On Appeal

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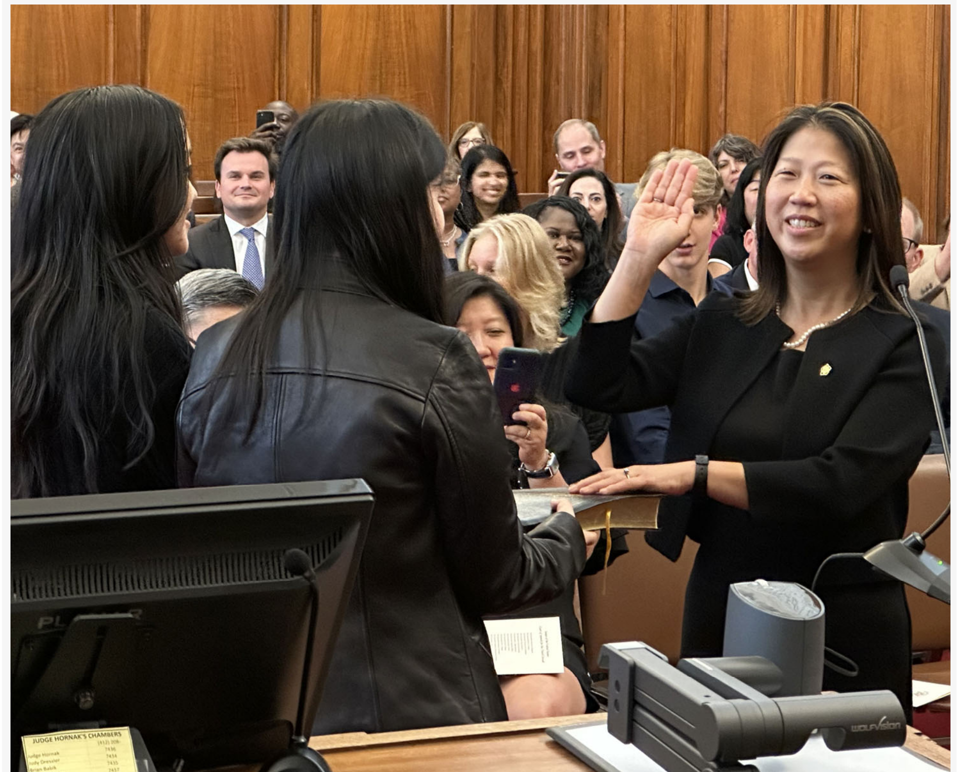
For more information about the Third Circuit Bar Association, please contact us at: 3cba@thirdcircuitbar.org

Or visit us at: www.thirdcircuitbar.org

3CBA welcomes Judge Cindy K. Chung to the Court



Judge Chung joins the Third Circuit from the U.S. Attorney's Office for the Western District of Pennsylvania, where she served as U.S. Attorney from 2021 to 2023. Prior to that appointment, Judge Chung served as an Assistant U.S. Attorney in Pittsburgh from 2014 to 2021. During her tenure, she held numerous positions within the Office, including Deputy Chief of the Major Crimes Section, Acting Deputy Chief of the Violent Crimes Section, Domestic Violence Coordinator, Project Safe Neighborhoods Coordinator, Border Security Coordinator, and Civil Rights Coordinator. Judge Chung also served as an Adjunct Professor at the University of Pittsburgh School of Law where she cotaught a course on Federal Hate Crimes in the Spring of 2021.

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3CBA welcomes Judge Cindy K. Chung to the Court

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Judge Chung received her B.A. from Yale University in 1997 and her J.D. from Columbia Law School in 2002. Following graduation from law school, Judge Chung served as a law clerk for Judge Myron Thompson on the United States District Court for the Middle District of Alabama from 2002-2003.

From there, Judge Chung joined the New York County District Attorney's Office, where she worked as an Assistant District Attorney from 2003 to 2007. She continued her work there as an Investigation Counsel in the Official Corruption Unit from 2007 to 2009.

In 2009, Judge Chung joined the Criminal Section of the Department of Justice's Civil Rights Division as a trial attorney. She remained with the Civil Rights Division until her move in 2014 to Pittsburgh when she joined the U.S. Attorney's Office.

Judge Chung is looking forward to serving on the Circuit. The Third Circuit Bar Association congratulates Judge Chung and welcomes her to the Court!

By Laura Irwin, Assistant United States Attorney, Western District of Pennsylvania

Public notice – appointment of new magistrate judge in the U.S. District Court for the Eastern District of Pennsylvania

The Judicial Conference of the United States has authorized the appointment of a full-time United States magistrate judge for the Eastern District of Pennsylvania at Philadelphia. The appointee may be required to preside at court sessions to be held at Reading, Philadelphia, Allentown, and Easton.

The duties of the position are demanding and wide-ranging, and will include, among others: (1) conduct of most preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) conduct of various pretrial matters and evidentiary proceedings on delegation from a district judge; and (4) trial and disposition of civil cases upon consent of the litigants. The basic authority of a United States magistrate judge is specified in 28 U.S.C. § 636.

The application is available on the court's web site at https://www.paed.uscourts.gov/. Applications **must be received by Friday, December 15, 2023**.

Third Circuit reaffirms the narrowness of interlocutory review of an order denying qualified immunity

Rush v. City of Philadelphia, 78 F.4th 610 (3d Cir. 2023)

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In *Rush v. City of Philadelphia*, 78 F.4th 610 (3d Cir. 2023), the Third Circuit affirmed a district court holding that an officer who fatally shot at an unarmed driver attempting to escape at slow speed was not entitled to qualified immunity. In its ruling, the Court confirmed that, on interlocutory review of an order denying qualified immunity, the Court is bound by the district court's recitation of the facts, unless the record blatantly contradicts those facts.

Background

This case stems from the fatal shooting of an unarmed driver, Jeffrey Dennis, by a Philadelphia Police officer, Richard Nicoletti, during the execution of a warrant in August 2018.

Philadelphia Police obtained a search warrant for the house in which Mr. Dennis resided due to suspected drug activity. The plainclothes officers observed Mr. Dennis driving near the house and attempted to initiate a stop. Two unmarked police cars blocked Mr. Dennis' car in a narrow one-way street, with no civilian cars or pedestrians in the immediate vicinity. Mr. Dennis attempted to free his car by moving forwards and backwards, bumping into the unmarked police cars at a slow speed. Six officers, including Officer Nicoletti, exited their cars and approached Mr. Dennis with their guns drawn. They attempted to open the door and then smashed the driver's side window and reached to grab the keys from the ignition. One officer reported to the others at one point that Mr. Dennis was reaching to the center console.

Mr. Dennis accelerated forward to escape the officers at the same time as the driver of one of the unmarked police cars accelerated. The two cars collided, with Mr. Dennis' car coming to a stop and appearing to be stuck. Two other officers on the scene began approaching Mr. Dennis' car with their weapons down. At the same time, Officer Nicoletti discharged his weapon three times through the driver's side window at Mr. Dennis, ultimately killing him.

The administrator of Mr. Dennis' estate brought claims against Officer Nicoletti—in both his official and individual capacities—for excessive force under 42 U.S.C. § 1983, and against the City under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), as well as state law assault and battery claims.

After discovery, Defendants moved for summary judgment on all counts. In declining to grant summary judgment for Officer Nicoletti in his individual capacity on the basis of qualified immunity, the district court analyzed the evidence—including a surveillance video of the incident—and determined that (i) Officer Nicoletti discharged his weapon two seconds after the cars collided; (ii) Mr. Dennis' car was pointed away from the officers on foot; (iii) no other officer had their guns drawn at the time; and (iv) Mr. Dennis was pronounced dead at the scene, and no weapon was recovered from the car. Officer Nicoletti then took an interlocutory appeal from the denial of qualified immunity.

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Third Circuit reaffirms the narrowness of interlocutory review of an order denying qualified immunity

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Third Circuit Analysis

In an opinion authored by Judge Restrepo and joined by Judges Ambro and Fuentes, the Third Circuit affirmed the district court's denial of qualified immunity.

Addressing its jurisdiction to hear the appeal, the Court explained that under the collateral order doctrine an interlocutory order may be treated as a "final decision" if it conclusively determines a disputed question, resolves an important issue completely separate from the merits, and is effectively unreviewable on appeal from a final judgment. The Court added that its jurisdiction under these circumstances was limited to resolving legal question, not factual questions.

The Court determined that the "bulk" of Officer Nicoletti's appeal was based on his disagreement with the district court's factual findings and the district court's determination that a "reasonable jury could conclude that Mr. Dennis posed no threat to officer or pedestrian safety." The Court concluded it could only consider Officer Nicoletti's legal challenge to the district court's conclusion that his conduct violated clearly established law.

The Court acknowledged that Officer Nicoletti attempted to invoke the one exception to the bar against an appellate court's review of the facts that applies when the record "blatantly contradict[s]" the district court's account of the facts, as recognized in *Scott v. Harris*, 550 U.S. 372, 380 (2007). But after performing an independent review of the video of the incident, the Court held that the video did not blatantly contradict the district court's factual determinations and thus the "narrow" *Scott v. Harris* exception was inapplicable.

The Court held that the district court was correct in concluding that Officer Nicoletti was not entitled to qualified immunity. A jury could find his conduct violated Mr. Dennis' Fourth Amendment right to be free from unreasonable seizure and use of force, a clearly established right. The Court took no issue with the district court's articulation of the right to be free from unreasonable use of lethal force in a situation "where an officer 'sho[ots] at an unarmed driver attempting to escape at a slow speed who had hit a car,' and/or 'us[es] deadly force against an individual driving a car,' from the side window while the car was moving away from the officer, 'when the driver did not pose a threat to the safety of the officer (or others).'" That right had been clearly established in the Third Circuit, such that "it would [have been] clear to a reasonable officer that his conduct was unlawful." As the Court stated, "a jury could conclude that Mr. Dennis posed no immediate safety threat and was not violent or dangerous, he was unarmed, was outnumbered six-to-one, and he suffered the most severe physical injury possible—death."

Conclusion

Rush confirms that when a defendant appeals an interlocutory order denying qualified immunity, the Third Circuit is bound by the district court's recitation of the facts, unless the record blatantly contradicts those facts—an exception that is to be narrowly applied.

Third Circuit reinforces standing requirement for First Amendment challenge

Greenberg v. Lehocky, 81 F.4th 376 (3d Cir. 2023)

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In a pre-enforcement First Amendment challenge to a newly adopted state anti-harassment and anti-discrimination professional ethics rule, the Third Circuit in *Greenberg v. Lehocky*, 81 F.4th 376 (3d Cir. 2023) ruled that the plaintiff failed to establish standing—he failed to show any imminently threatened or actual injury fairly traceable to the ethics rule, which the government amended and interpreted during the course of litigation to clarify its limited scope.

Background

To combat harassment and discrimination in the legal profession, the Supreme Court of Pennsylvania enacted Pennsylvania Rule of Professional Conduct 8.4(g) (the "Rule") in 2020. The Rule provided that it is professional misconduct for a lawyer "in the practice of law, by words or conduct, knowingly [to] manifest bias or prejudice, or engage in harassment or discrimination, as those terms are defined in applicable federal, state or local statutes or ordinances . . . ."

Before the Rule took effect, Zachary Greenberg, a Pennsylvania-licensed attorney who teaches CLE classes, challenged the Rule in federal court, claiming it violated the First Amendment and was unconstitutionally vague. His planned presentations focused on the First Amendment and included quotations of racial epithets from judicial opinions, among other things that people may find controversial or offensive. He believed that some audience members attending his CLE presentations would be offended and might file bar disciplinary complaints against him under the Rule. He sought a declaratory judgment that the Rule is unconstitutional and requested an injunction against its enforcement. He also moved for a preliminary injunction to prohibit enforcement of the Rule.

After Greenberg filed suit, the government amended the Rule with substantive changes to the text and comments to clarify the Rule's limited scope. Greenberg filed an amended complaint and asserted that the amended Rule would result in disciplinary complaints from some of his audience members. In addition to the pre-enforcement challenge, he alleged an ongoing injury because, he said, his speech was chilled by the threat of discipline.

The parties filed cross-motions for summary judgment. The defendants argued that Greenberg lacked standing to challenge the amended Rule. To support their motion, defendants offered a declaration from Pennsylvania's Chief Disciplinary Counsel, who had authority to direct and determine policy concerning enforcement of the Rule. That declaration stated that the Rule would not bar discussions of case law or "controversial" positions or ideas. It further stated that Greenberg's planned presentations did not violate the Rule. Finally, it said the Rule would not be enforced against Greenberg for conducting his CLEs and related discussions.

The district court, however, denied defendants' motion, agreeing with Greenberg that the declaration and amended Rule raised a mootness rather than a standing question—those events occurred after the commencement of the case, the ordinary focal point for assessing jurisdiction. The court ruled the defendants' summary judgment evidence failed to moot the case. On the merits, the court declared the Rule to be unconstitutionally vague and otherwise violative of the Constitution, granting Greenberg summary judgment and permanently enjoining enforcement of the Rule.

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Third Circuit reinforces standing requirement for First Amendment challenge

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The Third Circuit's Discussion

In an appeal that attracted significant *amicus curiae* attention, a unanimous panel of the Third Circuit reversed, ruling that Greenberg did not have standing.

The Court explained that the "amendment to [the] Rule raises an issue of standing and not mootness [as the district court had ruled] because Greenberg replaced his initial complaint with a subsequent pleading challenging the new Rule."

The Court summarized key Article III standing requirements imposed by the Case or Controversy Clause, stating that a plaintiff must "show an injury in fact fairly traceable to the challenged action that a favorable ruling may redress," and reasoned that Greenberg failed to establish that he had been injured or that he reasonably feared any imminent injury fairly traceable to the amended Rule.

The Court analyzed the language of the amended Rule and found that it could not be construed to punish Greenberg's planned speech for several reasons. Most significantly, the summary judgment record—including the Office of Disciplinary Counsel's controlling interpretation of the Rule—showed the Rule would not arguably come close to reaching a CLE presentation such as Greenberg's. Because nothing in Greenberg's planned presentations targeted an individual person, let alone for knowing harassment or discrimination, the Court ruled that Greenberg lacked standing to bring a pre-enforcement challenge.

Greenberg also claimed he suffered an ongoing, actual injury traceable to the Rule because, he said, it chills his speech: The "specter of disciplinary proceedings [will] cause him to alter his presentations." The Court, however, determined that Greenberg alleged a subjective, unreasonable chilling of his speech attributable to his generalized fear of the cancel-culture *milieu*. Thus, any changes Greenberg made to his speech could not be fairly traced to potential discipline under the Rule.

The Court expressed no opinion on the merits of Greenberg's challenge. It cautioned, however, that its ruling was limited to the pre-enforcement factual record before it, explaining that Greenberg might bring a future lawsuit if facts develop after the Disciplinary Board begins enforcing the rule.

The Concurring Opinion

Judge Ambro joined the panel's opinion in full. Without expressing any opinion on the constitutional merits of the Rule, he wrote separately to point Pennsylvania to examples of other states' anti-harassment rules that robustly protect lawyers' speech.

Conclusion

The Third Circuit reaffirmed that standing is a jurisdictional matter reviewable at any time during a case, that pre-enforcement challenges to regulations depend on a credible threat of prosecution (not tenuous chains of potential events), and that objectively unreasonable fears of adverse consequences fall short of satisfying Article III's requirement of a sufficiently concrete injury to support standing.

Third Circuit clarifies the standard for joinder under Federal Rule of Civil Procedure 19

Epsilon Energy USA, Inc. v. Chesapeake Appalachia, LLC, 80 F.4th 223 (3d Cir. 2023)

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Federal Rule of Civil Procedure 19 provides for dismissal of an action when certain "required" parties cannot be joined to it. However, a textual hiccup between the Rule's two primary provisions has led courts to do a bit of redlining. In *Epsilon Energy USA, Inc. v. Chesapeake Appalachia, LLC*, the Third Circuit justified this redlining through an examination of historical equitable joinder rules and put more shape to the nebulous concepts articulated in the Rule's wording.

Background

As alleged in the complaint, Epsilon Energy USA, Inc., Chesapeake Appalachia, LLC, and several other entities entered a joint operating agreement to develop natural gas production in Pennsylvania. The agreement designated Chesapeake as the "operator," or the entity responsible for conducting the drilling of natural gas wells under the agreement. The other parties to the agreement could propose new well sites for development, and each party could elect to participate in this proposed development. Epsilon proposed to create wells on a site known as the Craige Well Pad, but Chesapeake opposed the idea and refused to act as the operator. Chesapeake then went a step further and blocked Epsilon from serving as operator for the Craige Well Site in Chesapeake's stead. In response, Epsilon sued Chesapeake seeking a declaration that it could drill the Craige Wells without Chesapeake serving as the operator under the terms of the joint operating agreement. Chesapeake moved to dismiss Epsilon's suit, invoking Rule 19 because Epsilon did not join the other parties from the joint operating agreement in the lawsuit.

Third Circuit's Decision

The court began with a detailed summation of Rule 19. As the court noted, the Rule's first provision, Rule 19(a), defines a "required party" for joinder purposes as one who satisfies both (1) a jurisdictional requirement—*i.e.* being a non-party subject to service of process and the addition of which would not deprive the court of subject matter jurisdiction—and (2) certain prudential requirements, including whether a nonparty has an "interest" in the subject matter of the action that would be impaired if the action went forward to judgment. Under the second provision, Rule 19(b), if "a person who is required to be joined" cannot be joined, courts must determine whether, "in equity and good conscience," the action should proceed without this required party.

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**The contents of this article do not constitute legal advice.*

Third Circuit clarifies the standard for joinder under Federal Rule of Civil Procedure 19

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The court then addressed the real problem with Rule 19: "who exactly is 'a person who is required to be joined" under Rule 19(b)? After all, Rule 19(a) defines a "required party" as a party who satisfies both a jurisdictional requirement and a prudential requirement. But Rule 19(a)'s definition of a "required" party means the party can always, by definition, be joined because they are subject to service of process and their addition would not destroy the court's subject matter jurisdiction. Thus, Rule 19(b) would never apply in practice; no "required" party, as defined by Rule 19(a), would simultaneously not be able to be joined as contemplated by Rule 19(b).

As the court explained, other jurisdictions have resorted to some "imaginative redlining" by applying Rule 19(b) when the non-party satisfies the prudential requirement of Rule 19(a) but does not satisfy the jurisdiction requirement, in effect writing out the jurisdictional requirement. But while the text of Rule 19 might lack perfect logic, the court justified the redlining by examining the historical development of the joinder rule, concluding that this "old soil" would lend insight about the true intent of the drafters. Starting with late Seventeenth Century equity practice in England, the court examined how joinder rules developed to capture the very scenario brought about by the imaginative redlining: dismissal of an action when a nonparty could not be joined because of a jurisdictional barrier, but prudential considerations compelled its joinder. Freeing the lower courts from Rule 19's morass, the court spelled out what Rule 19 was trying to convey as supported by historical equity practice: "1) Considering the [prudential questions under Rule 19(a)], should the absent party be joined?; 2) If so, is joinder feasible—that is, can the party be joined without depriving the court of the ability to hear the case?; 3) If joining the party is not feasible, should the action continue in the party's absence or be dismissed?"

With the textual issues resolved, the court provided a few points of guidance on what the prudential considerations under Rule 19(a) really mean in practice. Joining other circuits, the court wrote that "parties owning rights under disputed contracts" have a "legally protected interest" under Rule 19(a)(1)(B)(i). Epsilon and Chesapeake were disputing the interpretation of the joint operating agreement. If Epsilon prevailed in the litigation and proceeded to drill the Craige Well Site, it would subject the other parties to the economic results of its drilling, whether good or bad. Further, the lower court's decision about the legal effect of the provisions of the contract would bind the other parties even though they played no part in the litigation. These other contracting parties, the court held, were "required" to be joined under Rule 19(a).

Proceeding to Rule 19(b), the court rejected the view that Epsilon or Chesapeake could advance the interests of the non-parties, even if the non-parties did not appear in the action. As the court saw it, if this standing-in-the-shoes argument, by itself, satisfied Rule 19(b), then "many multi-party actions would automatically proceed despite the careful inquiry created in the Rule."

Conclusion

Epsilon Energy USA, Inc. v. Chesapeake Appalachia, LLC clarifies the steps a lower court should take when faced with a complex Rule 19 question and hopefully puts all litigants on a firmer footing regarding their options in complex litigation in federal court.

Third Circuit holds that an order finding a duty to defend is not immediately appealable absent a directive to undertake the defense

Zenith Ins. Co., v. Martin P. Newell, Jr., 78 F.4th 603 (3d Cir. 2023)

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In *Zenith Insurance Co., v. Martin P. Newell, Jr.*, 78 F.4th 603 (3d Cir. 2023), the Third Circuit dismissed Zenith's appeal of a district court's order declaring that Zenith had a duty to defend its insured for lack of jurisdiction, concluding that the order from which Zenith appealed was not final or immediately appealable.

Background

In 2019, M.P.N., Inc. tendered a workplace liability lawsuit to Zenith, but Zenith declined coverage. After reaching an impasse with its insured regarding its duties and obligations under the policy, Zenith sued M.P.N. seeking a declaration that it did not have a duty to defend or indemnify the underlying action. M.P.N. counterclaimed for breach of contract and bad faith and moved for partial summary judgment. The district court partially granted M.P.N.'s motion finding that Zenith had a duty to defend because the tendered claim potentially fell within the scope of Zenith's policy. The district court entered an order that stated: "Zenith has a duty to defend M.P.N., Inc. in connection with the underlying action." Zenith appealed.

Third Circuit's Decision

The Third Circuit issued a precedential opinion dismissing the appeal for lack of jurisdiction. In so holding, the Court explained that orders "that have the 'practical effect' of granting or denying injunctive relief—even if they do not say so explicitly—may [] be immediately appealable." To be immediately appealable, however, the party seeking review must satisfy a three-part functional test that asks whether the order (1) is directed to a party; (2) may be enforced by contempt; and (3) is "designed to accord or protect some or all of the substantive relief sought by a complaint in more than a [temporary] fashion."

The Court concluded that Zenith could not satisfy this test. In reaching its conclusion, the Third Circuit relied on its prior decision in *American Motorists Insurance Co. v. Levolor Lorentzen, Inc.*, that "when a court defines an insurer's contractual obligations but does 'not order it to undertake the defense' or 'do anything,' the court's order 'cannot be enforced pendente lite by contempt and [does] not constitute an injunction.'" The Court held that *American Motorists* well described the order at issue because the district court's order merely announced that Zenith had a duty to defend, but did not "direct Zenith to begin defending or to advance any costs … it was not enforceable by contempt and [could not] be appealed under § 1292(a)(1)." Thus, the Court dismissed the appeal.

Conclusion

Zenith demonstrates the importance for counsel to consider, not only the finality of an order, but the implications of the contents of an order, when seeking to preserve appellate review.

Hon. Joseph A. Greenaway, Jr., retires from the bench after decades of distinguished service

Jonathan R. Bruno
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On June 15, 2023, Judge Joseph A. Greenaway, Jr., retired from the bench after 27 years of distinguished federal judicial service. The last 13 of those years were devoted to the Third Circuit. His legacy of excellence, humility, and collegiality will continue to enrich the Court for many years to come.

Distilling Judge Greenaway's contributions is no easy task. "The beauty and challenge of accomplishment," the Judge once told an assembly of law graduates, "is that it requires reflection." One obvious point for reflection is Judge Greenaway's jurisprudence. The author of approximately 100 precedential opinions, he significantly developed the law of the Circuit in a dizzying array of subject areas—copyright, immigration, civil rights, arbitration, education law, criminal law and sentencing, constitutional law, and on and on. His opinions are models of clarity. They also testify to Judge Greenaway's conviction that every litigant, large or small, deserves equal justice under law. And perhaps unsurprisingly, given his prior service as a District Judge, Judge Greenaway's opinions reflect a keen appreciation of the need for appellate decisions to provide practical, workable guidance to the bench, the bar, and the wider public.

Apart from his jurisprudence, Judge Greenaway leaves a legacy of diligence and *esprit de corps*. He has remarked more than once that the best part of judicial service is the "constant and continuous learning." When I asked him what makes the Third Circuit special, he didn't miss a beat: "Oh my, it's very simple. Our Circuit is special because we have a history of collegiality and respect. We have mastered the notion of working well with people whether you agree or disagree on a particular issue. Some of my closest friends on the Court were people that I disagreed with regularly. And that was okay, because I respected their perspectives, and they respected mine, and we all knew that our ultimate goal was to do justice in the best way that we could."

Judge Greenaway's transition to private practice "has been everything I could have hoped for," he says. Now a partner with the law firm of Arnold and Porter in New York, he has become deeply engaged in appellate practice. In response to my question about how his judicial service informs his advocacy, Judge Greenaway emphasized the importance of briefs that get to the point and that persuade by being helpful. "All you can do as an advocate," he says, "is to be beneficial to the decision-making process."

Having lived that process as a Circuit Judge through many years of public service, Judge Greenaway now approaches it as a jurist-turned-litigator. The Association congratulates him on his retirement from the bench and wishes him the very best in his next chapter.

3CBA hosts "Meet the New Third Circuit Judges" event

On September 29, 2023, the Third Circuit Bar Association hosted a two-hour continuing legal education program at the United States Courthouse in Philadelphia. The program included introductions of the judges and discussions of their new roles on the Court and their suggested best practices for lawyers appearing before the Court. The Third Circuit Bar Association also hosted a reception following the program.

From left to right: David R. Fine, Nilam A. Sanghvi, Hon. Arianna J. Freeman, Hon. Stephanos Bibas, Karl S. Myers, and Lisa J. Rodriguez

3CBA hosts reception for Harrisburg sitting

On October 19 and 20, 2023, the Third Circuit held oral arguments at the Sylvia H. Rambo United States Courthouse in Harrisburg. The 3CBA hosted a reception for the event.

From left to right: Chief Judge of the U.S. Court of Appeals for the Third Circuit Michael A. Chagares and President of the Third Circuit Bar Association David R. Fine

Chief Judge of the U.S. District Court for the Middle District of Pennsylvania Matthew W. Brann

President's note

David R. Fine
K&L Gates LLP, Harrisburg, PA

We lawyers spend our careers learning. We start, of course, with formal education, capped with law school. Our licensing jurisdictions require that we meet certain continuing-legal-education requirements. Those forms of training are critical to our ability to represent clients ably.

But there are all sorts of informal educational opportunities that we're not required to participate in but should.

One of the informal ways I try to learn and improve my skills is simply by watching appellate oral arguments in which I have no role other than as an observer. It used to be that you had to be in the city where the court was sitting and head over to the courthouse. Now, though, a significant number of courts allow folks to tune into their arguments online. The Third Circuit is one of those courts.

The benefits of watching (or listening to) oral arguments are, perhaps, obvious. You'll see how the advocates structure their arguments and deal with difficult issues and questions from the judges. You'll see what works and what doesn't. You'll see how the judges react to counsels' advocacy.

I recognize that watching or listening to arguments takes time, and our time as professionals (and in our other roles in life) is limited. But I spend maybe an hour or two a month watching or listening to arguments from various courts, and I think it's time well spent.

If you want to hear the Third Circuit's arguments, there's a link to the court's YouTube page on the court's homepage (https://www.ca3.uscourts.gov/).

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The Third Circuit Bar Association continues to work to represent its members and to provide opportunities for them. One of my goals as president of the 3CBA is for the association to sponsor as many events as possible and otherwise to provide value to its members. As I hope you will agree, our annual membership dues are low as compared to other bar associations and, with the discounts we provide to members on event-registration fees, a member need only attend a couple of our programs each year to recoup those dues. (On that front, please remember that our membership dues are annual, that most will come due in January and that you can now pay online on our website (www.thirdcircuitbar.org)).

As you'll see elsewhere in these pages, in September 2023, the association sponsored a "Meet the Judges" program at the Philadelphia courthouse and co-sponsored a celebration of the sixtieth anniversary of the landmark *Gideon* decision. In October, the 3CBA co-sponsored a reception to celebrate the Third Circuit's first-ever sitting in Harrisburg.

I hope you're seeing benefit from your membership and, in any event, I'm always glad to hear from our members. I'm at david.fine@klgates.com. Best wishes to you and yours for happy and healthy holidays.

Judge Hardiman moderates third annual Supreme Court Review

Renee Pietropaolo
Assistant Federal Public Defender, Managing Attorney, Appeals Unit
Western District of Pennsylvania

On August 30, 2023, the Honorable Thomas Hardiman moderated an engaging and informative program discussing the evolution of the United States Supreme Court over the last three decades. Joining Judge Hardiman were Leon F. DeJulius (Jones Day, Partner-in-Charge) and W. Thomas McGough (UPMC, Chief Legal Officer), two former law clerks to Former Chief Justice William Rehnquist. The panelists shared reminisces of their time on the Court while tracing the development of authority on affirmative action, voting rights, religion, and the rise and fall of the *Chevron* doctrine from the Burger Court, through the Rehnquist Court, to their potential fruition this Term before the Roberts Court. This must-see Supreme Court review is presented annually by the Allegheny County Bar Association Federal Court Section and held at the Joseph F. Weis, Jr. U.S. Courthouse in Pittsburgh, Pennsylvania.

3CBA membership note

The Third Circuit Bar Association is committed to promoting excellence in federal appellate practice by attracting members from every corner of the Circuit, every type of background, and every level of experience. Membership is open to attorneys in good standing of the Court of Appeals or any District Court within the Circuit, as well as the Justice of the Supreme Court of the United States assigned to the Court of Appeals and all federal Judges, Magistrate Judges, law clerks, and judicial staff within the Circuit. We hope that you will join us and become an active member of our Association.

Membership is a bargain at just $60 and only $30 for government and public interest lawyers, lawyers admitted to the bar for less than five years, and academics. (Judges, law clerks, court staff, law students, and attorneys admitted to the bar 50 years or more are exempt from dues.) This modest investment will yield significant dividends. If you are interested in improving the quality of your practice and practice before the Third Circuit generally, if you want to understand and provide input on the Court's rules of practice and procedure, if you are looking for CLE credits, or if you would like to network with other appellate practitioners, judges, and staff and enhance bench/bar relations, this is the organization for you.

To continue and expand on the good we have already accomplished, we need involved members. You can download our membership form. Please join or renew your membership in the 3CBA and get involved! Join one or more of our Committees. Suggest new program or article ideas or other initiatives. And recruit others to join you in supporting our mission. Reach out to any of our officers or other Board members with questions.

Bar Association for the Third Federal Circuit

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