Administrator Karen Kuhn at 724-430-1230.**

The training will include a 2 hour CJE/CLE presentation on recent changes to statutes and guidelines, and a less formal discussion of local practices and procedures, including the use of the Commission's JNET-based SGS Web application, as well as an opportunity to comment on proposals being considered by the Commission.

Earlier this year, in response to legislative mandates, the Pennsylvania Commission on Sentencing adopted and submitted to the General Assembly three proposals:

Sentencing Guidelines (7th Edition, Amendment 5)

Resentencing Guidelines (pursuant to Act 81 of 2008)

Sentence Risk Assessment Instrument (pursuant to Act 95 of 2010)

The sentencing and resentencing guidelines will take effect January 1, 2020 and apply to all offenses committed on or after that date. The Sentence Risk Assessment Instrument will take effect July 1, 2020 and apply to all offenses committed on or after that date. However, beginning on January 1, 2020, the Commission will conduct a six-month training and orientation for judges and practitioners related to the use of the Sentence Risk Assessment Instrument, the purpose of the recommendation, and the type of information recommended.

In addition, the General Assembly recently enacted and the Governor signed Act 114 of 2019 (SB 500) and Act 115 of 2019 (SB 501), commonly known as the Justice Reinvestment Initiative (JRI-II). This legislation amends substantial portions of Title 42 (Judiciary and Judicial Procedure) and Title 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, including changes to sentencing alternatives available to Courts, modification of sentencing guidelines to address probation duration and the use of restrictive conditions, a certification process linked to additional state funding for county adult probation and parole, and numerous changes that impact state sentences.

Other issues to be discussed include work underway on a Domestic Violence Pretrial Risk Assessment, a comprehensive revision of the Sentencing Guidelines (8th Edition), and Parole Guidelines and Recommitment Ranges for use by the (renamed) Pennsylvania Parole Board.

## LUNCH & LEARN SERIES

### FCBA LUNCH & LEARN SERIES

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

- Date: **Wednesday, February 19th** from 12:00 p.m. to 1:30 p.m.
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topic: **Issues in Landlord/Tenant Litigation**
- Presenters: Magisterial District Judge Mike Defino, Jr. and Attorneys Rachel Ann Clark and Jeremy Davis

### CLE Credit

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

#### Members of the FCBA

- No charge for attendance without CLE Credit
- \$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
- \$40 fee for attendance with CLE Credit

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

A light lunch will be provided.

### RSVP

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, February 17th.

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