

LAWYERS JOURNAL

Wills for Heroes provides first responders with estate planning documents

By Joanne Parise

Volunteer attorneys, witnesses, and notaries gathered on Saturday, March 25, 2023 at the Penn Hills No. 7 Volunteer Fire Department to prepare basic estate planning documents for first responders in the Penn Hills fire and EMS services at the Wills for Heroes event. The event was hosted by the Young Lawyers Division Public Service Committee and sponsored by Creenan & Baczkowski, PC. In a matter of six hours, the volunteers combined forces to provide nearly 30 people, including first responders and their spouses or domestic partners, with fully executed estate planning documents – and peace of mind.

The first responders, who lost a fellow Penn Hills firefighter and paramedic in a line-of-duty death in December, expressed tremendous gratitude. “This is something that most of us do not think about,” commented one of the first responders, “but it is so, so important.”

The Wills for Heroes program provides first responders and military veterans with estate planning documents including wills, durable financial powers of attorney, and healthcare powers of attorney free of charge. The program makes estate planning services accessible to people who face a significant risk of disability or death on a daily basis. The program is offered through events held at venues such as fire department social halls or conference centers where volunteer attorneys, witnesses, and notaries gather to draft, witness, and notarize the documents. Through the service of the volunteers, the program is able to provide the first responders



Samantha Callahan and Paige Tamecki pause for a photo during the Wills for Heroes event.

and military veterans with their completed documents within approximately one hour at a convenient location, which removes any cost or time barriers that may have previously prevented them from obtaining estate planning services.

The Pennsylvania Bar Association Young Lawyers Division, in partnership with the Wills for Heroes Foundation and Ballard Spahr LLP, administers the program in Pennsylvania. Using the program materials and resources provided by the Pennsylvania Bar

Association, the Allegheny County Bar Association Young Lawyers Division Public Service Committee coordinates the events in Allegheny County.

The Young Lawyers Division Public Service Committee uses dedicated laptops and printers for the events. Otherwise, the program runs entirely on the volunteer service of attorneys, witnesses, and notaries and law firm and corporate sponsorship for supplies such as paper and toner and refreshments for the volunteers and

attendees. The program has continually received overwhelming support from the members of the Allegheny County Bar Association. Estate planning experience or expertise is not required to volunteer at the events. Training and reference materials are provided to attorneys who volunteer to draft the documents, and attorneys with expertise in estate planning are available to answer questions and assist with drafting at each event.

The Young Lawyers Division Public Service Committee historically held four events per year – two events in the spring and two events in the fall. Due to the inherently in-person nature of the events, the program went on a hiatus during the COVID-19 pandemic and returned in May 2022. The Young Lawyers Division Public Service Committee plans to hold an event in the summer months and an event to benefit the City of Pittsburgh Bureau of Fire personnel in September. Inquiries regarding sponsoring or volunteering at the next and future events should be directed to Joanne Parise at jparise@cbattorneys.com or Paige Tamecki at ptamecki@edgarsnyder.com.

More information regarding the Wills for Heroes program is available at www.willsforheroes.org and www.pabar.org/site/For-Public/Wills-for-Heroes. ■

ACBF awards \$60,000 in Legal Aid Grants to organizations

By Brian Knavish

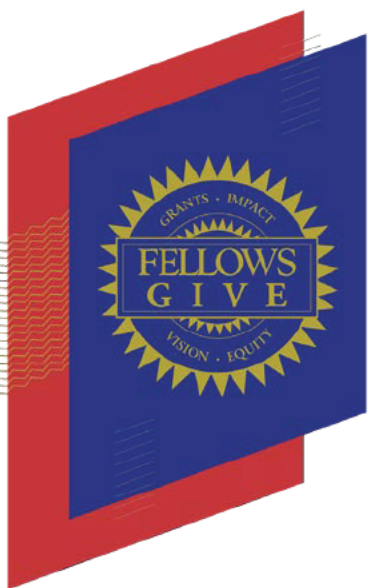
The Allegheny County Bar Foundation (ACBF), through its Fellows GIVE Program, recently awarded six Legal Aid Grants – each in the amount of \$10,000 – to the following Pittsburgh-area legal aid organizations:

- ANSAR of Pittsburgh
- Community Justice Project
- Education Law Center
- Neighborhood Legal Services
- Women’s Center & Shelter of Greater Pittsburgh
- Women’s Law Project

ACBF Fellows considered applications and heard pitches from a variety of organizations and cast votes for the six programs where they believed grants could have the most impact. The grantees will use these grants for

a variety of programs providing legal services to individuals with low incomes and communities who have historically been marginalized, including programs focused on housing, immigration, education, domestic violence and gender equity.

“The Allegheny County Bar Foundation is dedicated to helping those who can’t afford attorneys gain access to legal services,” said ACBF President Keith Whitson, an attorney with Schnader Harrison Segal & Lewis LLP. “These grantees proposed programs that will provide substantial benefit to those with a variety of legal needs. On behalf of the entire Foundation, we are thrilled to present these Legal Aid Grants and offer our congratulations to the grantees.” ■



Volunteers Needed for Law Day Project

The ACBA Law Day Committee is seeking volunteers interested in giving presentations at local high schools in late April and/or early May. Volunteers will be asked to talk with students about this year’s Law Day theme – “Cornerstones of Democracy: Civics, Civility and Collaboration” – and to answer questions about becoming a lawyer and practicing law. Those interested should contact Matt Oas at matt.oas@gmail.com.

Non-Profit Org.
U.S. Postage
PAID
Pittsburgh, PA
Permit #130

Allegheny County Bar Association
400 Koppers Building, 436 Seventh Avenue
Pittsburgh, PA 15219-1818
Address Service Requested

Mediation preparation, part two: The defense perspective

By Frederick B. Goldsmith

Allegheny County Local Rule 212.7, effective with the May 2023 trial list, requires, with certain exceptions, mediation of cases at least 45 days before their trial term begins. I described in the last issue of the *Lawyers Journal* best practices for mediation preparation from the *plaintiff's* perspective. Here are my recommendations for mediation preparation from the *defense* perspective. These tips are equally applicable to mediation of cases pending in the U.S. District Court for the Western District of Pennsylvania, which since 2006 has had a mandatory early ADR program, described in Local Civil Rule 16.2 and the Court's ADR Policies and Procedures. The WDPA requires the parties to complete an alternative dispute resolution session, which can be a mediation, within 60 days (subject to adjustment by the presiding judge) after the Initial Scheduling Conference.

1. Make sure it's the right time to mediate. Allegheny County Local Rule 212.7(4) states as to good faith participation in mediation: "The Calendar Control Judge may, upon motion, impose such sanctions as are deemed appropriate against counsel and/or the parties for failure to comply with this rule in good faith." So, for an Allegheny County case, if you and plaintiff's counsel agree to waive mediation (Rule 212.7(1)(b)) or one party can show "good cause" to be excused by motion from mediation (Rule 212.7(1)(a)), then make these decisions early on and file the



Frederick Goldsmith

appropriate motion. As to a WDPA case, if circumstances change, rendering the scheduling order deadline too soon to meaningfully mediate, then counsel should file an ideally joint motion under Rule 3.5 of the ADR Policies and Procedures. Section 2.8 of the WDPA's ADR Policies and Procedures, entitled "Good Faith Definition," provides in part, "If a party is attending a mediation session with the intent not to make any demand or offer of settlement, or if they intend to wait until the disposition of certain motions to engage in settlement discussions, they shall explicitly inform the mediator and all other parties in writing no later than 15 calendar days prior to the mediation session." So, in either state or federal court, to avoid the risk of drawing a motion for sanctions for failure to mediate in good faith, if it is your client's or its insurer's intent not to

offer any sums at mediation, or to not offer any or significant sums pending certain events which will not occur by the time of the mediation, then you should definitely let opposing counsel know this and decide whether a motion should be filed to attempt to reschedule the mediation for a more appropriate time.

2. Agree on a mediator early on and try to get on their schedule. Half or full day? Discuss with opposing counsel who would be a good choice to mediate your case, and then try to get on that mediator's schedule. Unless the case is obviously of modest value, opt for a full day mediation. The mediation process, like any significant negotiation, takes time. Be patient. Give the mediator the time he or she will need to do their job.

3. Ask plaintiff's counsel for a timely demand. Ask plaintiff's counsel to provide to you a demand letter or email, with supporting facts describing its basis, at least two weeks, ideally longer, before the scheduled mediation, so you and your client and/or the insurer can understand counsel's valuation of their case.

4. Evaluate the case for your client and/or your client's insurer. Most corporate clients and insurers require a thorough evaluation of a case well before any mediation or settlement conference. My standard practice as a defense lawyer was to prepare a written pre-mediation evaluation addressing:

- The venue, including the trial judge and the venire;
- A brief overview of the case, including key facts, claims, and defenses;

- The case's procedural posture, including any pending motions and their likely outcome, remaining pre-trial deadlines, and the trial date;

- Liability, including a summary of my investigation and the significant facts, documents, photos, videos, deposition testimony, and expert reports and deposition testimony, if any, which have been adduced in discovery, a brief summary of applicable law, followed by my prediction in percentage terms of a plaintiff's or a defense verdict, including likely jury findings for comparative negligence, if applicable, and why;

- Damages, including, in a personal injury case, a discussion of the elements and range of damages, in dollars, a reasonable jury will assess for each of the following elements:

- Lost past earnings and loss of future earning capacity (with discussion of any plaintiff and defense vocational and economic expert reports);

- Past and future medical expenses, including discussion of the plaintiff's injuries, medical status, future care needs, treating physician opinions on causation and nature and extent of injury, and, if obtained, the defense medical examination or records review report(s), and the weight you believe a jury will accord such;

- Past and future pain, suffering, mental anguish, and physical disfigurement;

- Any loss of consortium/loss of society claim(s) jury value and basis;

- Prejudgment interest/delay damages; and

Continued on page 10

CRIMINAL LAW SYMPOSIUM
continued from page 7

practicing trial attorney since 1997. Presently, he is running for Judge of the Court of Common Pleas of Allegheny County and has been endorsed by many groups as well as individuals.

1:00 - 1:30 p.m. – Indirect Criminal Contempt Proceedings (0.5 Substantive credit)

The Hon. Nicola Henry-Taylor will discuss how indirect criminal contempt proceedings are conducted in the Court of Common Pleas. The presentation will focus on the role of the defense attorney and the defenses.

The Honorable Nicola Henry-Taylor is a judge in the Family Division in the Allegheny County Court of Common Pleas. The Honorable Henry-Taylor was the named partner of the Nicola Henry-Taylor Law Office which dealt with family law as well as criminal law. Judge Henry-Taylor was a former assistant district attorney in the Office of the District Attorney of Allegheny County. Judge Henry-Taylor is an active ACBA member and, among other things, was a former chair of the ACBA Judiciary Committee. Judge Henry-Taylor was the Director of Diversity at the Thomas R. Kline School of Law of Duquesne University and had received the Carol Los Mansmann Award in 2019 given by the ACBA Women in the Law Division.

1:40 - 2:40 p.m. – New Case Law (1 Substantive credit)

Lisle T. Weaver and Justin D. Okun will discuss new criminal case law from the past year. They will discuss how it relates to the Criminal Division in the Allegheny County Court of Common Pleas. Participants will learn how these cases have changed the law

and will affect the practice of law in criminal court.

Weaver is a named partner at the law firm of Farrell Weaver & Okun. Weaver handles all types of state criminal cases from prior to arrest to post-conviction appeals. Weaver is a member of the ACBA Publications Committee. Weaver has published criminal law articles in the ACBA’s *Lawyers Journal* as well as the Pennsylvania Bar Association Quarterly. Weaver graduated from Thomas R. Kline School of Law of Duquesne University.

Okun is a named partner at the law firm of Farrell Weaver & Okun. Okun practices in the Criminal Division and Orphans’ Division where he has dealt with a variety of cases from preliminary hearings to the Pennsylvania Supreme Court. Okun has published criminal law articles in the ACBA’s *Lawyers Journal* and the Pennsylvania Bar Association Quarterly. Okun is a member of the ACBA Publications Committee. Okun graduated from the University of Pittsburgh School of Law.

2:50 - 3:50 p.m. – Nuances of Criminal Law (1 Substantive credit)

Jennifer Popovich will lead a presentation concerning the nuances of the law in criminal court. Participants will join in a discussion about the ins and outs of criminal court and the details to be aware of that might affect their case in court.

Popovich is an Assistant Public Defender in the Butler County Office of Public Defender handling capital and non-capital trials. Popovich has worked in private practice in the Law Office of David Shrager. Popovich was the First Assistant District Attorney at the Beaver County District Attorney’s Office. Popovich has handled many serious trials and has over 20 years of experience.

For more information or to register, visit [ACBA.org/Criminal-Symposium2023](https://www.acba.org/Criminal-Symposium2023). ■

MEDIATION PREPARATION
continued from page 9

– Plaintiff’s settlement demand and my opinions on it and its basis.

- A conclusion, applying the liability percentage ranges to the ranges of damages, arriving at (i) a range of damages, if any, the jury is likely to assess; (ii) a reasonable range of settlement values, (iii) continued defense costs through trial, and (iv) a request or recommendation for settlement authority.

5. Ensure the appropriate personnel will be attending the mediation with you and with full settlement authority. Allegheny County Local Rule 212.7(2) states: “Except by agreement of all parties, all parties with a financial interest and all non-parties with a financial interest (such as insurers) shall attend mediation with full authority to settle the case.” The WDPA’s ADR Policies and Procedures state at Sections 2.7(A)(1) and (2) that corporations and other entities must be represented by “a decision maker(s) (other than outside counsel) who has full settlement authority and who is knowledgeable about the facts of the case” and that government entities must be “represented by a person who has, to the greatest extent feasible, full settlement authority, and who is knowledgeable about the facts of the case, the governmental unit’s position, and the procedures and policies under which the governmental unit decides whether to accept proposed settlements.” As for insurers, Section 2.7(C) states that “Insurer representatives, including, if applicable, risk pool representatives,

are required to attend in person unless excused under paragraph D below [“personal attendance would impose an extraordinary or otherwise unjustifiable hardship”], if their agreement would be necessary to achieve a settlement.”

6. Prepare a credible and helpful confidential mediation position statement. Send this to the mediator at least by their deadline. Even though the WDPA ADR rules do not *require* position statements, I believe they are essential. Write succinctly. Less is more. Draft your position statement to help the mediator “get” your assessment of the case. Make it apparent you have looked at the case dispassionately, that you have considered the strengths and weaknesses of both the plaintiff and defense sides of the case, and candidly explain your conclusions. If the law is specialized or the operations or equipment involved in the case are unique, briefly explain such. Send the mediator important photos or illustrations, excerpts of deposition transcripts, expert reports, short videos, and/or key documents, but do not overwhelm the mediator with materials.

7. Have a pre-mediation call with the mediator. Unless the case is simple, involving well-traveled law and non-complex facts, ask the mediator for a brief *ex parte* phone call a day or two before the mediation, to cover logistics, the gist of your view of the case, and/or any issues unique to the case. The WDPA’s ADR rules require a pre-mediation conference call, and many mediators believe they, or *ex parte* calls with counsel and parties, enhance the chances for a successful mediation. If you will need the mediator’s help explaining to your client or the

Continued on page 11

CONNECT WITH US SOCIALLY



@AlleghenyCoBar



facebook.com/
alleghenycountybar



alleghenycobar



acba.org/Linked-In

ACBA

www.ACBA.org

MEDIATION PREPARATION continued from page 10

insurer the value of the plaintiff’s case in this region, tell this to the mediator in a private phone call. Let the mediator know what they are walking into. Find out if the mediator intends to have counsel make opening statements (I am not a fan) or if they will just facilitate a “meet and greet” session atop the mediation (I think these can be helpful in humanizing the participants).

8. Fully prepare your client representative and/or insurance claims representative. Explain the requirements of local rules as to attendance and with “full settlement authority,” and what to expect in terms of style and format from the mediator. If you sense or learn your client’s or the insurer’s settlement authority is far too low for the case, have a frank discussion with them about this. If appropriate, discuss with opposing counsel why you may need to postpone the mediation. Avoid a situation where you, your client, and/or its insurer may be accused of not mediating in good faith.

9. Will any lienholder(s) attend or be available during the mediation? Liens are typically plaintiff’s counsel’s problem. But it makes sense to ask opposing counsel if they have been in touch with the lienholder(s) and if they will either be attending or readily available by phone during the mediation. You could also ask plaintiff’s counsel if a Conditional Payment Letter has been secured from the Centers for Medicare & Medicaid Services, if a Medicare Set Aside is going to be required, and if so, if they have obtained an analysis of such. The idea is not to be nebbby, but to make sure

neither side will be hit with an avoidable obstacle to a fruitful mediation.

10. Plan for you and your client(s) and representative(s) to attend the mediation and to stay for as long as it takes. Mediations can fail when all the required players have not committed the *full* day or, if applicable, half day to the process. Make sure you, your client representative, and the insurer’s claim representative have cleared your schedules so you can each fully participate in the mediation through its conclusion.

11. Whether the case is going to settle, or not, be prepared for trial. I firmly believe preparing for mediation means preparing for trial. Mediation, if successful, will simply allow all parties to cease *further* trial preparation including outlays for experts, depositions, travel, attorney’s fees, etc.

12. Bring or have access to key file materials at the mediation. To be able to quickly respond to questions from the mediator, perhaps those raised by opposing counsel, about, for example, the testimony of a witness or the contents of a key document, have your physical or electronic case file readily available during remote mediations and bring your laptop or iPad to in-person mediations and have it loaded with key file materials such as deposition transcripts, key documents, medical records, and expert reports.

13. If the case settles at mediation, do not leave the mediation without a signed term sheet. You need an enforceable written contract. People’s memories can fade or differ. Put the key terms of the agreements reached at mediation in writing while everyone is still at the mediation, with all lawyers and clients signing, or at least get and save assenting emails and/or

photos or scans of signatures on the mediation term sheet (in the case of a remote mediation).

Conclusion – Mediations have proven to be highly effective in resolving cases before trial, but your chances of resolving a case at mediation will be overwhelmingly improved if the lawyers on all sides have taken all appropriate steps, well ahead of time, to fully prepare themselves, their clients, and those affording settlement authority for this important event. ■

Goldsmith, licensed in PA, WV, OH, TX, and MA, is a former federal judicial law clerk, has practiced in the roles of civil defense, in-house, and plaintiff’s counsel for 32 years, and has tried personal injury, property damage, and insurance coverage cases on both sides of the docket. He is an attorney and formally trained mediator with Goldsmith & Ogradowski, LLC (www.golawllc.com), approved to serve as a mediator, arbitrator, and early neutral evaluator by the U.S. District Court for the Western District of PA. He is also listed as a qualified mediator by the WV State Bar and serves as a member of the ADR Committees of the ACBA, the WV State Bar, and the Maritime Law Association of the U.S.

Looking to refer a case to an attorney outside of your practice area? Need consultation on a case from an attorney with specific expertise? The ACBA Member-to-Member (M2M) Referral Guide can help. M2M lists ACBA members by practice area and language proficiencies. We update and email the M2M Referral Guide to all ACBA members each quarter. Visit [ACBA.org/M2M](https://www.acba.org/M2M) for more.