

Mark J. Kozlowski

Shareholder

MJKozlowski@mdwccg.com

Scranton – 570.496.4664



As a member of the Professional Liability Department, Mark focuses his practice on civil rights, constitutional law and municipal liability.

Mark has represented a number of governmental agencies and municipalities over the years in matters ranging from police excessive force and wrongful arrest cases to premises liability lawsuits. He represents public entities and officials in cases arising under state law, federal civil rights statutes and the Pennsylvania Political Subdivision Tort Claims Act. He has also handled the defense of Homeowner Associations and officers in matters involving challenges to voting procedures, changes to short-term rental policies, employment discrimination and retaliation.

In addition, Mark publishes the Marshall Dennehey Municipal Law newsletter. Mark has experience in the areas of zoning appeals, administrative proceedings, and trial court and appellate practice. He has handled civil rights litigation at the trial court and appellate levels, including experience practicing before the Supreme Court of the United States on multiple occasions. In 2021, Mark was elected Greenfield Township (Lackawanna County) Judge of Election. In 2023, Mark became a certified mediator on the mediator panel for the United States District Court for the Middle District of Pennsylvania Mediation Program.

Mark received his *juris doctor* from Michigan State University College of Law in 2010. While in law school, he served as editor-in-chief of the *Journal of International Law* and as an associate editor of *Res Ipsa Loquitor*, the College of Law's newspaper. Mark was a member of the Student Bar Association and spoke on several panels at the National Conference of Law Reviews relating to successful management of law reviews, budget considerations and leadership. He also interned for the Lackawanna County District Attorney's Office.

Following law school, Mark served as a law clerk for the Honorable Edwin M. Kosik of the

Practices

- Public Entity & Civil Rights Litigation
- Employment Law
- School Leaders' Liability
- Miscellaneous Professional Liability
- Non-Profit D&O
- Real Estate E&O Liability

United States District Court for the Middle District of Pennsylvania. Following his clerkship, Mark began his private legal career with a general civil practice firm in Maryland.

Mark received his Bachelor of Science degree from Kutztown University of Pennsylvania in business administration and majored in marketing and business management. He also completed a minor in political science. While completing his undergraduate degree at Kutztown University, Mark served as president of the Recreational and Sports Club Council and spent four seasons as a defensive player with the lacrosse team.

Education

- Michigan State University College of Law (J.D., 2010)
- Kutztown University of Pennsylvania (B.S., 2007)

Admissions

- Pennsylvania, 2010
- U.S. District Court Middle District of Pennsylvania, 2010
- Maryland, 2011
- U.S. Court of Appeals 3rd Circuit, 2014
- Supreme Court of the United States, 2018
- U.S. District Court Eastern District of Pennsylvania, 2019

Honors & Awards

- Pennsylvania Super Lawyers Rising Star (2019-2023)

Associations & Memberships

- Lackawanna County Bar Association, Young Lawyers Division, Board of Directors, 2016-2018
- Pennsylvania Bar Association

Classes/Seminars Taught

- *Civil Rights and the 14th Amendment*, Marywood University's The Courts and Our Community Lecture Series, October 1, 2025
- *FLSA – Wage and Labor Laws*, Northeast Pennsylvania Chapter of Society for Human Resource Management, June 29, 2023
- *Recruitment and Selection*, Northeast Pennsylvania Chapter of Society for Human Resource Management, March 30, 2023
- *Employment Law Basics: The Basis of OSHA, FLSA, ADA & More*, Northeast Pennsylvania Chapter of Society for Human Resource Management, November 17, 2022
- *Performance Management & Record Retention: Avoiding Discrimination - What is Needed to Make a Hire and be Fired*, Northeast Pennsylvania Chapter of Society for Human Resource Management, August 18, 2022
- *Pay & Benefits: Overtime, Minimum Wage, Compensable Time & Legally Required Benefits*, Northeast Pennsylvania Chapter of Society for Human Resource Management, May 19, 2022

- *Recruitment & Selection: Where to Find Talent & the Do's/Dont's of Interviewing*, Northeast Pennsylvania Chapter of Society for Human Resource Management, February 17, 2022
- *Local Government Immunity in Pennsylvania*, client seminar, June 8, 2021
- *Essential Handbook Must-Haves and Updates*, National Business Institute, October 18, 2017
- *Workplace Behavior and Privacy Issues, Human Resource Law: What You Need to Know Now*, National Business Institute, December 2016
- *Hiring/Recruiting, Human Resource Law: What You Need to Know Now*, National Business Institute, December 2016
- *Employment Law: Rights, Benefits, and Emerging Issues*, Sterling Education Services, August 2, 2016
- *Employment Law: Beyond the Basics*, Sterling Education Services, August 4, 2015

Published Works

- *Legal Updates for Pennsylvania Municipal Law*, contributor and editor, September 2019-present
- "Third Circuit Reaffirms Ripeness Doctrine in Civil Rights Claim and Need to Exhaust State Remedies Before Pursuing a Fifth Amendment Takings Claim," *Defense Digest*, Vol. 23, No. 3, September 2017
- "The Fire Protection Engineer Expert," *Fire Protection Contractor*, April 2012

CERTIFICATIONS

- United States District Court Middle District of Pennsylvania, Certified Mediator

Results

Summary Judgment Affirmed by Pennsylvania Commonwealth Court in Police Pursuit Case

We were affirmed the granting of summary judgment in favor of our client in a high-speed police pursuit case. The plaintiff was severely injured after a brief police pursuit involving the driver, who died as a result of the pursuit. The plaintiff then sued the local municipality for negligence, arguing that the officers caused the wreck by turning a traffic stop into a high-speed chase. Following discovery, the court granted summary judgment in favor of the Township, finding that the so-called vehicle exception to municipal liability found in the Pennsylvania Political Subdivision Tort Claims Act did not apply. The trial court reasoned that pursuant to the Pennsylvania Supreme Court's holding in *Sellers v. The Township of Abington*, 106 A. 3d 679 (Pa. 2014), the defendants did not owe the plaintiff a duty of care because his existence or connection to the driver were unknown to the officers at the time of the pursuit. The Commonwealth Court issued an opinion affirming the trial court and held that the exception to the exception for vehicle liability involving high-speed police pursuits did not apply because the plaintiff was unable to establish the threshold requirement that the defendants owed him a duty of care.

Defense Obtains Dismissal of a Complex Federal Civil Rights Action

We obtained the dismissal of a federal civil rights action alleging that a municipality retaliated against a real estate developer after the sale of a large tract of local property.

Successful Defense of Employer Alleged to Have Violated the Pennsylvania Medical Marijuana Act

The plaintiff sought employment as a fork lift operator in a manufacturing facility. He was extended a conditional offer of employment, contingent on passing a pre-employment drug test. His drug test showed a positive indication for the presence of marijuana, and his offer was rescinded. The plaintiff claimed that he notified the facility that he held a valid Medical Marijuana Identification Card, yet our client still rescinded its offer in violation of the Pennsylvania Medical Marijuana Act. The Act prohibits an employer from refusing to hire a person solely on the basis of that person's status as a certified medical marijuana user. In response to the complaint, we filed preliminary objections arguing that the employment offer was expressly contingent upon passing a drug test. We also argued that fork lift operation is, by its very nature, an inherently dangerous job that, if done carelessly or under the influence of a narcotic, could result in injury or death to the plaintiff or others on the premises. The court held that the Medical Marijuana Act's provisions do not require an employer to hire a medical marijuana user as a forklift operator and taking on a substantial risk of liability for injury to persons. Additionally, the court found that a medical marijuana user does not have a right to be hired by a prospective employer who, prior to such hiring, determines that the position for which the prospective employee would be hired would require his or her performance of tasks an employer deems life-threatening to the employee or any of its employees. The demurer was sustained, and the complaint was dismissed.

Defense prevails in case involving a high-speed police pursuit.

During early morning hours, a vehicle was observed by police officers driving straight through a turning lane. The officers attempted a traffic stop, but the driver took off and led police onto an interstate highway. A high-speed pursuit ensued, reaching speeds in excess of 115 mph. The plaintiff was a passenger in the vehicle. Due to the high speed and an upcoming construction zone, officers broke off the chase. The driver attempted to exit the interstate via an off ramp, but turned too fast and crashed. Although the driver died on impact, the plaintiff-passenger was thrown from the rear of the vehicle and wedged under the dashboard. The plaintiff sued several municipalities under a negligence theory. Following discovery, Mark filed motion for summary judgment on behalf of our client, arguing that the plaintiff's claim was barred and the township was immune from suit pursuant to the Pennsylvania Political Subdivision Tort Claims Act. Following oral argument, the court granted our motion.

Defense verdict for PA Borough and Police Chief following a six-day jury trial.

The plaintiff, a part-time police officer, alleged that she told her Police Chief that she believed the hiring/promotions of three male police officers to full-time positions were illegal. After that meeting, the plaintiff claimed she was not assigned to higher-paying assignments like the male police officers in the department. She sued the borough and the police chief for First Amendment retaliation under Section 1983, and gender-based discrimination and retaliation pursuant to Title VII of the Civil Rights Act, and the

Pennsylvania Human Relations Act. Following a six-day trial and five hours of deliberation, the jury returned a complete defense verdict on all counts against both defendants.

School district immune under the PA Political Subdivision Tort Claims Act.

We obtained summary judgment in Carbon County, Pennsylvania in a negligence action brought against a local school district. The plaintiff, a former high school athlete, was working out in the District's weight lifting facility when a cable snapped on a leg curl machine, striking his head and causing significant injury. The plaintiff sued the district, alleging negligence in the operation, inspection, and maintenance of the gym and, more specifically, the leg curl machine. Following discovery, the district moved for summary judgment, arguing that the leg curl machine at issue was personalty and not part of the District's real property and, accordingly, the Pennsylvania Political Subdivision Tort Claims Act (PSTCA) prevented recovery. The court agreed and concluded the District was immune under the PSTCA since all evidence showed that the leg curl machine was not a fixture of the building and, therefore, the "real property" exception to local governmental immunity did not apply.

Successful defense of civil rights appeal.

We successfully defended a civil rights appeal before the United States Court of Appeals for the Third Circuit. The plaintiff filed a federal civil rights complaint against a police sergeant and a local municipality following his arrest and release. The plaintiff was charged with the attempted murder of his wife, who later recanted her statement to police. After the plaintiff was released from custody, he filed suit, claiming that police failed to conduct an adequate criminal investigation into the charges against him. At the district court, it was found that probable cause existed based on information known to officers at the time of the plaintiff's arrest. Therefore, our defense motion for summary judgment was granted. The plaintiff appealed to the United States Court of Appeals for the Third Circuit, claiming that the district court failed to weigh the evidence in the light most favorable to him, and ignored relevant evidence. The Court of Appeals affirmed the district court's decision finding probable cause.

Dismissal of lawsuit against a municipal client.

The plaintiffs contracted with a builder to construct a 5,000 sq. ft. home. In accordance with the Uniform Construction Code, the local township contracted with a privately-owned company to serve as a code enforcement and permit officer. The company issued a building permit, inspected the home at several points during construction, and eventually issued a certificate of occupancy. However, the plaintiffs claimed that the home had significant structural and aesthetic defects, and the code enforcement officer failed to conduct proper inspections during the construction process. The plaintiffs sued their builder, the code enforcement officer and the township. The township was alleged to have negligently hired and/or negligently supervised the code enforcement officer. Preliminary objections were filed in response, raising governmental immunity as a clear defense to the negligence claims against the township. Following oral argument, the court sustained the preliminary objections and dismissed the township from the action, finding there were no plausible claims for negligence based upon application of the

Summary judgment on behalf of a local municipality and police sergeant.

The plaintiff's wife reported to police that the plaintiff tried to kill her by firing a shotgun at her while she slept. Following a thorough investigation and witness interviews, police arrested the plaintiff and charged him with attempted murder. The next day, the wife recanted her story and told police that she was the one who fired a shotgun in the couple's home in an effort to frame her husband for attempted murder. Police immediately had the plaintiff released from prison. The wife was later charged with, and pleaded guilty to, making false statements to authorities. Thereafter, the plaintiff sued the police department and arresting officer, claiming the defendants falsely arrested and imprisoned him and maliciously prosecuted him without probable cause in violation of his 4th and 14th Amendment rights. Following discovery, a motion for summary judgment was filed on behalf of the defendants. The court found that the undisputed facts of record clearly showed the existence of probable cause at the time of arrest, and summary judgment was granted in favor of the defendants.

Successful Representation of a School District Faced with a Pennsylvania Sunshine Act Claim

The plaintiff, a suspended high school principal, claimed that the Pennsylvania Sunshine Act had been violated when the doors to the administration building had been locked at the start of the first day of her termination hearing. The court considered the issues of whether a plaintiff is denied a right under the Pennsylvania School Code when access to the hearing room by the public is barred, and whether a public hearing qualifies as "official action" within the meaning of the Sunshine Act. The court found that the public hearing required by the school code is not concurrently a "meeting" within the meaning of the Sunshine Act and subject to its provisions. Accordingly, the court granted summary judgment in favor of the school district.

Summary Judgment for Town and Its Police Officers.

We obtained summary judgment in favor of a town and several of its police officers in an excessive force and malicious prosecution case in the U.S. District Court for the Middle District of Pennsylvania. The plaintiff and his family were in Bloomsburg the night before his daughter's graduation when he got into a fist fight with a bar owner. The owner suffered significant injuries and the plaintiff fled the scene. He was spotted a short time later by one of the defendant officers, pursued and arrested. The plaintiff was charged with disorderly conduct, harassment, simple assault and aggravated assault. Following the criminal trial, the plaintiff was found not guilty. He then sued our clients—the town and several officers—for excessive force and malicious prosecution. The plaintiff's wife also sued, alleging loss of consortium and emotional distress. The wife's claims were dismissed via a motion to dismiss. Following the close of discovery, motions for summary judgment were filed on behalf of our clients. The court granted our motions, finding the existence of probable cause as a defense to claims for malicious prosecution and wrongful arrest. The court also found that the arresting officer acted reasonably during the pursuit and detention of the plaintiff.

