PGCBA NewsJournal

Newsletter of the Prince George's County Bar Association, Inc. *October 2012*

President's Message

Time Waits For No One

Wait? What? You have returned to read my second President's message? I am honored. Either you enjoyed the first one or you are really bored while waiting for your case to be called. Either way, I'll take it. In this edition of the President's message I will be talking about the growing problem of punctuality among attorneys arriving to the Prince George's Courthouses, but first, a few thanks and acknowledgments. First, a big announcement!!! The Prince George's County Bar Association has reached the 21st Century!!! (Does anyone say that anymore?). We have a Facebook page! **Make sure to like us on Facebook.** We will be posting photographs from bar events and making announcements as to upcoming events to make it easier for our members and non-members who are ready to join to find out about our great programming.

In my list of thanks to those lawyers that are on the Board of Directors for the Prince George's County Bar Association, I forgot to mention Walter Green, who serves not only on the Bar Association's Board, but on the Executive Committee as well and is the co-chair of the Bar's Estates and Trusts Committee. Now, many of you have correctly assumed that I forgot to mention Walter in my first article because his wife is a graduate of Duke University (AKA, The University of New Jersey in Durham), but truth be told, it was an oversight on my part, which I am truly sorry for. Walter, as do all of those that serve on the Board, is an important part of or our efforts to serve the Prince George's County community and the lawyers who practice within the county.

For those of you who attended the first Law Practice 101 event, and judging by the crowd, that is a lot of you, you were treated to a wonderful event. Thank you to Judge Erik Nyce for once again putting together the program and a special thanks to our panel of Dave Simpson, Glenn Grossman, Erik Frye, and Jennifer Muskus who gave helpful and honest advice on the always difficult task of evaluating and communicating with soon to be clients. This is very helpful information; whether you are a first year lawyer who just hung out their shingle or a season veteran. Additionally thanks to the Judge El-Amin who put together a great Brown Bag lunch and of course, a big thanks to all the new judges that are participating in our October 2, 2012 general membership meeting.

Last month Judge Tillerson Adams held a meeting with a group of trial attorneys from all different practices: Criminal, Estates and Trusts, Domestic and Civil. The purpose of the meeting was to let the practitioners know that attorneys have been arriving later and later for scheduled court proceedings and that this has become a real problem for the Circuit Court Bench. What has been especially troubling is that there are attorneys that are showing up as late as 11:00 am for civil jury trials that are scheduled for 9:00 am. Not only does this put a strain on the County's citizen jurors but also is simply unacceptable and frankly, unprofessional. I will tell you that the bench has not detected a pattern as to who the attorneys are that are doing this sort of thing. It is not known if these are local attorneys who are showing up late or if they are attorneys from other parts of the state that are being liberal with their arrival time. One thing is certain though: the attorneys in the Prince George's County Bar Association can help to prevent behavior and set an example for our out of county guests.

INSIDE THIS ISSUE

PGCBA NewsJournal

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PGCBA Mission Statement

...to represent the legal profession and to serve its members and the community by promoting justice, professional excellence, collegiality and respect for the law.

Lawyers in Need

...an ad hoc program for members under some form of distress or disability which will assist in keeping files productive while help is obtained and assist with professional referrals. For help, call

James Flynn 301-932-0700
Robin Shell.....240-472-9919

Ethics Hotline

Any member wishing to obtain an informal ethics opinion may call the Ethics Hotline

John R. Foran.....301-441-2022

Designated Conciliator Program

William Renahan.....301-351-7531
Gerald C. Baker 301-577-4600

According to a Texas A&M University study as reported by the Washington Post last year, the Washington, DC metro area is ranked number one for traffic congestion. This is not news to anyone who has driven at least once on the beltway. However, the fact that we live amongst the worst traffic congestion in the nation is not an excuse for being late. I can remember when I clerked for Judge William Spellbring, I was taught that if you are going to be late for a court appearance, you always call the judge's chambers (or if it's District Court, the clerk's office) and let them know that you are running late, but traffic and conflicts in other courthouses and courtrooms were not an excuse. Phone calls to chambers because you are running late are for the exception: health, flat tire, family emergencies, but not because you are stuck on the beltway and running late for court. You should always factor in your driving time and traffic when preparing for any court appearance. Just looking at Google maps on a typical fall rush hour morning will reveal that it takes at least an hour to get from Rockville to Upper Marlboro; at least an hour to get from Fairfax County to Upper Marlboro, and at least forty five (45) minutes to get from LaPlata to Upper Marlboro. As anyone who drives to these areas knows that those times are on a good day. You can easily double those travel times if you hit an accident or if it rains! (Side note: we have a lot of smart people in this bar. Can someone come up with a theory as to why DC metro area commuters are so bad at driving in the rain?? I say this as someone born and raised in DC). You cannot handle a minor matter in Rockville at 9:00 am and hope to get to Upper Marlboro in time for a motions hearing on a Friday at 9:30 am. It just defies the laws of physics.

So what can the members of the Prince George's County Bar do to help? Simple: leave fifteen (15) minutes earlier than you already do. Punctuality is an important part of the civility and professionalism that members of the PGCBA have always displayed. It is courteous to your fellow bar member who is on the other side of a case with you, it is courteous to the bench and it is courteous to the citizens of Prince George's County who make up the juries. Additionally, know your schedule limitations. As tempting as it is in these economic times to squeeze in as many cases as possible (believe me, as a solo practitioner, I can relate to this) you just can't make it to every court to handle every matter on the same day. When you have a scheduling conflict, get a continuance. When you are looking to take on a new case, check first to see if you have the date available to handle the matter. If you just can't get out of having two matters on the same day at the same time in different locations, lean on your fellow bar members for support and help in covering an appearance for you and be ready to return the favor for them some day. I can tell you that at this point the Circuit Court Bench has not made any decisions as to what action they will take on their own to force attorneys to arrive on time, but let's not let the situation get to that or if so, let the out of county attorneys be the culprits, not the local attorneys.

Until next month, go Virginia Cavaliers, Hail to the Redskins and be on time.

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

Member Announcements

Welcome New Members!

Donnaka Varner Lewis
State's Attorney's Office

Matthew McLane Gordon
Pr. Geo. Co. Office of Law

Mark Anthony Yost, Jr.
Neiswanger Management Services, LLC

Llamilet Gutierrez
Law Student-Pr. Geo. Circuit Court
Law Clerk

James Tilman Branda
Erlich Law Office

Elizabeth Ann Capunitan
U. S. Department of Labor

LaTosha L. Coleman
McKinney & Associates, PLLC

Teresa Nicole Taylor
Law Office of Teresa N. Taylor, LLC

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

Congratulations!

Congratulations to the Honorable William D. Missouri who has been selected to receive the Maryland Bar Foundation's 2012 Legal Excellence Award for the Advancement of Public Service Responsibility.

Judge Missouri will be presented with this award at the Maryland Bar Foundation's Annual Awards Ceremony on October 15, 2012.

PRINCE GEORGE'S COUNTY
BAR ASSOCIATION'S
TORT LAW COMMITTEE PRESENTS

EFFECTIVE DIRECT AND CROSS EXAMINATION OF FACT AND EXPERT WITNESSES IN PERSONAL INJURY AND CIVIL CASES

OCTOBER 13, 2012
9:00 a.m.-1:00 p.m.
Courthouse, Upper Marlboro
Jury Assembly Room

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SPEAKERS
Christopher R. Dunn
Richard L. Jaklitsch
Giancarlo M. Ghiardi
Robert V. Clark, Jr.

Cost includes material
$45.00 Members by Oct. 5, 2012- $55.00 After.
$55.00 Non-Members by Oct. 5, 2012- $65.00 After.

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Contact: PGCBA to make your reservations.
301-952-1442 or download the reservation
form from the website
www.pgcba.com

Information from the Prince George's County Circuit Court Law Library

With the growing use of mobile devices, many free and paid apps have been developed for consumer use. Below is a list of legal apps compiled by the Prince George's County Circuit Court Law Library which you may find useful. The list includes apps for iPads, iPhones, Blackberries, and Android devices.

Pricing information may have changed. These apps and more have been provided by the UCLA School of Law, Hugh & Hazel Darling Law Library at http://libguides.law.ucla.edu/mobilelegalapps.

ABA Journal is a free app for that provides breaking legal news and articles featured in the ABA Journal. The app may be downloaded from the iTunes App Store.

The American Arbitration Association's new mobile app provides ready access to AAA rules, codes, and protocols, as well as contact information for AAA offices worldwide. The app is free and may be downloaded from the iTunes App Store for use on iOS devices and from Google Play for use on Droid devices.

The American Lawyer is a free app that provides instant access to recent issues of American Lawyer every month. The app may be downloaded from the iTunes App Store for iOS devices or Google Play for Droid devices.

The **Bloomberg** app provides you with current information about news, stock quotes, market trends analysis, and more. The app is free and may be downloaded from the iTunes App Store, Google Play, and Blackberry App World.

Lawyers.com is a mobile app powered by LexisNexis Martindale-Hubbell. With the app, users can search for attorneys or law firms from 160 countries. The app is free and may be downloaded from the iTunes App Store.

The **NPR News** app is a free app that allows you to follow local and national news, listen to your favorite NPR programs when you like, and more. The app may be downloaded from the iTunes App Store for use on iOS devices and from Google Play for use on Android devices.

The **NY Times** app allows you to access the latest news articles and photos that appear on NYTimes.com. It may be downloaded from the iTunes App Store for use on iOS devices and from Google Play for use on Android devices.

The National Law Journal, the nation's leading legal weekly publication, is now accessible through an iPad app through the iTunes App Store.

Nolo's Plain English Law Dictionary is a great alternative to the Black's Law Dictionary mobile application. The application may be downloaded from the iTunes App Store for use on iOS devices, and from Google Play for use on Droid devices.

Reuters News Pro is a free mobile app whose features include world, business, and market news, optimized for easy reading on mobile devices. The app is available for use on iPhones, iPod Touch devices, Blackberry smartphones, and the Android. Information for downloading the app on these devices may be found on the Reuters website, http://www.reuters.com/tools/mobile.

The Wolfram Lawyer's Professional Assistant is a legal reference tool that provides access to a dictionary of legal terms, statutes of limitations for each state in the U.S., a tool for calendar calculations, a variety of calculators, and crime rate and demographic data. The app is compatible for use on all iOS devices. The app sells for $4.99 and may be downloaded from the iTunes App Store.

Brown Bag Lunch in May: Outline for Landlord/ Tenant | *by Judge John Morrissey*

In May, I was honored to present an overview of Landlord/Tenant actions as part of the Bar Association's continuing Brown Bag Lunch series. The presentation focused on the four major Landlord Tenant actions - Failure to Pay Rent cases, Tenant Holding Over cases, Breach of Lease cases and Wrongful Detainers. Actions in the nature of Distress of Rent, Security Deposit issues and Rent escrow were are also discussed. The event was well attended by the members of the Bar, despite Mr. Bereano's noted absence. A copy of the outline used for the presentation is printed below and also available on the Bar Association's Web page. Special thanks to Michael Winer, Esquire for his astute comments and assistance in presenting these topics and to Benjamin Rupert, Esquire for putting the event together.

I. FAILURE TO PAY RENT ("FTP") Real Property Art. §8-401

a. Residential Landlord ("LL") must be licensed by the County or local government as a pre-requisite to bringing a FTP action.

b. The action may be brought by the LL or the LL's duly authorized agent.

c. LL may seek judgment for possession for the amount of rent, costs and late fees. 8-401(b)(iv). No attorneys' fees allowed in FTP cases for residential lease, but attorneys' fees may be requested in commercial cases on personal service.

d. LL must certify compliance with Env. Art. 6-801 et seq. (lead based paint issues).

e. LL must set out amount of rent for each rental period, the day rent is due and late fees.

f. Trial is supposed to be held within 5 days after the filing of the complaint (typically runs 15 days after filing).

g. 8-401(b)(3) & (4) Service is by first class mail and by serving the summons personally or affixing the summons to the property (referred to as "Mail and Nail"). Mail and Nail is good for the in rem repossession of the property but not for a money judgment.

h. If either side needs a continuance of the trial, the Court can grant a one day continuance (if parties agree it can be longer).

i. Possession is to be given within 4 days after the trial. Parties may appeal within 4 days of the date of judgment.

j. LL must order a writ of restitution within 60 days of judgment or the judgment for possession is stricken. If LL takes no action to enforce the warrant, it is stricken and so is the judgment.

k. Right to redeem – Anytime up to the moment of eviction, unless the right of redemption has been foreclosed. Judgment Absolute foreclosing the right of redemption – 3 prior judgments of possession in the last twelve months.

II. TENANT HOLDING OVER ("THO")

a. Periodic tenants and tenants remaining in possession after the expiration of the lease term.

b. Notice must be in writing. If the tenancy is year to year, three months notice is required. Month to month -- one month. Week to week -- one week. There are exceptions for other counties.

c. Mail and nail is sufficient for purposes of restitution.

d. The writ for possession is issued forthwith and the appeal period is 10 days from the entry of the writ.

e. Bond should be in an amount sufficient to cover the time frame in the appeal.

f. The appeal is supposed to be set within 5 to 15 days of the date of the appeal (but it always takes longer).

g. Except for year to year tenancies, a tenant holding over will be for the duration of the month in a month to month tenancy, week to week etc.

h. Acceptance of payment of rent does not void the notice to quit.

III. BREACH OF LEASE

a. Unexpired lease with stated terms for breach or breach involves tenant' behavior which demonstrates a clear and imminent danger of the tenant doing serious harm to themselves, others or LL property

b. 30 days notice of breach and that LL desires to take possession or 14 days if clear and imminent danger.

c. Mail and Nail permitted.

d. Standard is that the Court finds that the tenant breached the lease, that the breach of lease was substantial and that the breach warrants eviction.

e. 10 day appeal period.

f. Acceptance of payment is not a waiver of the breach.

IV. WRONGFUL DETAINER

a. Holding possession of a property without the right of possession – think an adult child.

b. Cannot be a tenant holding over – In a wrongful detainer action there is no LL/ Tenant relationship between the parties.

c. Mail and Nail is permitted.

d. There can be no counter-claims or cross claims.

e. Damages may be awarded only if there is personal service. If the person shows up and asserts a limited appearance, no personal service.

f. The appeal is 10 days after judgment. Appeal bond is necessary.

V. DISTESS FOR RENT – 8-301

a. Exclusive jurisdiction of District Court regardless of value.

b. All leases in excess of three months or three months of possession.

c. A show cause will issue (similar to a replevin) as to why the personal property of the Tenant shall not be levied. Sheriff's to serve tenant or post to the interior of the premises.

d. The standard at the show cause hearing is a reasonable probability.

e. Sheriff's creates an inventory of all goods on the property even if not the tenants, unless otherwise exempt.

f. Exemptions:

i.Lease of more than 15 years – only tenant's property;

ii. similar to the CJ 11-504 exemptions;

iii. Hand powered tools for profession;

iv. Law books;

v. Hand operated instruments of a doctor;

vi. Medical books of a doctor;

vii. Files for atty or drs.;

viii. Prior perfected security interests – LL can release prior perfected security interest or pay the remaining balance.

g. Forcible entry only upon court order.





h. Court can order the removal of the property usually upon posting of a bond.

i. Third party goods.

i. 7 days after levy a third party must petition to get their goods back.

ii. Hearing is supposed to be held within 10 days. Upon sufficient proof, court can order release of the property to the non-tenant.

iii. If no petition by third party within 7 days, the levy is conclusive.

j. Risk of loss does not change for goods under levy.

k. Hearing on petition for sale must be within 10 days of Tenant's answer. Tenant must answer within 7 days of levy.

l. Continuing rent can be included as costs as well as the cost of removal or for securing the items.

m. Court orders sale at its discretion but as soon as feasible.

n. If the tenant has moved the goods, the LL can ask for the levy to follow the goods for up to six months anywhere within the Court's jurisdiction.

o. Sale notice by newspaper at least one time weekly or more at Court's discretion or by posting at the Courthouse.

p. Must be a public auction.

q. Only sell the amount of goods necessary to satisfy the levy. Tenant's property first, then property of others.

r. After sale and assuming service, the court can declare the lease terminated.

s. Any additional monies returned to Tenant.LL can request that any deficiency, assuming personal service, be a money judgment.

t. Distress can be brought against a deceased tenant or defunct corporate entity. Notice is to the PR or any officer of the corp.

u. Appeal within 14 days of the order or judgment. Trial is de novo on appeal.

VI. RENT ESCROW Real Property Art. §8-211

a. Can be affirmative or defensive.

b. The defects must be serious and dangerous.

c. The dangers present a substantial and serious threat of danger to the life, health and safety of the occupants.

d. Does not encompass housing code violations of a non dangerous nature.

e. Applies to residential units.

f. Serious and substantial defects

i. Lack of heat, light, electricity or water;

ii. Lack of adequate sewage disposal facilities;

iii. Infestation of rodents in two or more dwelling units;

iv. Structural defect threat to physical safety;

v. Any health or fire hazard.

g. Rebuttable presumption that these are not rent escrow defects

i. Lack of fresh paint, carpets etc.;

ii. Small cracks in the wall;

iii. Absence of tile on floors;

iv. Absence of air conditioning;

h. Notice prior to rent escrow is required by the tenant

i. Certified mail

ii. Actual notice of defects

iii. Written violation from inspector.

i. LL has a reasonable period of time after notice to make repairs. Rebuttable presumption that more than 30 days is unreasonable.

j. If 90 days have lapsed after finding by the Court that a dangerous condition exists, the Tenant may request an injunction ordering the repairs.

k. To obtain relief

i. Proper notice;

ii. Payment of the amount of rent into court;

continued on next page

Brown Bag Lunch in May, con't

iii. Cannot be used when LL is seeking to foreclose the right of redemption.

l. LL defenses

i. Tenant caused the problem

ii. Tenant refuses to allow access to repair the defect.

m. The Court can

i. Terminate the lease.

ii. Dismiss

iii. Abate rent to be fair and reasonable based on the conditions.

iv. Order the LL to make the repairs.

v. Disburse rent escrow to LL

vi. Disburse to LL to make repairs.

vii. Appoint a special administrator to oversee the repairs.

viii. Disburse to pay the mortgage.

ix. Disburse to the Tenant if no repairs or no good faith effort to repair is made within 6 months.

x. Disburse to the LL if payments have not been made into the rent escrow.

n. The rent escrow law may be superseded by local rent escrow laws.

VII. SECURITY DEPOSITS Real Property Art. §§8-203 and 8-203.1

a. Any payment of monies to secure against non payment and damages including payment of last month's rent in advance.

b. A receipt for the security deposit must notify the tenant of

i. Right to have unit inspected at commencement to see what damages are there within 15 days of occupancy if requested by certified mail by Tenant;

ii. Right to be present at lease termination inspection if requested by Tenant by cert. mail 15 days prior to move providing the LL with intention to move, move date and new address. LL must conduct the inspection 5 days before or after the move date. LL must notify the Tenant in writing of the date of the inspection;

iii. Tenant right to receive by first class mail within 45 days after lease term a written list of the charges against the security deposit and the actual costs incurred by the LL in the repairs;

iv. LL's obligation to return unused security deposit within 45 days by first class mail;

v. Statement that failure to return unused portion may result in a penalty of 3 times the security deposit;

vi. Must keep for 2 years;

vii. $25.00 penalty for no receipt.

c. Maximum sec. dep. is 2 months rent (treble damages if more than 2 months. (2 year S/L)

d. Security deposit must be deposited into its own account w/interest. 3% interest per annum. If LL fails to return without a reasonable basis within 45 days, treble damages, plus attorneys' fees.

e. Security deposit may be withheld for unpaid rent, damage due to breach of lease, and for damages in excess of ordinary wear and tear.

f. If Tenant is evicted or abandons the premises, the provisions regarding the return within 45 days and treble damages do not apply unless:

i. Tenant sends notice demanding return within 45 days of eviction or abandonment with tenant's new address;

ii. LL then has 45 days to list damages and costs actually incurred.

VIII. JURY TRIAL PRAYERS

a. If the amount in controversy exceeds the limit for jury trial prayer, there is a right to a jury trial.

b. By separate written pleading.

c. In residential leases, at or before the first scheduled court appearance.

d. In non residential leases, within 15 days of posting or service or at first court appearance whichever occurs first.

e. Upon successful invocation of JTP, Court enters an order for rent escrow.

<u>BROWN BAG LUNCH</u>

October 18, 2012 - 12:30 PM

Lawyer's Lounge
3rd Floor, Duvall Wing

Speaker:

Judge Albert Northrop

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Topic:
"Effective Closing Arguments"

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CONTINUING LEGAL EDUCATION

Legal Studies Institute

Anne Arundel Community College

LEG 389 Parentage Post Civil Marriage Protection Act (***In Partnership with Anne Arundel Bar Association***) Thoroughly examine parental rights created by Maryland's *New* Civil Marriage Protection Act and created by civil unions and domestic partnerships in other states. Explore the intersection of the Parentage Act in the District of Columbia. Gain a working knowledge on handling second parent adoptions, surrogacy, and assisted reproduction cases.

Speakers: Michelle Zavos, Esq. & Jennifer Fairfax, Esq. **When**: **Oct. 23, 2012 6 – 8:30 p.m.**

Where: Room 100, Center for Applied Learning Technologies (CALT) Building

LEG 387 Hot Topics for Criminal Trial Attorneys: (***In Partnership with Anne Arundel Bar Association***) Discover issues that defense lawyers should consider and prosecutors must understand. Examine consequences of a DUI. Review toxicology regulations and insufficient breath cases. Discuss search warrants in light of recent court opinions. Examine the endless questions of when and how different types of electronic evidence are admissible.

Speakers: Hon. William Mulford, Hon. Eileen Reilly, Virginia Miles, Esq., John Robinson, Esq., Greg Jimeno, Esq., Dave Putzi, Esq., Michelle Smith, Esq. **When**: **Nov. 15, 2012 6 – 8:00 p.m.**

Where: Room 107, Center for Applied Learning Technologies (CALT) Building

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LEG 388 Mediator Ethics: Conflict of Interest - Develop strategies for handling conflict of interest issues during a mediation session. Examine how to decline and withdraw from mediation. Discuss conflicts between administrators, judges and mediators. Explore the actions a mediator should take if he or she cannot ethically conduct a mediation.

Speakers: Robert McFarland, Esq. **When**: **Nov. 14, 2012 6 – 8:15 p.m.**

Where: Room 255, Careers (CRSC) Building

COMING SOON!

Property Issues: The Marital House and Business
(with the Bar Association of Frederick County)
November 14, 2012, 8:45 – 12:00 pm

Drafting Agreements
Tim Mummert, Esq., Anne Balcerzak, Esq.
October 2012

PLEASE SEE OUR WEBSITE FOR PRICES

For easy and fast registration, print out a registration form from the website below and fax it to (410) 777-4325 or email a PDF to edgable@aacc.edu.

101 COLLEGE PARKWAY ARNOLD, MD 21012 410-777-7323
FOR REGISTRATION, SPEAKER AND SEMINAR INFORMATION, VISIT WWW.AACC.EDU/LEGALSTUDIES/CLE

50 INSPIRING YEARS Anne Arundel Community College

Get Healthy Today | *by Edith Lawson-Jackson*

More Little Known Health Facts

Last month my article focused on exposing foods that you thought were healthy, but really weren't as good for you as the manufacturers would have you believe. This month, I'll follow this same trend and touch on little known facts about health and nutrition, revealing some information that may not be well known. I've gathered these pieces of information from medical journals, fitness articles, health magazines, and like sources. So hopefully, there will be something stated herein that you can use and apply in your quest to become healthy and fit.

Did you know that…….

Grapefruit appears to have unexplained weight loss benefits. During clinical tests, subjects who ate half a grapefruit with their meals or who drank 8 ounces of unsweetened grapefruit juice three times daily lost 4 pounds (with some individuals losing more than 10 pounds) in 12 weeks without dieting or changing their physical activity schedule.

It pays to eat more frequently. Eating 5-6 small meals (i.e. the same number of calories that you'd normally consume in a day) as opposed to eating "three squares" causes your metabolism to work constantly. However, eating 3 larger meals slows your metabolism down and forces excess calories consumed in a sitting to be stored as fat. So…cut those meals in half and spread them out over six feedings if you want to burn some fat.

Soda can sabotage the healthiest diet! If you drink just one soda per day, you're adding 1,750 calories per week to your diet. In two weeks, you've added a pound of fat from soda alone. So if you'd rather "eat" your bi-weekly gain of a pound of fat or just not add it on at all, drink water and other low calorie flavored drinks like iced tea or Crystal Light. Just imagine the difference this makes over a year.

Beer really does lead to a "beer belly". Calories from alcoholic beverages add up faster than you think – 200 calories on average for drinks that are NOT cocktail mixers and up to 500 calories per drink for some frozen drinks. So if you "knock back a couple" daily, that's where that annual 15 pound gain could be coming from….not to mention your "spare tire".

Fiber is necessary for good digestive health and it aids in weight loss. Fiber helps move food along in your system for proper elimination so you're not carrying around that "10 pounds of undigested meat" in your intestines. Adults should consume 35-40 grams of fiber per day. To reach this goal fairly easily, include broccoli, beans, whole grain cereals, and my favorite "Blue Machine Naked Drinks" which boast 15 grams of fiber in one bottle! Many protein bars including Atkins Bars also contain as much as 10 grams of fiber per serving.

Caffeine does assist with fat burning. Drinking coffee before doing your cardiovascular exercise (consuming 300 mg or the amount in two cups of coffee) within 2 hours of exercising will allow you to work out at a higher intensity AND use a much greater percentage of bodyfat (rather than glycogen) as fuel for the workout.

A "muscle strain" is actually a partial tear of a muscle. Muscle tears can be classified as grade one, two, or three, strains falling under category one. However, normal workouts produce some degree of soreness which is okay as long as the soreness is on both sides of the body and it doesn't persist for more than a few days. If you feel a sudden twinge or sharp pain in a muscle but it doesn't look deformed, it's probably a grade one. If there's bruising, swelling, or loss of mobility it's probably a grade two. If the muscle looks deformed or severe pain is localized on one side more at the joint than in the middle of the muscle, that's probably an indication of a serious problem that needs to be checked out by your doctor.

You can minimize post-workout soreness. If you hate that sore feeling you get the morning after your workout (especially legs), there are a few things you can do to minimize the pain. One, 10-20 minutes of cardio AFTER your workout will help reduce muscle pain the next day. Two, stretching the muscles after your workout will also ease pain, help with blood circulation and removal of lactic acid build-up. Three, 1-2 grams of vitamin C and 400-00 IU of vitamin E post-workout assist with decreased muscle pain (not to mention strengthening your immune system to make catching cold less likely). And lastly, icing your tired/sore muscles for about 10 minutes before going to bed help with pain and swelling.

Fructose sweetened drinks are bad for your bottom line….not to mention your bottom. According to a University of Cincinnati Study, drinking large amounts of beverages sweetened with fructose adds bodyfat - even when you consume fewer calories overall. In the study mice drinking fructose sweetened beverages gained almost twice as much weight and had about 90% more bodyfat than mice who just drank water, despite the fact that the fructose drinking mice ate less. Point to remember: read the labels on your beverages so as to avoid beverages sweetened with fructose.

Transfats should be avoided at all costs. Not only do transfats (just 5 grams per day) increase your risk of heart disease by 25%, they also make you fatter than any other type of dietary fat. A wake Forest University study found that diets high in transfats (as compared to other fats like those found in nuts and fish) cause a greater accumulation of fat around the mid-section and greater overall bodyweight. This includes specifically partially hydrogenated oils. So, read labels in all pre-packaged food items so as to decrease your intake of transfats. Another huge supplier of transfats: McDonalds (A large fry and chicken nugget combo has 10.2 grams of transfats).

Do you ever want a natural cure for everyday ailments that really works?

Well, parsley cures bad breath. Just chew a sprig after eating onions or garlic or after drinking coffee. Parsley is rich in the plant pigment chlorophyll, which is a powerful breath freshener.

A handful of raw almonds helps minimize a headache. As soon as you feel the headache coming on, eat about 8-10 raw almonds.

Do you avoid planes and boats because of motion sickness? Try ingesting ginger. Yep, 500 milligrams of powdered raw ginger consumed 30 minutes before departure and then again every 3-4 hours reduces motion sickness. This works through a mechanism where ginger stimulates receptors in the digestive track that help release the soothing hormone serotonin.

Want to avoid developing high blood pressure? There are a couple of things you can do to avoid this all too common ailment and substantially reduce your high blood pressure if you're already the victim of this disease. First, one of the most important things you can do to combat high blood pressure is 30 minutes of cardiovascular exercise 4 -5 days a week. Second, substantially decrease your sodium intake and be sure to consume enough potassium. Yes, potassium. It's not sodium intake alone that affects blood pressure but rather the balancing of sodium with potassium levels. And lastly, get in some laughs as often as possible. You read correctly….laughing. Researchers at College Park, Maryland conducted a study which showed that when subjects watched comedies (as opposed to serious dramas), their blood vessels relaxed and the vessels were able to dilate and contract more readily (blood vessels that have trouble dilating and contracting easily are associated with cardiovascular disease).

Hopefully, some of these tips will prove personally useful to you and you'll put them into practice to help you lead a healthier and happier lifestyle.

Easton vs King | *by Law Links Student Jade McSwain*

In my time in the Law Links Program, I have become exposed to many things; I have been given several, wonderful opportunities and a very much insightful look into the lives of those in the professional legal world. But above all, the one thing that definitely caught my eye was the case of George Easton v. Catherine King. From the first day that I went to court for the case, and the following warrant of restitution that I drafted for it, it has continued to tickle my brain with the sheer unbelievably of it all. And even today, as I am coming to the end of my stay as an intern at my lovely law firm of Shipley & Horne, P.A., I still just don't get it.

George Easton is the owner of a townhouse which, a year ago this February, he leased out to Catherine King and her husband while he was away for business. The problems for Mr. Easton began in March 2012 when Mrs. King stopped paying her monthly rent and refused to move out even after the lease was over. Mr. Easton, as the concerned landlord that he is, served Mrs. King with a 30 Day Notice to Vacate to which Ms. King replied to this notice with a Rent Escrow Action and thus proceeded to file Bankruptcy, signaling the start of her extensive rat race through the court system.

For those if you who aren't as knowledgeable about landlord/tenant law as I have become, let me explain. A tenant files a Rent Escrow Action on the basis that their landlord has failed to make their house habitable. Yet, when the inspector came to examine the townhouse, all he found were minor scratches and holes which would make her action unenforceable.

But, it was what the inspector could not find that would fuel her to continue her rat race with even more enthusiasm. To be a legal landlord in the state of Maryland and rent out a space, you must have a license. And this license is what the inspector could not find.

So after a period of time, in which an Automatic stay protected King from paying rent, in April, Easton, through his legal counsel of Bradley Farrar from Shipley & Horne, P.A., filed a Notice of Motion of Relief from Stay and Motion of Relief of Stay with the U.S. Federal Court of Bankruptcy, which the judge granted. Also, he asked the court to lift the Automatic Stay which was thus lifted in May, on the basis of the fact that she has filed 4 previous petitions of Bankruptcy, all of which she dismissed. And this isn't the only act of Bad Faith that King has presented in the courts, either. King had agreed to pay the rent she's accumulated from March till now into the District Court of Maryland, she has ceased to do. She has continuously filed schedules late and has failed to make payments for her Instant Bankruptcy case. And she didn't show up for the hearing of the lifting of Stay, which she was notified of.

At this point, there was a hearing of Creditors, where King clearly stated that she was not going to pay rent, to which her legal counsel agreed, claiming that she was protected by her Automatic Stay as part of her Bankruptcy. But her Automatic Stay has been lifted by this time, and she failed to respond to the motion, as mentioned, even when notified.

The battle between the landlord and tenant continued to rage on as Easton filed a Failure to Pay Rent Suit, which would give him back his house as well as the rent due from March until this point, and a Warrant of Restitution, which would evict King from Easton's house. To combat this, King filed a Motion to Stay the Execution of the Warrant, which the Judge had granted depending on how the inspection of her house went.

So, after the case has gone through several hearings and courts, I come in. At the hearing for the Rent Escrow Action, as all cases were reheard in District Court to settle everything after coming from Federal Court, I arrived with Mr. Easton's Lawyer, Bradley Farrar, at the District Court of Maryland for Prince George's County on July 10 only to realize that Mrs. King's Lawyer was late. She was 3 hours late, no less, accumulating legal fees to which our firm was not granted.

And she was unprepared. As she presented her client's case to the Judges, all she held in her hand was a business card.

She claimed at the hearing that Easton was not licensed, which he was and this fact has been affirmed by two different Judges on two different occasions when this argument was presented, and thus her client, Mrs. King, did not have to rent. But since Mrs. King did not pay into her Rent Escrow Action, as she agreed to and as this is the matter on which this hearing was held, the Judge dismissed the case.

So, as I sat at lunch after this hearing, with Mr. Easton and Mr. Farrar, discussing all of the previous information with each other over pasta and sandwiches, I couldn't help but wonder, why? Why did we have to go to court today? Why is Mrs. King dragging this out? Why won't she cut her loses and just move out? I'm sure these are the thoughts of everyone else dragged into this case, so my frustration is a little bit eased. But this case goes on, as she has filed a Motion to Vacate the Order Lifting the Automatic Stay, which was thus denied along with her Motion to Reconsider the Decision, and has thus appealed the case to the US District Court of Maryland. She has also filed another Rent Escrow Action, bringing all of this matter to full circle as this is what began all of this in the first place.

Maybe soon, all of this can come to an end, and Mr. Easton can finally rest in his own home.

But yet, perhaps King will continue to fight to not pay her rent and this battle will continue on. Is all of this just so she can stay in the house for free, or is there something beneath the surface here that motivates her? In my opinion, her bad faith in the court system is insight into something more, something I cannot place, but would give reason to all of this, something I'm sure everyone would like to know.

Family Law Matters | *by Master Judy Lynn Woodall*

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.

From Where I Sit

If I had a nickel for every request to impute income in a child support case without a finding of voluntary impoverishment, I could retire early. Well not really, but it would make for a hefty contribution toward a white linen tablecloth and napkin lunch. The issue of imputing income is a challenging one since a finding of voluntary impoverishment must, in every case, precede any imputation of income. Yes, say it out loud – there must be a finding of voluntary impoverishment before income can be imputed. A parent quits a job that pays $100,000.00 per year to open a business that has the potential for making millions. After one year his or her income from the new business barely exceeds $20,000.00 per year. This substantial decrease is due, in part, to a slow economy. Voluntary impoverishment? What about a custodial parent who has remarried and chooses to stay home with a child born as a result of her remarriage. Voluntary impoverishment? Finally what about the parent who has been seeking employment for the past two years and simply cannot find work but refuses to work at the local fast food restaurant. Should we make a finding of voluntary impoverishment? On the surface, this issue may seem straight forward however; closer examination takes us into a quagmire and reminds us of why we became lawyers in the first place. It is my hope that this article will provide a place to begin your research in the presentation (or defense) of this issue.

Maryland Code (1984, 1991 Repl. Vol., 2009 Supp) Sections 201(h) (1) and (2) of the Family Law Article defines, actual and potential income of a parent. Actual income is defined as, *actual income of a parent, if the parent is employed to full capacity.* Potential income means*, potential income of a parent, if the parent is* ***voluntarily impoverished*** *(emphasis added)*. Section 12-204(b) of the Family Law Article states …if a parent is voluntarily impoverished, *child support may be calculated based on a determination of potential income.* The Court of Special Appeals in *John O. v. Jane O* [1]defined voluntary impoverishment *as freely, or by an act of choice, to reduce oneself to poverty or to deprive oneself of resources with the intention of avoiding child support…*[2] *The court set forth factors to be considered in determining whether a party is voluntarily impoverished. These factors are: 1) his or her current physical condition; 2) is or her respective level of education; 3) the time of any change in employment or other financial circumstances relative to the divorce proceedings; 4) the relationship between the parties prior to the initiation of the divorce proceedings; 5) his or her efforts to find and retain employment; 6)his or her efforts to secure retraining if needed; 7) whether he or she has ever withheld support; 8) his or her past work history; 9)the area of which the parties live and the status of the job market there; and 10) any other considerations presented by either party*.[3]

The court in *John O* reviewed the very detailed evidence presented by both parties and remanded the case for the trial court to make specific findings on the issue of voluntary impoverishment. The Court stated the failure of the court to find specifically that Mr. O voluntarily impoverished himself necessitated a remand. Hmmm. Nothing is simple in matters of love and child support.

In *Goldberger v. Goldberger*[4], custody of the parties' six minor children was awarded to Mother (Appellee). The facts in this case were undisputed. Father (Appellant) was 32 years old, healthy as an ox but never worked a day in his adult life (or any other life). Father planned to spend his life as a perpetual learner – a student. Father was a student before he was married and remained a student after his children were born. Father's sole source of support came from family, friends and the kindness of strangers in his community. The trial court found Father had voluntarily impoverished himself and imputed income for the purpose of paying child support.

Notwithstanding his state of poverty, Father appealed the ruling citing as error the trial court's finding of voluntary impoverishment since he has always been voluntarily impoverished (the old "you knew I was a snake when you brought me here" defense). The Court of Special Appeals spent a couple of pages setting forth the relevant law about one's obligation to support one's minor children and concluded the Appellant had a legal obligation to support all six of his children. Whew, glad we cleared that up. The question then turned on whether income could be imputed to a party who never really had any. Yes, of course it can, which is why the court spent two or three pages talking about a parent's obligation to support one's children. The court went on to say, *whether the voluntary impoverishment is for the purpose of avoiding child support or because the parent has chosen a frugal lifestyle for another reason, doesn't affect the parents obligation to the child*.[5]

The Court of Special Appeals dispensed with Mr. Goldberger's argument and determined: *[For] the purposes of the child support guidelines, a parent shall be considered voluntarily impoverished whenever the parent has*

1 John O. v. Jane O, 90 Md. App. 406 (1992)
2 Id., 90 Md. App. at 421
3 Id., 90 Md. App. at 422
4 Goldberger v. Goldberger, 96 Md. App. 313 (1993)
5 Id., 96 Md. App. at 326

made a free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without adequate resources. The court instructed, in making this determination, the trial court should look at the factors stated in *John O*[6].

The Court of Appeals in *Wills v. Jones*[7] *declined to adopt the rule in John O* as being too narrow. The court stated *the question is whether a parent's impoverishment is voluntary, not whether the parent has avoided paying child support.* The *Wills* court did not seem to care why a parent had impoverished himself or herself, only that he or she had.

In this case, Mr. Jones and Ms. Wills were the parents of a minor child whose support obligation was the subject of this appeal. As fate would have it Mr. Jones committed a crime and got caught. Mr. Jones was sentenced to a mandatory ten-year sentence. Mr. Jones was under court order to pay support for the minor child. Realizing he would not be getting any cost of living increases while incarcerated, he filed a motion to "Stay Enforcement of His Child Support Obligation"[8]. The master recommended Mr. Jones' motion be denied finding his incarceration was "self-induced and voluntary". The Circuit Court disagreed and granted the motion finding Mr. Jones was not voluntarily impoverished. The Court of Special Appeals affirmed the Circuit Court and Ms. Wills appealed arguing, Mr. Jones' support obligation should not be modified because an incarcerated parent should be considered *voluntarily impoverished.*

The court discussed the meaning of "voluntariness" at length and concluded, *it stretches the imagination to conclude that Mr. Jones' incarceration was voluntary* (and besides do you think he would have committed the crime if he thought he was going to get caught- I don't think so).

In *Moore v. Tserouis*[9], *Father, the non-custodial parent, was under a support order for two children. He remarried and he and his new wife decided to move from Baltimore to Garrett County (I'm guessing to get away from wife number 1). Father filed a motion to modify his support order since his income in Garrett County would be less than what he earned in Baltimore. "Voluntary Impoverishment"? The master thought so, after all it's not like he didn't know that the wages in Garrett County were less than the wages paid in Baltimore. Court of Special Appeals said, nope. Court acknowledged the difference in income but stated, [w]e do not believe, however, that a court can restrict a parent's choice of residence in order to insure that he or she remains in or moves to the highest wage earning area*[10].

Wagner v. Wagner[11] teaches nothing new but stands for the proposition when parties enter into litigation that starts in 1987 and concludes in 1996 it is time to invest in one of those wheelie carts for the purpose of transporting their file (all 16 volumes) so you won't injure your back. Seriously, the Court of Special Appeals reiterated the holding in *Wills* stating, *to determine whether [a parent's] impoverishment is voluntary, a court must… ask whether his [or her] current impoverishment is by his [or her]… own free will,* ***regardless of the motivations therefore***[12] (emphasis added). When the dust settled, Mr. Wagner was awarded custody of the parties' minor children. Mrs. Wagner took a job paying approximately $60,000.00, resigned it for one paying $20,000.00 and, if that wasn't enough, she transferred her home to her parents for nominal consideration. The court stated, *the relevant inquiry, as clarified by the court in Wills, is whether Ms. Wagner brought about her impoverishment intentionally and of her own free will.*

The case of *Durkee v. Durkee*[13] is similar to Goldberger in that the situation that caused the inquiry of whether a party was "voluntarily impoverished" existed during the marriage. In short, the court declined to adopt appellant's contention that a court *may not find voluntary impoverishment unless the decline in income occurs after the separation.*[14]

Finally, two other cases worth reading are *Stull v. Stull*[15] *and Petitto v. Petitto*[16]. *In Stull* the trial court imputed income to the obligor after a finding of voluntary impoverishment. The obligor was fired from his full-time and part-time job. He was fired from the full-time job for falsifying documents. Now, if you have been paying attention, you should have reached the same conclusion as the Court of Special Appeals – no voluntary impoverishment. This case was similar to *Wills* in that the court found the obligor did not intend the result of his actions. In *Petitto*[17], the court found a custodial parent could also be voluntarily impoverished. The same free will (blah, blah, blah) analysis and *Jane O*[18] factors followed the courts finding of voluntary impoverishment.

In conclusion, and as I encouraged you to repeat out loud earlier, in order to impute income a finding of voluntary impoverishment must happen first. The facts must support a finding that either the obligor or obligee has made *a free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without adequate resources.* The court has made it clear that the reason for the impoverished state is of no moment and has provided factors (found in the *Jane O* case) to assist in making this determination. Thereafter feel free to present facts and argue how much income should be imputed when setting child support pursuant to the Guidelines. With that, I will enjoy my lunch.

**Judy Lynn Woodall is a Master in Prince George's County and has served the citizens of Prince George's County for the past eight years.*

6 John O. v. Jane O, 90 Md. App. 406, (1992)
7 Wills v. Jones, 340 Md. 480(1995)
8 The court treated Mr. Jones' motion as one for modification pursuant to FL 12-104.
9 Moore v. Tserouis, 106 Md. App.275 (1995)
10 Id., 106 Md. App. at 283
11 Wagner v. Wagner, 109 Md. App.1 (1996)
12 Id., 109 Md. App. at 45 and 46
13 Durkee v. Durkee, 144 Md. App. 161 (2002)
14 Id., 144 Md. App. at 186
15 Stull v. Stull, 144 Md. App 237 (2002)
16 Petitto v. Petitto, 147 Md. App. 280 (2002)
17 Petitto v. Petitto, 147 Md. App. 280 (2002)
18 John O. v. Jane O, 90 Md. App. 406, (1992)

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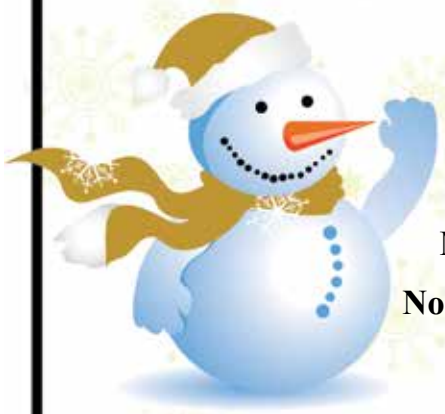

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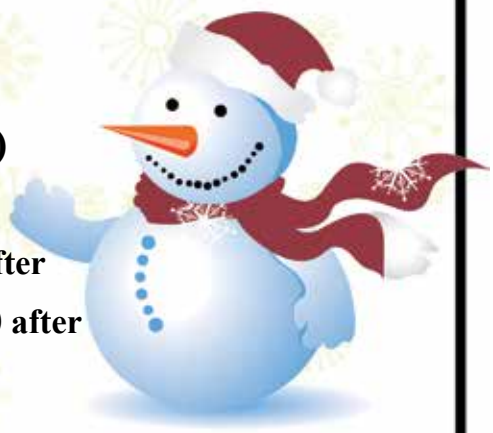

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