

## Project LITIGATE Aims to Give Young Attorneys Needed Experience

The PBA House of Delegates recently adopted a resolution supporting a new statewide initiative called Project LITIGATE, designed to address a growing problem in the legal community: the increasing difficulty for young, aspiring trial attorneys to gain litigation experience.

If anyone understands the importance of trial experience, it is Pittsburgh trial attorney John Gismondi, who had a virtually unprecedented “baptism by fire” in the courtroom.

“I began private practice on a Monday,” said Gismondi, partner, Gismondi & Associates, Pittsburgh. “The following Monday, I picked my first jury, and I was in court trying a four-day jury trial case against U.S. Steel by myself. In the next 12 to 14 months, I tried eight cases by myself to a jury. That could not happen today. It was a springboard for much of my career. You learn more in the first trial than anything you ever do,

and the earlier in your career you can get to that first trial, the better.”

Gismondi’s early exposure to courtroom work is exceedingly rare, but Pottsville attorney Eric M. Prock realizes the benefits of early exposure to litigation even if it is not actual performance in the courtroom.

Prock, junior partner at Fanelli Evans & Patel PC, Pottsville, and PBA Zone 2 governor, recalls how vitally important the early days in his career turned out to be.

“I had been at the firm a week or two,” Prock said. “I was working on a case with a senior partner. He asked me what I thought about a certain case, about a certain strategy, and I thought, ‘I’ve been here two weeks. What do I know?’ I understood what they were doing: They were teaching me how you have to think about the litigation process, about how you can win each case. That was invaluable to me.”



John P. Gismondi



Eric M. Prock



Justice Christine L. Donohue

### Project LITIGATE

Project LITIGATE, which stands for Lawyers Initiative To Improve next Gen Attorneys’ Trial Experience, is a new statewide initiative designed to help aspiring trial attorneys get earlier exposure to, and involvement in, the litigation process.

Here is how the project came about.

Late last year, Pennsylvania Supreme Court Justice Christine L. Donohue empaneled an ad hoc committee of trial judges to inquire into the declining opportunities for attorneys to develop trial skills and how to address and better prepare the next generation of lawyers to continue the high traditions of the legal profession. To that end, Justice Donohue asked Gismondi to assemble and chair an ad-hoc committee of lawyers that could develop a program/initiative to raise awareness of the problem and encourage firms to develop practices designed to increase young associates’ litigation experience. Gismondi has extensive trial experience and has been teaching a trial skills course at the University of Pittsburgh School of Law for

the past 35 years.

After accepting the role, Gismondi contacted the presidents of a wide spectrum of bar groups in Pennsylvania, including the PBA, Pennsylvania Defense Institute, Pennsylvania Association of Justice and several others, asking them to appoint two individuals to serve on the committee. Each of those presidents expressed immediate and unqualified support for the mission of the committee. 2022-23 PBA President Jay Silberblatt appointed Lydia H. Caparosa, MacDonald Illig Jones & Britton LLP and PBA Young Lawyers Division Zone 7 co-chair practicing in Erie County, and Prock, to provide input on behalf of the PBA.

The ad hoc committee first came up with the catchy acronym, Project LITIGATE, that would be readily identifiable by lawyers and law firms.

The committee worked on coming up with a group of aspirational goals in the form of a “pledge” which law firms would try to incorporate in order to accelerate the development of young trial lawyers. In general, the

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LITIGATE Pledge involves senior attorneys and law firms making a commitment to adopt policies that will allow young attorneys to first observe and then gradually, over time, perform litigation tasks such as witness preparation, taking depositions, oral arguments and, ultimately, examination of witnesses at trial.

Gismondi credits Justice Donohue's interest for invigorating this initiative. "This has become a pet project for Justice Donohue because she grew up in the profession first as a trial attorney," he said. "So, for her, this is a real passion project."

Prior to taking the bench in 2008, Justice Donohue was a trial lawyer for 28 years.

"My heart is and always will be with the trial bar, since that was my practice before moving to the bench," Justice Donohue said. "I think it's critically important to ensure that the right to trial by jury in civil cases perpetuates. Project LITIGATE is really a project that was started by lawyers and is composed solely of lawyers who came together to address the issue set forth in the pledge itself. At my request, John Gismondi was the moving force in getting a committee started."

"I started out with a wonderful, small, personal injury law firm, representing plaintiffs," she said. "About eight years into my career, I joined a large law firm and started doing commercial litigation, and so in that format I was representing business entities in their disputes in courtrooms."

## Met With Group

Before asking Gismondi to assemble the statewide lawyer committee, Justice Donohue met last summer with a group of about 20 trial judges from the Pennsylvania Conference of State Trial Judges, representing 15 different counties.

"It's just an active conference, including trial judges and judges in general from across the state," Justice Donohue said. The mission: determine if the judges "saw the same problem that I saw when I was a practicing lawyer, and which has continued and

only gotten worse. It is very difficult for younger, less-experienced lawyers to get on their feet in a courtroom to present their clients' interests, and there are lots of reasons for that, including the fact that there are many fewer cases that go to trial than was the reality 30 years ago."

Donohue said the judges' group was eager to advance the cause of getting younger lawyers involved in trying cases.

For most firms, young lawyers get little litigation experience and instead spend their time doing more mundane things such as research, discovery and document review.

"But those people who are really the worker bees very seldom have a chance to get out and present their client's case," she said. "Trial judges are seeing much the same thing. Many times, they see the same attorneys appearing in their courtrooms, trying cases and arguing motions. It became very clear that this was not merely a perception on my part but certainly a fact of what was happening with the trial bar in Pennsylvania."

After getting feedback from the judges, Justice Donohue came to the conclusion that the effort to help young lawyers gain trial experience had to start with the law firms who control the work assignments for those would-be litigators. Hence, her request to Gismondi to assemble the group that eventually developed Project LITIGATE.

## Approved Report

On May 5, during the PBA Annual Meeting in Philadelphia, the PBA House of Delegates overwhelmingly approved the Report and Recommendation of the Young Lawyers Division to endorse Project LITIGATE.

The Report and Recommendation was prompted by studies and anecdotal reports showing a decline in the rate of civil cases going to trial in both state and federal courts, a decline directly impacting younger attorneys' practical skills and abilities. This decline was aggravated by the global pandemic, which further limited junior attorneys' opportunities to represent clients through oral advocacy at all stages of civil proceedings.

"I'm very excited to promote this new PBA policy which directly and positively impacts so many of our younger lawyers," said Michael J. McDonald, PBA president. "Encouraging judges, law firms and senior lawyers to meaningfully support active participation of young lawyers' oral advocacy in pretrial and trial motions, arguments and presentation of witnesses is a win for clients, for the profession and for the justice system."

McDonald said he has reached out to Jennifer Galloway, chair of the PBA Young Lawyers Division, and they have begun discussing ways to advance Project LITIGATE. McDonald said he plans to reach out to committees and sections of the PBA to promote Project LITIGATE through their members' advocacy within their own counties and areas of practice. Reaching out to affiliate groups, such as the plaintiffs' and defense bar, as well as the Pennsylvania Conference of State Trial Judges, will also be part of the plan going forward.

## Fewer Jury Verdicts

The statistics reveal just how few

cases are going to jury verdicts.

Justice Donohue said, "Since 1996, when the Supreme Court began keeping statistics, we've seen a dramatic decrease in the number of cases going to verdict each year, from about 2,100 to about 700 in 2019, the year before the pandemic."

"It's a startling number," she said. "This is an erosion that's been taking place over time: the opportunity for attorneys to appear before juries. From my perspective, I think we need to take the initiative to do something to create a different track for the future."

The dearth of cases and experience for young attorneys has preceded the pandemic. During the pandemic, however, fewer cases were being tried and fewer were being filed.

"Probably by the end of this year we'll have some notion if that number has gotten back to 2019 numbers," Justice Donohue said. "We're on track to get back to somewhere around the 2019 numbers. However, it wouldn't be surprising, given the trend over the past few decades, that we're going to

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## Court Summaries

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expenses paid to funeral home — en banc court — order affirming grant of claim petition and denying petition for penalties and petition to review compensation benefits affirmed

*Steets v. Celebration Fireworks*, No. 512 C.D. 2022 (May 8, 2023) — Specific loss benefits are payable following death resulting from work injury, but only reasonable funeral expenses up to \$7,000 to be paid to funeral home.

## ZONING AND LAND USE

### Supreme Court

STANDING — request for variances

to build hotel on subject property — owner of competing hotel — desire to maintain market share — not recognized as enforceable interest — Section 908(3) — Municipalities Planning Code — 53 P.S. 10908(3) — no standing — order affirmed

*South Bethlehem Associates v. Zoning Hearing Board of Bethlehem Township*, No. 41 MAP 2022 (May 16, 2023) — Party that appears before zoning board may only appeal adverse decision to court if it has standing under traditional understanding of the concept; party lacks standing to appeal when only interest affected by zoning board ruling is desire to suppress competition in open market. *12*



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see a decrease, and I don't think it's going to be a result of the pandemic. I think it's just a result of all the factors that are part and parcel of our civil justice system now, that take cases out of the civil court system."

"This is not unique to Pennsylvania," Gismondi said. "This is going on all over the country and has been for a number of years. The pandemic is certainly not the cause of it, but the proliferation of remote work certainly hasn't helped."

With work-from-home and similar strategies, Gismondi said, "young associates don't get the spontaneous participation that can occur when you're on the premises at the office."

"There are fewer jury-eligible cases that are actually being filed than, say, in 1975," Justice Donohue said. "Also, there were options at that point in time where young lawyers

could get into small-claims court, where the jurisdictional limits were \$5,000 or something of that nature, and lawyers 'cut their teeth' on small cases before judges, but not necessarily juries. As time developed, a lot of things happened that changed the number of actual lawsuits that were available, and the cost of taking a case to trial increased."

Justice Donohue pointed out some developments that took cases out of court.

"Years ago, for example, the No Fault Act impacting the automobile insurance industry was enacted, which took thousands of cases out of the system, because of the legislative determination that many people should just be paid, regardless of fault, for lost wages and medical expenses," she said. "That took a whole bunch of cases out of the court system, and therefore fewer opportunities for young lawyers to get into courtrooms."

The prevalence of arbitration became yet another factor explaining why fewer cases are going to court. For example, Justice Donohue said many nursing home cases are controlled by arbitration agreements, where individuals agree that if a problem develops, they'll go to arbitration as opposed to filing a complaint in court.

"None of these things are necessarily negative, in terms of society as a whole," she said. "But as a result of all of these developments, we find ourselves in a situation that lawyers are not having an opportunity to try the smaller cases that used to be out there that would get them into a courtroom, which would get them before a jury, so that their trial skills could be developed."

## Developed Pledge

Gismondi, with the help of the ad hoc committee, developed the pledge recently approved by the PBA.

"The overriding goal of Project LITIGATE is to raise awareness of the problem," Gismondi said. "That's the most important thing. The committee did not want to mandate that firms take action. Instead, we simply want their commitment to take

voluntary steps to get young lawyers more involved early on in litigation."

The pledge is merely a promise to help enact change. It has no legal "teeth."

"You can't mandate how people run their offices," Gismondi said. "But you can encourage them, and a 'pledge' suggests a certain level of commitment. Therefore, couching these recommendations in the form of a pledge fit with our overall approach to encourage but not mandate a new effort to train young lawyers."

Gismondi said the first and most important step was raising awareness.

"If people are aware of the issue, and it's sort of top of mind, then it's more likely they are going to do the sorts of voluntary things that the pledge encourages them to do: Get a young associate involved in deposition preparation, take him or her to an oral argument, let him or her do part of the oral argument, take them to the trial, let them question a witness at trial, and gradually over time, let them do more and more," he said. "You have to be aware and thinking about exposing younger lawyers, otherwise it will never happen."

## Give Them Work

Most ad hoc committee members believe the best way to address the problem is to gradually expose young lawyers to litigation tasks leading up to courtroom appearances.

"Long before the LITIGATE pledge, it's always been very important to me to have young lawyers in the office getting hands-on experience to do things, because I knew from my standpoint how beneficial it is," Gismondi said.

One way is to have an associate attorney observe a couple of depositions before they conduct a deposition on their own, Prock said. But when they were ready to go out and do the deposition, "have a more experienced attorney from the law firm accompany the young attorney and have an agreement with the counsel that that more-experienced attorney would have the opportunity to come in at the end of the litigation to essentially cover anything that the younger attorney would

miss," he said. "That would sort of provide the safety net. They have a backup from their more-experienced attorney, sitting beside them."

Prock admitted that's what was done in his case.

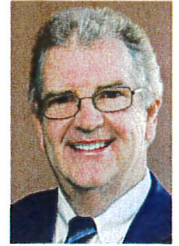
"That wasn't an original idea that I had," he said. "That was the way I learned. But that is not how it's done all the time. There is no risk to the client."

Prock's own law firm works in "pods," or groups, with two attorneys working on most of their more complex cases. There is more than one attorney handling most of the firm's complex cases. The younger attorney will also work his or her cases with a more experienced attorney. The more experienced attorney will sit down with the younger attorney, explain the litigation process, give the younger attorney examples of discovery, "and will show the younger attorney how to answer the discovery, how to answer a motion, how to respond to a brief," Prock said. "We will have the younger attorney sit down and shadow us in depositions."

The firm involves the younger attorneys in the litigation process from the very beginning.

"We will involve the younger attorney in all discussions related to the case," he said. "We will ask the younger attorney's opinion on things."

"We have an open-door policy, so that younger attorneys can feel free to come in and ask us any question," Prock said. "There's no dumb question. Part of the onus is on the experienced attorneys. They must be willing to dedicate their time, and they have to realize that this younger attorney is not going to be as knowledgeable as they are, and so they may need more guidance. The experienced attorneys have to buy into that and be willing to sacrifice



Michael J. McDonald

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their time to train the younger attorneys, and the younger attorneys need to realize that the criticisms are constructive and are designed to make them better."

"The most important cog in this wheel is law firms and lawyers, to get lawyers from their firms and their younger associates involved in the courtroom practice," Justice Donohue said. "Clients have their choice of an attorney. That's part

of the attorney-client relationship. Lawyers and law firms need to introduce younger lawyers to clients, get a comfort level between clients and younger lawyers and take steps at that level to assure that their younger attorneys are able to step up in court when the opportunity presents itself.

"I think once it's up and running, it's going to be for the long term," she said. "Raising awareness of the issue through Project LITIGATE is the first goal. Hopefully, by the

end of this year, the pledge will be adopted by enough law firms and lawyers that we will see a difference in our courtrooms."

The issue of limited trial experience not only impacts young lawyers, but the public in general.

"The legal community needs to be in the position to deliver the legal service that the public needs and expects," Gismondi said.

"This problem is one that impacts more than the career path of individual attorneys; it also

impacts the public.

"Nothing accelerates the learning curve for trial skill more than actually doing it yourself," Gismondi said. "That's really the rationale behind Project LITIGATE. Let the young associates first see a litigation task, then let them do a little, then let them do more. That's what the pledge is all about."

*Share your reactions or comments about this feature with Andy Andrews, editor, at [Andy.Andrews@pabar.org](mailto:Andy.Andrews@pabar.org).*



## 5 Questions for Lydia H. Caparosa, MacDonald, Illig, Jones & Britton LLP

*Editor's note: Lydia H. Caparosa is a litigation associate at Erie-based MacDonald, Illig, Jones & Britton LLP and PBA Young Lawyers Division Zone 7 co-chair. She answers five questions about her involvement in the Project LITIGATE ad hoc committee task force.*

**There has been much discussion among lawyers and judges about a serious problem facing the trial bar: the difficulty young lawyers have in getting trial and litigation experience. How will Project LITIGATE fix that?**

The ad hoc committee hopes the Project LITIGATE Pledge will encourage the courts and firms to examine their practices for training young lawyers and recognize that changes need to be made. While the pledge is not binding and is strictly voluntary, we hope that firms will take steps to implement programs to develop and support trial and litigation skills for young lawyers. We also hope that the courts will take a more active role in encouraging participation of young lawyers at hearings and trials. Many courts and firms have already taken positive steps to support training and inclusion of young lawyers. Our hope is that the pledge, supported by the PBA and Pennsylvania Supreme Court Justice Christine L. Donohue, will encourage other judges and law firms across the commonwealth to invest in the future of the bar by investing in the training of young litigators.

**What is your role in the project?**

I was appointed to the ad hoc committee task force by PBA Immediate Past President Jay N. Silberblatt as one of two young lawyer representatives. The ad hoc committee task force had several meetings, and during those meetings I relayed current experiences and challenges facing young lawyers across the commonwealth and thoughts about how the project could help expand opportunities for training of young lawyers in trial and litigation matters.

**While some law firms, and even some judges, have adopted practices designed to increase young attorneys' exposure to, and actual performance of, various litigation tasks, there is a need for a more comprehensive statewide effort to raise awareness about this issue and encourage law firms to adopt in-house customs and practices that will accelerate the development of our future trial attorneys. What similar strategies/practices has your firm adopted or plan to adopt?**

I am tremendously fortunate in that my firm, MacDonald, Illig, Jones &

Britton, has a very robust practice of involving young lawyers in litigation matters. My firm recognizes the value in training young lawyers in trial and litigation skills as beneficial to the firm's continued success and for the development of well-rounded attorneys. Our litigation department chair is a fierce advocate for our young litigators and makes sure that we are receiving appropriate training and exposure to trial practices. While civil matters do not regularly go to trial these days, my firm is not shy about having young lawyers draft, present and argue motions, prepare and respond to discovery, take depositions and sit second seat when matters do go to trial.



Lydia H. Caparosa

**How will the ad hoc committee gauge the success or shortcomings of the project?**

We have not formally discussed how we will be monitoring success or shortcomings of the project, but it is the hope that, since the PBA House of Delegates endorses the pledge, that the PBA and county bar associations will help to spread the word about the pledge to firms across the commonwealth. It is our hope that firms will support the pledge and take steps to address training shortcomings for young lawyers pursuing litigation. It is also our hope that the firms that sign the pledge will advise the PBA and/or Project LITIGATE that they have signed the pledge, which will hopefully give us a sense of involvement across the commonwealth.

**When do you expect the project to go full steam ahead?**

I expect that the project will go full steam ahead over the coming months. The PBA Young Lawyers Division (YLD) strongly favors Project LITIGATE, and the PBA House of Delegates also voted in favor of supporting Project LITIGATE at its meeting on May 5. As a member of the Project LITIGATE ad hoc committee and a YLD Council member, I will be reaching out to local bar associations and encouraging firms to sign the pledge. 