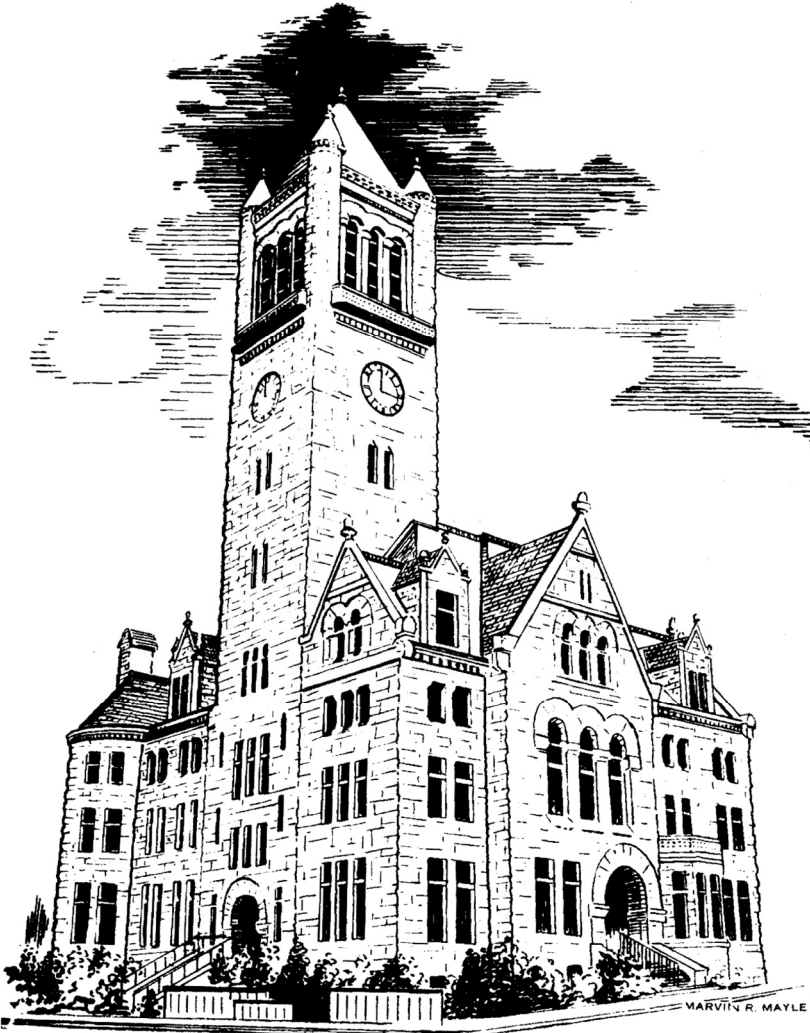


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ESTATE NOTICES

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

ROSEANNE CAMPBELL, late of Chalk Hill, Fayette County, PA ⁽³⁾

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Attorney: Simon B. John

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Attorney: Carmine V. Molinaro, Jr.

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CARL L. JURKIEWICZ, a/k/a CARL LOUIS JURKIEWICZ, late of Washington Township, Fayette County, PA ⁽³⁾

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208 Sherwood Street
Belle Vernon, PA 15012
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1711 Grand Boulevard
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BEDY RICHARD LIZZA, a/k/a BEDY R. LIZZA, late of Lemont Furnace, Fayette County, PA ⁽³⁾

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Cherry Hill, NJ 08002

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Second Publication

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HARRY J. BROWNFIELD, JR., a/k/a HARRY J. BROWNFIELD, a/k/a HARRY BROWNFIELD, a/k/a JAY BROWNFIELD, late of South Union Township, Fayette County, PA (2)

Administrator: Todd A. Brownfield
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720 Vanderbilt Road
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76 North Richhill Street
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NELLIE B. HODGE, late of Connellsville,
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MICHELE HOUCK WILCOSKY, late of
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First Publication

**MELVIN EARL ANSELL, a/k/a M. EARL
ANSELL, a/k/a EARL ANSELL**, late of
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**KEVIN EUGENE BITTNER, a/k/a KEVIN
BITTNER**, late of Springhill Township, Fayette
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Administratrix: Joy Ann Bittner
c/o 9 Court Street
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Attorney: Vincent J. Roskovensky, II

MILDRED A. DEHAINAUT, late of
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**JOSEPH EDWARD KOPACKO, a/k/a
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Uniontown, PA 15401
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Attorney: Margaret Zylka House

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Uniontown, PA 15401
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Uniontown, PA 15401
Attorney: James Higinbotham

MARILYN ANN WILLIAMS, late of
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Executor: Christopher Williams
1348 Lakeshore Circle
Gainesville, GA 30501

LEGAL NOTICES

NOTICE

Notice is hereby given that the Certificate of Organization has been approved and filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on February 22, 2022, for a limited liability company known as Smith Storage Facility LLC.

Said limited liability company has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

The purpose or purposes of the limited liability company is/are: managing storage facilities and any other lawful purpose related thereto for which the limited liability company may be organized under the Business Corporation Law.

DAVIS & DAVIS

BY: Gary J. Frankhouser, Esquire
107 East Main Street
Uniontown, PA 15401

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 March 2, 2022, to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of Arbogast Lawn Service with the principal place of business at: 2537 E Roy Furman HWY, Carmichaels, PA 15320. The name or names and addresses of persons owning and interested are: Travis Arbogast.

SHERIFF'S SALE

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, May 19, 2022, at 2:00 p.m. in Courtroom Number Three at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (3 of 3)

James Custer
Sheriff Of Fayette County

PINCUS LAW GROUP, PLLC
By: Alicia Sandoval (311874)
Jonathan M. Etkowicz (208786) 2929 Arch
Street, Suite 1700
Philadelphia, PA 19104
Telephone: 484-575-2201
Facsimile: 516-279-6990
E-mail: asandoval@pincuslaw.com
jettkowicz@incuslaw.com

No. 586 of 2020, G.D.
No. 121 of 2020 E.D.

**LEGACY MORTGAGE ASSET TRUST
2019- GS7,
Plaintiff,
v.
MONTY LILLEY,
Defendant.**

ALL THAT CERTAIN lot or piece of ground situate in MENALLEN TOWNSHIP, County of Fayette and Commonwealth of Pennsylvania, being Lot No. 2 in the Carbonara & Chico Plan of Lots, as recorded in said county Recorder's Office in Plan Book Volume 68, at page 68.

ADDRESS: 7409 NATIONAL PIKE
ROAD, A/K/A 7409 NATIONAL PIKE,
UNIONTOWN, PA 15401
TAX PARCEL 22-17-0019-01

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, May 2, 2022, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2620-0709	ROSE MARIE KOZIEL	Robert A. Koziel and Joycelyn A. Walters, Co-Executors
2621-0605	SHIRLEY ENLOW	Jeanne Bartholomai, Executrix

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

Monday, May 16, 2022, at 9:30 A.M.

in Courtroom No. 5 of the **Honorable Joseph M. George, Jr.** or his chambers, Third 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 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, May 2, 2022, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2617-0914	JAMES K. ALBRIGHT	Tina M. Dull, Administratrix
2610-0146	ELIZABETH KEKELA	Bernadette Lucia, Administrator

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

Monday, May 16, 2022, at 9:30 A.M.

in Courtroom No. 1 of the **Honorable Steve P. Leskinen** or his chambers, Second 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.

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN

518 Madison Drive

Smithfield, PA 15478

724-322-6529

johnfranciswarman@gmail.com

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
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
v. :
: :
AUSTIN MICHAEL PARKS, : No. 1998 of 2021
Defendant. : Honorable Linda R. Cordaro

OPINION

Linda R. Cordaro, J.

February 16, 2022

SUMMARY

Currently before this Court is Defendant's Omnibus Pretrial Motion for suppression of evidence as a result of an illegal search. The Defendant was charged with Possession with Intent to Deliver under 35 Pa.C.S.A. § 780-113(A)(30); Intentional Possession of Controlled Substance under 35 Pa.C.S.A. § 780-113(A)(16); and Use/Possession of Drug Paraphernalia under 35 Pa.C.S.A. § 780-113(A)(32).

BACKGROUND

On August 2, 2020, Pennsylvania State Troopers Strini and Karolak, in full uniform and in a marked patrol car, were dispatched to Walmart Drive, South Union Township, Fayette County, for a welfare check on a potentially intoxicated man attempting to enter a vehicle. Trooper Strini testified at the January 26, 2022 hearing on the Defendant's Omnibus Pretrial Motion, that he and Trooper Karolak saw the vehicle in question in a parking space, and they observed two individuals get into the vehicle. The driver moved the vehicle to the front of the Walmart, and the other individual (later established as the Defendant) went inside.

The troopers verified the registration of the vehicle, which was to a Dalton Mark Conn. They initiated an encounter with the driver as he was still in the vehicle, and he informed them that he was waiting for his friend. As the encounter continued, the troopers confirmed from his license that the driver was indeed Mr. Conn and observed what appeared to be two open containers of Smirnoff behind the driver's seat. Trooper Strini testified that he detected the odor of raw marijuana from the vehicle, and that he asked Mr. Conn for permission to search the vehicle. Mr. Conn consented and was asked to exit the vehicle.

The search of the vehicle revealed paraphernalia in the driver's side door pocket and a black backpack in the rear passenger seat. Relying upon Mr. Conn's consent for authorization to proceed, the troopers searched the backpack and found indicia, including envelopes and paystubs, belonging to the Defendant. The backpack also contained 320 glassine stamp bags containing suspected heroin and Xanax. Either during or after the backpack search, the Defendant returned to the vehicle. After Miranda warnings were issued, the Defendant took possession of the backpack.

DISCUSSION

The first issue is whether troopers were justified in asking Mr. Conn for permission

to search his vehicle. In this instance, the request extended the initial encounter beyond the scope of a welfare check and converted it to an investigatory detention.

"Instances of police questioning involving no seizure or detentive aspect (mere or consensual encounters) need not be supported by any level of suspicion in order to maintain validity." *Com. v. Strickler*, 757 A.2d 884,889 (Pa. 2000). However, an investigatory detention "subjects an individual to a stop and a period of detention [yet] is not so coercive as to constitute the functional equivalent of an arrest." *Id.* Such an investigatory detention must be supported by at least "a reasonable and articulable suspicion that the person seized is engaged in criminal activity and may continue only so long as is necessary to confirm or dispel such suspicion." *Id.* An officer's questions about matters unrelated to the reason for the stop do not necessarily mean the encounter has become an unlawful seizure, provided they do not "measurably extend the duration of the stop." *Arizona v. Johnson*, 555 U.S. 323, 333 (2009).

"[T]he [Medical Marijuana Act] makes abundantly clear that marijuana no longer is per se illegal in this Commonwealth." *Com. v. Barr*, 266 A.3d 25, 41 (Pa. 2021). However, "the smell of marijuana indisputably can still signal the possibility of criminal activity" as individuals not qualified under the MMA still are prohibited from possession. *Id.* In Pennsylvania, both probable cause and exigent circumstances must exist before police can conduct a warrantless search of a vehicle. *Com. v. Alexander*, 243 A.3d 177, 207 (Pa. 2020). "Exigent circumstances arise where the need for prompt police action is imperative, either because evidence is likely to be destroyed, or because there exists a threat of physical harm to police officers or other innocent individuals." *Com. v. Griffin*, 24 A.3d 1037, 1042 (Pa. Super. Ct. 2011) (quotation marks and citation omitted). A warrantless search is deemed to be unreasonable unless there exists an established exception, such as voluntary consent to a search by a person with proper authority to do so. *Com. v. Strickler*, 757 A.2d 884, 888 (Pa. 2000).

Here, the initial welfare check could have been completed once troopers identified that Mr. Conn was the registered owner of the vehicle in question and that he did not appear to be intoxicated. {1} The open bottles behind the driver's seat were in plain view, and therefore the initial encounter could have been resolved with a citation.

However, although the reported odor of marijuana from the vehicle is not sufficient for probable cause, it does support reasonable suspicion of the possibility of criminal activity. The reasonable next step in an investigation should have been to inquire whether Mr. Conn held a medical marijuana card, but troopers went directly to asking to search the vehicle. While this Court acknowledges that many (if not most) citizens are not fully aware of when they have the right to refuse a search, there is no indication that the troopers were threatening or coercive in their approach. There is no indication that Mr. Conn's consent could be deemed involuntary. Therefore, because troopers had at least a reasonable suspicion of illegal activity, the extension of the initial stop was lawful, and because Mr. Conn gave consent to the search, the search of the vehicle was not unlawful. {2}

{1} There is nothing on record showing that Mr. Conn was in any way intoxicated.

{2} The events of August 2, 2020 occurred before the Pennsylvania Supreme Court holdings in *Commonwealth v. Barr* and *Commonwealth v. Alexander*. However, pursuant to *Commonwealth v. Cabeza*, "unless the decision specifically declares the ruling to be prospective only, the new rule is to be applied retroactively to cases where the issue in question is properly preserved at all stages of adjudication . . ." 469 A.2d 146, 148 (Pa. 1983)

The second issue is whether the Defendant had any privacy interest in the backpack, since "a defendant cannot prevail upon a suppression motion unless he demonstrates that the challenged police conduct violated his own, personal privacy interests." *Com. v. Millner*, 888 A.2d 680, 692 (Pa. 2005).

Both Article 1, Section 8 of the Pennsylvania Constitution and the Fourth Amendment of the United States Constitution have been interpreted as protecting zones where an individual enjoys a reasonable expectation of privacy. While the Pennsylvania Constitution may be employed to guard individual privacy rights against unreasonable searches and seizures more zealously than the federal law, an individual's expectation of privacy in the place searched must be established to invoke constitutional protection.

Com. v. Viall, 890 A.2d 419, 422 (Pa. Super. Ct. 2005) (internal citations omitted).

"An expectation of privacy will be found to exist when the individual exhibits an actual or subjective expectation of privacy and that expectation is one that society is prepared to recognize as reasonable." *Id.* The expectation of privacy in luggage within a vehicle is reduced, but it does not disappear completely merely because it is in a vehicle. "Passengers, no less than drivers, possess a reduced expectation of privacy with regard to the property that they transport in cars." *Wyoming v. Houghton*, 526 U.S. 295,303 (1999). The analysis of whether such expectation exists "will ultimately rest upon a balancing of the societal interests involved. The constitutional legitimacy of an expectation of privacy is not dependent on the subjective intent of the individual asserting the right but on whether the expectation is reasonable in light of all the surrounding circumstances." *Viall*, 890 A2d at 422.

The backpack in the rear seat of Mr. Conn's vehicle apparently was not locked or secured in any way, nor were there any identification tags on the outside that would show ownership. There is nothing to indicate the backpack was unzipped or otherwise open, but the Defendant still had left it behind, in plain sight on the backseat of Mr. Conn's vehicle.

A search warrant entitles police to search the "entire area in which the object of the search may be found ... [including] the opening and inspection of containers and other receptacles where the object may be secreted. *Com. v. Reese*, 549 A2d 909, 911 (Pa. 1988) (quotation marks and citation omitted). In the interests of efficiency and promptness, "[i]t would not be reasonable to require police officers executing a warrant to ask individuals located on the premises whether they own various items of personal property nor, would it be reasonable to expect an appropriate response were they required to do so." *Id.*

In *Wyoming v. Houghton*, the defendant was a passenger in a vehicle stopped for speeding. The police officer saw a syringe in the driver's shirt pocket, and the driver admitted it was for drug use. The officer subsequently ordered all occupants to exit the vehicle and proceeded to search it for contraband. The defendant's purse was on the back seat, and she claimed it as hers. The officer searched its contents and found drugs and paraphernalia inside. 526 U.S. 295, 297-98 (1999). The U.S. Supreme Court ultimately held that the law enforcement interest in searching for contraband after finding paraphernalia on the driver outweighed the defendant's limited privacy interest in her purse. *Id.* at 306-07.

If there had been a warrant or probable cause and exigent circumstances, then the Defendant's limited privacy interest still likely would be overcome by law enforcement interest in finding contraband. However, because here there was no warrant, no probable cause, and no exigent circumstances, the validity of the search of the backpack turns entirely on the consent exception issue: whether Mr. Conn's consent to search the vehicle served as valid third-party consent to search the backpack.

In *Commonwealth v. Abdul-Salaam*, the Pennsylvania Supreme Court held that the search of a backpack in the bedroom closet was valid when the owner of the home gave consent to the search, even though the briefcase was not hers and even though it contained indicia belonging to the Defendant. 678 A.2d 342, 351-52 (Pa. 1996). The police did not know beforehand that someone else owned the briefcase, and the owner informed the police the briefcase was not hers only as an officer was already removing items from it. The Court rejected Appellant's argument that a "separate authority, effective consent, or a warrant" should have been required for the closed briefcase, and it held that the owner's voluntary consent to a search "included containers within the residence where [objects of the search] could be hidden." *Id.* at 352.

Other than the difference in premises to be searched, the facts here are largely analogous. There was no warrant in *Abdul-Salaam* and the owner's voluntary consent was the justification for the search. Although there is no explicit statement of what troopers were seeking in Mr. Conn's vehicle, the odor of marijuana allegedly led to the troopers' request to search, and so it is reasonable that locating (illegal) marijuana was the object. Accordingly, Mr. Conn's consent to search would include any containers in which marijuana could be held.

Unlike the police in *Abdul-Salaam*, the troopers here had reason to suspect that the backpack might not belong to Mr. Conn. They had seen the Defendant in the car, observed him go into the Walmart, and Mr. Conn told them he was waiting for his friend to return. The discovery of indicia was further confirmation that the backpack was not Mr. Conn's. It is not clear from the record whether the indicia or baggies were discovered first. However, just as lack of ownership was discovered mid-search in *Abdul-Salaam*, here the lack of ownership by Mr. Conn was discovered during the troopers' search.

CONCLUSION

If the Defendant had returned and claimed the backpack before troopers opened it, an analysis of the intrusion on his privacy rights might differ. However, he did not. The backpack logically could have contained the contraband the troopers sought, and there were no external indicators that the backpack belonged to the Defendant (e.g. no name tags) or that the owner had an expectation of anything greater than the limited privacy passengers are afforded (e.g., it was unlocked). The consent of the owner of the vehicle was an exception to the warrant requirement, and it covered the backpack.

For the foregoing reasons, the Motion is DENIED.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts

LUNCH & LEARN SERIES

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

- Date: **Wednesday, May 25th from 12:00 p.m. to 1:30 p.m.**
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topics: **On Cross-Examination**
- Presenter: **Samuel J. Davis, Esquire, Melinda K. Dellarose, Esquire, and Brent Eric Peck, Esquire**

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

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- No charge for attendance without CLE Credit
- \$10 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2017

- 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 email to cindy@fcbar.org on or before Monday, May 23rd.

Join us for an evening of camaraderie with your colleagues as we honor the retirement of President Judge John F. Wagner, Jr. at the

127th ANNUAL FAYETTE COUNTY BAR ASSOCIATION



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5:30 COCKTAIL RECEPTION
6:30 STEAKHOUSE & SEAFOOD BUFFET

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