

# CARBON COUNTY LAW JOURNAL

Publication Number (ISSN 0090-8789)

The Official Legal Newspaper for Carbon County

Containing Decisions Rendered, Legal Notices, Advertisements  
in the 56th Judicial District

ROGER N. NANOVIC, President Judge

STEVEN R. SERFASS, Judge

JOSEPH J. MATIKA, Judge

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Vol. XXIII    Jim Thorpe, PA, Friday, January 31, 2020    No. 5

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IN RE: J.M. .... 22  
*Civil Law—Mental Health Procedures Act—Section 303 Hearing and Certification—Petition for Review of Hearing Officer’s Certification—Time Within Which to Request Review by Court—Remedy Where Right to Appeal Otherwise Lost Due to Extraordinary Circumstances—Nunc Pro Tunc Appeal—Requirement That Petitioner Act With Due Diligence and Reasonable Promptitude*

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## Notice to Bar

The Carbon County Court of Common Pleas is accepting applications for a vacant Law Clerk position in the office of the Honorable Steven R. Serfass. Starting per annum salary is \$39,057.20 (commensurate with experience) to \$41,423.20 if a member of the PA Bar with extra compensation received for review of divorce files and serving as an Arbitrator. Admission to the Pennsylvania Bar is preferred. Salary may be negotiable based on experience. Applicants should provide a writing sample with the employment application. Position is available immediately.

All interested candidates should contact Assistant Court Administrator Kelly Hamm at (570) 325-8556, extension 3202 or visit the Court’s Web site at [www.carboncourts.com](http://www.carboncourts.com) for the job posting and employment application.

Gregory Armstrong  
District Court Administrator

Jan. 31

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CARBON COUNTY LAW JOURNAL

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COURT CALENDAR

Week of February 3

Court Calendar Submitted: January 22, 2020

For updates and revisions check courthouse webpage:

[www.carboncourts.com](http://www.carboncourts.com)

**Criminal**

Judge Matika, Joseph J., Hon.

Monday, February 3

9:00 AM

1	Pet. Amend Information	Com. v. Weaver, P.D.	(Hatton, Collins)	18-0909
2	Mot. in Limine	Com. v. Weaver, P.D.	(Hatton, Collins)	18-0909
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3	Jury Tr.	Com. v. Hobbs, L.L.	(Greek, Levy)	18-0062
4	Jury Tr.	Com. v. Cruz, A.L.	(Perilli, Levy)	17-0167
5	Jury Tr.	Com. v. Albert, S.M.	(Greek, Bench)	19-0855
6	Jury Tr.	Com. v. Ciappa, D.J.	(Greek, Levy)	17-1268
7	Jury Tr.	Com. v. Kelly, P.J., Jr.	(Hatton, Mottola)	18-0681
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9	Jury Tr.	Com. v. Lutz, A.	(Perilli, Mottola)	18-1101
10	Jury Tr.	Com. v. Dalessio, A.	(Gazo, Filer)	18-0445
11	Jury Tr.	Com. v. Jones, T.D.	(Miller, Levy)	19-0572
12	Jury Tr.	Com. v. Ciampaglia, L.M.	(Miller, Mottola)	14-0753
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15	Jury Tr.	Com. v. Thompson, A.M.	(Hatton, Mottola)	18-1068
16	Jury Tr.	Com. v. Englert, W.F.	(Hatton, Mottola)	18-0531

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Sheri A. Ryan, Managing Editor

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166	Bench Tr.	Com. v. Vereen, P.S.	(Greek, Mottola)	19-0339
167	Bench Tr.	Com. v. Alvarez, A.J.	(Miller, Levy)	15-1296

1:15 PM

168	Bench Tr.	Com. v. Moyer, A.L.	(Hatton, Wildoner Walbert)	15-0496
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### Judge Nanovic, Roger N., II, Hon.

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10:00 AM

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219	Jury Tr.	Com. v. Mead, M.A.	(Greek, Levy)	19-1113
220	Jury Tr.	Com. v. Hertzog, T.L.	(Greek, Wiltrout)	19-1107
221	Jury Tr.	Com. v. Green, T.S.	(Frycklund, Levy)	18-1269
222	Jury Tr.	Com. v. Phothong, B.	(Perilli, Levy)	19-0370
223	Jury Tr.	Com. v. Greenzweig, D.G.	(Greek, Unassigned)	19-1371
224	Jury Tr.	Com. v. McClain, J., III	(Doherty, Wildoner-Walbert)	19-0438
225	Jury Tr.	Com. v. Williams, S.	(Doherty, Weaver)	19-0456
226	Jury Tr.	Com. v. Dominic, G.A.	(Greek, Levy)	19-0909
227	Jury Tr.	Com. v. King, C.N.	(Gazo, Unassigned)	19-0952
228	Jury Tr.	Com. v. Gundry, J.L.	(Gazo, Weaver)	19-0953
229	Jury Tr.	Com. v. Stalgaitis, J.J.	(Greek, Wildoner-Walbert)	19-0014
230	Jury Tr.	Com. v. Sitler, R.	(Hatton, Gough)	18-0315
231	Jury Tr.	Com. v. Christman, J.L.	(Engler, Levy)	19-0784
232	Jury Tr.	Com. v. Green, T.S.	(Gazo, Levy)	16-0674
233	Jury Tr.	Com. v. Hunsicker, J.E.	(Frycklund, Kemmerer)	19-0556
234	Jury Tr.	Com. v. Hunsicker, J.E.	(Frycklund, Kemmerer)	19-0550
235	Jury Tr.	Com. v. Smith-Morales, A.J.	(Frycklund, Unassigned)	19-0725
236	Jury Tr.	Com. v. Dail, J.H.	(Frycklund, Wildoner Walbert)	17-0665
237	Jury Tr.	Com. v. Kirchner, B.	(Gazo, Wiltrout)	18-1426
238	Jury Tr.	Com. v. Rostocki, J.J.	(Miller, Schnell)	18-0769
239	Jury Tr.	Com. v. Whiteman, A.	(Gazo, Mack)	18-0990
240	Jury Tr.	Com. v. Lewis, M.L.	(Perilli, Levy)	19-1031
241	Jury Tr.	Com. v. Bartenope, Z.J.	(Perilli, Levy)	19-1024
242	Jury Tr.	Com. v. Bartenope, Z.J.	(Perilli, Levy)	19-1025
243	Jury Tr.	Com. v. Bartenope, Z.J.	(Perilli, Levy)	19-1028
244	Jury Tr.	Com. v. Bartenope, Z.J.	(Perilli, Levy)	19-1029
245	Jury Tr.	Com. v. Behler, W.L.	(Perilli, Levy)	19-1030

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246	Jury Tr.	Com. v. Chickilly, D.	(Gazo, Rapa)	19-1054
247	Jury Tr.	Com. v. Gothard, J.	(Gazo, Levy)	19-0702
248	Jury Tr.	Com. v. Jones, T.D.	(Hatton, Levy)	16-0051
249	Jury Tr.	Com. v. VanHorn, A.	(Perilli, Levy)	19-0661
250	Jury Tr.	Com. v. Washington, J.	(Hatton, Unassigned)	19-0600
251	Jury Tr.	Com. v. Zettlemoyer, A.	(Francis, Gough)	19-0552
252	Jury Tr.	Com. v. Walck, R.L.	(Perilli, Kemmerer)	19-0892
<b>Friday, February 7</b>				
9:00 AM				
253	Bench Tr.	Com. v. Martin, C.	(Greek, Unassigned)	19-0470
254	Bench Tr.	Com. v. Martin, L.	(Greek, Unassigned)	19-0471
<b>Judge Serfass, Steven R., Hon.</b>				
<b>Monday, February 3</b>				
10:00 AM				
255	Jury Tr.	Com. v. Ventura, R.	(Miller, Bench)	19-0417
256	Jury Tr.	Com. v. Matheson, G.E.	(Greek, Schnell)	17-1290
257	Jury Tr.	Com. v. Pudvah, A.H.	(Miller, Levy)	17-1551
258	Jury Tr.	Com. v. Pudvah, A.H.	(Miller, Levy)	19-0683
259	Jury Tr.	Com. v. Shafer, C.	(Frycklund, Wiltrout)	19-1101
260	Jury Tr.	Com. v. Holmes Santiago, E.	(Perilli, Levy)	18-0627
261	Jury Tr.	Com. v. Rinehardt, K.A.	(Greek, Mottola)	17-1291
262	Jury Tr.	Com. v. Aponte, F.	(Hatton, Wiltrout)	18-0239
263	Jury Tr.	Com. v. Bauder, K.S.	(Greek, Vlossak)	17-1475
264	Jury Tr.	Com. v. Mika, J.	(Miller, Vlossak)	18-0520
265	Jury Tr.	Com. v. Porter, G.A.	(Miller, Gough)	16-1666
266	Jury Tr.	Com. v. Smith, D.J.C.	(Frycklund, Mottola)	17-1644
267	Jury Tr.	Com. v. Smith, D.J.	(Frycklund, Mottola)	18-1137
268	Jury Tr.	Com. v. Romano, K.H.	(Miller, Levy)	17-0281
269	Jury Tr.	Com. v. Santiago, E.H.	(Gazo, Levy)	18-0603
270	Jury Tr.	Com. v. Smith, A.M.	(Frycklund, Levy)	17-0853
271	Jury Tr.	Com. v. Rodriguez, J.A.	(Hatton, Levy)	18-0808
272	Jury Tr.	Com. v. Johnston, E.W.	(Hatton, Levy)	16-0076
273	Jury Tr.	Com. v. Kelly, P.	(Greek, Mottola)	18-0076
274	Jury Tr.	Com. v. Sullivan, D.	(Perilli, Bench)	17-1375
275	Jury Tr.	Com. v. Bruno, M.A.	(Frycklund, Collins)	17-1101
276	Jury Tr.	Com. v. Eckhart, T.	(Frycklund, Rapa)	18-0571
277	Jury Tr.	Com. v. Helmer, F.C.	(Hatton, Rapa)	18-0433
278	Jury Tr.	Com. v. Molosky, R.M.	(Greek, Rapa)	15-0566
279	Jury Tr.	Com. v. Schleicher, A.L.	(Hatton, Kemmerer)	17-1035
280	Jury Tr.	Com. v. Schleicher, A.L.	(Hatton, Kemmerer)	17-0276
281	Jury Tr.	Com. v. Schleicher, A.L.	(Hatton, Kemmerer)	18-0492
282	Jury Tr.	Com. v. Schleicher, A.L.	(Hatton, Kemmerer)	18-1007
283	Jury Tr.	Com. v. Cummings, D.V.	(Hatton, Bench)	17-0775
284	Jury Tr.	Com. v. Cummings, D.V.	(Hatton, Kemmerer)	17-0776
285	Jury Tr.	Com. v. Cummings, D.V.	(Hatton, Kemmerer)	17-0766
286	Jury Tr.	Com. v. Walck, R.	(Frycklund, Kemmerer)	19-0638
287	Jury Tr.	Com. v. Walck, R.	(Frycklund, Kemmerer)	18-1138
288	Jury Tr.	Com. v. Walck, R.	(Hatton, Kemmerer)	19-0687
289	Jury Tr.	Com. v. Wurst, M.M.	(Miller, Gillen)	19-0232
290	Jury Tr.	Com. v. Freeman, R.H., Jr.	(Hatton, Saurman)	17-1523
291	Jury Tr.	Com. v. Conklin, S.M.	(Greek, Levy)	15-1457
292	Jury Tr.	Com. v. Mays, K.	(Miller, Riegel)	18-0004
293	Jury Tr.	Com. v. Behler, D.S.	(Perilli, Levy)	18-1418
294	Jury Tr.	Com. v. Behler, D.S.	(Perilli, Levy)	17-1062
295	Jury Tr.	Com. v. Behler, D.S.	(Perilli, Levy)	15-1225
296	Jury Tr.	Com. v. Ventura, R.	(Miller, Wiltrout)	19-0770
297	Jury Tr.	Com. v. Ventura, R.A.	(Miller, Wiltrout)	19-0773
298	Jury Tr.	Com. v. Holland, M.S.	(Perilli, Levy)	17-0521
299	Jury Tr.	Com. v. Bonilla, D.	(Miller, Katz)	19-0260
300	Jury Tr.	Com. v. Stuckley, A.L.	(Hatton, Wildoner-Walbert)	17-1034
301	Jury Tr.	Com. v. Smolar, S.M.	(Gazo, Unassigned)	16-0014

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302	Jury Tr.	Com. v. James, J.	(Frycklund, Unassigned)	18-0040
303	Jury Tr.	Com. v. Toth, M.J.	(Miller, Zelonis)	18-1016
304	Jury Tr.	Com. v. Flores, M., Jr.	(Gazo, Unassigned)	19-0450
305	Jury Tr.	Com. v. Hagenbach, R.E., Jr.	(Hatton, Mousseau)	17-0122
306	Jury Tr.	Com. v. Kistler, T.	(Gazo, Unassigned)	17-1457
307	Jury Tr.	Com. v. Kistler, T.	(Gazo, Unassigned)	18-0660
308	Jury Tr.	Com. v. Castellano, R.C.	(Perilli, Melman)	15-1291
309	Jury Tr.	Com. v. Cebrosky, H.L.	(Perilli, Wilttrout)	19-0810
310	Jury Tr.	Com. v. Hamman, B.	(Perilli, Weaver)	19-0813
311	Jury Tr.	Com. v. Hunsicker, D., Jr.	(Gazo, Wilttrout)	19-0791
312	Jury Tr.	Com. v. Barthel, M.	(Perilli, Unassigned)	18-0663
313	Jury Tr.	Com. v. Teat, P.	(Miller, Wilttrout)	19-1184
314	Jury Tr.	Com. v. Phillips, B.	(Gazo, Kemmerer)	18-1218
315	Jury Tr.	Com. v. Messinger, T.M.	(Gazo, Levy)	18-1106
316	Jury Tr.	Com. v. George, C.A.	(Gazo, Unassigned)	19-1043
317	Jury Tr.	Com. v. Pudvah, A.H.	(Miller, Unassigned)	18-1369
318	Jury Tr.	Com. v. Snisky, J.M.	(Greek, Wildoner-Walbert)	18-0900
319	Jury Tr.	Com. v. Fisher, R.T.	(Gazo, Rapa)	18-1221
320	Jury Tr.	Com. v. Reed, J.	(Dobias, Mousseau)	19-0381
321	Jury Tr.	Com. v. Haskell, R.L.	(Frycklund, Rapa)	19-1100
322	Jury Tr.	Com. v. Kane, T.L.	(Frycklund, Riegel)	18-0116
323	Jury Tr.	Com. v. McLaughlin, J.E.	(Perilli, Wilttrout)	19-0252
324	Jury Tr.	Com. v. Cadugan, S.	(Miller, Unassigned)	19-1189
325	Jury Tr.	Com. v. Hosier, T.	(Miller, Wilttrout)	19-0939
326	Jury Tr.	Com. v. Markley, D.L.	(Frycklund, Mottola)	18-1339
327	Jury Tr.	Com. v. Markley, D.L.	(Frycklund, Mottola)	18-1405
328	Jury Tr.	Com. v. Borst, M.T.	(Miller, Unassigned)	19-0853
329	Jury Tr.	Com. v. Walsh, C.M.	(Perilli, Unassigned)	19-0814
330	Jury Tr.	Com. v. Ahn, T.J.	(Perilli, Unassigned)	19-1302
331	Jury Tr.	Com. v. Ackley, B.H.	(Hatton, Unassigned)	18-1472
332	Jury Tr.	Com. v. Scott, S.A.	(Gazo, Kemmerer)	17-1455
<b>Friday, February 7</b>				
9:00 AM				
333	Bench Tr.	Com. v. Knell, V.W., Jr.	(Hatton, Levy)	17-0204
334	Bench Tr.	Com. v. Leyba, M.D.	(Miller, Saurman)	18-0758
335	Bench Tr.	In Re: \$736.00 U.S. Currency	(Unassigned)	19-0525
1:15 PM				
336	Permanency Rev. Hrg.	Restricted Case Caption	(Unassigned)	15-0033
337	Permanency Rev. Hrg.	Restricted Case Caption	(Unassigned)	18-0010
338	Permanency Rev. Hrg.	Restricted Case Caption	(Unassigned)	18-0011
339	Permanency Rev. Hrg.	Restricted Case Caption	(Unassigned)	18-0013
<b>Probation Officer Wall, Tammy</b>				
<b>Monday, February 3</b>				
9:00 AM				
340	Hrg.	Com. v. Johnson, C.D.	(Gazo, Unassigned)	18-0795
341	Hrg.	Com. v. Kerschner, B.D.	(Perilli, Brazil)	15-1261
342	Hrg.	Com. v. Paveleski, R.E.	(Engler, Unassigned)	14-0190
343	Hrg.	Com. v. Rabenold, K.T.	(Gazo, Unassigned)	18-1046
344	Hrg.	Com. v. Quaca, D.	(Greek, Unassigned)	17-1153
345	Hrg.	Com. v. Painter, T.W.	(Gazo, Unassigned)	18-0794
346	Hrg.	Com. v. Tobin, J.N.	(Perilli, Unassigned)	18-0251
347	Hrg.	Com. v. Gutierrez, A.	(Miller, Unassigned)	15-1301
348	Hrg.	Com. v. Spillane, D.T.	(Greek, Unassigned)	15-0934
349	Hrg.	Com. v. Minrod, M.J.	(Miller, Unassigned)	19-0022
350	Hrg.	Com. v. Holler, L.F.	(Perilli, Unassigned)	15-0110
351	Hrg.	Com. v. Warner, J.N.	(Gazo, Wilttrout)	19-0916
352	Hrg.	Com. v. Husar, T.J.	(Greek, Unassigned)	19-0861



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353	Hrg.	Com. v. Mieczkowski, T.J.	(Perilli, Unassigned)	19-0835
354	Hrg.	Com. v. Andre, J.J., III	(Hatton, Unassigned)	15-1087
355	Hrg.	Com. v. Ritton, A.L.	(Hatton, Unassigned)	19-0116
356	Hrg.	Com. v. Kuntz, L.E.	(Hatton, Unassigned)	18-0539
357	Hrg.	Com. v. Kuntz, L.E.	(Hatton, Unassigned)	17-1533
358	Hrg.	Com. v. Vandever, C.M.	(Hatton, Unassigned)	18-0591

### Civil

#### Monday, February 3

##### Chairman Combi, Mark E., Esq.

9:00 AM

1	Arbitration Ready	Dotter, B. (Ettinger) v. Stevens, J. (Filer)		19-1341
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#### Tuesday, February 4

##### Chairman Kemmerer, Arley L., Esq.

9:00 AM

1	Arbitration Ready	Bowman, G. (Connell) v. Bradley, D.F., Sr. (Kendikian)		17-2259
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#### Thursday, February 6

##### Chairman Diehl, Eileen M., Esq.

8:30 AM

1	Complnt./Pet. for Cust.	Mertz, A.M. (Kemmerer) v. Boyer-Wimberly, W.L. (Pro Se)		19-2123
2	Pet./Comp. to Mod. Cust.	Bartenope, A.B. (Pro Se) v. Crostley, K.L. (Pro Se)		15-2545

9:30 AM

3	Complnt./Pet. for Cust.	Clark, F.B. (Gaumer) v. Clark, H. (Stafiuc)		19-1518
4	Pre-Tr. Conf.	Halada, J. (Kemmerer) v. Halada, P., Jr. (Iacobelli)		18-1758

10:30 AM

5	Complnt./Pet. for Cust.	Lehman, E. (Pro Se) v. Binder, D. (Pro Se)		19-3687
6	Complnt./Pet. for Cust.	Bulla, C. (Pro Se) v. Keenehan, K. (Pro Se)		19-3737

11:30 AM

7	Complnt./Pet. for Cust.	Bollinger, S.A. (Pro Se) v. Bollinger, M.A. (Pro Se)		19-3588
8	Cust. Count in Complnt.	Steigerwalt, T. (Heintzelman) v. Steigerwalt, B.L. (Pro Se)		19-3747

1:00 PM

9	Pet./Comp. to Mod. Cust.	Pupko, J. (Kemmerer) v. Versuk, D., Jr. (Pro Se)		18-1099
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#### Friday, February 7

##### Judge Nanovic, Roger N., II, Hon.

9:00 AM

1	PFA Hrg.	Tatasciore, T. (Pro Se) v. Tatasciore, A. (Pro Se)		19-3664
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##### Judge Serfass, Steven R., Hon.

9:00 AM

2	PFA Hrg.	Bedford, T. (Stafiuc) v. Bedford, A. (Weaver)		19-2451
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##### Chairman Velitsky, Joseph J., Esq.

9:00 AM

3	Arbitration Ready	Ally Financial Inc. (Ratchford) v. Hinger, J.P. (Pro Se)		19-0222
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##### Chairman Rapa, Jason M., Esq.

1:15 PM

4	Arbitration Ready	Citibank N.A. (Scott) v. Zimmerman, R.A. (Pro Se)		19-0329
5	Arbitration Ready	Citibank N.A. (Scott) v. Beers, M.S. (Pro Se)		19-0712

**ESTATE AND  
TRUST NOTICES**

Notice is hereby given that, in the estates of the decedents set forth below, the Register of Wills has granted letters testamentary or of administration to the persons named. Notice is also hereby given of the existence of the trusts of the deceased settlors set forth below for whom no personal representatives have been appointed within 90 days of death. All persons having claims or demands against said estates or trusts are requested to make known the same, and all persons indebted to said estates or trusts are requested to make payment, without delay, to the executors or administrators or trustees or to their attorneys named below.

**FIRST PUBLICATION**

**COSTENBADER, BRUCE F.,**  
Dec'd.

Late of Lower Towamensing Township.

Co-Administrators CTA: Bonnie Lou Snyder and Barry A. Costenbader c/o David B. Shulman, Esquire, Shulman Law Office PC, 419 Delaware Avenue, P.O. Box 157, Palmerton, PA 18071.

Attorneys: David B. Shulman, Esquire, Shulman Law Office PC, 419 Delaware Avenue, P.O. Box 157, Palmerton, PA 18071.

**GILHAM, ELAINE M.,** Dec'd.

Late of Lehighon Borough.

Co-Executors: Craig R. Gilham, 202 Maiden Lane, Lehighon, PA 18235 and Linda L. Wehr, 422 South 8th St., Lehighon, PA 18235.

Attorney: None.

**MALISKO, JENNIFER L. a/k/a  
JENNIFER MALISKO,** Dec'd.  
Late of 118 Center Lane,  
Weatherly.

Executor: James P. Berlando,  
118 Center Lane, Weatherly,  
PA 18255.

Attorneys: Daniel A. Miscavige, Esquire, Gillespie, Miscavige & Ferdinand, LLC, 67 North Church Street, Hazleton, PA 18201.

**SECOND PUBLICATION**

**COLE, FRED, JR.,** Dec'd.

Late of Lehighon.

Executrix: Eleanor C. Leonard, 502 Girard Avenue, Croydon, PA 19020.

Attorneys: William G. Schwab, Esquire, Law Offices of William G. Schwab & Associates, 811 Blakeslee Blvd. Dr. East, P.O. Box 56, Lehighon, PA 18235, (610) 377-5200.

**EDWARDS, MARTHA A. a/k/a  
MARTHA A. (MACENKA)  
EDWARDS,** Dec'd.

Late of Jim Thorpe.

Executor: Joseph J. Velitsky, Esquire, Velitsky & Frycklund, 49 East Ludlow Street, Summit Hill, PA 18250.

Attorneys: Joseph J. Velitsky, Esquire, Velitsky & Frycklund, 49 East Ludlow Street, Summit Hill, PA 18250.

**FRANTZ, RONALD P.,** Dec'd.

Late of Lehighton.

Executrix: Lenore A. Frantz  
c/o William J. Fries, Esquire,  
The Atrium, 2895 Hamilton  
Boulevard, Suite 106, Allentown, PA 18104.

Attorney: William J. Fries,  
Esquire, The Atrium, 2895  
Hamilton Boulevard, Suite  
106, Allentown, PA 18104.

**FREY, WILLIAM W.,** Dec'd.

Late of Palmerton Borough.

Executors: Richard W. Frey,  
13706 Trinity Leaf Place, Riverview, FL 33579 and Suzanne Rigg a/k/a Suzanne E. Rigg,  
316 Dorchester Drive, Lititz,  
PA 17543.

Attorneys: Michael L. Ozalas,  
Esquire, Ozalas & McKinley,  
47 Broadway, Jim Thorpe, PA  
18229.

**JONES, NANCY M.,** Dec'd.

Late of the Borough of Palmerton.

Executrix: Gwendolyn R. Gruber c/o James R. Nanovic,  
Esquire, Nanovic Law Offices,  
57 Broadway, P.O. Box 359,  
Jim Thorpe, PA 18229.

Attorneys: James R. Nanovic,  
Esquire, Nanovic Law Offices,  
57 Broadway, P.O. Box 359,  
Jim Thorpe, PA 18229.

**McGASKO, MATTHEW S.**

**a/k/a MATTHEW STEPHEN  
McGASKO a/k/a MATTHEW  
McGASKO,** Dec'd.

Late of Tresckow.

Executrix Patricia Ann Lombardo a/k/a Patricia Lombardo.

Attorneys: Richard J. Marusak, Esquire, Ustynoski & Marusak, LLC, 101 West Broad St., Suite 205, Hazleton, PA 18201.

**THIRD PUBLICATION**

**BERGHOLD, KIM MARIE**

**a/k/a KIM M. BERGHOLD**

**a/k/a KIM BERGHOLD,**

Dec'd.

Late of the Borough of Palmerton.

Administrator: David E. Strohl, II, 6680 Oak Drive, Slatington, PA 18080.

Attorneys: Angela M. Stehle,  
Esquire, Shabbick & Associates, P.C., 533 Delaware Avenue, Palmerton, PA 18071.

**GEORGE, CLAIR R. a/k/a**

**CLAIR GEORGE,** Dec'd.

Late of Towamensing Township.

Executors: Barry Lee George,  
2200 Summer Mountain Road,  
Palmerton, PA 18071 and  
Linda I. Everett, 150 Anderson  
Drive, Lehighton, PA 18235.

Attorneys: Angela M. Stehle,  
Esquire, Shabbick & Associates, P.C., 533 Delaware Avenue, Palmerton, PA 18071.

**KARABINOS, MARY ELLEN,**

Dec'd.

Late of Lansford.

Administrator: John Stephen Karabinos c/o Joseph J. Velitsky, Esquire, Velitsky & Frycklund, 49 East Ludlow Street, Summit Hill, PA 18250.

Attorneys: Joseph J. Velitsky, Esquire, Velitsky & Frycklund, 49 East Ludlow Street, Summit Hill, PA 18250.

**KECK, GRACE JEAN, Dec'd.**

Late of Lehighton Borough.  
Executrix: Deborah J. Hann c/o Amy H. Besser, Esquire, 1701 Walnut St., 6th Fl., Philadelphia, PA 19103.

Attorneys: Amy H. Besser, Esquire, The Law Offices of Peter L. Klenk & Assoc., 1701 Walnut St., 6th Fl., Philadelphia, PA 19103.

**SCHERER, DEBRA L., Dec'd.**

Late of Palmerton.  
Executors: Aaron M. Scherer and Brandon T. Scherer c/o Charles A. Waters, Esquire, Steckel and Stopp, LLC, 125 S. Walnut Street, Suite 210, Slat- ington, PA 18080.

Attorneys: Charles A. Waters, Esquire, Steckel and Stopp, LLC, 125 S. Walnut Street, Suite 210, Slat- ington, PA 18080.

**SOUDERS, KATHY J. a/k/a**

**KATHY SOUDERS, Dec'd.**  
Late of Parryville Borough.  
Co-Administratrices: Beryl Ann Souders and Suzanne Iona Clements c/o David B. Shulman, Esquire, Shulman Law Office PC, 419 Delaware Avenue, P.O. Box 157, Palmerton, PA 18071.

Attorneys: David B. Shulman, Esquire, Shulman Law Office PC, 419 Delaware Avenue, P.O. Box 157, Palmerton, PA 18071.

**WESTON, JOHN F., JR. a/k/a JOHN F. WESTON, Dec'd.**

Late of Summit Hill.  
Executrix: Sheryl E. Weston c/o Joseph J. Velitsky, Esquire, Velitsky & Frycklund, 49 East Ludlow Street, Summit Hill, PA 18250.

Attorneys: Joseph J. Velitsky, Esquire, Velitsky & Frycklund, 49 East Ludlow Street, Summit Hill, PA 18250.

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**REGISTER OF WILLS**

**COSTENBADER, BRUCE F.;**  
Palmerton, PA; Admn. CTA; David B. Shulman, Esquire.

**MALISKO, JENNIFER L. a/k/a JENNIFER MALISKO;** Weatherly, PA; Will; Daniel A. Miscavage, Esquire.

**MANWELL, BETTY J. a/k/a BETTY JUNE MANWELL;** White Haven, PA; Will; Attorney: n/a.

**PARRISH, FRED;** Albrightsville, PA; Will; Kim Roberti, Esquire.

**PICKERING, JACQUELINE M. a/k/a JACQUELINE PICKERING;** Jim Thorpe, PA; Will; Anthony Roberti, Esquire.

**SEBELIN, THOMAS P.;** Weatherly, PA; Will; Kim Roberti, Esquire.

Jan. 31

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**SUITS BEGUN**

The plaintiff's name appears first, followed by the name of the defendant, the case number, the

CARBON COUNTY LAW JOURNAL

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- nature of the suit, the name of the plaintiff's attorney, and the date the suit was filed.
- ALLY BANK; Shirl A. Taschler, Stephen P. Totic, Jr.; 20-0166; Civil Action; Frederic I. Weinberg, Esquire; 01/21/20.
- BANK OF AMERICA N.A.; Jennifer A. Engle; 20-0158; Civil Action; Frederic I. Weinberg, Esquire; 01/20/20.
- BARTHOLOMEW, JOHN L.; John C. Bartholomew; 20-0162; Protect/Abuse; Pro Se; 01/20/20.
- BARTHOLOMEW, SHERRY; John C. Bartholomew; 20-0163; Protect/Abuse; Pro Se; 01/20/20.
- FIRST COMMONWEALTH FEDERAL CREDIT UNION; Matthew Edward Mackiewicz; 20-0149; Civil Action; Michael R. Nesfeder, Esquire; 01/20/20.
- FLEXER, LEWIS M.; Marilyn J. Flexer; 20-0146; Divorce; Kim M. Gillen, Esquire; 01/17/20.
- FRANTZ, WILLIAM M.; Commonwealth of Pennsylvania Department of Transportation; 20-0170; License Appeal; Pro Se; 01/22/20.
- GRATE, MELISSA ANN; Andrew Michael Grate, Jr.; 20-0169; Protect/Abuse; Pro Se; 01/22/20.
- GREEN, JENNIFER N.; Jason T. Green; 20-0148; Divorce; Pro Se; 01/20/20.
- HELLER, JULIA; Caleb Heller; 20-0172; Custody; Pro Se; 01/22/20.
- HERRICK, JEAN M.; Gregg W. Martens; 20-0147; Protect/Abuse; Pro Se; 01/17/20.
- KUCHER, GLENN ANDREW; Commonwealth of Pennsylvania Department of Transportation; 20-0174; License Appeal; Paul John Levy, Esquire; 01/23/20.
- LEHIGH COUNTY EMPLOYEES FEDERAL CREDIT UNION; Margaret J. Kurtz & Frank J. Kurtz, Jr.; 20-0160; Mortgage Foreclosure; Robert E. Donatelli, Esquire; 01/20/20.
- LOANDEPOT COM LLC; Don T. Amoruso; 20-0173; Mortgage Foreclosure; Peter Wapner, Esquire; 01/23/20.
- LOMBANA, KATSY o/b/o A.L. (M.); Abraham Campos; 20-0167; Protect/Abuse; Pro Se; 01/21/20.
- LOMBANA, KATSY o/b/o A.L. (M.); Abraham Campos; 20-0168; PFSVI; Pro Se; 01/21/20.
- PRIMELENDING A PLAINSCAPITAL COMPANY; Anthony Tatasciore or Occupants; 20-0159; Ejectment; Peter Wapner, Esquire; 01/20/20.
- RENNINGER, BRETT; Cheida Soto; 20-0150; Divorce; Jennifer Lynn Rapa, Esquire; 01/20/20.
- RIGGIO, AMY; Anthony Riggio; 20-0171; Custody; Nicholas J. Masington, III, Esquire; 01/22/20.

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**JUDGMENT INDEX REPORT**

The information contained herein is listed in the following order: (1) party against whom judgment was entered; (2) party for whom judgment was entered; (3) docket number; (4) date of entry; and (5) amount. Subsequent entries and filings, including appeals and satisfactions, may not be reported herein and may affect the lein status of any entry.

APM CONSTRUCTION INC.; Commonwealth of Pennsylvania Department of Labor and Industry; 20-0165; 01/21/20; \$2,479.71

ASHBY, IRWIN PIERRE; Carbon County Adult Probation Office; 20-8076; 01/17/20; \$1,806.91

CINTO, EVA; Midland Funding LLC; 20-0151; 01/20/20; \$1,600.39

CONARTY, MARYGRACE E.; Carbon County Adult Probation Office; 20-8078; 01/21/20; \$469.22

CONARTY, MARYGRACE ELIZABETH; Carbon County Adult Probation Office; 20-8079; 01/21/20; \$1,231.91

DEVINE, MICHAEL TIMOTHY; Carbon County Adult Probation Office; 20-8082; 01/23/20; \$1,526.18

FAIRCHILD, COREYANN MARIE; Carbon County Adult Probation Office; 20-8083; 01/23/20; \$875.25

FRANTZ, KYLE MICHAEL; Carbon County Adult Probation Office; 20-8074; 01/17/20; \$6,209.10

GERHARD, KIMBERLY & TIMOTHY; United States Internal Revenue Service; 20-0155; 01/20/20; \$11,226.14

HOLLSTEIN, KARINA; Carbon County Adult Probation Office; 20-8071; 01/17/20; \$1,675.18

JOYCE, JOSH MICHAEL; Carbon County Adult Probation Office; 20-8072; 01/17/20; \$947.07

MB WAREHOUSE SERVICES LL; Commonwealth of Pennsylvania Department of Labor and Industry; 20-0164; 01/21/20; \$1,359.27

McGLINCHEY, ANGELA P.; Carbon County Adult Probation Office; 20-8081; 01/23/20; \$5,564.00

MILLER, BRUCE A., DEC'D. c/o LORI M. GENEROSE; United States Internal Revenue Service; 20-0156; 01/20/20; \$18,982.47

SHAFER, GREGORY MATTHEW; Carbon County Adult Probation Office; 20-8073; 01/17/20; \$1,915.75

STORM, TAMATHA ELIZABETH; Carbon County Adult Probation Office; 20-8075; 01/17/20; \$1,617.43

STRAUSBERGER, BRUCE; United States Internal Revenue Service; 20-0153; 01/20/20; \$29,037.51

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TAGLIATERRA, SAMANTHA;  
Carbon County Adult Probation Office; 20-8080; 01/23/20; \$2,114.18  
WALKER, DAVID L. & PATRICIA A. WALKER; United States Internal Revenue Service; 20-0154; 01/20/20; \$10,-442.43  
WALTERS, WILLIAM; Midland Funding LLC; 20-0152; 01/20/20; \$3,271.67  
WELSH, KATHLEEN; Midland Funding LLC; 20-0157; 01/20/20; \$1,548.73  
WILKUS, CAROLYNE MICHELLE; Carbon County Adult Probation Office; 20-8077; 01/21/20; \$2,068.68  
YOSTYS AUTO SERVICE INC.; Commonwealth of Pennsylvania Department of Labor & Industry; 20-0145; 01/17/20; \$1,808.92

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**NOTICE OF ACTION IN MORTGAGE FORECLOSURE**

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA CIVIL ACTION—LAW

No. 19-3236

WELLS FARGO BANK, N.A. s/b/m TO WELLS FARGO HOME MORTGAGE, INC. f/k/a NORWEST MORTGAGE, INC.

Plaintiff

vs.

WESLEY P. DIDOMENICIS, INDIVIDUALLY AND IN HIS CAPACITY AS HEIR OF BETTY C. HEAL, DECEASED, JOHN P. DIDOMENICIS, INDIVIDUALLY AND IN HIS CAPACITY AS HEIR OF BETTY C. HEAL, DECEASED, ANNETTE C. DIDOMENICIS, BILLY DIDOMENICIS, IN HIS CAPACITY AS HEIR OF BETTY C. HEAL, DECEASED, ANTHONY DIDOMENICIS, IN HIS CAPACITY AS HEIR OF BETTY C. HEAL, DECEASED, SCOTT DIDOMENICIS, IN HIS CAPACITY AS HEIR OF BETTY C. HEAL, DECEASED, UNKNOWN HEIRS, SUCCESSORS, ASSIGNS AND ALL PERSONS, FIRMS OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER BETTY C. HEAL, DECEASED

Defendants

**NOTICE**

To: ANNETTE C. DIDOMENICIS

You are hereby notified that on October 29, 2019, Plaintiff, WELLS FARGO BANK, N.A. s/b/m TO WELLS FARGO HOME MORTGAGE, INC. f/k/a NORWEST MORTGAGE, INC., filed a Mortgage Foreclo-

CARBON COUNTY LAW JOURNAL

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sure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of CARBON County, Pennsylvania, docketed to No. 19-3236. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 18 NEW BIRCH STREET a/k/a 5 NEW BIRCH STREET, LAKE HARMONY, PA 18624 whereupon your property would be sold by the Sheriff of CARBON 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.

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.

North Penn Legal Services

101 W. Broad Street

Suite 713

Hazleton, PA 18201

Telephone (877) 953-4250

Fax (570) 455-3625

- or -

Carbon County Lawyer Referral

811 Blakeslee Blvd. Dr. E.

Suite 130

Lehighton, PA 18235

Telephone (610) 379-4950

Fax (610) 379-4952

Jan. 31

—————  
**FICTITIOUS NAME NOTICE**  
—————

M\_I\_D\_S—

MINDFUL INTERIOR

DESIGN SOLUTIONS

hereby gives notice pursuant to the provisions of the Fictitious Names Act of Pennsylvania, that an application for registration of a fictitious name was filed with the Department of State; Bureau of Corporations and Charitable



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Organizations, under which I will provide Interior Design services. The principal place of business is: 175 Balsam Way, Palmerton, PA 18071. The name and address of the person included in the registration are: Lynda Kaspern; 175 Balsam Way, Palmerton, PA 18071.

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COMMON PLEAS OF CARBON COUNTY  
SHERIFF'S SALE OF VALUABLE REAL ESTATE  
Sheriff's Office, Courthouse Building, Jim Thorpe, PA

SHERIFF'S NOTICE: The Sheriff shall not be liable for loss or damage to the premises sold resulting from any cause whatsoever and makes no representation or warranty regarding the condition of the premises.

Notice is hereby given and directed to all parties in interest and claimants that a Schedule of Distribution will be filed by the Sheriff on February 24, 2020 and that distribution will be made in accordance with that Schedule unless exceptions are filed thereto within ten (10) days thereafter.

ANTHONY C. HARVILLA  
Sheriff, County of Carbon  
[www.carboncountysheriff.com](http://www.carboncountysheriff.com)  
Jan. 24, 31; Feb. 7

**Sale of the real estate described below shall be held on Friday, February 14, 2020 at 11:00 a.m. at the Carbon County Courthouse.**

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**SALE #1**

Writ of Execution No.: 18-1946.

Property Address: 1000 Louise Street, Weatherly PA 18255.

Location: Borough of Weatherly.

Improvements: Residential dwelling.

Defendants: Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest From or Under Gary L. Beacham, Deceased; Colleen L. Hoffman, in Her Capacity as Heir of Gary L. Beacham, Deceased; John Willis, in His Capacity as Heir of Gary L. Beacham, Deceased.

**SALE #3**

Writ of Execution No.: 19-1576.

Property Address: 248 East Abbott Street, Lansford, PA 18232.

Location: Borough of Lansford.

Improvements: Residential dwelling.

Defendant: Jesse A. Chuma.

**SALE #4**

Writ of Execution No.: 19-0302.

Property Address: 414 South Ninth Street a/k/a 414 South 9th Street, Lehighton, PA 18235.

Location: Lehighton Borough.

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Improvements: Residential dwelling.

Defendants: Louise A. Dagorn a/k/a Louis A. Defebo and Daniel Dagorn.

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**SALE #5**

Writ of Execution No.: 19-1093.

Property Address: 414 Bridge Street, Lehighton, PA 18235.

Location: Borough of Lehighton.

Improvements: Unknown.

Defendants: Kris J. Gasker and Denise M. Gasker.

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**SALE #6**

Writ of Execution No.: 17-2629.

Property Address: 639 Evergreen Avenue, Weatherly, PA 18255.

Location: Borough of Weatherly.

Improvements: Residential dwelling.

Defendants: Lawrence W. Grove and Marla J. Grove.

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**SALE #7**

Writ of Execution No.: 19-2897.

Property Address: 4602 Colonial Terrace assessed as 136 Colonial Terrace, Albrightsville, PA 18210.

Location: Penn Forest Township.

Improvements: Residential dwelling.

Defendants: Ramdat Kissore Harihar a/k/a Ramet Harihar a/k/a Ramdat Harihar and Chandmany Sunita Harihar a/k/a Chandmany Harihar a/k/a Chandmary Harihar.

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**SALE #8**

Writ of Execution No.: 18-3874.

Property Address: 506 Mahoning Street, Lehighton, PA 18235.

Location: Borough of Lehighton.

Improvements: Residential dwelling.

Defendants: John N. Hnatishion and Dawn DiMeo Hnatishion a/k/a Dawn D. Hnatishion.

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**SALE #9**

Writ of Execution No.: 19-3109.

Property Address: 350 South 3rd Street a/k/a 350 South Third Street, Lehighton, PA 18235.

Location: Borough of Lehighton.

Improvements: Residential dwelling.

Defendants: Jacob Hoffman a/k/a Jack Hoffman and Marguerite Hoffman a/k/a Marguerite E. Hoffman.

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**SALE #10**

Writ of Execution No.: 19-2181.

Property Address: 200 Evergreen Road, Lehighton, PA 18235.

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Location: Township of Franklin.

Improvements: Residential dwelling.

Defendant: Michelle A. Klotz a/k/a Michelle Klotz.

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**SALE #11**

Writ of Execution No.: 19-0748.

Property Address: 332 South Street a/k/a 332 S. Street, Jim Thorpe, PA 18229.

Location: Borough of Jim Thorpe.

Improvements: Residential dwelling.

Defendant: Mathew Ryan Lepley.

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**SALE #12**

Writ of Execution No.: 16-2049.

Property Address: 150 W. Abbot Street, Lansford, PA 18232.

Location: Borough of Lansford.

Improvements: Residential dwelling.

Defendants: Stanley J. Micholik and Marie L. Micholik.

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**SALE #13**

Writ of Execution No.: 19-1200.

Property Address: 34 Chipewa Trail, Albrightsville, PA 18210.

Location: Township of Penn Forest.

Improvements: Residential property.

Defendants: The Unknown Heirs of Evelyn D. Murden, Deceased, Bruce Murden, Solely in His Capacity as Heir of Evelyn D. Murden, Deceased.

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**SALE #14**

Writ of Execution No.: 19-1315.

Property Address: 120 Lipo Way, Albrightsville, PA 18210.

Location: Penn Forest Township.

Improvements: Residential property.

Defendants: Marie Betty Pean and Joseph Auguste.

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**SALE #15**

Writ of Execution No.: 19-2869.

Property Address: 50 Lafayette Avenue, Palmerton, PA 18071.

Location: Palmerton Borough.

Improvements: Residential dwelling.

Defendants: Roxanne Rehrig and Jeffrey Rehrig.

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**SALE #16**

Writ of Execution No.: 17-1453.

Property Address: 328 W. Kline Avenue, Lansford, PA 18232.

Location: Borough of Lansford.

Improvements: Twin (half-double) 2-story frame.

Defendant: Bruce A. Romig.

**SALE #17**

Writ of Execution No.: 19-1599.

Property Address: 1797 South Lehigh Gorge Drive, Weatherly, PA 18255.

Location: Lehigh Township.

Improvements: Residential dwelling.

Defendant: Roseann Sabia.

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**SALE #18**

Writ of Execution No.: 19-0837.

Property Address: 713 North Street, Jim Thorpe, PA 18229.

Location: Borough of Jim Thorpe.

Improvements: Residential dwelling.

Defendant: Matthew W. Searfoss.

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**SALE #19**

Writ of Execution No.: 16-1979.

Property Address: 347 W. Catawissa Street, Nesquehoning, PA 18240.

Location: Borough of Nesquehoning.

Improvements: Residential dwelling.

Defendants: Bobby D. Smith and Marianne A. Smith.

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**SALE #20**

Writ of Execution No.: 19-1822.

Property Address: 23 West Bear Drive, Summit Hill, PA 18250.

Location: Borough of Summit Hill.

Improvements: Unknown.

Defendants: Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest from or under Betty June Snyder a/k/a Betty Jane Snyder a/k/a Betty J. Snyder; Richard Snyder, Known Heir Betty June Snyder a/k/a Betty Jane Snyder a/k/a Betty J. Snyder and Judy Fredericks, Known Heir of Betty June Snyder a/k/a Betty Jane Snyder a/k/a Betty J. Snyder.

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**DEEDS**

The name of the grantor appears first, followed by name of grantee, location of premises, amount of consideration, and date of recording.

FANNIE MAE, JLP Real Estate LLC, Nesq., \$20,000.00, 06/28/19

SANCHEZ, ANTHONY, Parr, Brad W., Tow. Twp., \$225,000.00, 06/28/19

KORNER, CHARLES, Connors, Michelle, Weathrly., \$52,000.00, 06/28/19

BEALE, NATHAN, Beale, Sandra, Kidder, \$1.00, 06/03/19

WESTWOOD CONDOMINIUM ASSN. INC., Sanchez, Teddy, Sr., Kidder, \$1,500.00, 06/10/19

WESTWOOD CONDOMINIUM ASSN. INC., Sanchez, Teddy, Sr., Kidder, \$1,500.00, 06/10/19

**IN RE: J.M.**

*Civil Law—Mental Health Procedures Act—Section 303 Hearing and Certification—Petition for Review of Hearing Officer’s Certification—Time Within Which to Request Review by Court—Remedy Where Right to Appeal Otherwise Lost Due to Extraordinary Circumstances—**Nunc Pro Tunc** Appeal—Requirement That Petitioner Act With Due Diligence and Reasonable Promptitude*

1. Section 303 of the Mental Health Procedures Act (“MHPA”) provides for extended involuntary emergency treatment of any person who is being treated pursuant to Section 302 for a period not to exceed twenty days if, after an informal conference where the patient is represented by counsel, a judge or mental health review officer finds that the patient is severely mentally disabled and in need of continued involuntary treatment, and so certifies.
2. A person involuntarily committed to treatment following a Section 303 hearing before a mental health review officer has the right to petition the court of common pleas for review of the certification. 50 P.S. §7303(g). The MHPA does not state the time period within which this petition is to be filed.
3. The certification of a mental health review officer under Section 303 of the MHPA is a final adjudication or determination of a local agency and, under 42 Pa. C.S.A. §5571(b), the time for appealing such determination to the court of common pleas is statutorily fixed at thirty days.
4. An appeal **nunc pro tunc** is intended as a remedy to vindicate the right to an appeal where that right has been lost due to certain extraordinary circumstances. In civil cases, **nunc pro tunc** relief has been judicially recognized in one of two circumstances: (1) where the cause for a late filing is fraud or a breakdown of court operations; or (2) where the petitioner demonstrates that an appeal was filed late as the result of non-negligent circumstances, either as they relate to the petitioner or his counsel, that the notice of appeal was filed shortly after the expiration date, and that the appellee or respondent was not prejudiced by the delay.
5. Whether the basis for seeking **nunc pro tunc** relief is a breakdown in the court’s operations, or non-negligent conduct of appellant or his counsel, the petition to file the appeal **nunc pro tunc** must be filed within a reasonable time after the occurrence of the extraordinary circumstances presented in support of the late filing.
6. “The correct inquiry in determining whether a petitioner’s conduct resulted in a want of due diligence is to focus not upon what the [petitioner] knows, but what he might have known, by the use of the means of information within his reach, with the vigilance the law requires of him.”
7. A person who has been involuntarily committed to a mental health institution for inpatient care and treatment under Section 302 or 303 of the MHPA is prohibited from possessing a firearm in this Commonwealth.
8. The seven-month delay between when the Section 303 certification for involuntary emergency treatment of the Petitioner was filed with the court and when the Petition to Appeal **Nunc Pro Tunc** was filed evidences a lack of due diligence and justifies dismissal of the Petition as untimely where (1) Petitioner was present and learned of the Section 303 certification at the time it was issued; (2) Petitioner became aware of the consequences of the certification and the firearm disability within one month of the date of the certification; and (3) Petitioner was advised by counsel of his right to appeal the certification and the thirty-day time period by which the certification should have been appealed at least two months prior to the filing of his Petition to Appeal **Nunc Pro Tunc**.

NO. 19-0290 (18 MH 0093)

KAITLYN CLARKSON, Esquire—Counsel for the Petitioner.

**MEMORANDUM OPINION**

NANOVIC, P.J.—September 5, 2019

On August 9, 2018, a mental health review officer (**i.e.**, a hearing officer) certified J.M. as severely mentally disabled and in need of emergency mental health treatment for a period not to exceed twenty days pursuant to Section 303 of the Mental Health Procedures Act (“MHPA”), 50 P.S. §§7101-7503.<sup>1</sup> J.M. did not appeal the hearing officer’s certification for extended involuntary treatment within the statutory period to file an appeal as of right—thirty days—instead, filing on March 25, 2019, the instant petition now before us seeking permission to appeal **nunc pro tunc** the hearing officer’s Section 303 certification.

**PROCEDURAL AND FACTUAL BACKGROUND**

The August 9, 2018 hearing was held upon a request for certification dated the same date by a social service therapist at the facility where J.M. was then being treated to extend J.M.’s period of involuntary treatment under Section 302 of the MHPA, 50 P.S. §7302, for an additional twenty days. (Court Exhibit 1, Application for Extended Involuntary Treatment (Part I—Request for Certification).)<sup>2</sup> J.M. was present at the hearing and was represented by

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<sup>1</sup>In **In re J.M.Y.**, 179 A.3d 1140 (Pa. Super. 2018), **appeal granted**, 194 A.3d 121 (Pa. 2018), an **en banc** panel of the Pennsylvania Superior Court recently summarized Section 303 as follows:

Section 303 of the MHPA provides for extended involuntary emergency treatment of any person who is being treated pursuant to section 302 for a period not to exceed twenty days if, after an informal conference where the patient is represented by counsel, a judge or mental health review officer finds that the patient is severely mentally disabled and in need of continued involuntary treatment, and so certifies. 50 P.S. § 7303(a)-(c).

**Id.** at 1144.

<sup>2</sup>J.M. was involuntarily committed to a mental health facility on or about August 5, 2018 under Section 302 for firing a gun in the air at 10:00 P.M. while walking near a home in the Borough of Weatherly, Carbon County, Pennsylvania. (Court Exhibit 1, Application for Extended Involuntary Treatment (Parts I, III, IV); Petitioner’s Exhibit 1, CD of 8/9/18 hearing; N.T., 5/13/19, pp. 16-17, 33.) At the time, J.M. was suffering from bipolar disorder with psychosis for which he had failed to take his prescribed medication. (Court Exhibit 1, Application for Extended Involuntary Treatment (Parts III and IV).) A month earlier, in July 2018, J.M. had voluntarily committed himself to a mental health facility in the Borough of Lehighton, Carbon County, Pennsylvania for three to four days. (N.T., 5/13/19, pp.18-19, 21.)

the Carbon County Public Defender's Office. (N.T., 5/13/19, p. 10.) The mental health facility was represented by Mary Ann Kresen, Esquire. (Petitioner's Exhibit 1, CD of 8/9/18 hearing.)

Immediately following the receipt of evidence, the hearing officer orally announced her decision and completed a written certification finding J.M. was severely mentally disabled and in need of continued inpatient treatment for a period not to exceed twenty days. (Petitioner's Exhibit 1, CD of 8/9/18 hearing.) This written certification was filed with the court on August 16, 2018. In accordance with the hearing officer's certification, J.M. continued to receive inpatient treatment until his discharge from inpatient care on August 23, 2018. (N.T., 5/13/19, pp. 41-42.)

On March 25, 2019, J.M. filed with this court a Petition to Appeal **Nunc Pro Tunc** (the "Petition") from the hearing officer's August 9, 2018 certification. The Petition was filed by privately retained new counsel. In the unverified Petition, J.M. requests **nunc pro tunc** relief on two bases: (1) where the cause for a late filing is fraud or a breakdown of court operations; and (2) where the petitioner demonstrates that an appeal was filed late as the result of non-negligent circumstances, either as they relate to the petitioner or his counsel, that the notice of appeal was filed shortly after the expiration date, and that the appellee or respondent was not prejudiced by the delay, **citing Vietri ex rel. Vietri v. Delaware Valley High School**, 63 A.3d 1281, 1284 (Pa. Super. 2013), as authority for granting an appeal **nunc pro tunc** under these two circumstances. (Petition to Appeal **Nunc Pro Tunc**, paragraphs 9-10.)

In the Petition, J.M. alleges a breakdown in court operations, asserting he was never informed of his right to petition the court for review of the hearing officer's decision—**citing** to 50 P.S. §7303(c), (d)(3) and (g)—and that he was never provided a copy of the written certification. (Petition, paragraphs 11, 13.) As to the

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Court Exhibit 1 is a four-page form document entitled "Application for Extended Involuntary Treatment," which is divided into four parts, each with a separate heading, and each containing space for the insertion of information specific to the patient involved. In chronological sequence, Part III, Physician's Examination, is dated August 7, 2018; Part II, the Patient's Rights, is dated August 8, 2018; Part I, Request for Certification, is dated August 9, 2018; and Part IV, Certification by the court for Extended Involuntary Emergency Treatment—Section 303, is also dated August 9, 2018. The actual filing of this application with the Carbon County Prothonotary's Office occurred on August 16, 2018.



second basis for appeal, J.M. contends he meets all three elements necessary to excuse the late filing as a result of non-negligent circumstances. (Petition, paragraph 15.)

A hearing on the Petition was held on May 13, 2019, with J.M. being the only person to testify. The purpose of the hearing was to determine whether J.M. should be permitted to appeal the hearing officer's Section 303 certification **nunc pro tunc**, more than seven months after the certification hearing was held and the hearing officer's decision announced. Besides J.M. and his counsel, no one else appeared to testify or to represent any other party at this hearing.

### DISCUSSION

A person involuntarily committed to treatment following a Section 303 hearing before a mental health review officer has "the right to petition the court of common pleas for review of the certification." 50 P.S. §7303(g). This petition must be filed within thirty days of the entry of the order from which the appeal is taken, in this case, within thirty days of August 16, 2018. 42 Pa. C.S.A. §5571(b).<sup>3</sup> Because J.M. failed to act within this timeframe, J.M.'s right to a direct review of the procedural and factual propriety of the Section 303 proceeding is admittedly untimely. (Petition, paragraph 7.) Therefore, unless his petition for **nunc pro tunc** relief is granted, J.M. will be time barred from challenging the certification.

In **Vietri**, the Superior Court stated:

Our Supreme Court has characterized the purpose of **nunc pro tunc** restoration of appellate rights as follows:

Allowing an appeal **nunc pro tunc** is a recognized exception to the general rule prohibiting the extension of an appeal deadline.

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<sup>3</sup>The certification of a mental health review officer under Section 303 of the MHPA is a "final adjudication or determination of a local agency or a Commonwealth agency as to which jurisdiction is vested in the courts of common pleas." **In re J.M.Y.**, *supra* at 1152 (Olson, J., **dissenting**) (citation and quotation marks omitted.)

Therefore, the mental health review officer's Section 303 certification constitutes a 'final adjudication or determination' and, under 42 Pa.C.S.A. § 5571(b), the time for appealing such determination to the court of common pleas is statutorily fixed at 30 days. 42 Pa.C.S.A. § 5571(b) ('[e]xcept as otherwise provided ... , an appeal from a tribunal or other government unit to a court ... must be commenced within 30 days after the entry of the order from which the appeal is taken, in the case of an interlocutory or final order').

**Id.**; see also, **Matter of Marone**, 2016 WL 5938256 \*1 (Pa. Super. 2016) (Memorandum Opinion.)

This Court has emphasized that the principle emerges that an appeal **nunc pro tunc** is intended as a remedy to vindicate the right to an appeal where that right has been lost due to certain extraordinary circumstances. Generally, in civil cases an appeal **nunc pro tunc** is granted only where there was fraud or a breakdown in the court's operations through a default of its officers.

\* \* \*

In addition to the occurrence of 'fraud or breakdown in the court's operations,' **nunc pro tunc** relief may also be granted where the appellant demonstrates that (1) [his] notice of appeal was filed late as a result of non-negligent circumstances, either as they relate to the appellant or the appellant's counsel; (2) [he] filed the notice of appeal shortly after the expiration date; and (3) the appellee was not prejudiced by the delay.

**Id.** at 1284 (citations and internal quotation marks omitted.) While prejudice need not be established when the basis for seeking an appeal **nunc pro tunc** is a breakdown in the court's operations, **Fischer v. UPMC Northwest**, 34 A.3d 115, 122-23 (Pa. Super. 2011), whether the basis for seeking **nunc pro tunc** relief is a breakdown in the court's operations, or non-negligent conduct of appellant or his counsel, "the petition to file the appeal **nunc pro tunc** must be filed within a reasonable time after the occurrence of the extraordinary circumstance" presented in support of the late filing. **Amicone v. Rok**, 839 A.2d 1109, 1114 (Pa. Super. 2003).

J.M. in essence claims that there was a breakdown in court operations and that his Section 303 hearing counsel was ineffective because he was never advised of his right to appeal his continued commitment by either the hearing officer or his Section 303 counsel, respectively, and was never provided with a written copy of the hearing officer's certification. (N.T., 5/13/19, pp. 3, 12-13, 39-42, 58.) Assuming (without deciding) this to be so,<sup>4</sup> J.M. has failed to

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<sup>4</sup>The hearing officer's certification appears on a pre-printed form adopted by the Department of Public Welfare. Included in this certification, as part of the pre-printed form, is the following sentence:

I have explained to the patient that if his/her conference was before a Mental Health Review Officer he/she may petition the court for a review of any decisions reached at this conference.

Court Exhibit 1, Application for Extended Involuntary Treatment (Part IV—Certification for Extended Treatment.) Notwithstanding this statement contained in

offer a satisfactory explanation for the seven-month delay in filing the Petition or that this delay was attributable to something other than his own or counsel's negligence.

J.M. was thirty four years old at the time of the hearing before the hearing officer, worked as a certified financial planner, and was well educated. (N.T., 5/13/19, pp. 10, 14.) He received his high school diploma in 2002, a bachelor's degree from Temple University in 2007, and, as of the spring of 2019, completed the requirements to obtain a Master's degree from the University of Missouri. (N.T., 5/13/19, pp. 15-16.) At the time he was managing a portfolio of twenty million dollars in client assets. (N.T., 5/13/19, p. 17.) Following his discharge from involuntary commitment on August 23, 2018, J.M. returned to his home and began outpatient treatment. (N.T., 5/13/19, pp. 41-42.)

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the certification, after listening to the CD of the commitment hearing (Petitioner's Exhibit 1), we concur with counsel's representation to the court that such explanation does not appear to have been given.

Nevertheless, in Part II of the Application for Extended Involuntary Treatment (Court Exhibit 1), Gwendolyn Logan, a social service therapist at the mental health facility where J.M. was then a patient and who testified at the Section 303 hearing, affirms that she explained to J.M. his rights as described in Form MH 784-A and that he understood them. Paragraph six of this form entitled "Notice of Intent to File a Petition for Extended Involuntary Treatment and Explanation of Rights (303)" states:

If your conference is before a Mental Health Review Officer and if you are not satisfied with the results of your conference, you have the right to ask for a hearing before a judge of the court. The court will hold a conference, review all the evidence presented, and make its own decision as to whether you should be discharged or receive further treatment.

Form MH 784A 7/07, paragraph 6.

Further, since counsel has an ethical obligation to communicate reasonably with a client to ensure effective representation, it is doubtful that the failure of counsel to advise J.M. of his right to appeal the certification would be non-negligent. **See e.g.**, Rule 1.4(a)(2), (3) and Rule 1.4(b) of the Rules of Professional Conduct which require counsel to (1) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (2) keep the client reasonably informed about the status of the matter; and (3) explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, respectively. Nor are we aware of any legal authority to support the proposition that ineffective assistance of counsel in a civil proceeding is grounds for an appeal **nunc pro tunc**.

Before or soon after his discharge from inpatient treatment, J.M. was contacted by the Carbon County Sheriff, learned he couldn't possess firearms, and was required to relinquish his firearms and gun permit.<sup>5</sup> (N.T., 5/13/19, pp. 42-45, 50-51.) In September 2018, after his discharge, and again several months later, J.M. conducted on-line research on his own which apparently confirmed this disqualification on his right to carry a firearm, and which prompted J.M. to file his petition seeking **nunc pro tunc** relief in order to restore his right to own and possess firearms. (N.T., 5/13/19, pp. 19, 43, 48-50.) Notwithstanding this knowledge, J.M. testified he did not seek any legal advice until December 2018 or January 2019,<sup>6</sup> at which time he claims to have learned for the first time that he had had a right to appeal the 303 certification and that this right to file an appeal expired either thirty days after the hearing officer made her decision, or thirty days after the certification was filed. (N.T., 5/13/19, pp. 13, 46-47, 50-52.) Still, a minimum of another two months passed before the Petition to Appeal **Nunc Pro Tunc** was filed on March 25, 2019.

In accordance with the foregoing timeline, the Petition to Appeal **Nunc Pro Tunc** was filed more than six months after the September 15, 2018 deadline for filing a timely appeal. To explain this delay, J.M. appears to argue that notwithstanding his knowledge of the collateral consequences of his involuntary commitment and the importance to him of having his firearm rights restored, he waited more than four months after his discharge from inpatient care before contacting counsel because he needed to catch up on his work as a financial consultant and did not want to deal with this issue, and then waited another two to three months before filing his Petition even though, by either December 2018 or January

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<sup>5</sup>Pursuant to 18 Pa. C.S.A. §6105(c)(4), a person who has been involuntarily committed to a mental health institution for inpatient care and treatment under Section 302, 303 or 304 of the MHPA is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm in this Commonwealth. Under federal law, such a person is also prohibited from possessing a firearm pursuant to 18 U.S.C. §922(g)(4.)

<sup>6</sup>In a separate petition filed on February 13, 2019, requesting a copy of the recording of the August 9, 2018 hearing, it's averred that J.M. first retained new counsel on November 11, 2018 to review and investigate his 302 and 303 matters to determine possible avenues of relief. J.M.'s request for a copy of the 303 hearing recording was promptly granted by order dated February 15, 2019.

2019, he clearly knew of his right to appeal the hearing officer's decision and the time by which an appeal should have been taken. (N.T., 5/13/19, pp. 44-45, 49-52.) Against this background, it should also be noted that the hearing officer's certification was a matter of public record having been filed with the Prothonotary's Office on August 16, 2018 and, while subject to confidentiality concerns, readily available to J.M. **Sprague v. Casey**, 520 Pa. 38, 45, 550 A.2d 184, 188 (1988) ("The correct inquiry in determining whether [a petitioner's] conduct resulted in a want of due diligence is to focus not upon what the plaintiff knows, but what he might have known, by the use of the means of information within his reach, with the vigilance the law requires of him.") (citation and quotation marks omitted).

Under all the circumstances, we are not convinced that J.M. filed his Petition to Appeal **Nunc Pro Tunc** within a reasonable period of time after learning of the hearing officer's decision on August 9, 2018. See **Amicone v. Rok**, *supra* at 1115-16 (finding that a delay of more than four months in filing a petition to appeal **nunc pro tunc** after the expiration of the appeal period was unreasonable); **Commonwealth v. Stadtfield**, 445 Pa. Super. 271, 277, 665 A.2d 487, 490-91 (1995) (concluding that a nine-month time lapse between the date a notice of suspension of driving privileges was mailed and when a petition for allowance of appeal **nunc pro tunc** of the underlying summary conviction which resulted in the suspension was filed was not reflective of the "promptitude" expressed by the Superior Court in affirming the grant of an appeal **nunc pro tunc**).

### CONCLUSION

Before an appeal **nunc pro tunc** will be granted, the party requesting permission to appeal must establish that the delay in filing a timely appeal was caused by extraordinary circumstances and that he acted with due diligence once he became aware of the consequences of the challenged decision and the need to take action. **V.S. v. Department of Public Welfare**, 131 A.3d 523, 527 (Pa. Commw. 2015); **Stadtfield**, *supra*. The question of whether the facts as accepted by the fact-finder establish extraordinary circumstances is a question of law reviewable on appeal. **V.S.**, *supra*. Even if we were to assume in the instant proceedings that a failure

to advise of the right to appeal is such a circumstance,<sup>7</sup> we are not convinced that J.M. acted promptly and with due diligence in the assertion of his rights.

The hearing officer advised J.M. of her decision at the time of the hearing and there can be no question but that J.M. was aware of the decision and disagreed with it. Notwithstanding the certification authorizing his involuntary commitment for up to twenty days, J.M. was released after fourteen days and, within days of his release, if not earlier, was aware that because of his involuntary commitment he was barred from owning or possessing a firearm.<sup>8</sup> Yet, despite adamantly believing that there was no legal basis for his commitment and having researched the consequences of his commitment, J.M. waited at least four months before consulting an attorney and then another two to three months before filing his Petition. This delay, we conclude, is inexcusable.<sup>9</sup>

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<sup>7</sup>This is not a case where J.M. is claiming that the hearing officer had a duty to advise J.M. of the time within which to file an appeal or that the hearing officer misinformed J.M. of the time to take an appeal which J.M. relied upon to his detriment. **Cf. Union Electric Corporation v. Board of Assessment, Appeals & Review of Allegheny County**, 560 Pa. 481, 746 A.2d 581 (2000) (holding that a taxpayer's reliance upon an extended deadline for filing a tax assessment appeal granted by an assessment board which lacked such authority justified a **nunc pro tunc** appeal); **Monroe County Board of Assessment Appeals v. Miller**, 131 Pa. Commw. 538, 570 A.2d 1386 (1990) (holding that a taxpayer's reliance upon erroneous advice given by a county board of appeals justified the grant of a **nunc pro tunc** appeal). J.M. has cited no legal authority imposing a duty on the hearing officer to advise J.M. of the date by which an appeal needed to be taken; nor are we aware of any such obligation. (N.T., 5/13/19, pp. 54, 58.)

<sup>8</sup>J.M. was earlier advised of this collateral consequence of an involuntary commitment when he voluntarily committed himself for treatment at a mental health facility in July 2018. (N.T., 5/13/19, pp. 19-21.)

<sup>9</sup>As an alternate form of relief potentially available to J.M., **see In re J.M.Y., supra** at 1149 (directing expungement of Section 303 commitment records when the procedural due process requirements of the MHPA were violated). **See also, In Re Ryan**, 784 A.2d 803, 806-808 (Pa. Super. 2001) (finding that an application to extend treatment under Section 303(a) must be filed in the trial court, before the informal hearing under Section 303(b) is held, and concluding that the failure to strictly comply with the time limitations in Section 303 constituted a deprivation of due process requiring the certification for involuntary treatment to be vacated and the records pertaining to the 303 commitment to be expunged).

CARBON COUNTY LAW JOURNAL

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