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ABAD v. PENNDOT 24

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Wilkes-Barre, PA 18711



The Legal Register
will be
CLOSED
MONDAY—June 19th
for the Juneteenth National Holiday.

June 2, 9, 16



FRIDAY, JUNE 23rd at
NOON—Hybrid Program.

*“Help for the Helper:
The Effects of Trauma
and Compassion
Fatigue on the Lawyer
Who Cares.”*

Presented by
Brian S. Quinn, Esq.,
Education and Outreach Coordinator
Lawyers Concerned for Lawyers of Pennsylvania.



LAWYERS CONCERNED FOR LAWYERS
PENNSYLVANIA

To be held on Zoom and in the
President’s Room at the Law Library
(worth 1 Ethics CLE Credit).

**The W-BLLA (#53) is an accredited CLE and Distance
Learning Provider.**

This CLE provides 1 Ethics CLE Credit.

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**When registering be sure
to provide your name and
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All payments must be received 48 hours in advance of the program.
Minimum requirement is access to a computer or laptop, if you plan to use your
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To pay by check: Please mail a check payable to the
**“Wilkes-Barre Law and Library
Association.”**

Mail to: Wilkes-Barre Law and Library Association
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Lawyers' Confidential Helpline: 1-888-999-1941 www.lclpa.org
Judges' Confidential Helpline: 1-888-999-1941 www.jcjsa.org

REMEMBER:

**When you log on to Zoom you need to log on using your
first and last name as the CLE Board requires Online
tracking for CLE Distance Learning verification
purposes.**

June 2, 9, 16

ADR

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Luzerne County Office of Law—Conflict Department is looking for an experienced criminal defense attorney to represent a Luzerne County criminal defendant on six court appointed conflict cases. **Please contact** Attorney Vito DeLuca at: **vito.deluca@luzernecounty.org** for details.

May 19, 26; June 2, 9

Join a Bar Committee

W-BLLA members may join a committee by contacting Gail at **(570) 822-6712** or at the e-mail address of **Gail.Kopiak@luzernecounty.org**. For a list of Committees and Committee Chairs, see issues of *The Luzerne Legal Register*. These lists are published frequently throughout the year.

Thank you.



W-BLLA Members:

This year's **Summer Outing** will be held at the Fox Hill Country Club in Exeter on **FRIDAY, JULY 21st**. Details will soon be sent by Constant Contact and published in the Legal Register.

The Outing each year serves as the major fundraiser for our Charitable Foundation. Money is raised through the sale of cigars, basket raffles, hole wagers and sponsorships.

If you know of a restaurant that would be willing to donate a **Restaurant Gift Certificate** for inclusion in the basket raffle or if you or someone you know would be willing to make a **Gift Basket** for the raffle, please e-mail Gail at ***Gail.Kopiak@luzernecounty.org***.

Also, **Hole Sponsorships** are \$150 and are a great way to advertise your law office or firm at the Outing. Again, the money from this goes to the Charitable Foundation. So, if your firm or office is interested or if you know of another area business that would be interested in having a Hole Sponsorship sign at the Outing, please e-mail Gail at ***Gail.Kopiak@luzernecounty.org***.

May 26; June 2, 9, 16

OFFICE SPACE AVAILABLE

Office space available at 26 Pierce Street, Kingston, PA. Rental includes use of conference room, off-street parking. Conveniently located 2 doors from Wyoming Avenue and the Kingston post office. Less than 5 minutes from the Luzerne County Courthouse and Luzerne County Central Court.

Please call Nanda Palissery at **(570) 331-4529**.

May 26—June 30

NOTICE OF NEW ADDRESS AND CONTACT INFORMATION:

Cynthia R. Vullo, Esquire has moved her office to the location listed below:

Cynthia R. Vullo, Esq.
Attorney at Law
340 Market Street
Kingston, PA 18704
Phone: (570) 714-4001
Fax: (570) 714-4002
E-mail: cvullo@vullolaw.com

June 9, 16, 23



WILKES-BARRE LAW & LIBRARY ASSOCIATION
2023 SUMMER OUTING
All proceeds benefit the Charitable Bar Foundation



Friday—July 21st

~ Prices for All Day – Golf and No Golf ~

~ Golf & Brunch Only ~

~ Brunch and Dinner Only ~

~ Dinner Only ~

GOLF

Full Day -
Registration and Brunch: 11:00 a.m.—12:30 p.m.
Shot Gun Start: 12:30 p.m.
Additional Food Stations on the Course
Beverage Cart: Water, Soft Drinks, Beer

Cards played all day!

Cocktails & Dinner

Cocktails & Dinner Stations: 5:30 p.m.—7:30 p.m.
2023 Charitable Bar Foundation Charity Recipients Photos
W-BLLA Retiring Executive Committee Members Photo,
and 2023 Law School Scholarship Recipient Photo will
be taken during the cocktail hour.

There will also be a brief Golf Program
with announcements of the various golf flight winners.

PLEASE NOTE:

There is a limit on the number of golfers and dinner attendees,
Golfers when registering online:

1. list the names of all the members or your foursome
(if less than 4 people list all in your group).
2. The name of the captain of your foursome, and
3. For what members of your four-some you are paying and for those
you not their e-mail address.

PLEASE REMEMBER a GOLF TEAM CANNOT BE REGISTERED UNTIL THE WHOLE TEAM IS PAID.

So, the easiest way to register is for the captain to collect the money for the team, then register the whole team, so payment is complete.

Golf ALL-DAY price includes brunch, food and drink on the course and dinner.

Golf ALL-DAY Price is:

Early Registration (if paid **by July 11th**):

Regular Price: \$155—YLD/Summer Law Clerk: \$90

Price (if paid **AFTER July 11th**):

Regular Price: \$175—YLD/Summer Law Clerk: \$110

Golf/Brunch Only [NO DINNER] Price is:

Early Registration (if paid **by July 11th**):

Regular Price: \$100—YLD/Summer Law Clerk: \$50

Price (if paid **AFTER July 11th**):

Regular Price: \$110—YLD/Summer Law Clerk: \$60

ALL-DAY [NO GOLF] (Brunch/Dinner) Price is:

Early Registration (if paid **by July 11th**):

Regular Price: \$70—YLD/Summer Law Clerk: \$55

Price (if paid **AFTER July 11th**):

Regular Price: \$85—YLD/Summer Law Clerk: \$70

Dinner Only Price is:

Early Registration (if paid **by July 11th**):

Regular Price: \$55—YLD/Summer Law Clerk: \$40

Price (if paid **AFTER July 11th**):

Regular Price: \$65—YLD/Summer Law Clerk: \$50

Register By Friday, July 14th.

Registration is Now OPEN!

To Register go to the Bar Website:

Luzernecountybar.com

or see the *Constant Contact* message sent.

Wilkes-Barre Law & Library Association
Golf Registration Form
Friday • July 21, 2023

TEAM CAPTAIN/CONTACT PERSON'S NAME:

Amount Paid: \$ _____.

Tel. #: _____.

E-mail Address: _____.

Please List the Other Golf Team Members:

2. _____ \$ _____

3. _____ \$ _____

4. _____ \$ _____

For all teams, one team member should serve as Captain/Team Contact and fill out a registration form for his/her team and submit it with one check or ALL separate checks to the W-BLLA or to pay with Pay Pal or by Credit Card
Go to Luzernecountybar.com

**In order to Register your team with Fox Hill,
ALL Team Members must be paid.**

June 9—July 7



A Law Revue

An Evening of Talent with Harmless Error.

Date: Saturday, November 11, 2023

For Veterans' Day -

Featuring at the start, a ***Recognition of Veterans in the Audience and a procession and Presentation of Colors***
By Members of the W-BLLA Military Affairs Committee and other Veterans who would like to participate.

Time: 7:00 P.M. – Curtain

6:00 P.M. – Doors Open with

Cocktails & Basket Raffle.

Location: **The Little Theatre
of Wilkes-Barre**
537 North Main Street
Wilkes-Barre, PA 18705



Ticket Admission for Veterans
Is **FREE**.

Also, any veteran who would like to participate
in the *Presentation of Colors* or in some
other non-performance role,
e-mail **Joanna Bryn Smith, Esq.** at

jbsmith32@gmail.com.

BRING YOUR TALENT To “A Law Revue”

In celebration of Veterans’ Day, and as an extension of this year’s Bench Bar Conference, the Luzerne County Bar Association will stage a show of talent from the County’s legal community on **November 11, 2023**, at The Little Theatre of Wilkes-Barre, 537 North Main Street.

Judges, attorneys, paraprofessionals, courthouse employees, and others in the legal community, including the employees in your law offices and firms.

In addition to law partners and associate lawyers, your secretaries, paralegals, clerks, investigators and other staff in your offices are welcome to show off their talents. Their talent can be anything—it does not just have to be singing or playing a musical instrument. It can be juggling, tap dancing, putting on a short skit (whether a comedy or drama), reading poetry, almost anything that you can think of doing.

So, please try out for one of 20 spots in the Revue! **All we ask is that you steer clear of politics and keep your act family-friendly.** Moreover, *the act does not need to involve a legal theme.*

For example, if you want to sing a song – it can be any song. The lyrics do not need to be about lawyers, the law, or justice or anything dealing with the legal profession.

**If interested in being in the
Talent Show,**

**please e-mail: Joanna Bryn Smith, Esq. at
jbsmith32@gmail.com.**

There will be a review of the interested acts on

Sunday, October 1st,
from 1:00 P.M. to 3:00 P.M.
on the Little Theatre stage.

There will then be an on-stage
practice/rehearsal date on

Friday, November 10th
at the Little Theatre starting at
6:00 P.M.

Show Directors:

Joanna Bryn Smith, Esq.

David Parmelee,

General Manager, W-B Little Theatre.

Talent Show M.C.s:

Hon. Jennifer L. Rogers

Jarrett J. Ferentino, Esq.

SHOW DATE:

SATURDAY, Nov. 11, 2023

Ticket Price:

\$10.00 per person.

FREE to Veterans.

Building Opens at 6:00 P.M.

With an Audience Sing-a-long in the Lobby.

Show Begins at 7:00 P.M.

**With a Recognition of and thanks to Veterans
And Presentation of Colors.**

There will be a Cash Bar.

The Audience will get to vote for their favorite act!

Ticket Proceeds to Benefit



And



***Please Consider Being a Sponsor for this
Terrific Event!***

*All Sponsorship Proceeds will also benefit the Foundation
and the Little Theatre.*

Event Sponsors \$1,000

Listed On Website.

Listed in a Constant Contact.

Listed in Legal Register.

Full Page Ad (in early pages of Program Book).

Announced by MCs in Opening.

Listed on Sign on the Stage.

10 tickets to event.

Refreshment Sponsors \$500

Listed in a Constant Contact.

In Legal Register.

Full Page Ad.

Listed on Lobby Sign.

4 tickets

Back Page & Inside front Cover Ads \$350

(This will be on a first submitted, first paid basis)

Full Page Ad \$250

One-Half Page Ad \$125

PROGRAM BOOKLET ADS

To have a full page or half page ad in the Program Booklet,

Please design your ad roughly to the page size it needs to be:

For a **FULL PAGE** cost is \$250.00. Please make the ad to be more rectangular 5 x7 inches and submit as a **JPG/JPEG or Word Document file**. It does not have to be perfect in size. If you get if close that will work.

For a **HALF PAGE** cost is \$125.00. Please make the ad, roughly 2.5 x 3.5 inches and submit it as a **JPG/JPEG or Word Document file**. It too does not have to be perfect in size as we can shrink it or enlarge it to the exact size when Joe Burke sets the Program Booklet for our *Legal Register's* color printing company.

Where to Submit your ad:

E-mail your ad to

Joseph.Burke@luzernecounty.org.

Joe will then send them to size and compile them into the Program Booklet.

**** All checks are to be made payable to: "Little Theatre."**

Where to send your check:

Please mail your check made payable to "Little Theatre" to the W-BLLA:

Wilkes-Barre Law & Library Assn
200 North River Street
Wilkes-Barre, PA 18711

EVENT & REFRESHMENT SPONSORS

If you wish to be either an event sponsor at \$1,000.00 or a refreshment sponsor at \$500.00

E-mail

Joseph.Burke@luzernecounty.org.

***DEADLINE* FOR THE PROGRAM BOOKLET ADS AND SPONSORSHIPS IS MONDAY, OCTOBER 2nd**

as the Program Booklet must be sent to press in order for to be finished in time for the event.

Where to purchase Tickets for the show:

When we get closer to the November 11th date information will be published on where and how to buy tickets for the show.

Also, tickets will be on sale in person at the Charitable Foundation Table to be located in front of the stage in the main Ballroom of Mohegan Sun at the November 9th Bench Bar Conference. The Raffle Baskets will also be on display and tickets sold for the drawing for them as well.

The Talent Show is an extension of this year's Bench Bar Conference, so we hope that if you attend the Conference, you also attend the Talent Show. All proceeds from the Talent Show (accept the Cash Bar) will be divided between The Little Theatre and our Luzerne County Bar Association Charitable Foundation, Inc.

Talent Show Sponsors

(Thus far—Listed Alphabetically):.

Event Sponsors \$1,000:

Anzalone Law Offices, LLC.

Burns White, LLC - Attorneys at Law.

O'Donnell Law Offices

Refreshment Sponsors \$500:

Law Offices of Girard J. Mecadon

Again, e-mail Joseph.Burke@luzernecounty.org if you are interested in being a Sponsor. **Deadline for Sponsorship Submissions is October 2nd.**

June 9—Aug. 4

ABAD v. PENNDOT

Civil Law and Procedure—Driver License Suspension—75 Pa. C.S.A. Section 1547—Appeal—Pa. R.A.P. 1925(a)—Implied Consent for Chemical Tests—Driving Under the Influence—75 C.S.A. Section 1547(b)—Refusal—Commonwealth—Initial Burden of Proof—Motorist’s Burden of Proof—Refusal Not Knowing or Conscious—Physically Unable to Take Test—Trial Court—Fact Finder—De Novo Hearing—Appeal to Commonwealth Court—Standard of Review—Sufficient Evidence—Question of Whether Driver Was Placed Under Arrest in the Case—Factual Determination—Basis for Arrest Lacking—Record Devoid of Competent Evidence That Basis for Arrest Was for Driving Under the Influence—On Appeal Charges or Nature Cannot Be Assumed as Fact—Conflicts in Testimony—Document Not Moved for Admission into Record as Evidence—Identification by Counsel Not Enough—Exhibits Merely Marked for Identification Do Not Constitute Evidence—Closing Statements of Counsel Are Not Evidence—Decision of Trial Court Appealed to Commonwealth Court—Appeal DISCONTINUED.

1. In order to sustain a one-year license suspension under Section 1547, PennDOT bears the initial burden in hearing an appeal and must show that the driver: (1) was placed under arrest for driving under the influence of alcohol (DUI); (2) was asked to submit to a chemical test; (3) refused to do so; and, (4) was specifically warned that refusal would result in the suspension of his/her driver’s license.

2. Once PennDOT’s burden has been met, the motorist must prove that his refusal was not knowing or conscious or that he was physically unable to take the test.

3. The trial court in this case inhabited the role of finder of fact in a *de novo* hearing held on October 17, 2022.

4. As long as sufficient evidence exists in the record which is adequate to support a factual finding of the trial court, sitting as fact finder, appellate courts are precluded from overturning such finding and must affirm, thereby paying the proper deference due to the fact finder who heard the witnesses testify and was in the sole position to observe the demeanor of the witnesses and assess credibility.

5. For purposes of a Section 1547(b) license suspension, the question of whether a driver has been placed under arrest is a factual, rather than a legal, determination.

6. In the matter *sub judice*, while the court finds that defendant/appellee was placed under arrest, the record is devoid of competent evidence demonstrating that the basis for the arrest was for DUI. And, on appeal, the existence of any related criminal charge or its nature cannot be assumed as fact.

7. The trial court also found that conflicts in testimony precluded a finding that the defendant was informed that refusal of testing would unequivocally result in the suspension of his operating privilege.

8. Identification of a document by counsel at trial serves merely to label the document for discussion purposes and does not serve to offer its submission to the record or render it capable of consideration by a finder of fact.

9. In the matter *sub judice*, PennDOT never marked the document as an exhibit, never moved that it be admitted to the record as an exhibit, never asked the witness to read into the record any portion of the document, never submitted a copy of the document to the finder of fact, and never asked that the court take judicial notice of the document. Exhibits that are merely marked for identification do not constitute evidence on which a finder of fact can rely.

10. Statements of counsel, including statements made in an attorney's Closing are not evidence.

11. For the reasons set forth in the Opinion, the trial court issued its decision that was reflected in the Disposition Sheet from which PennDOT appealed to the Commonwealth Court. The Appeal was subsequently *DISCONTINUED* by PennDOT.

*In the Court of Common Pleas of Luzerne County—
Civil Division—No. 2022-05194—Appeal filed to
Pennsylvania Commonwealth Court—No. 1325 CD
2022. Praeipice to Discontinue thereafter filed by
PennDOT. Appeal DISCONTINUED.*

Tricia J. Watters, Esquire, Assistant Counsel North-eastern Region Commonwealth of Pennsylvania Department of Transportation Office of Chief Counsel, for Commonwealth PennDOT/Appellant.

Michael I. Butera, Esquire, for Defendant/Appellee.

Before: Pierantoni, III, J.

PIERANTONI, III, J., December 12, 2022:

*Opinion Pursuant to Pa. R.A.P. 1925(a) and
Order for Transmission of the Record
Pursuant to Pa. R.A.P. 1931*

Respondent, Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing (hereinafter referred to as “PennDOT”), appeals from the Disposition Sheet filed to the record herein on October 17, 2022, reflecting the decision issued by the Luzerne County Court of Common Pleas, after *de novo* hearing, to sustain the appeal of Petitioner, Alex John Vilegi Abad (hereinafter referred to as “Abad”), from PennDOT’s imposition of a 12-month suspension of Abad’s operating privilege pursuant to Section 1547 of the Vehicle Code, 75 Pa. C.S.A §§101-9805, 75 Pa. C.S.A. §1547. The trial court now submits to the rec-

ord the instant opinion pursuant to Pa. R.A.P. 1925(a), which herein sets forth the reasons for the decision from which PennDOT now appeals.

I. Procedural History

On June 7, 2022, PennDOT forwarded to Alex John Vilegi Abad (hereinafter “Abad”) a Notice of Suspension indicating PennDOT imposed a suspension of Abad’s operating privilege for a period of one year—effective July 12, 2022. The notice indicated the suspension was being imposed due to violation of Section 1547 on May 12, 2022. On June 14, 2022, Abad filed an appeal of the suspension, and the merits of the suspension were heard *de novo* before the trial court on October 17, 2022. At the conclusion of the hearing, the trial court determined that Abad’s operating privilege should not be suspended and issued from the bench a ruling sustaining Abad’s appeal. Subsequent to the hearing, also on October 17, 2022, a disposition sheet reflecting the decision of the trial court was filed to the record with the county prothonotary. PennDOT timely filed a motion for reconsideration on October 19, 2022, which by order issued November 2, 2022, was denied. On November 15, 2022, PennDOT timely filed to the Commonwealth Court of Pennsylvania a notice of appeal, a copy of which was served on the trial court. The trial court now submits to the record the instant opinion pursuant to the provisions of Pa. R.A.P. 1925(a) and sets forth the reasons for its decision of October 17, 2022.

II. Summary of Evidence Submitted to the Record

At the *de novo* hearing, the trial court heard testimony from two witnesses: Officer Jenna Rhanes of the Wright Township Police Department (hereinafter “Officer Rhanes”) was called on direct examination by PennDOT

during its case-in-chief and Abad was called to testify on his own behalf during the presentation of his case.

The testimony provided by Officer Rhanes on both direct and cross examination is set forth, in its substantive entirety, as follows:

By Ms. Watters:

Q. Officer, please tell the Court where you are employed.

A. Wright Township Police Department.

Q. How long have you been there?

A. Nine and a half months.

Q. Were you working as an officer there on May 12th of 2022?

A. Yes.

Q. And, on that date, did you encounter the Petitioner. Mr. Abad?

A. Yes.

Q. Can you please tell the Court how it was that you encountered him?

A. I was dispatched to a one-car MVA. The vehicle had crashed into a telephone pole and continued to drive about two miles from the scene of the accident.

Q. And, when you appeared on scene, was the Petitioner driving the vehicle?

A. At that point, the Petitioner was driving the vehicle, and he had stepped out of the vehicle.

Q. Was he the only person there?

A. Yes.

Q. And, did you approach him?

A. Yes.

Q. Please, tell the Court what happened when you approached him.

A. I approached the Defendant and began asking him questions such as where he was coming from. While speaking with him, I noticed his speech was slurred. He had the odor of an intoxicating beverage emanating from him, and he was also unsteady on his feet.

Q. Did he tell you where he was coming from?

A. Yes. He had said that he was coming from the Ice House Pub, which was about a mile from the accident. Then I asked him again. I repeated if he was coming from the Pub, and he told me he was coming from the Moscow Area.

Q. As a result of the accident, was he injured?

A. No.

Q. At this point, did you perform Field Sobriety Tests?

A. I asked if he would submit to it, and he asked what would happen if he did not. So, I explained to him if he did not submit, that I would ask for blood; and, then he asked multiple times what would happen if he did not submit to either one.

Q. So, the Field Sobriety Tests were not performed?

A. No. He ended up denying them.

Q. Was a preliminary breath test given?

A. No.

Q. Okay. At this point, was he taken into custody?

A. I asked multiple times if he would submit to blood or breath, and he just kept asking officers what he should do. So, he was advised that we were not going to give him legal advice.

Mr. Butera: Objection to him being advised without—

The Court: Sustained. The question was, was he arrested? That was the question.

Ms. Watters: It was.

The Court: So, it's non-responsive.

Ms. Watters: Okay.

The Court: Continue.

By Ms. Watters:

Q. So, at that point, was he arrested, taken into custody?

A. Once he was—after he was read the DL-26-B, he was taken into custody, yes.

Q. I have here a copy of the DL-26. Did you fill this form out?

A. Yes.

Q. So, this is the Petitioner's information at the top; is that correct?

A. Yes.

Q. And, then down in the lower portion, is your information; is that correct?

A. Yes.

Q. In the middle here, are the Warnings. Did you read Paragraphs 1 through 4 verbatim to the Petitioner?

A. Yes, I did.

Q. And, then it looks like there are two signatures. The top one, is that your signature?

A. Yes.

Q. And, then is there a second one below that?

A. Yes.

Q. Is that Petitioner's?

A. Yes.

Q. So, he did sign that he was read this form?

A. Yes.

Q. And, after reading that form, he did not submit to a chemical test of his blood; is that correct?

A. No, he did not.

Q. So, at that point, what occurred? Was he released?

A. I transported him to his residence.

Ms. Watters: Nothing further, Your Honor.

The Court: Mr. Butera?

CROSS EXAMINATION

By Mr. Butera:

Q. Were you assisted by anyone else at the time?

A. Yes, I was.

Q. Who was there along with you?

A. Officer DeLuca from Fairview Township, as well as Officer O'Brien from Wright Township.

Q. Were they involved at all in this—in the notification of the use for the blood test?

A. No. That was—I had read that verbatim to him.

Q. And, you were at Central Court for the preliminary hearing, correct?

A. Yes, sir.

Q. And, we waived that preliminary hearing with the intentions of applying for the ARD Program?

A. Yes.

Q. And, the—you indicated at that time, that you had no objection to the ARD; is that correct?

A. Yes, sir.

Q. Do you know what the results of the ARD application—

Ms. Watters: I object, Your Honor. The ARD application, isn't relevant to the refusal.

The Court: Overruled. Don't speculate. Only if you know.

By Mr. Butera:

Q. Only if you know.

A. I do not know.

Mr. Butera: I have no further questions.

The Court: All right, Thank You. Attorney Watters, any Redirect?

Ms. Watters: No, Your Honor.

The Court: Anything else?

Ms. Watters: No, Your Honor. The Commonwealth rests.

(Notes of Testimony, Oct. 17, 2022, pp. 2-7.) The substantive testimony of Abad, likewise, is reproduced in its entirety as follows:

By Mr. Butera:

Q. Alex, you recall being stopped that day?

A. Yeah. Yes.

Q. Do you recall being questioned regarding taking a blood test?

A. I was questioned, but the consequences of the one-year suspension were not read to me or made clear to me.

Q. This form that they say was signed and that the officer signed, did any one of the police officers read this form to you?

A. No, sir.

Q. Did any of the police officers tell you that if you did not take the blood test, you would lose your driver's license—you would definitely lose your driver's license for one year?

A. No, sir. If I was made aware, I would have definitely submitted to a blood test then, a chemical test.

Q. And, your driver's license was valid that day?

A. Yes.

Q. And, your insurance was valid? Everything else was okay?

A. Yep.

Q. And, do you have any prior record whatsoever regarding the driver's license suspension?

A. Not even a speeding ticket.

Mr. Butera: I have nothing further, Your Honor.

The Court: Cross?

Ms. Watters: Yes, Your Honor.

CROSS EXAMINATION

By Ms. Watters:

Q. Looking at that same form that your attorney just showed you, is this your signature here next to Signature of Operator? (Indicating.)

A. That would appear to be my signature.

Q. So, you signed the form. So, you did see the form that night?

A. The form presented in front of me.

Q. Did you not read the form?

A. No, Ma'am.

Q. And, it's your testimony that you do not recall the officer reading that to you?

A. Correct.

(N.T., pp. 8-9).

III. Discussion

Pennsylvania's implied consent provisions are set forth within Section 1547 of the Vehicle Code, and read, in pertinent part, as follows:

(a) General rule.—Any person who drives, operates, or is in actual physical control of the movement of a vehicle in this Commonwealth shall be deemed to have given consent to one or more chemical tests of breath or blood for the purpose of determining the alcoholic content of blood or the presence of a controlled substance if a police officer has reasonable grounds to believe the person to have been driving, operating or in actual physical control of the movement of a vehicle in violation of section 1543(b)(1.1) (relating to driving while operating privilege is suspended or revoked), 3802 (relating to driving under the influence of alcohol or controlled substance) or 3808(a)(2) (relating to illegally operating a motor vehicle not equipped with ignition interlock).

(b) Civil penalties for refusal.—

(1) If any person placed under arrest for a violation of section 3802 is requested to submit to chemical testing and refuses to do so, the testing shall not be conducted but upon notice by the police officer, the department shall suspend the operating privilege of the person as follows:

(i) Except as set forth in subparagraph (ii), for a period of 12 months.

...

(2) It shall be the duty of the police officer to inform the person that:

(i) the person's operating privilege will be suspended upon refusal to submit to chemical testing and the person will be subject to a restoration fee of up to \$2,000

(3) Any person whose operating privilege is suspended under the provisions of this section shall have the same right of appeal as provided for in cases of suspension for other reasons.

75 Pa. C.S.A. §1547.

It is well-settled that, in order to sustain a one-year license suspension under Section 1547, PennDOT bears the initial burden in hearing an appeal and must show that the driver: (1) was placed under arrest for driving under the influence of alcohol (DUI); (2) was asked to submit to a chemical test; (3) refused to do so; and, (4) was specifically warned that refusal would result in the suspension of his/her driver's license. *Quigley v. Com., Dept. of Transp., Bureau of Driver Licensing*, 965 A.2d 349, 352 (Pa. Commw. 2009) (citing *Martinovic v. Dep't of Transp., Bureau of Driver Licensing*, 881 A.2d 30 (Pa. Commw. 2005)). Once PennDOT's "burden has been met, the motorist must prove that his refusal was not knowing or conscious or that he was physically unable to take the test." *Id.* at 352-53 (quoting *Dep't of Transp., Bureau of Driver Licensing v. Boucher*, 547 Pa. 440, 446, 691 A.2d 450, 453 (1997)).

The trial court inhabited the role of finder of fact in the October 17, 2022, *de novo* hearing. The nature

of the hearing necessitated that evidence be submitted in order for the court to examine anew the merit of the appealed suspension and determine the propriety of PennDOT's suspension in light of those facts supported by competent evidence of record. Though its brevity is apparent, the testimony reproduced above represents the complete evidentiary record submitted by the parties for this purpose. PennDOT asserts with the filing of its notice of appeal that the trial court erred in determining the record did not contain competent evidence sufficient for the court to have found facts satisfying PennDOT's burden to show that on May 12, 2022, Abad: (1) was placed under arrest for DUI; (2) was asked to submit to a chemical test; (3) refused to submit to a chemical test; and (4) was specifically warned that refusal would result in the instant suspension. The trial court issued the decision sustaining Abad's appeal based upon the facts it was able to find from the competent evidence of record.

A. Facts found by the trial court from evidence of record

Based on the competent evidence of record, the trial court did find the following facts. On May 12, 2022, Officer Rhanes received a dispatch related to a report of a vehicle which had struck a telephone pole and left the scene of the collision. In responding, Officer Rhanes located a vehicle which was assumed to have been involved in the collision approximately and was located approximately 2 miles away. The vehicle was accompanied by no apparent occupant other than Abad. Upon questioning, Officer Rhanes noticed Abad was unsteady on his feet and had slurred speech and an odor of "intoxicating" beverage about his person. Abad indicated that he was coming from a pub which Officer Rhanes knew to be approximately a mile from the location of the collision under investigation.

Abad displayed no apparent injury from any purported collision. Officer Rhanes asked Abad if she could administer field sobriety testing (FST) and informed Abad that if he declined to participate, she would request he submit to a test of his blood. Officer Rhanes administered neither FST nor a preliminary breath test (PBT). Officer Rhanes asked Abad more than once whether he would submit to a test of his blood or breath and, in responding with questions regarding what he should do, Abad failed to indicate in a clear and affirmative matter that he would assent to either a blood draw or a test of his breath.

B. Discussion of evidence submitted of record and findings with respect to other facts both found and not found

As long as sufficient evidence exists in the record which is adequate to support a factual finding of the trial court, sitting as fact finder, appellate courts are precluded from overturning such finding and must affirm, thereby paying the proper deference due to the fact finder who heard the witnesses testify and was in the sole position to observe the demeanor of the witnesses and assess credibility. *O'Connell*, supra.

1. Lack of Competent Evidence to Support Finding the Fact of an Arrest for DUI

PennDOT must show, *inter alia*, that the driver was placed under arrest for DUI. *Quigley*, supra at 352. “For purposes of a Section 1547(b) license suspension, the question of whether a driver has been placed under arrest is a factual, rather than a legal, determination.” *Pappas v. Com., Dep’t of Transp., Bureau of Driver Licensing*, 669 A.2d 504, 507 (Pa. Commw. 1996). Although the court finds that Abad was placed under arrest, the record is devoid of competent evidence demonstrating that the basis

for the arrest was for DUI. “[A]n arrest for driving under the influence is required to sustain a one-year suspension imposed pursuant to 75 Pa.C.S. § 1547(b)(1) for a chemical test refusal.” *Sfida v. Com., Dep’t of Transp., Bureau of Driver Licensing*, 877 A.2d 537, 542 (Pa. Commw. 2005). Nowhere in the record of the instant civil suspension appeal is it indicated that Abad was arrested for DUI, in violation of 75 Pa. C.S.A. §3802.

The instant matter is an appeal of the imposition of a civil penalty for refusal and the existence of any related criminal charge or its nature cannot be assumed as fact. The record contains testimonial evidence that the officer observed in Abad indicators of impairment due to intoxication. It also contains evidence that she assumed he had been driving when she came upon him after he had stepped out of the vehicle. There is evidence also supporting the finding of Abad having been arrested on the basis of some forthcoming criminal charge. Officer Rhanes, however, never indicated the charge upon which she placed Abad under formal custodial arrest and the collective weight of the other testimonial evidence of record does not support a finding of the fact of an arrest for DUI as opposed to an arrest for any other potential charge related to the circumstances surrounding Abad’s alleged involvement in the precipitating collision. For this reason alone, the decision of the trial court was justified in its decision to sustain the appeal.

2. Credibility Determination Precludes Finding That Petitioner Was Clearly and Unequivocally Advised That Refusal Would Result in Suspension

Secondarily, the trial court also found that the conflicts in testimony precluded a finding that Abad was informed that refusal would unequivocally result in the suspension

of his operating privilege. Officer Rhanes indicated in her direct testimony that she had “read the DL-26B” to Abad before taking him “into custody” (N.T. p. 5 ll. 4-5) and, in response to pointed questioning, that she had read to Abad, verbatim, what at the hearing had been referred to as “paragraphs 1 through 4” of the “warnings” from an unmarked document which PennDOT referred to as “the DL-26” (N.T. p. 5 ll. 15-17). Officer Rhanes responded affirmatively to questions which suggested that the document bore a signature indicating that Abad had “read this form” and that after having done so, Abad “did not submit to a chemical test of his blood.” (N.T. p. 5 l. 6-p. 6 l. 4.)

Abad testified he was questioned regarding taking a blood test during his encounter with the police on that day, but that the consequences of the one-year suspension were not read to him. (N.T. p. 8 ll. 6-7.) He testified that no officer told him that if he did not take the blood test he would lose his driver’s license and that the suspension would be for a period of 12 months. (N.T. p. 8 ll. 12-16.) Abad further testified that although the unmarked document contained what “would appear to be [his] signature,” he had neither read the form nor did he recall the officer reading the form to him. (N.T. p. 9 ll. 7-18.)

The document at issue was referred to by PennDOT’s counsel informally as “the DL-26.” Such identification by counsel serves merely to label the document for discussion purposes and does not serve to offer its submission to the record or render it capable of consideration by a finder of fact. PennDOT never marked the document as an exhibit, never moved that it be admitted to the record as an exhibit, never asked the witness to read into the

record any portion of the document, never submitted a copy of the document to the finder of fact, and never asked that the court take judicial notice of the document. An unmarked document which was not identified as an exhibit and the actual substantive content of which was neither made known to the finder of fact or even offered for consideration of submission simply does not constitute evidence on which a finder of fact can rely.¹ See *Commonwealth v. Jones*, 2021 Pa. Super. 250, 271 A.3d 452, 456 (2021) (“[E]xhibits that are merely marked for identification and submitted by the offering party do not constitute evidence on which a finder of fact can rely.” Unlike the evidence in *Jones*, however, the instant document was never offered for submission or even marked for the record.); *Com, Dep’t of Transp., Bureau of Driver Licensing v. Doyle*, 151 Pa. Commw. 171, 616 A.2d 201 (1992); *Denver Nursing Home v. Dep’t of Public Welfare*, 123 Pa. Commw. 131, 552 A.2d 1160, 1161-63 (1989).

In closing argument, counsel for PennDOT stated:

Yes, Your Honor. So, we have the testimony of the officer she did read the DL-26 to Petitioner, and she read it verbatim. So, therefore, that would include Paragraph 3 wherein the first line is that, ‘If you refuse to submit to the blood test, your operating privilege will be suspended for, at least, 12 months.’

¹PennDOT never indicated whether “the DL-26” to which it referred was a public record, never indicated that it was a document issued or transmitted by the Department, never indicated whether it was certified, under seal, or accompanied by an attestation. PennDOT made no attempt to indicate any factor which could have rendered admissible by statute in the instant proceeding a DL-26 offered as an exhibit; the law of the Commonwealth is clear that such a document, upon submission, would have been considered admissible without even resort to argument over rules of evidence addressing the rule against hearsay and exceptions thereto. See *e.g.*, 42 Pa. C.S.A. §§6103-04 and 75 Pa. C.S.A. §6328.

It is her testimony that she read it verbatim. Therefore, she would have notified the Petitioner of that, and he did sign the form. Next to where the signature goes, it says, ‘I have been advised of the above.’ Signature of the operator and then his signature.

So, therefore, I think it may be a credibility issue for the Court but, I think, the officer’s testimony is credible that she did read that and advised the Petitioner of same.

(N.T. p. 10.) It is axiomatic that statements of counsel are not evidence. *See e.g., School District of Phila. v. Bd. of Revision of Taxes*, 217 A.3d 472, 485 (Pa. Commw. 2019) (“an attorney’s statement in an argument does not constitute evidence,” *citing East Norriton Township v. Gill Quarries, Inc.*, 145 Pa. Commw. 574, 604 A.2d 763, 772 n.1 (1982) (“[S]elf-serving, unsubstantiated and unsworn statements by counsel are not competent evidence.”)).

Quite simply, the factfinder was never provided competent evidence specifying either what warning Abad may have received or the language employed to advise him. To the extent that Officer Rhanes testified credibly to her having engaged in providing warnings to Abad regarding her request for his submission to a chemical test and her advising Abad of the existence of potential negative consequences for refusal, the evidence of record does not indicate with specificity what language Officer Rhanes employed and what any such discussion actually entailed. As such, as an alternative basis to having been unable to find the fact of an arrest for DUI, the trial court is justified in having sustained Abad’s

suspension appeal because the record lacks evidence of the substance of whatever warning and advisement was provided to Abad prior to his constructive refusal through failure to offer clearly his assent to submit to a chemical test.

IV. Conclusion

For the reasons set forth above, the trial court issued the decision reflected in the Disposition Sheet from which PennDOT now appeals.

[EDITOR'S NOTE: Appeal was filed to the Pennsylvania Commonwealth Court—No. 1325 CD 2022. Discontinued by Praecepte of Discontinuance filed by PennDOT, March 9, 2023.]

THE LUZERNE LEGAL REGISTER

Notice is hereby given to all persons concerned that accountants in the following estates have filed their accounts in the Office of the Register of Wills and Clerk of the Orphans' Court of Luzerne County and unless objections are filed thereto, said accounts will be audited and confirmed by the Orphans' Court Division of the Court of Common Pleas of Luzerne County at 9:30 A.M. on July 11, 2023 at Luzerne County Courthouse, 200 North River Street, Wilkes-Barre, PA.

NO.	NAME OF ESTATE	ACCOUNTANT	FIDUCIARY CAPACITY
1.	Stanley Pratz	Jeffrey Yelen	Executor
2.	Conestoga Memorial Park, Inc.	Conestoga Memorial Park, Inc.	Trustee

The Luzerne County Orphans' Court, located at Luzerne County Courthouse, 200 North River Street, Wilkes-Barre, PA is a facility accessible to persons with disabilities. Please notify a member of the staff of the Honorable Tarah C. Toohil, Judge at (570) 830-5122 if special accommodations are required.

NOTICE

It is strongly recommended that all attorneys having a matter on an Audit List of the Orphans' Court be present at the call of the Audit List. Any attorney seeking to be excused from attending the call of the Audit List must contact the staff in Judge Toohil's Chambers in advance of the call date in order to obtain permission from the Judge to be absent.

June 9, 16

THE LUZERNE LEGAL REGISTER

DECEDENTS' ESTATES

Notice is hereby given that letters testamentary or of administration have been granted in 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 or their attorneys

FIRST PUBLICATION

ESTATE OF MADELYN M. BRENNAN, late of Dallas Twp. (died November 27, 2014), James C. Brennan, Administrator; Francis J. Hoegen, Esquire, 152 South Franklin St., Wilkes-Barre, PA 18701

ESTATE OF TERRANCE B. CARR, late of Edwardsville (died January 25, 2023), Patricia Passetti, Administratrix; Biagio V. Musto, II, Esquire, 171 William St., Pittston, PA 18640

ESTATE OF DONNA MARIE DeNEE, late of Hilldale (died February 13, 2023), Michael DeNee, Administrator; Anthony G. Ross, Esquire, Law Offices of Tony Ross, 126 South Main St., Pittston, PA 18640

ESTATE OF JOHN M. DEVINE, late of West Pittston (died March 11, 2019), Diane Devine, Administratrix; Laura C. Dennis, Esquire, William P. Opeil, Jr., Esquire, 843 Exeter Ave., West Pittston, PA 18643

ESTATE OF LINDA DRIBNACK a/k/a Linda A. Dribnack, late of Wyoming (died April 16, 2023), Melanie Audy, Executrix; Patrick J. Aregood, Esquire, 1218 South Main St., Wilkes-Barre, PA 18706

ESTATE OF JOHN ENGLER, JR., late of Shavertown (died April 3, 2023),

John D. Engler, Executor; Patrick J. Aregood, Esquire, 1218 South Main St., Wilkes-Barre, PA 18706

ESTATE OF HELEN A. EVERETT, late of Nanticoke (died May 6, 2023), Leonarda Skudla, Executrix; Hudacek and Hudacek, 33 E. Main Street, Plymouth, PA 18651

ESTATE OF CAROL FLIS a/k/a Carol A. Flis a/k/a Carol Flis Yencha, late of Plains (died March 27, 2023), Lindsey Flis Siegel, Executrix; Girard J. Mecadon, Esquire, 363 Laurel St., Pittston, PA 18640-1719

ESTATE OF NANCY L. GITTENS, late of Hanover Township (died April 17, 2023), James Gittens, Executor; Lewis W. Wetzel, Esquire, 900 Rutter Avenue, Box 24, Forty Fort, PA 18704

ESTATE OF ANNA MARIE KOLASKI, late of Kingston (died April 25, 2023), Gerald Kolaski, Administrator; Paul M. Pugliese, Esquire, Pugliese, Finnegan, Shaffer & Ferentino LLC, 575 Pierce Street, Suite 500, Kingston, PA 18704

ESTATE OF MARGARET A. LASOTA a/k/a Margaret Lasota, late of Duryea (died April 19, 2023), Leigh Ann Balchune and Barney Mahalsky, Executors; Robert S. Betnar, Esquire, 126 South Main Street, Pittston, PA 18640

ESTATE OF BERNADINE C. MARTIN, late of West Wyoming (died April 8, 2023), Mary Hofmann, Executrix; Joseph J. Yeager, Esquire, 1208 Wyoming Ave., Forty Fort, PA 18704

ESTATE OF MARY ELLEN POWELL, late of Plains (died December 19, 2022), James B. Powell and David J. Powell, Jr., Administrators; P. Timothy Kelly, Esquire, Needle Law, P.C., 240 Penn Avenue, Suite 202, Scranton, PA 18503

THE LUZERNE LEGAL REGISTER

ESTATE OF MARY FRANCES SWAN-
DICK a/k/a Mary F. Swandick,
late of Fairview Township (died
May 10, 2023), Barbara Duda
a/k/a Barbara Ann Duda, Execu-
trix; Chad J. Sweigart, Esquire,
Dyller & Solomon, LLC, 88 North
Franklin Street, Wilkes-Barre, PA
18701

ESTATE OF DEBORAH WARMAN,
late of Hanover Township (died
May 17, 2023), Arlene Charnich-
ko, Administratrix; John J. Gill,
Jr., Esquire, Gallagher, Brennan
& Gill, 220 Pierce Street, King-
ston, PA 18704-4655

ESTATE OF KAREN M. WERNER
a/k/a Karen Marie Werner, late
of Hilldale (died May 5, 2023),
Tara Werner Yamelski, Executrix;
Patrick J. Aregood, Esquire, 1218
South Main St., Wilkes-Barre, PA
18706

ESTATE OF DALE F. WHITNER, late
of Black Creek Twp. (died April 20,
2023), Holly Lynn Herring, Execu-
trix; Peter O'Donnell, Esquire, 305
South Church St., Suite 175, Ha-
zleton, PA 18201

SECOND PUBLICATION

ESTATE OF SUSAN E. ALAIMO, late
of West Pittston (died March 24,
2023), Steven E. Alaimo, Adminis-
trator; Job T. Stepanski, Esquire,
183 Market St., Suite 200, King-
ston, PA 18704

ESTATE OF MARVIN W. BOOTE, late
of Wilkes-Barre City (died May 8,
2023), Barbara Rupert, Executrix;
Jannell L. Dudick, Esquire, 1043
Wyoming Avenue, Forty Fort, PA
18704

ESTATE OF MICHAEL CLARK CON-
LON a/k/a M. Clark Conlon, late
of Dallas Township (died October
25, 2021), Lael Conlon Kiesling,
3814 Hobbs Road, Nashville, TN
37215, Executrix

ESTATE OF EUGENE T. COZZI, late
of Hanover Twp. (died March 18,
2023), Mary Ann Cozzi, Executrix;
Donald J. Frederickson, Jr., Es-
quire, 435 Main St., Moosic, PA
18507-1017

ESTATE OF GERALD J. EMERICK
a/k/a Gerald John Emerick a/k/a
Gerald Emerick, late of Bear Creek
Township (died April 17, 2023),
Michael Emerick, Executor; David
W. Saba, Esquire, 345 Market St.,
Kingston, PA 18704

ESTATE OF WILLIAM J. HARLAN, late
of Wilkes-Barre (died December
12, 2022), Heather A. Harlan, Ex-
ecutrix; Michael R. Kostelansky,
Esquire, Blazick Law Firm, Cross
Creek Pointe, 1065 Hwy. 315,
Suite 402, Wilkes-Barre, PA 18702

ESTATE OF MARY ELIZABETH JEF-
FREY a/k/a Mary E. Jeffrey, late
of Wilkes-Barre (died July 5, 2019),
Molly M. Hoegen, Administratrix;
Donald P. Roberts, Esquire, Burke
Vullo Reilly Roberts, 1460 Wyo-
ming Avenue, Forty Fort, PA 18704

ESTATE OF MARY ELLEN MUNDY,
late of Plymouth (died May 1,
2023), Thomas McTague, Adminis-
trator; Donald P. Roberts, Es-
quire, Burke Vullo Reilly Roberts,
1460 Wyoming Avenue, Forty Fort,
PA 18704

ESTATE OF LORRAINE M. OELLER
a/k/a Lorraine Smith a/k/a Lor-
rain Smith Vacula, late of Plains
Twp. (died April 28, 2023), Tracie
Vacula, Administratrix; David J.
Harris, Esquire, 67-69 Public Sq.,
Suite 700, Wilkes-Barre, PA 18701

ESTATE OF RITA PETLOCK a/k/a
Rita M. Petlock, late of Wilkes-
Barre (died March 25, 2023),
Matthew Petlock, Administrator;
Stacey Acri, Esquire, 273 E.
Northampton St., Wilkes-Barre,
PA 18702

THE LUZERNE LEGAL REGISTER

ESTATE OF BURTON E. SCHAFER,
late of Freeland (died July 11,
2022), Darryl Schafer, 326 Barry's
Road, White Haven, PA 18661,
Executor

ESTATE OF BRENDA ANN SCHULTZ
a/k/a Brenda Ann T. Schultz, late
of West Pittston (died March 3,
2023), Robert Schultz, Executor;
Harry P. Mattern, Esquire, 777
Wyoming Ave., Suite 5, Kingston,
PA 18704

ESTATE OF ROSE M. SHARTLE
a/k/a Rose Marie Shartle, late of
Pittston (died May 1, 2023), Rick
Hiduck and Lisa Hiduck Riszin,
Co-Executors; John J. Hovan,
Esquire, 154 Warren St., P.O. Box
336, Tunkhannock, PA 18657

ESTATE OF BARBARA A. SMITH
a/k/a Barbara Alice Smith, late of
Wilkes-Barre (died October 29,
2022), Mary Patricia Smith a/k/a
Mary Smith Theimann, Executrix;
John K. Lisman, Esquire, 152
South Franklin St., Wilkes-Barre,
PA 18701

ESTATE OF JAY R. STANTON, late of
Rice Twp. (died December 26,
2022), Michelle Marie Stanton,
Executrix; Reed Law, 4303 Derry
St., Harrisburg, PA 17111

ESTATE OF RITA TIBUS a/k/a Rita
I. Tibus, late of Swoyersville (died
April 14, 2023), Faith Ann Riley,
Executrix; Thomas A. O'Connor,
Esquire, Law Office of Thomas A.
O'Connor, P.C., 601 Wyoming
Ave., Kingston, PA 18704

ESTATE OF IRENE WOJTACH a/k/a
Irene H. Wojtach, late of Dupont
(died April 3, 2023), John Woytach,
Executor; Saporito, Falcone &
Watt, 48 South Main St., Pittston,
PA 18640

THIRD PUBLICATION

ESTATE OF GEORGE ABRAHAM,
JR., late of Wilkes-Barre (died
April 17, 2023), Joanne Abraham
and George Abraham, III, Co-
Administrators; Hourigan, Kluger
& Quinn, PC, 600 Third Ave.,
Kingston, PA 18704

ESTATE OF JOSEPH BARRON, JR.,
late of Exeter (died March 13,
2023), Sandra E. Barron, Execu-
trix; Jannell L. Dudick, Esquire,
1043 Wyoming Avenue, Forty
Fort, PA 18704

ESTATE OF MARILYN J. BARTOLI,
late of Mountain Top (died April
1, 2023), Carl Hashagen, Execu-
tor; Donald G. Karpowich, Es-
quire, 85 Drasher Rd., Drums, PA
18222

ESTATE OF PETER F. CANTERINI,
JR., late of Plains Township (died
April 6, 2022), Ross Livingstone,
Executor; John J. Terrana, Es-
quire, 400 Third Ave., Suite 216,
Kingston, PA 18704

ESTATE OF DONALD JAY COOK,
JR., late of Kingston (died July 11,
2022), William Cook, Administra-
tor; John K. Lisman, Esquire, 152
South Franklin St., Wilkes-Barre,
PA 18701

ESTATE OF DOROTHY M. FAUX
a/k/a Dorothy Mae Faux a/k/a
Dorothy Faux, late of Wapwallo-
pen (died March 26, 2023), Terry
L. Faux and Ruth M. Yoder, Co-
Executors; Matthew E. Turowski,
Esquire, Hill, Turowski, James &
Lehman, LLP, 38 West Third St.,
Bloomsburg, PA 17815

ESTATE OF GEORGE J. GOODE,
JR., late of Edwardsville (died
March 1, 2023), Janice Connelly,
Administratrix; Hourigan, Kluger
& Quinn, PC, 600 Third Ave.,
Kingston, PA 18704

THE LUZERNE LEGAL REGISTER

ESTATE OF ANN C. HARVILLA a/k/a Ann M. Harvilla a/k/a Ann Harvilla, late of Hazle Twp. (died April 1, 2023), Edward J. Harvilla and James G. Harvilla, Executors; Edward J. Harvilla, Esquire, P.O. Box 282, Lattimer Mines, PA 18234

ESTATE OF JOSEPH J. LAVELLE, late of Pittston (died April 26, 2023), Thomas Lavelle, Administrator; Anthony G. Ross, Esquire, Law Offices of Tony Ross, 126 South Main St., Pittston, PA 18640

ESTATE OF JOAN LITCHKOFSKI, late of Nanticoke (died March 21, 2023), Michael Tolodzieski, Executor; Bregman & Lantz, LLC, 1205 Wyoming Ave., Forty Fort, PA 18704

ESTATE OF ADALGISA P. MARCINKO, late of Fern Glen (died November 22, 2022), Larry Stroup, Administrator; Donald G. Karpovich, Esquire, 85 Drasher Rd., Drums, PA 18222

ESTATE OF JOHN MINNICK, late of Hazle Twp. (died May 2, 2023), Betty Evanochick, Executrix; Thomas J. Sharkey, Esquire, 982 North Sherman Ct., Hazleton, PA 18201

ESTATE OF SANDRA ORTIZ, late of Foster Township (died October 12, 2022), Jermie Ortiz, Administrator; Niemiec, Smith & Pellinger, 427 Main Street, Towanda, PA 18848

ESTATE OF CHARLES H. PETERMAN, late of Kingston (died December 4, 2022), Charles A. Peterman, Administrator; Girard J. Mecadon, Esquire, 363 Laurel St., Pittston, PA 18640-1719

ESTATE OF ANTHONY T. SAKALOUCKAS, late of Kingston (died

March 24, 2023), Marie Sakalouckas, Executrix; Bregman & Lantz, LLC, 1205 Wyoming Ave., Forty Fort, PA 18704

ESTATE OF ANNA MARIE R. SHEDLOCK a/k/a Anna Marie Shedlock a/k/a Ann Marie Shedlock, late of West Pittston (died April 22, 2023), Angelo Montante, Executor; Rosenn, Jenkins & Greenwald, LLP, 1065 Hwy. 315, Suite 200, Wilkes-Barre, PA 18702

ESTATE OF MARIE C. SMITH, late of Courtdale (died September 8, 2022), Andrew J. Smith, Jr., Executor; Donald P. Roberts, Esquire, Burke Vullo Reilly Roberts, 1460 Wyoming Ave., Forty Fort, PA 18704

ESTATE OF MYRON TYBURSKI, late of Wilkes-Barre (died March 29, 2023), JoAnn Tyburski, Administrator; Stephen B. Killian, Esquire, 575 Pierce Street, Suite 303, Kingston, PA 18704

NOTICE

NOTICE IS HEREBY GIVEN that a Rule to Show Cause Hearing will be held on July 20, 2023 at 10:00 A.M. in the Luzerne County Register of Wills, located at 153 North River Street, Wilkes-Barre, PA 18711 to SHOW CAUSE why Carl P. Ungvarsky should not be appointed Administrator of the Estate of Steven W. Price, who died on July 14, 2019, late of Wilkes-Barre, PA, filed to Luzerne County No. 4019-2278. Any known heir/beneficiary objecting to the same must show cause and make said objections at the hearing date, time and place as stated.

THE LUZERNE LEGAL REGISTER

STACEY ACRI, ESQUIRE
273 East Northampton
Street
Wilkes-Barre, PA 18702
(570) 826-5554

June 9

PETITION FOR
CHANGE OF NAME

NOTICE IS HEREBY GIVEN that on April 20, 2023, the Petition of Christina Marie Barrett, was filed in the Court of Common Pleas of Luzerne County, No. 04260 of 2023, praying for a Decree to Change her name to Christina Marie Olivares.

The Court has fixed June 12, 2023, at 1:00 p.m., Luzerne County Courthouse, 200 North River Street, Wilkes-Barre, Pennsylvania 18711, as the time and place for the hearing on said Petition, when and where all interested may appear and show cause why the prayer of the said Petitioner should not be granted.

June 9

CITATION

IN THE COURT OF COMMON
PLEAS OF LUZERNE COUNTY
ORPHANS' COURT DIVISION

NO. 4022-0341

IN RE: RICHARD DeANGELO,
JR., DECEASED

At the instance of Richard A. Franzosa, the heirs of Richard DeAngelo, Jr. are cited to appear before Joan Hoggarth, the Register of Wills for the County of Luzerne, at 153 North River

Street, Wilkes-Barre, Pennsylvania on July 20, 2023 at 10:30 A.M. to show cause why they should not apply for and take out Letters of Administration on the Estate of Richard DeAngelo, Jr., deceased, or failing to show cause why such letters should not be granted to Richard A. Franzosa or his nominee.

June 9

NOTICE OF SHERIFF'S SALE
OF REAL PROPERTY

COURT OF COMMON PLEAS
CIVIL DIVISION
LUZERNE COUNTY

NO.: 202007604

Cascade Funding
Mortgage Trust HB3
PLAINTIFF

vs.

Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest from or under Edward M. Krefski, Deceased, Peter Moskal, Known Heir of Edward M. Krefski, Deceased
DEFENDANTS

TO: Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest from or under Edward M. Krefski, Deceased, 561 Wilkes-Barre Street, Hanover Township, PA 18706

Your house (real estate) at: 561 Wilkes-Barre Street, Hanover Township, PA 18706, Parcel ID: 28-18NE3-003-025-000 is scheduled to be sold at Sheriff's Sale at Luzerne County Court-

THE LUZERNE LEGAL REGISTER

house, 200 North River Street, Wilkes-Barre, PA 18711 on August 4, 2023 at 10:30 A.M. to enforce the court judgment of \$129,602.13 obtained by Cascade Funding Mortgage Trust HB3 against you.

NOTICE OF OWNER'S RIGHTS
YOU MAY BE ABLE TO
PREVENT THIS
SHERIFF'S SALE

To prevent this Sheriff's Sale you must take immediate action:

The sale will be cancelled if you pay back to Cascade Funding Mortgage Trust HB3 the amount of the judgment plus costs or the back payments, late charges, costs, and reasonable attorneys fees due. To find out how much you must pay, you may call: LOGS Legal Group, LLC., (610) 278-6800.

PLEASE NOTE a Schedule of Distribution will be filed by the Sheriff on a date specified by the Sheriff not later than thirty (30) days after sale. Distribution will be made in accordance with the schedule unless exceptions are filed thereto within 20 days after the filing of the schedule.

June 9

NOTICE OF SHERIFF'S SALE
OF REAL PROPERTY

COURT OF COMMON PLEAS
CIVIL DIVISION
LUZERNE COUNTY

NO.: 2020-11560

Specialized Loan Servicing LLC
PLAINTIFF

vs.

Mary Elizabeth Oberteuffer
a/k/a Mary E. Spaide a/k/a
Mary E. Major a/k/a Mary E.
Oberteuffer and Unknown
Heirs, Successors, Assigns and
All Persons, Firms or
Associations Claiming Right,
Title or Interest from or under
George C. Spaide, deceased
DEFENDANTS

TO: Unknown Heirs, Successors,
Assigns and All Persons,
Firms or Associations Claim-
ing Right, Title or Interest from
or under George C. Spaide,
deceased, 141 Edgerock Drive
f/k/a 27 Buck Ridge Drive,
Drums, PA 18222

Your house (real estate) at:
141 Edgerock Drive f/k/a 27
Buck Ridge Drive, Drums, PA
18222, Parcel ID: 06-Q8S10-
004-027-000 is scheduled to be
sold at Sheriff's Sale at Luzerne
County Sheriff's Office, 200
North River Street, Wilkes-Barre,
PA 18711 on August 4, 2023 at
10:30AM to enforce the court
judgment of \$195,950.30 ob-
tained by Specialized Loan Ser-
vicing LLC against you.

NOTICE OF OWNER'S RIGHTS
YOU MAY BE ABLE
TO PREVENT THIS
SHERIFF'S SALE

To prevent this Sheriff's Sale
you must take immediate action:

The sale will be cancelled if
you pay back to Specialized Loan
Servicing LLC the amount of the
judgment plus costs or the back
payments, late charges, costs,
and reasonable attorneys fees
due. To find out how much you

THE LUZERNE LEGAL REGISTER

must pay, you may call: LOGS Legal Group, LLC., (610) 278-6800.

PLEASE NOTE a Schedule of Distribution will be filed by the Sheriff on a date specified by the Sheriff not later than thirty (30) days after sale. Distribution will be made in accordance with the schedule unless exceptions are filed thereto within 20 days after the filing of the schedule.

June 9

NOTICE

NOTICE IS HEREBY GIVEN that Freeland Borough Council will consider adopting an Ordinance repealing the Freeland Borough's Stormwater Management Ordinance of 2011 (Ordinance No.: 0404-2011) and all amendments thereto in their entirety and restating and substantially adopting the Pennsylvania Department of Environmental Protection Model Stormwater Ordinance at its regular monthly meeting to be held on Thursday, June 22, 2023, 6:00 p.m., at the Freeland Borough Municipal Building, 526 Fern Street, Freeland, PA 18224.

The Ordinance subject to enactment repeals in its entirety the Stormwater Management Ordinance of 2011 and replaces said Ordinance with updated provisions consistent with the Pennsylvania Department of Environmental Protection's Model Stormwater Management Ordinance. The provisions to be adopted include title and stated purpose; repeal and severability provisions; definitions for a bet-

ter understanding; establishing Stormwater Management Standards; establishing Stormwater Management Site Plan requirements; providing for operation and maintenance for developers and landowners; establishing fees and expenses; setting forth certain prohibitions associated with Stormwater runoff; and establishing enforcement and penalties for violation with appeal rights.

A copy of the full text of the proposed Ordinance and its incorporating attachments may be examined by any person in the Office of the Secretary of the Borough, Monday through Friday during normal business hours. A copy of the Ordinance will likewise be on file and may be reviewed at the Business Office of the Hazleton Standard Speaker as well as the Luzerne County Legal Register's Office.

SLUSSER LAW FIRM
Solicitor for Freeland
Borough Council
1620 N. Church Street
Suite 1
Hazleton, PA 18202
(570) 453-0463

June 9

NOTICE

NOTICE IS HEREBY GIVEN that:

KRI LOGISTICS, INC. has been incorporated under the provisions of the Business Corporation Law of 1988.

HOURIGAN, KLUGER & QUINN, P.C.
600 Third Avenue
Kingston, PA 18704

June 9

THE LUZERNE LEGAL REGISTER

PETITION FOR
CHANGE OF NAME

NOTICE IS HEREBY GIVEN that on April 21, 2023, the Petition of Christina Barrett, was filed in the Court of Common Pleas of Luzerne County, No. 04303 of 2023, praying for a Decree to Change his name to Evan Christian Olivares.

The Court has fixed June 12, 2023, at 1 p.m., Luzerne County Courthouse, 200 North River Street, Wilkes-Barre, Pennsylvania 18711, as the time and place for the hearing on said Petition, when and where all interested may appear and show cause why the prayer of the said Petitioner should not be granted.

June 9



e-Mail Request

To: All W-BLLA Members

In order to send to you important Bar and Court updates, please contact Gail Kopyak, the Bar's Deputy Executive Director for Bar Events and Membership Services, at:

Gail.Kopyak@luzernecounty.org
with any changes to your e-mail address.

Thank you.

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Subscribers to the

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send an e-mail to

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Remember The Register is also
published weekly on the Association's website and
legal ads from it and from other county legal journals
are searchable online

at ***www.palegalads.org.***

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PERIODICAL PUBLICATION

* Dated Material. Do Not Delay. Please Deliver Before Monday, June 12, 2023