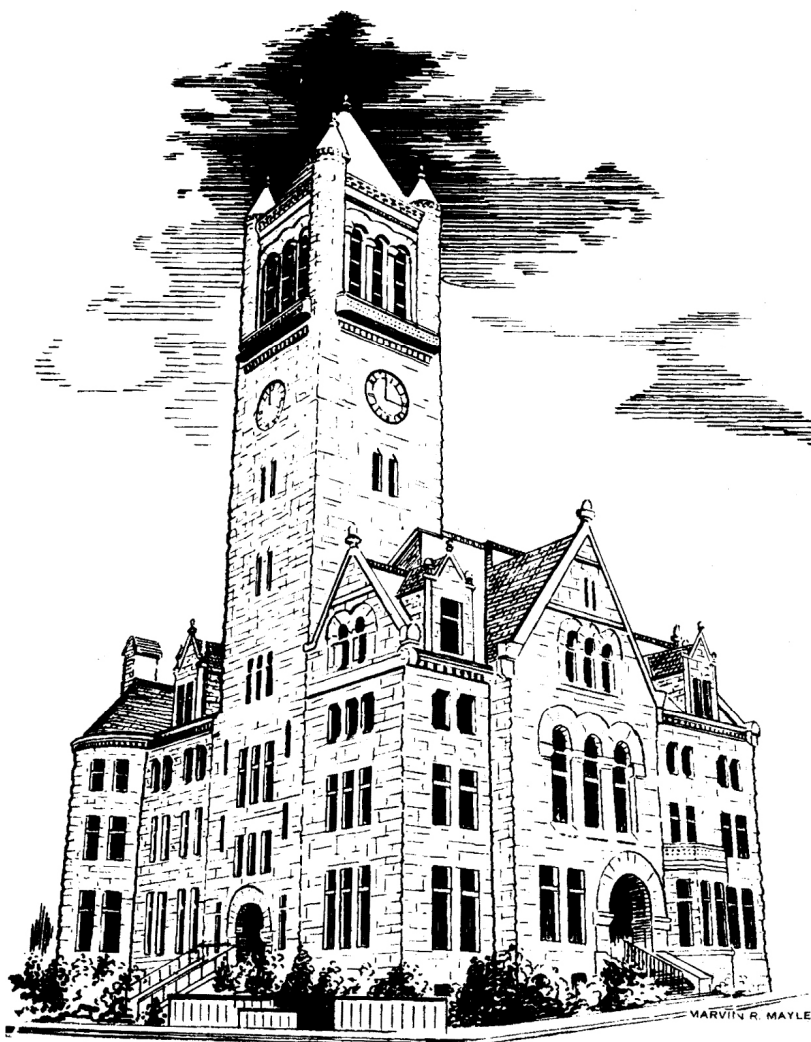


FAYETTE LEGAL JOURNAL

VOL. 82

JUNE 8, 2019

NO. 23



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.

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Third Publication

JUDITH M. BAIRD, late of North Union Township, Fayette County, PA (3)

Executrix: Jamie L. Supensky
c/o Webster & Webster
51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

JOHN A. CANADA, a/k/a JOHN ANTHONY CANADA, late of Dunbar Township, Fayette County, PA (3)

Personal Representative: Sharon A. Canada
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

MARY R. FIKE, late of Uniontown, Fayette County, PA (3)

Personal Representatives:
Bradley T. Fike
28 Oak Hill Drive
Uniontown, PA 15401
Kristin L. Fike
17 Jordan Street
Fairchance, PA 15436
c/o DeHaas Law, LLC
51 East South Street
Uniontown, PA 15401
Attorney: Ernest P. DeHaas, III

STELLA M. HARTZEL, a/k/a TAMMY LYNN HARTZEL, late of North Union Township, Fayette County, PA (3)

Administratrix: Ronda L. Hartzel
314 Chestnut Hill Street
Gaithersburg, MD 20878
c/o 111 East Main Street
Uniontown, PA 15401
Attorney: Robert R. Harper, Jr.

HELEN VEGHTS, a/k/a HELEN ARLENE VEGHTS, late of Connellsville, Fayette County, PA (3)

Executor: Dayna A. Veghts
615 Snyder Street
Connellsville, PA 15425
c/o Zacharia Brown, P. C.
111 West McMurray Road
McMurray, PA 15317
Attorney: Benjamin Urso

Second Publication

DENNIS PAUL HUGHES, late of Connellsville, Fayette County, PA (2)

Executrix: Pamela S. Hughes
c/o Casini & Geibig, LLC
815B Memorial Boulevard
Connellsville, PA 15425
Attorney: Jennifer M. Casini

ALTA PHILLIPS KAMP, late of Markleysburg, Fayette County, PA (2)

Executor: Brett Phillips
342 Washington Road
Waynesburg, PA 15370

ELZIE LAVERY, a/k/a ELZIE E. LAVERY, SR., late of South Union Township, Fayette County, PA (2)

Administratrix: Nicole Renee Lavery-Behlke
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James Higinbotham

KENNETH MILLER, a/k/a KENNETH DARWIN MILLER, late of Luzerne Township, Fayette County, PA (2)

Administratrix: Candy Cunningham
c/o Goodwin Como, P.C.
108 North Beeson Boulevard, Suite 400
Uniontown, PA 15401
Attorney: Benjamin Goodwin

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

SONDRA JILL WHITMAN, late of North Union Township, Fayette County, PA (2)

Executrix: Sondra Denise Johns
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

First Publication

MILDRED H. DOMONKAS, a/k/a MILLIE DOMONKOS, Fayette County, PA (1)

Executors: Gerald R. Domonkos, Jr., Renee Smith and Wendy McGee
P.O. Box 688
Perryopolis, PA 15473
c/o P.O. Box 718
Belle Vernon, PA 15012
Attorney: Brian G. Pirilla

CHARLES MELLON GOWER, late of Smithfield, Fayette County, PA (1)

Administratrix: Diana Gower
1164 Walnut Hill Road
Smithfield, PA 15478
c/o P.O. Box 727
Uniontown, PA 15401
Attorney: Bernadette K. Tummons

RACHEL E. LAWRENCE, late of Jefferson Township, Fayette County, PA

Co-Executors: Joseph S. Lawrence and Pamela Sauritch, n/k/a Pamela Seykoski
c/o Casini & Geibig, LLC
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Connellsville, PA 15425
Attorney: Jennifer M. Casini

HELEN M. LEGAS, a/k/a HELEN MARGARET LEGAS, a/k/a HELEN MARGARET NIETFELD, late of Saltlick Township, Fayette County, PA (1)

Administratrix: Joann H. Valetti
507 Firearms Lane
Greensburg, PA 15601
c/o 35 West Pittsburgh Street
Greensburg, PA 15601
Attorney: Kenneth B. Burkley

JANET A. PETLEVICH, late of South Union Township, Fayette County, PA (1)

Administratrix: Rosemary Wesdock
c/o Radcliffe Law, LLC
648 Morgantown Road, Suite B
Uniontown, PA 15401
Attorney: William M. Radcliffe

DOUGLAS EUGENE SHOW, a/k/a DOUGLAS E. SHOW, late of Springfield Township, Fayette County, PA (1)

Personal Representative: Lisa D. Show
c/o George & George, LLP
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

LEGAL NOTICES

NOTICE

NOTICE is hereby given pursuant to the provisions of Act 295 of December 16, 1982, P.L. 1309, that a Certificate was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about May 24, 2019, to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of United Career Institute at Mt. Braddock with the principal place of business at: 1015 Industrial Park Drive, Mount Braddock, Pennsylvania 15465.

The name or names and addresses of persons owning and interested are: West Virginia Junior College @ Morgantown, Inc., 144 Willey St., Morgantown, West Virginia 26505.

Step toe & Johnson PLLC
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Morgantown West Virginia 26507

Burke Family Trust U/A/D 4/27/2000
late of South Connellsville Borough,
Fayette County, Pennsylvania
Donald A. Burke, Deceased

in the above Trust having been granted to the undersigned, notice is hereby given to all persons indebted to the said decedent to make payment to the undersigned without delay, and all persons having claims or demands against said estate are requested to make known the same.

Donald L Burke, Successor Trustee
c/o WATSON MUNDORFF & SEPIC, LLP
720 Vanderbilt Road
Connellsville, PA 15425-6218
Phone: 724/626-8882

MARSHAL'S SALE: By virtue of a Writ of Execution issued out of the United States District Court for the Western District of Pennsylvania and to me directed, I shall expose to public sale the real property located at 100 High Street, Brownsville, PA 15417 being more fully described at Fayette County deed Book Volume 110, Page 154. **SAID SALE** to be held at the Fayette County Courthouse, 61 E. Main Street, Uniontown, PA 15401 at 10:00 a.m. prevailing, standard time, on June 26, 2019. All that certain tract of land, together with the buildings, and improvements erected thereon described as Tax Identification No. 02060008 recorded in Fayette County, Pennsylvania. Seized and taken in execution as the property of Sage Partners, LP successor by merger to Sage Associates at the suit of the United States of America, acting through the Secretary of Housing and Urban Development, to be sold on Writ of Execution as Civil Action No. 2:18-CV-01622. **TERMS OF SALE:** Successful bidder will pay ten percent (10%) by certified check or money order upon the property being struck down to such bidder, and the remainder of the bid within thirty (30) days from the date of the sale and in the event bidder cannot pay the remainder, the property will be resold and all monies paid in at the original sale will be applied to any deficiency in the price at which the property is resold. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Sheila Blessing, 700 Grant Street, Suite 2360, Pittsburgh, PA 15219. Bidder must have deposit funds immediately available and on his person in order to bid, bidder will not be permitted to leave the sale and return with deposit funds. Notice is hereby given that a Schedule of Distribution will be filed by me on the thirtieth day after the date of sale, and that distribution will be made in accordance with the Schedule unless exemptions are filed thereto within ten (10) days thereafter. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Marshal's costs, fees and commissions are to be borne by seller. Michael Baughman, Acting United States Marshal. For additional information, please contact Holly Maloy at 817-978-5556. (3 of 4)

JUDICIAL OPINION

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

COMMONWEALTH OF PENNSYLVANIA :
v. :
TONEY JONES, : No. 2025 of 2018
Defendant. : Honorable Linda R. Cordaro

OPINION

CORDARO, J. May 24, 2019

SUMMARY

Before the Court is Defendant's Omnibus Pretrial Motion in the form of a Writ of Habeas Corpus, Motion to Suppress Statements, and Motion to Suppress Evidence. For the following reasons, Defendant's Omnibus Pretrial Motion is denied.

BACKGROUND

As the result of an incident that happened on July 26, 2018, Defendant was charged with criminal homicide.

On March 14, 2019, Defendant, Toney Jones, filed an Omnibus Pretrial Motion nunc pro tunc. That Motion included a Writ of Habeas Corpus, challenging that the Commonwealth failed to establish the necessary elements of criminal homicide; a Motion to Suppress Statements, challenging that Defendant made statements without waiving his right against self-incrimination; and a Motion to Suppress Evidence, arguing that there was no probable cause to search Defendant or apply for a search warrant.

This Court held a hearing on Mr. Jones's Omnibus Pretrial Motion on April 29, 2019. At the hearing, the Commonwealth offered into evidence: 1) the transcript of the preliminary hearing; 2) a video of the incident; 3) a search warrant for the search of Mr. Jones's person; 4) a search warrant for Mr. Jones's cell phone; 5) a search warrant for Mr. Jones's apartment; and 6) a Rights Warning and Waiver signed by Mr. Jones. These exhibits were all admitted into evidence without objection by Defendant. The Commonwealth also called Trooper Justin Handlin of the Pennsylvania State Police to testify about whether Mr. Jones voluntarily waived his rights before making statements. Defendant did not call any witnesses or present any evidence.

DISCUSSION

The first issue in Defendant's Omnibus Pretrial Motion is the Writ of Habeas Corpus, challenging that the Commonwealth has not presented sufficient evidence to establish each element of the crime charged-Criminal Homicide.

A petition for a writ of habeas corpus is the proper means for testing a pretrial finding that the Commonwealth has sufficient evidence to establish a prima facie case against a defendant. *Commonwealth v. Scott*, 578 A.2d 933, 936-37 (Pa. Super. Ct. 1990). The question of the evidentiary sufficiency of the Commonwealth's prima facie case is one of law. *Commonwealth v. Dantzler*, 135 A.3d 1109, 1111-12 (Pa. Super. Ct. 2016) (citing *Commonwealth v. Huggins*, 836 A.2d 862, 865 (Pa. 2003)). The focus of the court in a habeas corpus hearing is on the legality of the restraint on the petitioner's liberty; the court must determine whether sufficient Commonwealth evidence exists to require a defendant to be held in government custody until trial. *Commonwealth v. Morman*, 541 A.2d 356, 359-60 (Pa. Super. Ct. 1988).

For the court to determine whether the petitioner is lawfully detained at this stage, the Commonwealth "bears the burden of establishing at least a prima facie case that a crime has been committed and that the accused is probably the one who committed it." *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991) (citing *Commonwealth v. Prado*, 393 A.2d 8, 10 (Pa. 1978); Pa.R.Crim.P. 141(d)). In order to show a prima facie case, the Commonwealth must present evidence with regard to each material element of the crimes charged and sufficient probable cause that the accused is the person who committed the offense. *McBride* at 591. (citing *Commonwealth v. Wojdak*, 466 A.2d 991, 996-97 (Pa. 1983). Further, "[i]t is not necessary for the Commonwealth to establish at this stage the accused's guilt beyond a reasonable doubt." *McBride* at 591 (citing *Commonwealth v. Rick*, 366 A.2d 302, 303 (Pa. Super. Ct. 1976)). The weight and credibility of the evidence are not factors at this stage. *Wojdak* at 997. The Commonwealth may establish its burden by wholly circumstantial evidence. See, e.g., *Commonwealth v. De Petro*, 39 A.2d 838, 842 (Pa. 1944). However, circumstantial evidence must rise above mere suspicion and conjecture. *Prado* at 10.

The statute at issue here states that, "[a] person is guilty of criminal homicide if [that person] intentionally, knowingly, recklessly[,] or negligently causes the death of another human being." 18 Pa.C.S.A. 2501. Between the testimony presented at the preliminary hearing and the video of the incident, the Commonwealth presented sufficient evidence to establish a prima facie case for criminal homicide against Mr. Jones.

At the preliminary hearing, the Commonwealth called Tyler Stickle. Mr. Stickle testified that he had known Toney Jones for about five or six months. On July 26, 2018, Mr. Stickle was at Woodview Terrace at approximately 11 AM. Mr. Stickle saw Mr. Jones there, wearing a black shirt, dark blue pants, and a pinkish-orange Bulls hat.

Mr. Stickle was also able to identify Jarod Ashburn from a security camera video

recording outside of Woodview Terrace. Mr. Stickle testified that Mr. Jones had a revolver in his hands. Mr. Jones attempted to shoot Mr. Ashburn, but the revolver didn't work. Mr. Jones then played with the gun for a minute and then shot Mr. Ashburn. Mr. Stickle testified that the video accurately depicted what he witnessed that day.

The security video outside of Woodview Terrace was also admitted into evidence at the hearing on Defendant's Omnibus Pretrial Motion. This Court had an opportunity to view the video after the hearing. The relevant portion of the video depicts a man wearing dark clothes and an orange-colored hat point a gun at another man before lowering the weapon. The man in the orange hat with the gun then turns around and starts to walk away. He begins to fiddle with the weapon. Meanwhile, the other man starts walking back toward the man in the orange hat. The man in the orange hat then turns around and from a distance of a few feet, points the gun at the other man again, and then shoots him. The other man falls to the ground. This all happened with multiple people around and in broad daylight, right in front of the security camera.

The Commonwealth also presented the District Judge with the death certificate of Jarod Ashburn at the preliminary hearing. The death certificate was admitted into evidence without objection.

Between the evidence of Mr. Stickle at the preliminary hearing and the security video, the Commonwealth has presented sufficient evidence to establish a *prima facie* case of homicide against Mr. Jones. Defendant specifically argues in his Omnibus Pretrial Motion that the Commonwealth failed to establish that he had the necessary intent to commit criminal homicide. However, shooting another person in the chest clearly evinces criminal intent to commit homicide.

The second issue in Defendant's Omnibus Pretrial Motion is the Motion to Suppress Statements, challenging that the Defendant made statements to the police without knowingly, intelligently, or voluntarily waiving his rights.

The Fifth and Fourteenth Amendments to the United States Constitution, as well as Article 1, Section 9 of the Pennsylvania Constitution, provide that individuals shall not be compelled to testify against themselves in criminal cases. The United States Supreme Court in *Miranda v. Arizona* examined the federal constitutional right "to be free from compelled self-incrimination" in the context of custodial interrogations. *Alston v. Redman*, 34 F.3d 1237, 1242 (3d. Cir. 1994) (citing *Miranda v. Arizona*, 384 U.S. 436, 468 (1966)). The Supreme Court concluded that certain procedural safeguards are necessary to "dissipate the compulsion inherent in custodial interrogation[s]," thereby protecting the constitutional rights of individuals suspected of a crime. *Alston* at 1242 (Internal citations omitted). The Third Circuit in *Alston* went on to state that, "[o]nly if there is a voluntary, knowing, and intelligent waiver of the rights expressed in the warnings can police question a suspect without counsel being present and introduce at trial any statements made during the interrogation." *Id.* (Internal citations omitted).

It is well-settled law that the prosecution may not use statements stemming from custodial interrogations of defendants unless the Commonwealth demonstrates that defendants are apprised of their right against self-incrimination and their right to counsel. *Commonwealth v. Lukach*, 195 A.3d 176, 184-85 (Pa. 2018) (citing *Commonwealth v. Gaul*, 912 A.2d 252, 255 (Pa. 2006)). If individuals are given their Miranda warnings and respond that they wish to exercise those rights, all interrogation must cease. *Lukach* at 185 (citing *Commonwealth v. Mercier*, 302 A.2d 337, 339 (Pa. 1973)).

The interview in question here occurred at about 2 PM on July 26, 2018. At that time, Mr. Jones was interviewed-at the Pennsylvania State Police barracks in Uniontown by Trooper Justin Handlin and Trooper Jamie Petrosky. Trooper Handlin testified at the hearing on Defendant's Omnibus Pretrial Motion that he read a Rights Warning and Waiver form to Mr. Jones. Mr. Jones then signed the waiver, which was admitted into evidence at the hearing as Commonwealth Exhibit 6.

Trooper Handlin testified at the hearing that Mr. Jones understood what he was signing at the time. Trooper Handlin also testified that he had experience and training in observing individuals who are under the influence of drugs and alcohol, as well as individuals with mental or emotional health issues. Mr. Jones did not exhibit any of those signs, according to Trooper Handlin. Further, the troopers ended the interview once Mr. Jones asked for an attorney and stated that he wasn't going to talk anymore. Defendant did not present any evidence at the hearing or make any further argument as to why Mr. Jones's statements were not made voluntarily and should be suppressed.

Based on the testimony of Trooper Handlin and the Rights Warning and Waiver form signed by Mr. Jones, this Court finds that Mr. Jones voluntarily, knowingly, and intelligently waived his rights before making statements to the troopers at the interview on July 26, 2018. Therefore, the statements will not be suppressed.

The third issue in Defendant's Omnibus Pretrial Motion is the Motion to Suppress Evidence, challenging that there was no probable cause to apply for search warrants. Defendant did not present any additional argument in either his Motion or at the hearing as to why he believes there was no probable cause to search the Defendant, his residence, or his belongings.

"Article I, Section 8 [of the Pennsylvania Constitution] and the Fourth Amendment [to the United States Constitution] each require that search warrants be supported by probable cause." *Commonwealth v. Jones*, 988 A.2d 649, 655 (Pa. 2010). "Probable cause exists where the facts and circumstances within the affiant's knowledge and of which [the affiant] has reasonably trustworthy information are sufficient in themselves to warrant a [person] of reasonable caution in the belief that a search should be conducted." *Id.* (citing *Commonwealth v. Thomas*, 292 A.2d 352, 357 (Pa. 1972)).

The United States Supreme Court established a "totality of the circumstances" test to determine whether a request for a search warrant under the Fourth Amendment is supported by probable cause. *Id.* (citing *Illinois v. Gates*, 462 U.S. 213 (1982)). This test

was adopted by the Pennsylvania Supreme Court in *Commonwealth v. Gray*, 503 A.2d 921 (Pa. 1985). The Pennsylvania Supreme Court in *Jones* described the test as such:

Pursuant to the "totality of the circumstances" test set forth by the United States Supreme Court in *Gates*, the task of an issuing authority is simply to make a practical, common-sense decision whether, given all of the circumstances set forth in the affidavit before [the issuing authority], including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place... It is the duty of a court reviewing an issuing authority's probable cause determination to ensure that the magistrate had a substantial basis for concluding that probable cause existed. In so doing, the reviewing court must accord deference to the issuing authority's probable cause determination, and must view the information offered to establish probable cause in a common-sense, non-technical manner.

Further, a reviewing court is not to conduct a *de nova* review of the issuing authority's probable cause determination, but is simply to determine whether or not there is substantial evidence in the record supporting the decision to issue the warrant.

Id. (citing *Commonwealth v. Torres*, 764 A.2d 532, 537-38, 540 (Pa. 2001) (Internal citations and brackets omitted)).

Applying the "totality of the circumstances" test to a review of the three search warrants at issue, which were admitted into evidence at the hearing on Defendant's Omnibus Pretrial Motion, this Court finds that there was probable cause to issue each of the warrants. Defendant's Motion to Suppress Evidence based on the validity of the search warrants is without merit and is therefore denied.

CONCLUSION

As a result of the foregoing analysis, Defendant's Omnibus Pretrial Motion is denied in its entirety. This case shall be listed for trial.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts

Date: May 24, 2019

LUNCH & LEARN SERIES

FCBA LUNCH & LEARN SERIES

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

- Date: **Wednesday, June 12th** from 12:00 p.m. to 1:30 p.m.
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topic: **Everything You Ever Wanted to Know About Impaired Lawyers...**
- Presenter: Brian S. Quinn, Esq., Education and Outreach Coordinator, Lawyers Concerned for Lawyers of Pennsylvania, Inc.
- Topics will include: early warning signs of impairment; free services that Lawyers Concerned for Lawyers provides; the barriers exist that prevent lawyers and judges from seeking the help they need, etc.

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

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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.

RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or by email tocindy@fcbar.org on or before Monday, June 10th

-Professional Ethics/CLE Committee

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