

PGCBA NewsJournal

Newsletter of the Prince George's County Bar Association, Inc.

December 2012

PRESIDENT'S MESSAGE



A DAY IN THE LIFE OF THE BAR PRESIDENT

With 2012 winding down and the holidays and their parties in full swing, I wanted to answer probably the most burning question that you, as a member of the Prince George's County Bar Association, have: what exactly do you do as the Bar President? For some of the readers you may already know the answer to that question. I sit around and mention my friends in articles, talk about my favorite TV shows (side note: I hear all of this buzz over Homeland. Should I be watching this show? Let's discuss this the next time you see me in the courthouse) and occasionally, I get some of my own legal work done. This

may come as a surprise to you since you probably assume that being President of the Bar Association comes with a lot of perks such as front row parking at the courthouse, continuances anytime you want them and of course my own espresso machine. (For the record, the Bar President does not get any of these things!) However, one of the biggest things that you probably don't know is that as Bar President I am reminded every day of the great work that the members of the Prince George's County Bar Association do, not only in the courtroom but in the community.

Before I get into examples of some of the great work I've seen over the past few months, as is tradition I would like to thank those who helped bring to life several Bar Association programs since we last spoke. First, once again thank you to Judge Erik Nyce who put together another wonderful program on District Court criminal trials at our **Award Winning Law Practice 101** meeting this month. I say award winning because at the annual MSBA Bar Leadership retreat held at the end of October, the Prince George's County Bar Association was honored with an award by the MSBA for the Best Service to the Bar Award for our very own Law Practice 101 program. Thanks to all who attended the last meeting and a special thanks to all those who participated in the trial. Also, thank you to Judge Sherrie L. Krauser and the new Trust Attorney Sharon Christmas De-Berry for putting on the latest Brown Bag lunch program on Guardianships. We had a great turn out of experienced trust attorneys and new attorneys who just passed the bar and are looking to add this skill set to their practice. Please don't forget that on **December 11, 2012** we will be holding our annual Prince George's County Bar Association Holiday Party at **6:00 pm at the Newton White Mansion**. The party is \$50.00 for members (up until November 30, 2012) and \$60.00 for non-member. The party will feature some great items up for bid as a part of our silent auction and a raffle for a chance to win an Ipad III courtesy of Minnesota Lawyers Mutual Insurance Company.

One last announcement, Mock Trial Competition season is upon us! If you are unfamiliar with the Prince George's County Bar Association's Mock Trial Competition you are missing out. The Bar Association seeks volunteer Mock Trial team coaches and judges to assist high school students with this annual competition. I can speak from experience, having been the volunteer Mock Trial team coach for Eleanor Roosevelt High School in Greenbelt, Maryland, that this may be one of the best projects you ever volunteer for! The kids are wonderful and will constantly amaze you as to how bright and hardworking they are. The competition is fierce! Just ask Tiffany Harvey whose team a couple years



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PGCBA NewsJournal

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William Renahan..... 301-351-7531

Gerald C. Baker 301-577-4600

ago handed Roosevelt a tragic loss in the playoffs. Even to this day I have a hard time talking to her without wanting to rehash where the judge went wrong in awarding her team the victory. If you are interested, please see myself or Judge Krauser and we will get you assigned to a team or set up as a volunteer judge right away. The competitions start in early February and coaching begins in early December.

I mentioned at the beginning of this article that as Bar President I am fortunate enough to witness firsthand the kindness and great work of the members of our organization. I first began to truly see this after the October 2, 2012 General Membership meeting where we honored outgoing Trust Attorney Cathy Bouchard. After the meeting was over, Cathy had a situation that we have all faced sometime in our lives. It was late at night and she had a flat tire. No sooner was it discovered that she had a flat tire, than four attorneys came running to her vehicle to try and rescue her from her situation. I use the word try because after attempting, along with Judge Leo Green, to change the tire, I learned something else. How many

lawyers does it take to change a tire? The answer: none. It takes a law clerk! Thankfully for the Judge's and mine's pride as well as Cathy's safety, Michael Adams, Judge Green's law clerk was there and was a true hero and got Cathy on her way. It is watching these types of actions that remind me that the Bar Association is going to be in good hands for many years to come.

My other example of the truly generous nature of the members of the Bar Association came on November 15, 2012. There were no less than three bar events that day and I was fortunate to be able to attend them all. The day was very much a reminder of the cycle of life. The morning began with a moving celebration for Adoption day. Fourteen forever families were honored and their moving stories were shared and I was reminded that as attorneys, not everything we do has to deal with trouble and tragedy but that we, as attorneys, also bring together families and can touch people's lives. This notion continued as I ended my day attending the Memorial Service where three pillars of the Prince George's County legal community were honored: Heiskell

Gray, Hon. William H. McCullough and Donald Messenger. Listening to the moving words that were spoken by their colleagues it was brought to my attention, again, that many members of our bar do more than just practice law; whether its coaching women's softball teams in the community, bringing the courthouse into the 20th century, or mentoring other attorneys, lawyers in Prince George's County are more than just the cases they work on. They are people who care about those in the legal community and those that are in the Prince George's County community as a whole. This is probably the most humbling part of my job as President of the Bar Association and to all those lawyers in the county, I want to say thank you for the work that you do every day. Oh, and also, like us on Facebook! You know you want to.

Wishing you a safe, happy, and healthy holiday season.

Thanks,
Bryon S. Bereano
President, Prince George's County
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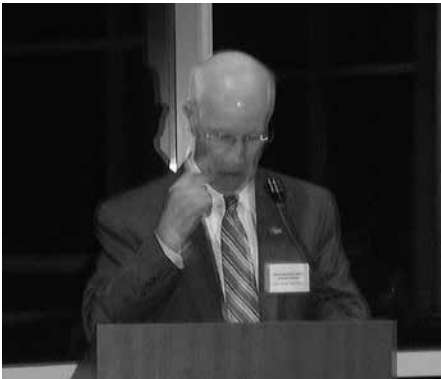
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OCTOBER 2, 2012 MEMBERSHIP MEETING



OCTOBER 2, 2012 MEMBERSHIP MEETING



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ASSOCIATION AND THE BAR ASSOCIATION
OF MONTGOMERY COUNTY

FEBRUARY 5, 2013
FEDERAL COURTHOUSE-GREENBELT
6:00 PM

GUEST SPEAKER:
CHIEF JUDGE ROBERT M. BELL

*The Employment Law Sections of the Bar Association of
Montgomery County and the
Prince George's County Bar Association present:*

**“THE DYNAMICS OF EMPLOYMENT
LITIGATION IN FEDERAL COURT:
A VIEW FROM THE BENCH AND THE BAR”**

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TORT LAW SEMINAR

OCTOBER 13, 2012



A special thank you to Robert Clark, Jr., Christopher Dunn, Giancarlo Ghiardi and Allan Steinhorn for putting together the Tort Law Seminar which was held on Saturday October 13, 2012. Mr. Clark and Mr. Ghiardi were instrumental in bringing the Tort Law Seminar back to life after a few years in retirement. It is the hope of the Bar Association that this will become a yearly event and attendance will continue to increase as members realize what is being offered.

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BROWN BAG LUNCH IN OCTOBER: EFFECTIVE CLOSING

ARGUMENTS | *by Judge Albert Northrop*

CLOSING ARGUMENT TIPS

I just finished reading Judge Morrissey's article on L&T and wondered: "Whew, Now that's a good article. How will I ever match that?" Well, here goes anyway.

The place to start is with the Pattern Jury Instructions. More specifically, look there to be sure you have all of the elements of proof you need if you are the plaintiff or the prosecutor. And if you are defending you'll look there as well to find a failure of proof by the other side. You will want to cover these elements regardless of whether you are trying the case before a jury or the bench. At the end of this article I'll return to the use of the instructions.

If you want to get someone's attention, whisper. Yes, from time to time you'll want to almost whisper. Just watch the whole room get quiet - and you'll get the attention of the jury and/or judge. But there will be times to get loud. Now there's a difference between being loud for loud's sake and being passionate. In fact sometimes raising your voice too much can hurt your argument, particularly if it's a bench trial. I've often found that the one who screams the most does so because he's hurting the most. Showing passion for your case and your client and raising your voice to show your passion, not your pain, can be very effective.



For the most part stand right in front of the jury and look each juror in the eye and do it regularly. Move about from time to time, again to keep their attention, and consider standing behind your client at

the right moment perhaps with your hand on her/his shoulders. This will show a positive nexus with your client and further convey a belief in your client and your client's case.

Try not to refer to anything more than an outline of notes. I've actually watched attorney's read their entire closing argument. It's not pretty. During the brown bag lunch I mentioned witnessing Edward Bennett Williams do a closing lasting almost two and a half hours and he did it without any notes at all. Very impressive. Gentlemen, keep your hands out of your pockets. It goes without saying that jingling change or keys is distracting.

While it may be difficult in the more complex case, try to keep it short and to the point. We've all seen TV shows where there's a closing argument that lasts all of three minutes and is a very biting and succinct, effective argument. OK, that's TV but we've also seen real life examples of an attorney who goes on and on being repetitive to the point of putting the jury to sleep and snatching defeat from the jaws of victory. One way to avoid putting them to sleep is show and tell. Be sure exhibits favorable to your argument get passed around. Use the easel and if you've made up poster board's of, for example, the instructions feel free to use them.

Now the final couple of key tips. If you have the burden of proof hold something back if you're confident the other side will touch on it. You don't want your rebuttle to just be a rehash of your earlier argument. If you can successfully save that "smoking gun" till after your opponent's closing, it is not only very effective but your opponent has no opportunity to rebut it. Regardless of which side you are on, if you can weave in a misdirection and lead your opponent astray, consider it. If you're really wanting to hit hard on "A" but your opponent thinks you're working hard on "B" you may catch him/her off guard. That moment of silence from the other side can be very effective.



Back to the pattern instructions. The Judge gives them to the jury. To that jury the judge is the authority figure in the room. Don't just say "You have been instructed . . ." Rather say "Judge Judy has instructed you that . . ." Use that vicarious authority to your advantage when you can.

I'm thinking most of this is nothing new to you. If you want to learn more, it's worth taking an afternoon to sit in a courtroom and watch one of your colleagues who is known to do it well. Seeing it in real life sure beats those TV dramas.



Respect Your Elder Laws:
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Saturday, January 26, 2013
9:00am - 1:00pm

TOPICS:

- | | |
|-----------------|--|
| 9:00 - 9:20am | Maryland Statutory Power of Attorney Update
Sally Presler McCash |
| 9:20 - 10:20am | Elder Law Pitfalls for the Estate Planning Attorney
Jessica L. Estes |
| 10:20 - 11:20am | VA Aid & Attendance - Hidden Money
Cheryl Chapman Henderson |
| 11:20 - 11:30am | Break |
| 11:30 - 12:00pm | Probate Update - Big Changes for Small Estate Administrations
Benjamin J. Woolery |
| 12:00 - 1:00pm | Maximizing Your Social Security Retirement Income
Brian W. Ritter, Jr. |

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OCTOBER 4, 2012 LAW PRACTICE 101: “NOT SO CIVIL DISCOVERY, INTERROGATORIES AND DEPOSITIONS” | *by Judge Erik Nyce*

Thank you to Judge Leo Green and Barbara Gilmore for assisting Judge Erik Nyce in the October Law Practice 101



NOVEMBER 8, 2012 LAW PRACTICE 101: “MOCK CRIMINAL/ TRAFFIC TRIAL” | *by Judge Erik Nyce*

Judge Erik Nyce pulled together another outstanding Law Practice 101. The topic of the November seminar was a Mock Criminal/Traffic Trial. Judge Lawrence Hill gave his time to be the presiding Judge and Jennifer and Robert Rowlett served as defendant and witness with Jason Ricke and Wes Adams taking on the rolls of opposing attorneys. This program is aimed at the new attorney and has been very successful in reaching out to them and providing basic information on the actual practice of law in Prince George’s County. This program has been recognized by the Maryland State Bar with the Best Service to the Bar Project Award. Everyone who has participated in Law Practice 101 should be very proud of this program and the service it has provided to new attorneys.





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Perhaps you are a new lawyer or new to the practice of family law. *The Family Law Clinic* meets the first Tuesday of every month and is

hosted by **Nakia Gray, Esq.** of *Joseph, Greenwald, & Laake, P.A.* These free monthly trainings are for attorneys who have accepted/or will accept a pro bono case from CLS. Attorneys meet at her office and discuss their particular cases. The trainings are scheduled on the second Tuesday of every month, from 6:00 pm to 8:00 pm. To register for the trainings, please email Karin Dalichow, Esq. at dalichow@clspgc.org

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This article originally appeared in Family Law News, September, 2012, a Newsletter published by the Section Counsel of the Section of Family and Juvenile Law, Maryland State Bar Association, Inc.

Ricketts, Now What?

It's the same old tune, fiddle and guitar,
Where do we take it from here?
Rhinestone suits and new shiny cars,
It's been the same way for years.
We need a change.[1]

In July of 2006, the Court of Appeals of Maryland published its opinion in *Ricketts v. Ricketts*.^[2] At issue, was whether or not a complaint for limited divorce alleging a constructive desertion could survive a motion to dismiss when neither spouse had physically departed the marital home. The facts in *Ricketts* were quite uncomplicated. Mr. Ricketts complained that his wife had ejected him from the marital bedroom and refused to engage in sexual relations. In response, Mrs. Ricketts asserted that a “desertion” requires that the parties live separate and apart and that, “in the absence of a separation, there is no ground for divorce on that ground.” The trial court agreed with Mrs. Ricketts’ argument and dismissed Mr. Ricketts’ complaint. An appeal followed.

In a unanimous twenty-two page opinion written by Chief Judge Bell, the Court held that a constructive desertion can occur when one spouse withdraws to a separate bedroom and refuses to engage in sexual relations (i.e. cohabit) without just cause even though the married couple still resides together. The court cited its prior ruling in *Scheinin v. Scheinin*^[3] that unequivocally held that, “It is beyond question that there may be a desertion although the husband and wife continue to live under the same roof.”^[4]

In *Scheinin*, the husband had moved his “secretary” into the marital home. The wife justifiably protested and insisted that she leave. After the “secretary” departed the residence, Mrs. Scheinin complained that

her husband battered and otherwise abused her. Ultimately, Mr. Scheinin told his wife that, “he did not want to have anything more to do with her.”^[5] In response, Mrs. Scheinin moved out of the marital bedroom, “ceasing to live together as husband and wife.” On these facts, “the court granted the wife, a limited divorce on the ground of constructive desertion and awarded her alimony, custody of the children and child support.”^[6]

The Court of Appeals also indicated that under a *Ricketts* fact pattern, a custody and visitation dispute could also be maintained notwithstanding the jurisdictional requirements of Section 5-203(d) (1) of the Family Law Article which provides that, “[i]f the parents live apart, a court may award custody of a minor child to either parent or joint custody to both parents.” The Court found that language to be “ambiguous” and “not to be read in isolation.”^[7] Obviously, Maryland courts frequently make custody awards in divorce actions where adultery and cruelty are alleged, and both parties are living together. Accordingly, *Ricketts* would not apply to an unmarried couple residing in separate bedrooms and engaged in a custody battle precisely because there are no “marital duties and obligations” the violation of which could give rise to a cause of action.

Now, as a result of the holding in *Ricketts* and presumably with a Judgment of Limited Divorce in hand, an injured spouse can leave the home without fear that he or she is committing a marital wrong. As the Court indicated in its opinion, “[a] limited divorce which may be decreed for a limited or indefinite period is ‘one from bed and board. It grants unto the injured spouse the right to live separate and apart from the one at fault.’” Even more impressive, in a “*Ricketts* case” out of Montgomery County, the Court granted the wife custody, child support, mortgage contribution, exclusive use and possession and ordered the husband out of the home in thirty days! Clearly the holding in *Ricketts* clarified existing case law and highlighted new opportunities for litigants and their lawyers to avoid the typical standoff that frequently occurs when

neither spouse is willing, or financially able, to relocate to new quarters.

But what transpired next was truly interesting. In short order and in what can only be described as a collective exercise of wishful group thinking, lawyers were announcing in my Courtroom that their clients were entitled to a divorce on the grounds of mutual and voluntary separation, “pursuant to the holding in *Ricketts*.” In other words, the parties were still residing under the same roof and there were no allegations of a constructive desertion. A possible explanation for this phenomenon may lie in the fact that many lawyers who practice in Prince George’s County are also admitted in the District of Columbia where “in-house” separations for six months leading to a divorce are permitted and no corroboration is required.

It is also possible that lawyers heard what they wanted to hear, and assumed that the judges and masters would not bother to read the opinion and simply accept their representations as to what the case stood for. It got so bad that I kept copies of the *Ricketts* opinion on the bench for the times when attorneys became overly insistent in misrepresenting its findings. An informal survey on The Family & Juvenile section “List Serve” confirmed that other counties were also grappling with attorney assertions that, post-*Ricketts*, cohabitating couples were eligible for a divorce on the ground of a mutual and voluntary separation. In fact, in some instances, divorces were granted absent proof of a constructive desertion.

With that said, will the *Ricketts* decision open up the floodgates for a surge of “in-house” divorces? Absolutely not. In my twenty-four years of private practice, I do not believe I ever encountered a client who was complaining that their spouse was living in a separate bedroom and refusing to engage in marital relations. Typically, by the time the prospective client arrived in my office, the marriage was, “in name only” and both spouses were coming and going as he or she pleased trying to avoid the other and any exposure to having to pay child support and/or alimony that a separation might entail. Inquiries as to whether or not

marriage counseling might be helpful in saving or improving the relationship were routinely rebuffed.

So, where do we go from here? *Ricketts*, while helpful, is no silver bullet. Maybe it's the poor state of the economy. And maybe it is my libertarian leanings, but, it is time to seriously consider amending our divorce statutes to allow for "in-house separations" ultimately leading to an absolute divorce. Yes, our public policy should support the institution of marriage. The stability that a good marriage provides to children and families is incalculable. With that said, we can better support marriage and families when we create good jobs that provide a living wage and when we build affordable housing and decent schools. But, once the marriage has become terminal and toxic, why make the granting of the divorce more cumbersome than need be? You do not support marriage by making divorce difficult.

In the last session of the Maryland General Assembly, Delegate Luiz Simmons from Montgomery County introduced legislation that he described as "a modest step forward" authorizing a court "to grant a limited or absolute divorce on the ground of voluntary separation if the parties are not engaging in sexual relations." The proposed amendment retained all of the elements of our current one year statute except for the requirement for separate residences. That bill was never voted upon. It needs to be reintroduced and passed in the next session.

But how about beginning a debate as to eliminating all fault grounds in the divorce process? Coincidentally, while vacationing on the Eastern Shore, and stressing over the fact that I had this article to write, I came across the following Letter to the Editor in The New York Times regarding that State's attempt to pass "no-fault" divorce legislation that eloquently speaks to the issue.

To the Editor:
Re "Divorce", No-Fault Style," by Stephanie Coontz (Op-Ed, June 17):
Having to establish grounds to get divorced can be viewed as an

encroachment on freedom. Consenting adults deserve the freedom to choose when to end their marriages without having to explain themselves to the court, just as they do not have to explain to the state why they are choosing to marry. The crux of the matter in a divorce action in court is not the grounds (reason) for the divorce; it is about how parenting time will be allocated, how assets and liabilities will be divided and how and whether money will flow between the former spouses once the divorce is final. Those issues must be front and center, ahead of why they have decided not to remain married. Why should any government have the right to tell people they must prove that their marriage is over for specific reasons the state deems worthy? New York has stood alone on this issue. Couples are the best experts in the viability of their own marriages. It is time to allow overstretched matrimonial judicial resources (needed by people in matrimonial litigations) to focus on solving how the business

of the divorce will be handled, not the reason it is happening. Empowering couples in the divorce process to make their own choices will with luck lead more couples' choosing to resolve their divorces with the help of mediators and the support of counsel, as opposed to litigating in the court system.

(Footnote – Cara M. Raich – New York Times Letter to the Editor)

Exactly my sentiments! Let the discussion begin! And by the way, Mr. Ricketts received his Judgment of Absolute Divorce and many thanks to all of the ListServers for their input and participation. Your identities will forever remain anonymous.

Paul Bauer Eason is a Family Division Master in the Circuit Court for Prince George's County. Prior to his appointment in 2007, he was a solo practitioner for 24 years.

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