

# LAWYERS JOURNAL

## Hard-working McVerry retires after career spent 'doing the right thing'

By Tracy Carbasho

There's a reason the lights in Judge Terrence McVerry's chambers were usually on before sunrise every day for the past 14 years.

"I did not view my appointment to the U.S. District Court as a retirement job. I viewed it as the most prominent duty and responsibility that could be bestowed upon me as a practicing lawyer in my hometown community," McVerry said. "I knew I was following a number of good, hardworking legal minds before me, and I didn't want to be left behind. I always worked hard to be prepared."

After earning a reputation as a hard-working judge who always adhered to his personal philosophy of "do the right things for the right reasons," McVerry turned off the lights in his chambers for the last time and began retirement on Sept. 30.

"He was always in his chambers by 5:30 or 6 a.m. because he loved what he did," said District Court Judge Donetta Ambrose. "He believes every case is important and interesting, and he conveyed that to all who appeared before him. He imbued respect for justice day by day and case by case."

The mantra by which McVerry has lived his life is apparent to those who know him and those who worked with him. In fact, Ambrose notes that his biggest contribution to the profession is "his dedication to doing the right thing."

"He was always meticulous and thorough in his written opinions," she said. "He wanted to be correct on the facts and the law not because he was concerned with what might happen on

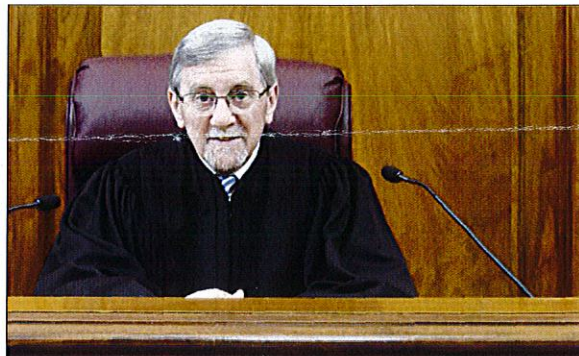


PHOTO BY JOCELIN HERSTEX

After serving 14 years on the U.S. District Court for the Western District of Pennsylvania, Judge Terrence McVerry retired Sept. 30.

appeal, but because he wanted to be as correct as possible."

Ambrose said although her friend's retirement at the age of 73 is well deserved, he will be missed by his judicial colleagues, members of the bar, those he mentored and those who worked with him every day.

McVerry elected to take senior status in 2013 but never slowed down. Senior judges must be at least 65 years old and have 15 years of service. He had previously served in the Family Division of the Allegheny County Court of Common Pleas for two years.

Senior judges are permitted to reduce their caseload to as little as 25 percent of that of full-time judges. That isn't McVerry's style, though. He

continued to maintain approximately 75 percent of an active judge's caseload and accepted new filings on a regular basis.

"He always volunteered to take on extra cases and to take on any assignment that the court requested," said District Court Chief Judge Joy Flowers Conti. "He was a congenial colleague, and his wit and charm made him one of our finest judges."

Conti said McVerry's thoughtful opinions and courtroom demeanor resulted in the efficient and fair administration of justice in Western Pennsylvania. Others agree.

"His commitment to the profession, both before and after he took the

Continued on page 11

## Insurance Month continues at ACBA

The ACBA Insurance Program is regarded by many as one of the top member benefits offered by the bar association. As a way to highlight the features of the program, the ACBA has designated October "Insurance Month" at the bar.

The ACBA Insurance Program – which is advised and administered by USI Affinity – features discounts on an array of insurance options, including lawyers' professional liability coverage. Beyond actual insurance products, the program also offers expert advice on nearly any insurance question imaginable, even on policies purchased through other providers.

For example, if you need help picking between a Highmark and UPMC health insurance plan or deciding how much life insurance to carry, you can get free, expert advice from USI professionals at any time by emailing [bob.cagna@usiaffinity.com](mailto:bob.cagna@usiaffinity.com) or [michelle.logan@usiaffinity.com](mailto:michelle.logan@usiaffinity.com).

As a way to make it easier for members to get this expert advice, insurance professionals from USI will be onsite at the ACBA offices on Tuesday, Oct. 18, and Monday, Oct. 24. Members are encouraged to stop by with questions. For details, see [www.ACBA.org](http://www.ACBA.org). ■

### On-site insurance reviews

USI Affinity insurance professionals Bob Cagna and Michelle Logan will be at the ACBA offices to answer members' insurance questions on the following days:

Tuesday, Oct. 18 –  
11:30 a.m. to 5 p.m.

Monday, Oct. 24 –  
10 a.m. to 2 p.m.

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## Bankruptcy Court program has helped hundreds avoid foreclosure

By Tracy Carbasho

An effort that initially ignited pushback from lenders during bankruptcy proceedings has evolved into a successful program that has all parties working together to preserve home ownership.

The Loss Mitigation Program was created in 2012 by the U.S. Bankruptcy Court for the Western District of Pennsylvania to provide court-supervised relief to people at risk of losing their homes. In the four years since, the court has finalized about 190 successful cases per year.

The program averts the loss of a person's home and prevents increased costs to a lender by facilitating an agreement that commonly includes loan modification/refinancing; forbearance; surrender of the property in full or partial satisfaction of a loan obligation; or a short sale in which the

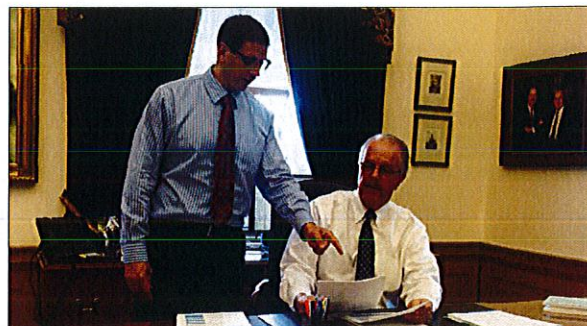


PHOTO PROVIDED BY PAMELA JEWELL

Judge Thomas Agresti, seated, of the U.S. Bankruptcy Court for the Western District of Pennsylvania looks over information about the court's Loss Mitigation Program with one of his law clerks, Matthew Burne. The court achieved a milestone in August by successfully handling 750 cases since the program was started in 2012.

Continued on page 6



**BANKRUPTCY COURT PROGRAM**  
continued from front cover

lender accepts a payoff amount less than the principal balance of the mortgage.

"A person's home is their castle, and preservation of the home adds to stability and a sense of security within the family unit. There also is the community benefit that results from a successful residential mortgage modification," said Chief Judge Jeffery Deller. "A successful mortgage modification promotes continued home ownership by each successful participant. Continued home ownership, in turn, promotes market-based values of residential homes as opposed to the distressed value of the homes, which would otherwise result from foreclosure."

A total of 1,413 requests have been made for participation in the LMP from its inception through September of this year, but debtors sometimes abandon their requests. Of the requests, 1,119 cases were completed – meaning they were closed because all necessary steps were followed, but not all of them had a successful outcome. The number of completed cases that resulted in successful loan modifications or other positive relief was 750.

**Program origins**

Deller discussed starting an LMP in the Western District as early as 2008, a year before the first such program in the country was created in the Southern District of New York. Deller's brainchild was in response to the mortgage crisis of 2008.

However, the local program did not become a reality until four years ago when Judge Thomas Agresti was chief judge. When the district established

its program, it became the eighth bankruptcy court in the United States to do so. Today, 16 courts have similar programs.

Agresti, who continues to oversee the program, said it was clear that the district needed to take action to benefit all parties involved – including the debtors, the lenders, the attorneys and the court. Time after time, he heard the same story about lenders failing to respond to an individual's request for an out-of-court loan modification or other relief. Creditors frequently would tell the court they had no information about the request or would claim the debtor failed to provide the required information for loan relief.

"The resulting effect was that hearings had to be repeatedly continued, clogging the court's dockets, since the process for information exchange was insufficient and often nonexistent," Agresti said. "The frustration created by the then 'gold standard' of doing business was not just frustrating for the debtor but also for the court and even the lender. It was a huge waste of time for the parties and the courts, forcing needless litigation, with costs and fees being wasted on useless services."

**Quelling pushback**

The court modeled its program after the ones in New York, New Jersey and Rhode Island. Unlike some programs that permit lenders to opt out under certain circumstances, the Western District mandates participation by lenders. The program is available to those who file for bankruptcy protection under Chapters 7, 11, 12 and 13.

During the planning stages, the court invited representatives from all

of the national lenders to meet with its LMP Committee to discuss the proposal. Agresti said the move was an attempt to secure lender cooperation and avoid confrontation. The Bankruptcy Court for the Eastern District of Michigan had just been drawn into litigation filed by national lenders not for trying to implement a program but just for attempting to mandate the use of a vendor to facilitate its program.

"By opening up the lines of communication, it was our hope to avoid this type of trench warfare before we even got the project off the ground," Agresti said. "Fortunately, we were able to do so by making very limited, yet appropriate, concessions, such as primarily requiring that the LMP be resolved early in the process and assuring that the mandate for participation was considered good faith with no guarantee of results."

Agresti said it was common in the early days of the program for him to require the top brass from major lenders – such as Wells Fargo, Citibank, Chase – to meet with him at his chambers in Erie to explain why the court's LMP rules were not being followed. It didn't take long before his "nudging" broke the lender log jam and got the program on track. Today, participation problems are rare.

"Once lenders realized our program is designed to open the lines of communication between them and the debtors to allow for an expedited conversation in good faith about options toward mitigation of the debtor's loan obligation, they agreed it was a win-win situation for all parties," Agresti said.

Attorney James Probstko, an associate at Phelan Hallinan Diamond & Jones in Pittsburgh, represents national

mortgage lenders in bankruptcy court. He was among those who were skeptical of the court's program, but now believes it is working well.

"Having participated in several state court programs, I now see that the bankruptcy court program has several advantages," Probstko said.

The LMP's advantages, as outlined by Probstko, include:

- Debtors pay counsel to represent them so they are invested in the process.
- Attorneys know precisely what documents are required prior to the entry of a loss-mitigation order.
- Debtors must continue to make monthly mortgage payments in accordance with the program formula so they don't fall behind, and lenders are required to accept the payments.
- The use of an online portal creates transparency. All documents and correspondence are available for the parties and the court to review.
- The bankruptcy judges actively monitor the loss mitigation cases, and if one is stalled, a status hearing is set.

**Making it work**

Deller and Agresti are proud of the program's success and readily attribute it to the hard work of all bankruptcy judges, clerks, other court personnel and the attorneys who participate in the program. While all of the clerks are commended for their work, the judges have noted that court clerk Michael Rhodes and law clerk Matthew Burne have been especially dedicated to the program.

Rhodes said the program stands out from others because it involves the direct negotiation between the parties


Continued on page 7

## HARRY M. PARAS

*Attorney at Law*

428 Boulevard of the Allies  
Suite 300  
Pittsburgh, PA 15219

Phone: 412-391-8100  
Fax: 412-391-9972  
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**BANKRUPTCY COURT PROGRAM**  
continued from page 6

and their designees. In addition, it requires the debtor to complete all necessary paperwork in advance.

Rhodes also notes the court has integrated the use of document-preparation software to streamline the process and eliminate human errors. The program requires the use of a neutral and secure communication portal to ensure transparency and accountability by all participants. The online tools streamline the process of reporting the status and results of negotiations.

"As a result, our court is able to collect and analyze the data with a view toward ensuring the efficacy of the program," Rhodes said.

**Good for our communities**

The bankruptcy judges are eager to promote the program so that both sides may share in its benefits.

"Clearly, the Loss Mitigation Program has demonstrated how the judicial system is working to assist the public by allowing borrowers another chance to retain their homes after experiencing financial difficulties," said Judge Carlota Böhm. "As a judge, it is very rewarding to see the program thrive to the benefit of all impacted parties as borrowers are able to retain their homes and lenders are able to receive funds that are owed. The manner in which the lenders and borrowers communicate to reach amicable solutions that are favorable and fair for both sides is commendable."

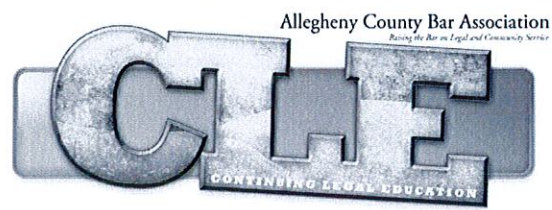
Judge Gregory Taddonio said the program is a perfect example of the court using innovation to address a 21st century need.

"Once lenders realized our program is designed to open the lines of communication between them and the debtors to allow for an expedited conversation in good faith about options toward mitigation of the debtor's loan obligation, they agreed it was a win-win situation for all parties."

— Judge Thomas Agresti

"By bringing stakeholders together to construct a system that encourages communication and demands accountability, the public can see firsthand how the court is developing a forum that promotes solutions beneficial to all parties," Taddonio said. "It's gratifying to see the parties agree on a mortgage modification, especially in those circumstances that would have been irreparable before the LMP."

"For instance, families with large mortgage arrearages were often forced to give up their homes because it was not feasible to pay off the arrearage in five years," he added. "Through mortgage-modification programs, those families now have more options available to save the home. Anything that promotes stability within the home is good for the parties and for our communities." ■



**ALLEGHENY COUNTY BAR FOUNDATION  
PRO BONO CENTER**

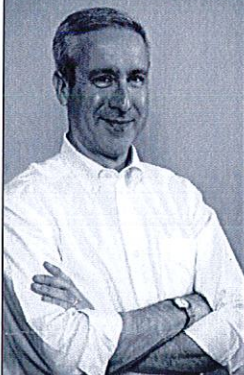
**Expunging and Sealing Criminal Records to  
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Many Pennsylvanians are caught in a vicious cycle of headaches, roadblocks and deferred dreams because of past criminal offenses. Because of their criminal records, individuals face barriers that often prevent them from securing viable employment, safe and secure housing and/or federal student loans. During this program, attorneys can learn about how Pennsylvania's expungement and new sealing laws may serve as tools to help individuals overcome these barriers by assisting them with re-entry and restoration, and reducing the chances of recidivism. The course includes training on how to draft the necessary petitions. The course is free for attorneys who volunteer at the city-wide expungement clinic on Monday, Nov. 14 and/or who take a pro bono expungement case from a legal aid program within one year.

Regular ACBA CLE tuition rates apply to non-volunteers.

Credits: 1.5 hours of Substantive CLE credit • When: Friday, Oct. 28 • Registration: 11:30 a.m. • Time: noon - 1:30 p.m. • Where: Koppers Building Conference Center, Grant Room, 9th floor, 436 Seventh Ave., Pittsburgh, PA 15219 • Cost: Free for Pro Bono volunteer, \$50 for ACBA members, \$75 for all others • Last date to pre-register: Thursday, Oct. 26, 11:59 p.m.

Register online at [www.acba.org](http://www.acba.org).



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- Mishnah: Mo'ed - Festivals, Friday Dec. 9, 2016
- Mishnah: Nashim - Women, Friday Feb. 3, 2017
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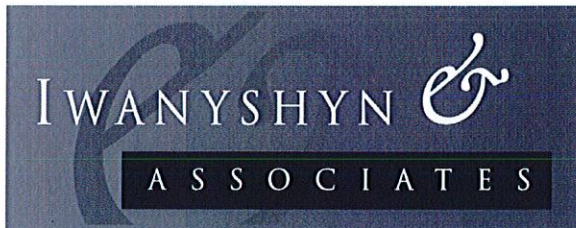
Each session is a "stand alone" unit. Sign up for one or all.

Time: First session 8:30 am - 11:15 am.  
All subsequent sessions 8:30 am - 10:45 am.

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