

PGCBA NewsJournal

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

November 2012

PRESIDENT'S MESSAGE



Faster Than An RGIII Touchdown Run

The holidays and the end of the year are approaching as fast as RGIII running down the sidelines on his way to a 76 yard touchdown run. (Side note: You want to know how good RGIII is? He is so good that the Honorable Joseph Wright, life-long Cowboys fan is just about ready to declare, in public, his love for the Redskins. Remind him of that the next time he is sentencing your client). Now don't worry, I am not going to rush things by talking about the giving nature of the PGCBA and its members. You will have to wait for next month's President's message for the heart-warming story of the

members of the bar coming to their colleague's aid at the end of the October 2 general meeting. Instead, I will talk about how we as a Bar Association can get into the giving spirit, a month early. But first, as always I want to throw out some love to bar members like RGIII throws touchdown passes. (Can you tell that I wrote this message the day after I attended the Redskins-Vikings game? Please don't remind me of this when the Redskins are 3-6 and this message actually appears in print.)

Once again, I am pleased by the fact that the Bar Association has had some great programs this past month and need I remind you that these programs were **FREE** to members. Let me say that again...**FREE** to members. Thank you to Judge Erik Nyce and Judge Leo Green for their Law Practice 101 presentation on discovery. Also, thank you to all of the Judges who attended the Young Lawyers' Happy Hour at the Old Towne Inn. I was especially glad to see all of the new law clerks for the Circuit Court judges and the members of the State's Attorney's Office come out and participate and have a good time. Thank you again to the District Court bench. I think the entire bench that was sitting in Upper Marlboro made it out for the Happy Hour. It is exciting to have a renewed interest in the Bar Association by the State's Attorney's Office and we will be offering more criminal law programs along with our usual civil law programs as it evidenced by our criminal trial presentation at the most recent Law Practice 101. Again, thanks to Judge El-Amin who gave an entertaining Brown Bag lunch on what Judges do and do not like and that program was followed up by a great Brown Bag lunch by Judge Northrop on presenting an effective closing argument. We are looking forward to another great Brown Bag lunch in November by Judge Krauser.

Anyone who knows me and asks me about how this bar year is going knows that they are going to get an earful about the Bar's wonderful programs and how Prince George's County is the best bar in the state. Why is Prince George's County the best bar in the State? Simply put its members. Now this is not me pandering for new members (but, if it helps, yes, you all are great!!!) but rather to issue a call of action to our members. Every month, myself and the other board members get to see the list of new admittees to the Bar Association. What we are struck by is the number of individuals who are coming out of law school and opening up their own law firms. Believe me. I am



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not judging. Two years ago I opened up my own law firm and became a solo practitioner and it is the most stressful, nerve racking, best decision I ever made. I was fortunate though. I had been out of law school for eleven years and had the benefit of two clerkships and the chance to learn from several older attorneys. A Judge once told me that passing the bar exam really gives you a license to go out and learn how to practice law; the things that they don't teach you in law school.

In the coming months one of my new initiatives that I hope to get set up before my bar year ends is a mentoring program for the young lawyers in the Bar Association. A program that matches attorneys that are fresh out of law school and that are setting up their own shop with seasoned, veteran attorneys who can give guidance and help the young attorney avoid some common pitfalls that they just might not know about. However, while we are in the process of setting up the mentoring program, I know that because the members of the bar association are great people, that you all can get started

without me. Young attorneys can come to the general meetings for the Bar Association (the next one is the Holiday Party on December 11, 2012 at the Newton White Mansion) and introduce yourself to an experienced attorney. They are not hard to find, they are usually the ones who are talking with the Judges at the bar meetings. The young attorneys in this county will find that those of us who grew up practicing in the county, were mentored by an experienced attorney and because of that remember how helpful and beneficial that mentoring was and will be eager to pay in forward. Now, all you experienced attorneys, don't make me look foolish. When a young attorney approaches you, be generous of your time. Don't be afraid to meet some of the young attorneys yourself. Remember some day they will be the legal leaders of this community.

The mentoring does not have to only take place at bar events but can also take place in the courtroom. I can remember covering a criminal matter for a colleague in Judge Femia's courtroom and the look on my face told the whole story. The

matter was supposed to be run of the mill, but for a Landlord/Tenant attorney anything criminal is never run of the mill. I can remember seeing some friendly members of the bar who were experienced criminal attorneys in the court room who saw the look of fear on my face and took the time out to give me some helpful tips for handling the routine matter. Those few words made all the difference in the world to me. Remember, we are all in this practice of law together.

I am looking forward to seeing new members of the bar at our next events. Make sure to "like" us on Facebook if you already haven't (if you don't know what that means, ask a young attorney). We are up to 27 likes out of a 1,000 members. Not the best percentage in the world, but a good start.

Thanks,
 Bryon S. Bereano
 President, Prince George's County
 Bar Association

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"The PGCBA is glad to have you as our new members!"



MEMORIAL SERVICE

November 15, 2012
3:00 pm

Ceremonial
Courtroom

Courthouse
Upper Marlboro



ETHICS AND PROFESSIONALISM PROGRAM

January 17, 2013
Lawyer's Lounge
12:30 pm

Led by John Foran and Arnold Bruckner, co-chairs of the Ethics and Professionalism Committee of the Prince George's County Bar Association.

We are soliciting questions and issues that our members might want to be discussed at this event. Please send questions and or comments for discussion to gerry@pgcba.com by January 11th, 2013.

THANK YOU

to Godwill Tachi, Jumoke Oladapo, Martine Jean, Jonathan Haskell, Sharna Smith and Murray Zitver for manning the phones for our Legal Advice Line over the last few months. The number of calls continue to grow and we hope to see that trend continue as we reach out to our community.

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Suzanne Vetter, Rick Jaklitsch & Debbie Potter

To All District Court ADR/Mediation Volunteers:

The District Court ADR Program wants your help. Remember the sense of accomplishment you felt in that dry cleaning case where the parties started more than \$1,000.00 apart and you were able to settle the case? Or the clever resolution of the case where the next door neighbor's dog was doing unseemly things around the neighborhood? It is unfair for us to hog all the glory. Let's share.

First, thank you for the many hours of service you have given to the District Court for Prince George's County in your capacity as mediators. However, we are approaching the decade mark for the mediation program and we are looking for new blood. I am asking each of you to ask just one (or more than one) attorney if he or she will join our program in the District Court. New mediators and settlement conference attorneys will ensure that ADR is available in Courtroom 162 each morning.

If you know of an attorney that is interested in volunteering, you can always contact me at john.morrissey@mdcourts.gov or Nancy Kreitzer, the Regional ADR Program Director for our Court at nancy.kreitzer@mdcourts.gov. We will be happy to address any questions that the prospect may have. In addition, information on the requirements for ADR/Mediation can be found on the District Court's ADR/Mediation page at www.mdcourts.gov/district/adr/aboutmediation.html. Orientation will be provided at no cost to the attorney.

Again, thank you for your anticipated cooperation in keeping the Prince George's County District Court ADR program strong.

John P. Morrissey
Associate Judge, District Five
District Court for Prince George's County

Prince George's County Bar Association

HOLIDAY PARTY

December 11, 2012

Newton White Mansion

6:00 PM

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BROWN BAG LUNCH IN SEPTEMBER: JUDGE EL-AMIN OFFERS PRACTICE

AND COURTROOM TIPS | by *Sakinda L. Skinner, Law Clerk to Judge Hassan A. El-Amin*

On September 20, 2012, the Young Lawyers Committee of the Prince George's County Bar Association (Ben Rupert, Esq., Chair) hosted the first of its fall "Brown Bag Luncheons" in the Attorney's Lounge of the Prince George's County Courthouse. This luncheon featured a presentation by the Honorable Hassan A. El-Amin entitled, "**A View from the Bench: What Judges LOVE and What Judges HATE.**"

The mini-seminar opened with an excerpt on "love" and "hate" from Spike Lee's 1985 film classic, *Do the Right Thing*. From there, Judge El-Amin used Power Point slides to discuss his judicial likes and dislikes.

In the "Hate" category were:

1. Motions without proposed Orders.
2. Counsel not showing up and not reachable.
3. Rambling opening statements and disjointed presentations.
4. Excessive motions in limine.
5. No copies or not enough copies of case law for opposing counsel and the Judge.
6. Not having spoken with opposing counsel or the opposing party on the day of trial.
7. Counsel coming to "settlement" conferences with no settlement authority.
8. Protracted discovery disputes (aka "pissing contests").
9. Lack of witness preparation.
10. The phrase, "With all due respect," because it really means, "With all DISrespect."
11. Phrases such as, "As I said...", "Again..." or, "Your Honor, I'll be brief." (The realities are "I heard you clearly the first time!" and "No, you won't be brief!")

Immediately following each item on the "Hate" list, Judge El-Amin highlighted a contrasting practice from the "Love" list:

1. Proposed Orders, especially proposed Orders emailed to the law clerk.



2. Counsel on time or early; or at least a secretary or administrative assistant to apprise the Court of a missing attorney's whereabouts. (If no explanation, expect a "Show Cause" letter).
3. Concise opening statements and ability to tell the story of the case.
4. "Crossing that bridge when we get there," rather than excessive motions in limine.
5. Sufficient copies of case law (with relevant parts highlighted) for all counsel and the Judge.

6. Counsel communicating with opposing counsel or the opposing party the day of trial, and requesting to meet with the court in chambers to facilitate a possible SETTLEMENT.
7. Well managed clients—or at least clients whose expectations are in the range of reason.
8. Reasonable discovery requests and discovery with full disclosure.
9. Thorough witness preparation and effective cross-examination.
10. Phrases that show respect, e.g., "May it please the court?"; "With your

Honor's indulgence or permission" or "Begging your Honor's pardon."

11. Getting to the finish line: "In conclusion," or "To sum up."

Judge El-Amin praised his Executive Administrative Assistant, **Denise Williams**, for assembling the Power Points. Some of the illustrations were hilarious. Based on the attendees' reactions, the Judge found a way to entertain while leaving some lasting impressions that may help immensely with our practices.

BROWN BAG

LUNCH

November 15, 2012
12:15 PM

.....

Lawyer's Lounge
3rd Floor,
Duvall Wing

.....

Speaker:
Judge Sherrie L.
Krauser

.....

Topic:
"Guardianships,
Trusts and CINA"

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LAW PRACTICE 101: “CLIENT TO COURTHOUSE-REPRESENTATION AND PREPARATION FOR TRIAL” | *by Judge Erik Nyce*

Law Practice 101 began the bar year on September 6, 2012 with “Client to Courthouse - Representation and Preparation for Trial” to a packed house. The seminar was a moderated panel discussion. David Simpson was present on behalf of criminal law practitioners. Erik Frye was present on behalf of personal injury practitioners. Jennifer Muskus

was present on behalf of family law and general practitioners. Glenn Grossman, Bar Counsel, provided insight from the view of the Attorney Grievance Commission. The question and answer format began with topics such as initial interviews, whether to take a case, and fee agreements. Questions for the practitioners evolved into best

practices during the representation. The panel discussed pitfalls which could arise during the attorney-client relationship. The seminar was enjoyable and informative. Our thanks to our volunteer panelists for sharing their knowledge with our members.





Have your turkey and stuffing too: Eating smart through Thanksgiving

The average American will gain between five and ten pounds during the holiday season. Having fallen victim to this statistic in prior years, you may think that gaining pounds during the holiday season is unavoidable. And when you consider the typical holiday menu - turkey, stuffing, casseroles, pies, and cakes - can anyone really expect to indulge without gaining at least a few pounds? The answer to that question is an unequivocal yes! You can have your stuffing and eat it too, all without gaining more than perhaps a pound. How to do it? Easy....first off, you can't tell anyone who'll be eating your cooking that you will be "modifying" the traditional recipes. What they don't know won't hurt them, and they'll never know if you don't tell them....promise. If you're doing the cooking, this is what you need to do to prepare a scrumptious AND healthy Thanksgiving dinner that no one will suspect is "healthy cuisine".

Turkey

If you typically slather your turkey in tons of butter or deep fry it, that's not only the recipe for a spare tire, but it will also likely clog a few arteries. So let's revamp the cooking of the bird. It is possible to prepare a beautiful juicy and golden turkey while slashing calories at the same time. Typically, I'll massage three tablespoons of pure olive oil into my turkey after pricking the skin all over with a fork. That way, the oil and your seasonings will sink into the turkey and the turkey will stay juicy and moist. Add two cups of water to your roasting pan and you can baste the turkey with the juice created from the water, olive oil, and seasonings. I've prepared my bird in this heart-healthy fashion for years and no one has ever accused the turkey of being dry or bland. Just be sure to massage in plenty of your favorite seasonings during your rub down of the turkey.

If you want other new healthy turkey recipes, Eating Well publishes new recipes every year including one for an herb-roasted turkey and a lemon garlic roasted turkey with white wine gravy. Just log onto www.Eatingwell.com. These healthy recipes provide delicious turkey dishes at only 155-180 calories and no more than 6 grams of fat per serving.

Some additional tips for cutting calories and fat include removing/avoiding visible fat, limiting dark meat, and most important - watching your portion size. One portion should be about 4-5 ounces. That means that the serving should be the size of your hand while balled into a fist or the size of a deck of cards. Have turkey as your source of meat for the holidays and skip ham and/or prime rib. Turkey is a great source of protein, iron, zinc, potassium, and B vitamins.

Stuffing

If you want to be able to eat stuffing on Thanksgiving, without feeling like you're the one who's been stuffed, you'll have to substitute your traditional recipe made with butter and fatty sausage for a healthier version using chopped veggies, broth, and lean chicken or turkey sausage. Additionally, it will be key to replace white bread as the main ingredient with whole wheat bread or brown rice. Eating Well also has posted a cornbread and sausage stuffing recipe made with sweet Italian sausage, onion, celery, cornbread, and chicken broth which boasts only 237 calories and 9 grams of fat per serving. This is a substantial reduction from the traditional stuffing recipe which typically contains 260 calories and fifteen whopping grams of fat.

Side Dishes

Your side dishes don't have to be macaroni and cheese, lasagna, creamy mashed potatoes, and the like. Healthy side dishes that everyone will enjoy include steamed fresh green beans sprinkled with garlic and sprayed with non-fat butter flavored spray, wild and brown rice, and baked sweet potatoes. Sweet potatoes are a much better choice than mashed white potatoes

since sweet potatoes are naturally creamy and sweet, needing no whipping agents or butter to be added. Baked sweet potatoes can be topped with cinnamon, Healthy Balance butter flavored spread, and just a pinch of brown sugar.

Desserts

The holidays just wouldn't be the holidays without dessert, and having said that, dessert is undeniably the finishing ingredient to any holiday meal. The key to your success will be in choosing which dessert to partake of. There is pecan pie, apple pie, pumpkin pie, sweet potato pie, chocolate cake, cheesecake, brownies, and of course, those cute little cookies. Just keep this in mind: desserts with natural ingredients like fruit are always better than those made primarily from flour ingredients. That means go for the apple pie and sweet potato pie instead of the cakes and cookies. Pumpkin pie is typically only about 180 calories per serving (without eating the back crust portion) while pecan pie will cost you a whopping 480 calories!

Final Tips for a No Gain Holiday Meal

Following the suggestions above for preparing healthy recipes and opting to choose healthier desserts will slash calories dramatically and help you in your quest to wake up the next morning weighing the same thing you weighed on Thanksgiving morning. In total these modifications can save you as much as 600 calories, bringing your total consumption of calories down to about 1700 calories for your entire meal. But there are other things that you should do earlier in the day to "prepare" for your holiday meal. First, don't think that you'll "save" calories by skipping breakfast and lunch. This will only cause you to be super hungry at dinner and more likely to over-eat. Instead, have a light breakfast of oatmeal. I like Quaker Weight Control Oatmeal because it has even more fiber than regular oatmeal which means you'll feel full longer, and it is low in sugar. Alternatively, you could have a small banana which has fiber and an egg white omelet made with a half cup of egg substitute. During the rest of the day while

preparing your holiday feast, snack on apple slices instead of constantly “tasting” all the delights you’re preparing. Drink lots of water throughout the day prior to your big holiday meal - aim for half a gallon or 8 glasses of water. And if your holiday dinner is a late one, try to have a light lunch consisting of something light like 2 servings of low-fat yogurt or a small meatless salad with cruciferous veggies such as broccoli and cauliflower.

Try to find an hour prior to dinner time where you can squeeze in some exercise. Go for a 30 minute walk or jog, or get the family members together for a Wii dance off. Anything you do to get your metabolism elevated right before your meal will keep your calorie burning mechanism revved during dinner so that more of what you eat is burned up. Lastly, watch what you consume during dinner. Avoid high sugar drinks like pure fruit juices, sparkling cider, AND alcoholic beverages. Cut your fruit based beverages

with 1/3 water. But really it’s best to opt for iced tea sweetened with a low-calorie sweetener. As for the spirits, try your best to have just one...tell yourself there will be plenty more opportunities to imbibe over the next couple months.

Follow these tips and you’ll wake up after the holidays feeling healthy and happy that you won’t have to have your pants let out for the New Year.

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On October 11, we held our **2012 Pro Bono Awards Reception** at the United States District Court. The Fred R. Joseph Award went to **Manuel R. Geraldo, Esq.** The Pro Bono Awards went to **John David Gabel**

and **Dontrice P. Hamilton, Esq.** The New Attorney Award went to **Dallas Elana Houston, Esq.**

The Honorable **Lynne A. Battaglia** of the Court of Appeals of Maryland was our guest speaker for the event. Thank you Judge Battaglia for your inspiring speech!

We held a special tribute to honor our Past Presidents the **Hon. Darlene Perry**, the **Hon. Joel D. Worshtil**, **Leonard Goldstein, Esq.**, the **Hon. Julia B. Weatherly**, **Michele La Rocca, Esq.**, **Edward J. O'Connor, Jr., Esq.**, the **Hon. Cathy Serrrette**, **Keith A. Parris, Esq.**, **Anthony D. Martin, Esq.**, **Jodi H. Blecker, Esq.**, the **Hon. Paul Bauer Eason** and **Lindsey K. Erdmann, Esq.**, (immediate Past President).

We thank our sponsors Mack-Cali, McNamee, Hosea Attorneys and Advisors, the Honorable Paul Bauer Eason, the Law Offices of Joseph J. Gigliotti, Muskus & Muskus, LLC, Lt. Col. Orlando D. Barnes, and Monise A. Brown, Esq.

The music was provided by **The Center for the Visual and Performing Arts at Suitland High School**. Thank you Melia Humphrey, Gabrielle Rodgers, Taisha Steward and Dr. Hovayda Samandari for the great music!!!

New Officers and Directors of our Board

We thank **Lindsey K. Erdmann, Esq.**, our outgoing president for your commitment and dedicated work to Community Legal Services. We welcome our new president **Jennifer Muskus, Esq.**, Vice President **John C. Fredrickson**, Treasurer **Wanda Ramos**, and our ongoing Secretary **Edith Lawson-Jackson**. Our new board members are **Vania McNeary Edwards**, **Joseph J. Gigliotti, Esq.**, **Maureen Glackin, Esq.**, **Steven L. Goldberg, Esq.**, **Julio Morales, Esq.**, and



Manuel R. Geraldo receives The Fred R. Joseph Award



Dontrice P. Hamilton receives the Pro Bono Award



John D. Gabel receives the Pro Bono Award



Dallas E. Houston receives the New Attorney Pro Bono Award



Lindsey K. Erdmann passes the gavel to Jennifer Muskus



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Gregory C. Powell, Esq. We welcome you!

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This article originally appeared in Family Law News, September, 2010 a Newsletter published by the Section Counsel of the Section of Family and Juvenile Law, Maryland State Bar Association, Inc.

**MARITAL vs. NON-MARITAL DEBT:
THE IMPACT ON PROPERTY
DISPOSITION AND MONETARY
AWARDS**

Many clients in the midst of separation and divorce, particularly in today's economy, are having trouble making ends meet, credit card bills continue to mount, and oftentimes the mortgage falls behind. These individuals turn to their lawyer and the courts in hopes of finding some relief from their grim financial situation. What advice does the family law practitioner give? The advice provided and the approach taken in court must be premised on an understanding of the law as it relates to debt and how debt can be resolved by the court.

Marital debt defined.

A client that just came into your office to retain you following your initial consultation has advised you that she maxed out her credit card to pay for a fabulous tour of the California wine country with her husband. Unfortunately, her husband left her less than two weeks after their return and your client expects her husband to pay. Maryland law makes it difficult to recoup this money for your client, absent the proving of a monetary award. You recognize that your legal opinion is not going to be particularly welcome by this client. Just the week prior, you received a similar reaction from another client who divulged to you that he took out multiple parent-plus loans to pay for his son's college education, to the tune of \$80,000. Both clients thought recoupment of their expenditure would be rather simple because both heard through the grapevine that these liabilities constituted marital debt and would be split by the trial judge. You,

being the bearer of bad news, have to tell them, "not so!"

Why are both clients so surprised? The client's surprise usually stems from the common misconception about the liabilities that constitute marital debt under Maryland law. Oftentimes clients, and even many attorneys, believe that marital debt is a debt incurred during the marriage for a marital or family purpose (i.e., a child's college tuition, a family vacation, accumulated grocery bills), regardless of whose name is on the liability. In fact, in most states, a marital debt is any debt incurred during the marriage for the parties' joint benefit. *See* TURNER, BRETT R., *EQUITABLE DISTRIBUTION OF PROPERTY* § 6:97 (3d ed. 2009). Maryland law, however, differs drastically and holds that, by definition, a debt can only be a "marital debt" if the debt is directly traceable to the acquisition of marital property. *See Harper v. Harper*, 294 Md. 54 (1982). For instance, the first mortgage that was taken out at the time the married couple purchased the marital home is a marital debt because it was incurred for the purpose of acquiring a piece of marital property. Likewise, the lien encumbering wife's vehicle that wife purchased during the marriage is a marital debt. As explained in *Kline v. Kline*, 85 Md. App. 28 (1990), debt can be a marital debt even if the debt is not a lien or encumbrance on the marital property, i.e., husband borrows money from his mother or uses his credit card to purchase a new living room set during the marriage. A debt can also be a marital debt where the debt was used to acquire a piece of marital property, but the debt itself is attached to a different piece of property. For instance, in the case where a married couple takes out a home equity loan to purchase a timeshare, the portion of the home equity loan attributable to the acquisition of the timeshare is a marital debt that will be deducted from the value of the timeshare, not the value of the marital home on which the home equity loan is attached.

If a debt is not directly traceable to the acquisition of marital property, it is a non-marital debt. *See Freedenburg v.*

Freedenburg, 123 Md. App. 729 (1998). The parent-plus loans taken out to pay for a child's college are accordingly non-marital debt, as the debt was not incurred to acquire marital property. Even if those college expenses were paid using a home equity loan that encumbers the marital home, the portion of the home equity loan attributable to the college debt would still remain a non-marital debt, despite the debt being attached to marital property. The credit card debt incurred to pay for the trip to California is also a non-marital debt, even if the credit card is in the parties' joint names. The court is required to make a decision as to the proper characterization of debt as marital debt or non-marital debt based on the evidence presented. *See Coutant v. Coutant*, 86 Md. App. 581 (1991). Who owes the debt is as immaterial to a determination of whether a debt is marital or non-marital as who owns the property itself. *See Kline*, 85 Md. App. 28 (1990).

The impact of marital and non-marital debt on property determination.

It is critical to first determine whether a liability is a marital debt or a non-marital debt to understand when and where that debt will come into play in the application of the Marital Property Act. The court must engage in a 3-step process in arriving at a determination of a monetary award. *See Ward v. Ward*, 52 Md. App. 336 (1982); *Harper v. Harper*, 294 Md. 54 (1982); and MD. CODE ANN., Family Law §§ 8-203 through 8-205 (Replac. Vol. 2006).

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The court must first determine which property is marital property, and then must determine the value of all marital property. See Ward, 52 Md. App. 336 (1982); Harper, 294 Md. 54 (1982); and MD. CODE ANN., Family Law §§ 8-203 and 8-204 (Replac. Vol. 2006). Only after the court has determined and valued the marital property may the court proceed to make a monetary award. See Ward, 52 Md. App. 336 (1982); Harper, 294 Md. 54 (1982); and MD. CODE ANN., Family Law § 8-205 (Replac. Vol. 2006). A marital debt is relevant in step 2 – the valuation of marital property. A non-marital debt, in contrast, will only come into play in step 3 – the determination of the amount and method of payment of a monetary award.

Marital Debt and Valuation

Marital debt comes into play in the second stage of the three-step process, when the court is required to determine the value of marital property. The court is required to adjust downward the value of marital property to account for any unpaid liability incurred to acquire that property. See Schweizer v. Schweizer, 301 Md. 626 (1984); Green v. Green, 64 Md. App. 122 (1985); Niroom v. Niroom, 313 Md. 226 (1988); see also Goldberg v. Goldberg, 96 Md. App. 771 (1993). If the marital debt exceeds the value of the piece of marital property, the value of that property is zero; marital property cannot have a negative value. See Kline, 85 Md. App. 28 (1990). Additionally, marital debt cannot be transferred from one piece of marital property to another. See Id. These holdings in Kline are of particular significance in today's tough economic times where unpaid balances of mortgages often exceed the fair market value of the house. Particularly devastating are the cases in which a home equity loan was taken out for use on improvements, intended obviously to increase the value of the home. At the time of absolute divorce, and later at sale, many attorneys and clients are finding that the fair market value of the home is not great enough to cover both the first mortgage and the home equity loan.

Non-Marital Debt and Monetary Awards

Non-marital debt has no function in the valuation process. See Schweizer, 301 Md. 626 (1984). Rather, non-marital debt will only come into play in the last step of the three step process, when the court fashions a monetary award. Those parties with non-marital debt are in a precarious position, and the attorney would be wise to explain at the outset of the case the difficult position in which the client finds him/herself.

First, the attorney and client must remember that a monetary award is discretionary. The decision whether to grant a monetary award is generally within the sound discretion of the trial court. See Alston v. Alston, 331 Md. 496 (1993). The trial judge may grant a monetary award “as an adjustment of the equities and rights of the parties concerning marital property.” See MD. CODE ANN., Family Law § 8-205 (Replac. Vol. 2006). In interpreting this Section, Maryland's appellate courts have discussed the legislature's intent in creating this law. The Court of Special Appeals has held that, “[t]he monetary award is designed to accomplish an equitable division of the marital property in an indirect manner.” See Ward, 52 Md. App. 336 (1982) (citing Ohm v. Ohm, 49 Md. App. 392, 396 at n.2, 431 A.2d 1371 (1981)) (emphasis added). In making a monetary award, the trial court must use its sound discretion to arrive at an award that is equitable and in accordance with the statute. See Alston, 331 Md. 496 (1993). Both the client and attorney must be mindful that what may appear fair to one person may not be fair to another, and what is equitable to one judge may not be equitable to another.

Second, although some factors required in considering a monetary award may fall in your client's favor, other factors may weigh against your client and/or the debt which your client faces may pale in comparison to other circumstances or evidence presented. The trial judge must consider each factor listed in Section 8-205(b) of the Family Law Article when determining whether to grant a monetary award and the amount of that award. Jandorf v. Jandorf, 100 Md. App. 429, 439, 641 A.2d 971 (1994). The

trial court is required to articulate that it has considered all of these factors when granting or denying a monetary award. Imagnu v. Wodajo, 85 Md. App. 208, 582 A.2d 590 (1990). The provisions of this section are mandatory, and the failure of the trial judge to apply the statutory factors will result in the award being vacated. See Bangs v. Bangs, 59 Md. App. 350, 475 A.2d 1214 (1984); see also Quinn v. Quinn, 83 Md. App. 460, 575 A.2d 764 (1990).

Third, the attorney and client must be mindful that the amount of a monetary award cannot exceed the amount of marital property owned by the payor. See Odunukwe v. Odunukwe, 98 Md. App. 273 (1993). Accordingly, if there is no marital property at all, there can be no monetary award. Likewise, if marital property exists, but it has no value, there can be no monetary award. In the vast majority of cases, the largest asset that the parties own is the marital home. If the marital home is “underwater,” the client may be faced with the brutal reality of keeping the debt and receiving no monetary award.

Conclusion

In conclusion, it is important for all practitioners to understand the difference between marital and non-marital debt, and how each type of debt impacts a property case. I find, in practice, that it is one of the most misunderstood concepts in family law, particularly by clients. It is the attorney's role to educate the client as to the client's rights, potential “problems” in their case, and what the client may face in court if the case does not settle. Contrary to popular belief, not all debt is treated the same by the court, and it is critical to you and your client that the difference is understood and accounted for in your case strategy.

Lindsey K. Erdmann is an attorney in the law firm of McNamee, Hosea, Jernigan, Kim, Greenan & Lynch, P.A., focusing her practice in the area of family law. She is also Co-Chair of the Family Law Committee for Prince George's County.

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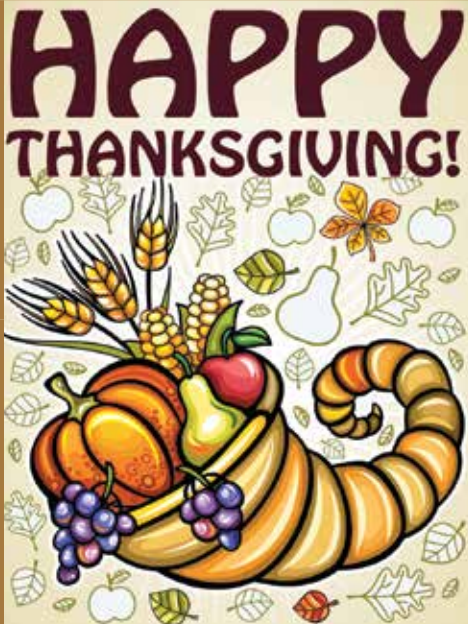
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