

PGCBA NewsJournal

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

February 2013

PRESIDENT'S MESSAGE



WHAT IF NED STARK HAD HIS CRIMINAL RECORD EXPUNGED?

Sure, I know the new season of Game of Thrones doesn't start until the end of March, but Denise Bowman challenged me to write an article for the newsletter which included references to one of my favorite television shows, so challenged accepted. I actually found a way to have it relate to a new Bar Association program! More on that in a minute, because I want to first thank members of the Bar Association for some wonderful January programs. On January 8, 2013, Judge Erik Nyce and Judge Nick Rattal presented another addition of the award winning Law Practice 101. Thanks to both judges for their participation and thanks to all of those who took the time to come and participate in the program. We had a great turn out of about 42 lawyers. I know it's not the easiest thing to make it down to Upper Marlboro in the afternoon so thank you to all of the attorneys who attended. Our next Law Practice 101 will be held on Thursday, February 7, 2013 at 4:00 pm and is tentatively a program on search and seizures and confessions and will be moderated, as always by Judge Nyce and will feature Judge Michael Whalen. Additionally, thanks to John Foran and Arnold Bruckner for their presentation during the Brown Bag Lunch which was a "Refresher on Professionalism and Ethics." Last, but certainly not least, thank you to Jay Holland who helped to put on a wonderful CLE on Employment Law in Greenbelt last week. He had over eighty (80) participates in the program. We look forward to the continued involvement of the Bar Association's Employment Law Section over the coming years!

Truth be told, this is a rewritten version of the President's message. The first draft was going to talk about Valentine's Day and contained one of my favorite quotes from Justice Joseph Story about the "law as a jealous mistress..." and was going to give the secret to making your significant other happy on Valentine's Day. (Sorry, another time, another column.) But instead, I was inspired by our very own Board of Directors and a great meeting we had where the details of a new, exciting program that is beginning in a few weeks. A significant part of the Prince George's County Bar Association's mission has been not only to educate and service lawyers in Prince George's County, but to reach out and help the Prince George's County community. Our Bar Association has a long history of public service, whether it be Christmas in April, the adopt a school program, Law Links, Mock Trial and providing free legal advice on Law Day in May. Well you can now add another program to this long impressive list: the Criminal Record Expungement Program.

It is no secret that jobs in today's economy are hard to come by and that individuals need all the help that they can get to be competitive. Many people have minor



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PGCBA NewsJournal

Published monthly (except Jul./Aug.) by

The Prince George's County Bar Association

Established 1902

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Members at no cost as part of annual dues;

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

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...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

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criminal matters that appear on their record during routine background checks for jobs or are required to list these matters when applying for jobs or applying to educational programs and colleges. Even more people do not know that they can expunge their record of these criminal matters, what specific matters can be expunged and how to expunge their records. Have you ever taken a look at the standard Expungement of Records Form on the Maryland Judiciary website? It's hard enough for someone who graduated from law school to fully comprehend the form, much less a lay person who doesn't understand arcane English phrases and the subtle, legal art of using fifteen words to say something when only five are needed.

This is why the Prince George's County Bar Association is putting together the Criminal Record Expungement project. Our goal is to help the Prince George's County community determine if their record qualifies for expungement

and help the individuals fill out the paperwork for free. One of the most common reasons that expungements are denied is because they are not filled out properly. The PGCBA will be putting on four programs throughout the county. The first one is taking place on February 23, 2013 from 10:00 am until 2:00 pm at the Largo-Kettering Library. Additionally, lawyers will provide free advice on expungements on March 23th at the Hyattsville Library; April 27 at the Clinton Library; and finally May 4, 2013, in conjunction with Prince George's County's celebration of law day, we will be holding our last workshop at the library in Upper Marlboro. All are from 10:00 am to 2:00 pm.

The Bar Association is giving free training to lawyers who wish to participate in this program. Marilyn Booth of the State's Attorney Office for Prince George's County will conduct this first training season at the February Brown Bag lunch on February 21, 2013 at noon in the lawyer's lounge

in the Courthouse. As we get closer to the dates of the other three events, additional training dates and times will be announced. Our goal is to get at least five attorneys to donate their time and knowledge at each event. If you wish to get further information about the program, please feel free to contact the board members who will be running this program, Ben Rupert, who first came up with the idea to do the program in Prince George's County, and Sabrina Richardson and Nakia Gray, who are assisting Mr. Rupert. It is my hope that this is the first of many years in which the program will continue to grow and aide the Prince George's County community.

Until my next message, remember, winter may be here, but pitchers and catchers report by the end of the month.

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

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MEMBER ANNOUNCEMENTS

LOOK AHEAD
FAMILY LAW
MAY 4, 2013

**PARKING PERMITS
TO EXPIRE
FEBRUARY 28, 2013**



The black and white parking permits issued to the Bar Association will expire on February 28, 2013. Since we are trying to merge the cycle of the permits with our dues payment we are issuing stickers that will extend the deadline for your current parking pass until June 30, 2013.

There is a minimal cost of \$20 for this sticker. Please send a self addressed stamped envelope along with a check for the \$20 fee to PGCBA, 14330 Old Marlboro Pike, Upper Marlboro, MD 20772 and we will send you the sticker for your permit.



**SAVE THE DATE
MARCH 21, 2013**

MARCH MADNESS HAPPY HOUR
5:00 TO 6:30 PM

Drinks & Appetizers

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\$25 FOR NON-MEMBERS

**SAVE THE DATE
MARCH 30, 2013**

.....

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AND MORE

FEBRUARY 7, 2013 -
THURSDAY

LAW PRACTICE 101

Confession
and Suppression

***Presenter: Judge
Michael Whalen***

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Upper Marlboro
4:00 PM

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***“The PGCBA is glad to have you as
our new members!”***

BROWN BAG LUNCH

February 21, 2013 - 12:15 PM

Lawyer's Lounge, 3rd Floor

Duvall Wing

“PGCBA SERVICE PROJECT:

EXPUNGING CRIMINAL RECORDS TRAINING SESSION”

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a training session. More training dates will be announced.*

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New Year's Resolution In Baby Steps

The number one New Year's resolution every year is to lose weight and become healthier.

Yet, Americans are becoming more and more overweight every year and we are seeing unprecedented increases in health problems, many of which are related to our lack of exercise and proper diets. Keeping your New Year's resolution can seem a daunting chore. But it doesn't have to be. Often, we have unrealistic expectations and goals. Like everything else, achieving optimal health takes time, commitment, and consistency. Even when it seems you're seeing no progress, you must keep to the course in order to obtain the results you want. And most importantly, you have to remember to take baby steps. For the next few months, we're going to break down getting healthy into baby steps and focus on one objective at a time. The first baby step - eliminating (or minimizing) sugar from your diet.

People often cringe at the thought of eliminating sugar from their diets. They imagine dining on asparagus spears and broccoli florets for every meal. But severely minimizing sugar isn't as bad or as hard as you might think. Why did I choose to start with sugar? Simple. In addition to ending up on your belly and hips most easily, sugar affects your mood, your energy levels, and in excess, can lead to many severe health ailments. Now, when I say that we want to focus on eliminating sugar, I don't mean that in the strictest sense. You'll still be able to have fruits and vegetables that contain sugar, as well as some sugar derivatives. Mostly, we want to avoid high fructose syrups, white cane sugar, store bought undiluted juices, and products made with these ingredients.

It's easier to specify which foods you should try to avoid than it is to tell you which foods you can have. But I'll give you a mixture of both. To start, you want to get rid of any white sugar you have in your home. Replace it with either Splenda or stevia, a natural sweetener which can be

purchased at any health food store. If you drink tea, coffee, or other beverages which require sweetening, use one of these sugar substitutes in place of white granulated sugar. Next, don't drink any soft drinks. It's really best if you eliminate soft-drinks altogether, but if that's too challenging for you, switch over to sugar-free soft-drinks and try to cut your consumption of these to half of what you normally drink in a given week. Avoid juices unless you squeeze the fruits yourself with a juicer. However, it's really best to get your fruit juice from simply eating the fruit itself. So instead of drinking orange juice in the morning, slice an orange into quarters and eat that. It's fresher, better for you, and contains less sugar than processed juices. So what should you drink, you ask? Try Propel, Vitamin Water, plain old water, sugar-free iced tea, and beverages such as coffee or tea sweetened with Splenda or stevia.

When we talk about foods, it's really not hard to avoid sugar unless you like to indulge in sweets and baked goods. Most lunch and dinner items don't include tons of sugar unless you're having cinnamon buns for lunch. So here's the solution to reducing sugar from your meals - as often as possible, prepare your own meals. But even if you can't do this, it's easy to spot, and avoid, sugar traps. Always choose meats like chicken, fish, and lean beef with some sort of vegetable for your main meals. You can even have sandwiches (try whole grain bread). Skip muffins, cookies, cake, pies, and candy. If you feel like you want something sweet, try portable apple sauce cups or a piece of fruit, or even a sweet potato sprinkled with cinnamon and a half pack of Splenda. And for breakfast, there are many great low-sugar cereals and oatmeals (like Quaker Weight Control) that you can pick up right from your local grocery store. And sliced bananas can be added for additional natural sweetness.

You won't believe the difference these simple steps will make in helping you achieve your New Year's resolution. Something as simple as restricting sugar from your diet can result in the loss of up to 10 pounds in one month, not to mention stabilizing your blood sugar levels. But

what about sugar withdrawal you might ask? People who are accustomed to consuming large amounts of sugar often suffer symptoms of withdrawal when they attempt to give up sugar all of a sudden. Symptoms of withdrawal can include headaches, irritability, fatigue, depression, and cravings for sweets and starchy foods. Well, the best way to avoid sugar withdrawal is to avoid skipping meals and to consume adequate amounts of water. Eating regularly, or every three hours, will help to moderate blood sugar levels so that you don't experience as many cravings and so that you enjoy more stable energy levels. Eating every three hours doesn't mean having a four course meal. It can mean having a half of a turkey sandwich with an apple or a chicken breast salad with a banana or even a couple cups of yogurt and an orange. Many of these food items can be kept in your briefcase, desk drawer or your car. And if you drink plenty of water, that will stave off "false" feelings of hunger. You see, often we are really thirsty when we think that we're hungry. So aim for a minimum of half a gallon of water a day, or 64 ounces. That's only four sixteen-ounce cups. Guzzle one sixteen ounce cup with every meal, and that way you'll be sure to get in sufficient amounts of water.

There are also some supplements which are aimed at battling the symptoms of sugar withdrawal. If you can, you should add these aids to your arsenal. Stock up on Vitamin C (I take two grams a day and swear by it), B-complex vitamins (these can give you enough energy to get you through a workout even when you thought you were dead tired), fiber (pills or powder), and L-glutamine. All of these supplements help stabilize blood sugar levels and will keep your mind off of sweets. When you combine these supplements with your regimen of eating every three hours, choosing alternatives to "sweets" and sugars which I've already mentioned, and drinking plenty of water, your hunger cravings and desire for sweets will be substantially minimized. And fortunately, sugar withdrawal is only temporary. Your cravings will decrease after the first few days and

will practically subside altogether after about three weeks. If you can stick to this reduced-sugar eating plan for that long, you'll already be seeing a difference in your clothing, which will make you want to continue on this positive trend. And remember....it's only sugar that you're giving up in this first baby step. You can still have a cheeseburger or fries (but don't try to compensate for sweets with additional fatty foods). Before you know it, fruits and other naturally sweet foods will taste sweeter to you and your taste buds will change so that super sugary foods taste too sweet to you (I can't even drink straight juice).

Just keep in mind that starting this process is the most difficult part. Once you get started though, it will become easier each day. So keep in mind that the mild withdrawal you may experience is only temporary and stick to the plan outlined herein. We're taking baby steps and only working on one aspect of your fitness and nutrition plan at a time. And if you fall off the wagon and have a cookie when you know you're not supposed to, just commit to getting right back on track and starting anew with the very next meal. You can do this and it's much easier than just saying "I'm going to lose 10 or 20 pounds". This way you have a plan that really is doable. This month commit to taking your first step towards achieving a realistic New Year's resolution by avoiding sugar. This year we're going to get healthier, and we'll achieve this goal by taking baby steps.

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‘Histories make men wise...’¹

On November 1, 2012, I attended the annual banquet of the J. Franklyn Bourne Bar Association at Martin’s Crosswinds in Greenbelt, Maryland. As I entered the room, I was stunned by the words I heard from the speaker at the podium. I heard Judge Williams talking about the passing of Judge James H. Taylor on October 31, 2012. I was stunned by his words because I realized that one of the” Brahmins” of the Bar and treasures of our community would no longer be in our physical midst.

Judge Williams shared some eloquent words and insights regarding the life and legacy of Judge Taylor that evening. He graciously consented to my request to publish his comments in “The History Corner” this month.

A SPECIAL TRIBUTE TO JUDGE JAMES H. TAYLOR

Presented by Alexander Williams, Jr. (United States District Judge for the District of Maryland) at the J. Franklyn Bourne Bar Association’s Scholarship Banquet on November 1, 2012.

I rise this evening to offer a few remarks in tribute to the Honorable Judge James H. Taylor, who quietly passed yesterday evening around 10:00 pm in the circle of family. Judge Taylor was one of the founders of this association and truly the tallest tree in the forest. He attended Howard University as an undergraduate and graduated from American University Law School (now the Washington College of Law at American University). Judge Taylor was born in Howard County and was a life-long resident of Maryland. He was a devoted husband, father and grandfather. A handsome and towering figure, he came to Prince George’s County to practice law in 1956. As you can probably imagine, at that time Prince George’s County and Upper Marlboro were tough places to do business. The legal system was segregated. Right in the courthouse and in the Town of Upper Marlboro were signs for separate toilets and eating facilities. You had to be a strong, self-assured, wise and calm person. You had to be a person who was able to recognize the social revolution and movement that was taking place at that time in America. But, at the same time, it was necessary to learn how to survive in Prince George’s County, Maryland, which had a legacy

of segregation and a segregated culture in Upper Marlboro. Any Black lawyer who assumed that role at that period in time had to be a special person who was capable of weathering the environment and the attitudes prevalent during that period. Judge Taylor endured all of the insults that were hurled at him and at African-Americans during that period, yet he never lost his cool.

Many of us in this room have assumed key positions in both Montgomery and Prince George’s Counties; but the one we salute today is the real trailblazer, Judge Taylor. Judge Taylor was the first Black attorney to practice law in Prince George’s County. He first purchased a house on Sheriff Road in Fairmount Heights across the street from the present location of the Ebony Inn. Later, Judge Taylor purchased a house in the town where he lived and also saw clients. Shortly thereafter, he and Frankie Bourne together purchased another house located at 6918 on the Old George Palmer Highway (now MLK Highway) near Addison Road on the border of Fairmount Heights and Seat Pleasant. Judge Taylor practiced law for several years in that house alongside Frankie Bourne, Henry Johnson, Bruce Harrison and later Sylvania Woods. Black and white clients from all of the surrounding counties including Montgomery County and Southern Maryland traveled miles just to engage this Black attorney-extrordinaire. He was the first Black Assistant State’s Attorney for Prince George’s County; the first Juvenile Master for Prince George’s County; and, he was the first Black

attorney appointed by a Maryland Governor to a Circuit Court judgeship outside of Baltimore City.

There is a little history about Judge Taylor’s appointment you should know. Had former Governor Spiro Agnew remained in office, perhaps, Franklyn Bourne (who was a Republican and who had been appointed to the Workers Compensation Commission by Governor Agnew), would have been appointed as the first Black judge. However, Governor Agnew became President Richard Nixon’s Vice President of the United States, and Marvin Mandel (a Democrat and former Speaker of the Maryland House of Delegates) became Governor of Maryland. Governor Mandel then appointed Judge Taylor to the Circuit Court of Prince George’s County. At that time in 1969, with the exception of the united support he had from Bud Marshall, State’s Attorney For Prince George’s County, and the other prosecutors in his office, the Prince George’s Bar Association membership, in general, provided little support for him. Additionally, the Prince George’s Judicial Nominating Commission initially did not send up Judge Taylor’s name to Governor Mandel. However, Governor Mandel sent the names back and the Commission then added Judge Taylor’s name to the recommended candidate’s list. I have spoken on many occasions with former Governor Mandel who told me that though he made the appointment, he candidly admitted that he had reservations as

to whether Judge Taylor could get elected at the next upcoming general election, which the State Constitution requires of a circuit court judge in order to serve a fifteen (15) year term. But, through the united efforts of so many individuals (Blacks, Whites, Democrats and Republicans), Judge Taylor won his election and became the first Black person elected county-wide to a major political office in Prince George's County.

With your permission and privilege this evening, let me personalize a couple of points. Immediately after my graduation from law school and having taking the July bar, I became Judge Taylor's law clerk. While I have been privileged to serve in several terrific jobs as an attorney during my legal career, I state, unequivocally, that none of those positions and challenges which I assumed (not one) can ever match that one (1) year experience I had with Judge Taylor which I will forever cherish. And what an experience it was to have served as his law clerk and to have been groomed by this professional and outstanding trial jurist and student of the law! He shared with me the history of Prince George's County and of his career. At one point in time there were only nine (9) circuit court judges and each handled everything: civil, criminal, equitable and domestic cases. Judge Taylor and I literally rode the circuit. We cruised down Routes 301 and 5 (he talking and me sapping in what I could) in the Judge's Rolls Royce toward Leonardtown or La Plata or down Route 4 to Prince Fredrick on the days Judge Taylor was to preside in those courts. Those were the days! Being in law school exchanging esoteric theory with professors is one thing. However, seeing the law and observing a master in action; seeing how Judge Taylor prepared himself by taking files home with him each night; observing how patient and careful he was in listening to the attorneys and litigants and weighing all of the pertinent considerations of a particular case; observing the politeness and humility he exhibited in his interactions with the attorneys, litigants

and court personnel; seeing him trying his best to get it right and make every effort to have litigants leave the court believing that they got their day in court, and admiring the tremendous respect his colleagues had for him; all of this and so much more is ample evidence of the tremendous privilege I enjoyed serving as the law clerk of this extraordinary man. His gentleness and meekness was breathtaking. I never, ever felt comfortable with him always referring to me, his mentee, as judge. But that was the nature of the character of Judge Taylor.

His wisdom, sharp intellect (yet without pretense), political savvy and instincts, and the lessons he taught to so many of us will remain forever. For me personally, he supported my career moves and provided tutelage regarding the practice of law. He made a powerful pitch to Senator Sarbanes on my behalf which probably sealed the deal for his recommendation of my nomination to the United States District Court for the District of Maryland to President Bill Clinton.

I suspect that more will be said in the weeks to come, but let me mention how much of a mentor and advisor Judge Taylor has been to so many mentees in both the private and the public sector. He has tutored and mentored many private litigants throughout the DC Maryland metropolitan area. For example, seasoned DC litigation attorney Robert Goodson is one of Judge Taylor's former law clerks. Additionally, Judge Taylor has a mentee on every level of trial courts in this county. They include: Judge Crystal Mittelstaedt (his former law clerk) now on the Circuit Court for Prince George's County; Judge Larry Hill, Jr. worked in Judge Taylor's law office and received great mentoring and is now on the District Court for Prince George's County; and Judge Athena Malloy-Groves (who worked in his law office) now sits on the Prince Georges County Orphans Court. I might also add the name of Circuit Court Judge Herman Dawson who Judge

Taylor let just hang around chambers as an intern from 1983-84. I am also a former law clerk of Judge Taylor, and I now sit on the Federal District Court here in Greenbelt. There are so many more mentees I could name but time and space limits such an effort.

Let me conclude by saying that Judge Taylor laid the groundwork and he literally was the engine which started our success in Prince George's County. He influenced countless lawyers with his valuable lessons and advice. I believe that I speak for many of us in this room today when I say this: That many of us (I know I fall in this category) have tried our best to emulate his temperament, his work ethic, his sense of integrity and to follow the high standard that he set and which we observed him perform. He left us with a legacy of excellence. And so I am honored this evening to have been asked to give these few remarks as a tribute to him and I say publicly: Thank you Judge Taylor for your life, for your service, for your mentoring, for your support and for all you did for so many of us here in Prince George's County and the State of Maryland across the years.

Ladies and Gentlemen, we salute Judge James H. Taylor: lawyer, judge, community warrior and family man. I ask, Mr. President, that my remarks be made a part of the permanent records and preserved among the archives of this Association. I now ask all who are able to stand in a moment of silence as we reflect upon the passing of this historic and legal giant who is most deserving of this tribute. While standing let us also pray for those who suffered losses as a result of Hurricane Sandy.

These remarks were edited by Carolyn Starks Saxon

1 Essay. Of Studies by Francis Bacon (1625)

This is the beginning of a series of articles regarding the founders of the J. Franklyn Bourne Bar Association.

The Prince George's County Bar Association's
Expungement Project



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Thank you to Arnold Bruckner and John Foran for the Brown Bag Lunch program on Ethics and Professionalism. They shared vital information about the Bar Counsel and the Attorney Grievance Commission and the grievance process. They also highlighted the practices that tend to get attorneys in trouble some old but some very new that have been brought on by the economy and the increase in the diverse cultural practices in our county and the state.

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CLS Awarded Funding For Foreclosure Prevention

We are pleased to announce that CLS has been awarded funding by the Maryland Office of the Attorney General and the Department of Housing and Community Development in the amount of **\$850,000**. The funding will be broken down into Fiscal Years 13, 14 and 15. The Foreclosure Prevention Program is funded by the Maryland Attorney General's portion of 2012 joint federal-state mortgage loan servicing practices settlement with the five largest U.S. bank services of mortgages (the "Settlement Funds") and the Housing Counseling and Foreclosure Mediation Fund. The purpose of these funds is to enable CLS to provide homeowners and tenants foreclosure-related housing counseling or legal assistance. If you know someone who may be facing foreclosure, please direct them to contact our office at 240-391-6413.

Two of our Foreclosure Success Stories in FY2012

A College Park homeowner fell behind on mortgage payments in 2009 because of a loss of employment as a public school teacher. The homeowner began making partial payments in May 2009, however by December 2009 the lender, PNC Bank, stopped accepting payments. The homeowner sought the assistance of a CLS pro bono attorney to navigate through the loss mitigation process. As a result of the attorney's efforts, the foreclosure case was dismissed and the homeowner is no longer in jeopardy of foreclosure.

A Lanham resident struggling to put her son through college fell behind on payments because of a reduction in monthly income. She received a PNC loan modification for her first mortgage, but second mortgage on the home was

acquired by a new lender, Partners for Payment Relief. A foreclosure action was filed against the second loan and the homeowner experienced difficulty contacting the lender and resolving the problems. She contacted CLS for assistance. The homeowner was matched with a volunteer CLS attorney who successfully negotiated a re-payment plan with the second mortgage holder and her home is no longer in danger of foreclosure.

Free Foreclosure Prevention Training for Lawyers

The Pro Bono Resources Center (PBRC) provides training to attorneys who would like to help but lack knowledge and training. The training is in exchange for a pro bono commitment. PBRC also provides a listserv for attorneys to actively communicate with each other and discuss various foreclosure issues in real-time! You can visit their website for further details at www.probonomd.org

CLS provides **advice and mentoring** for volunteer attorneys on foreclosure law, defense and modification strategies. Please contact Angela Richardson Green at 240-391-6413; extension 16, or email her at richardson@clspgc.org. If you need to refer a client facing foreclosure to CLS, please direct them to our Foreclosure Prevention line at 240-391-6413. Spanish speakers may ask for our bilingual legal assistant Oswaldo Perez at this same number.

We Have Funding Available to Pay for Attorneys Fees!

CLS continues to refer cases under our Family Law Judicare funding project made available by *Maryland Legal Services Corporation*. Attorneys receive \$80.00 per hour up to \$1,600.00 per case. Payment is made after the case is concluded. Due to increased funding from Maryland Legal Services Corporation, CLS is temporarily able to suspend our

requirement of accepting one pro bono case for each Judicare case. This is temporary, so please contact Michael Udejiofor or Angela Wright at 240-391-6532 to get on the list!

Community Legal Services of Prince George's County, Inc. is a non-profit organization established to provide quality civil legal services to low-income persons in Prince George's County. It does this through the generous contribution of legal advice and legal representation by members of the private Bar. Additionally, CLS operates free legal clinics in the County. They are located in the in Circuit Court House, Langley Park and Suitland. For more information about our services, please contact Nora C. Eidelman, at 240-391-6532, ext. 12.

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Suzanne Vetter

The Jaklitsch Law Group is pleased to announce that **Suzanne Vetter** was chosen for inclusion in the 2013 Maryland *Rising Stars* list, an honor reserved for those who exhibit excellence in practice. According to Super Lawyers magazine, only 2.5 percent of the attorneys in Maryland are named to *Rising Stars* list each year.

"Anyone who has seen Suzanne try a personal injury case knows she is a 'rising star' in litigation trial practice," says Rick Jaklitsch. "The Jaklitsch Law Group is very lucky to have Suzanne helping our clients."



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LAW PRACTICE 101 - “DISSECTION OF FIVE MOST FREQUENTLY MADE OBJECTIONS.” | Presenters Judge Nicholas E. Rattal and Judge Erik H. Nyce

Prince George’s County Bar Association Law 101
January 8, 2013

Dissection of 5 Common Objections Overview

Reason for objection

-keep out inadmissible evidence

-prevent prejudice

-protect the record for appeal

-trial strategy

-other reasons

Maryland Rules 2-517, 4-323 Method of making objection; 5-103 Ruling on evidence; 5-104 Preliminary questions; 5-611 Mode and Order of interrogation and presentation; control by court; scope of cross examination; leading questions

SPECIFIC OBJECTIONS

1. **OBJECTION - irrelevant**

5-401 Relevancy, et seq - “What element does this tend to prove”

Elements of Case - Pattern Jury Instructions

State of Mind?

Foundations and relevance “inextricably linked”

Personal knowledge - senses - hear, see, feel, mind (if applicable)

Conclusion? Speculation? Opinion? (how would this witness know that?)

Relevance - Why did you ask that? Tends to prove a fact. Which issue or jury instruction?

Chart of Testimonial Evidence

Not Admissible

51% ----->

Admissible

Opinion <-----> Facts

Speculation | conclusory| logical inferences

“Maybe...I think...not sure...possibly...less than 50%”

2. **OBJECTION - hearsay**

5-801 Hearsay “ie: rule against hearsay”

“...offered in evidence to prove the truth of the matter asserted.”

State of Mind

Probable cause

Background

Prejudicial?

5-802 “...hearsay is not admissible [but]...”

5-802.1 Prior Witness; 5-803 Exceptions; 5-804 Exceptions - declarant unavailable.

-statement of party opponent (adoption, authorized individual employee or agent, conspirator)

-Excited utterances - **Crawford** (USSC) 6th Am. Right to confrontation; **Davis v. Washington** 911 call - emergency vs. testimonial.

-business records (or absence of entry)

Law 101 01/08/13

-prior (inconsistent) statements of witness at trial

NO -prior consistent statement - "buttress credibility - said it before - say it again...unles..."

3. **OBJECTION - leading**

5-611(C) Leading Question

Do not - suggest an answer

Ie: What color was the red light.

Do - use facts in evidence

Ie: As you approached the intersection, was there a traffic control device?

You said there was a light controlling the intersection, what color was it?

Interrogation - tell the story. Sequential. Can always ask:

...and then what happened?...what did you do?...what did you see?

...taking you back to the date, time, and place of the incident which is the subject of the suit, where were you?

Why did you do that?

Flaw - trying to prove every element of the case through every witness

- using the witness to argue your point...Cf...unless you can win.

Cross-exam - Do not rehash direct

Use known facts - medical records, deposition, irrefutable evidence

"Perceived cross-exam" - does not establish anything but looks good\

Know why you are asking the question and what you want

Read materials on cross-examination



4. **OBJECTION - discovery violation**

Civil

Motion filed or prior order

Different from Interrogatories/deposition

Credibility

New allegation

Prejudice vs. Continuance

Appeal

Criminal

District Court 4-262

Brief Overview

Prejudice vs. Continuance

The agreement between OSA & OPD

Circuit Court 4-263

5. **OBJECTION - foundation**

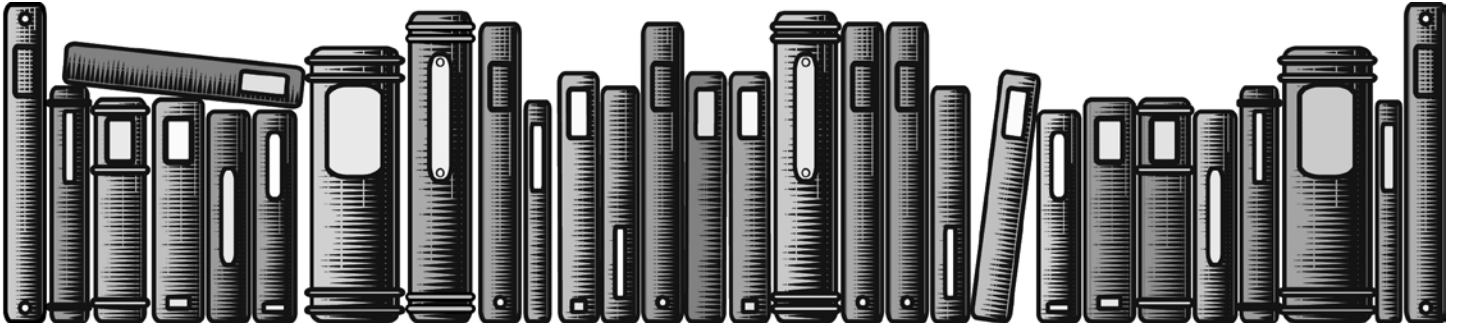
-personal knowledge

-authenticity - 5-901, *et seq.*

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



New Titles! New Editions!

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The Prince George's County Circuit Court Law Library presents a list of new materials acquired December 2012. Feel free to visit the Library and review any materials, new or old.

BOOKS

**Civil Procedure Forms, 2012-2013 ed.
KFM 1730 .M3 2012 RESERVE**

**Federal Civil Rules Handbook, 2013 ed.
KF 8816 .A2 2013**

**Hearsay Handbook, 4th ed., 2012-2013
KF 8969 .A15 H43 2012**

**Maryland Evidence: Courtroom Manual, 2013 ed.
KFM 1740 .H67 2012 RESERVE**

**Search and Seizure Checklists, Nov. 2012 ed.
KF 9630 .Z9 S42 2012 RESERVE**

ELECTRONIC RESOURCES

Bloomberg BNA – Full text articles from the following publications:

- **ABA/BNA Lawyer's Manual on Professional Conduct**
- **Americans with Disabilities Act Manual**
- **Employment Discrimination Report**

- **The United States Law Week**
 - **Criminal Law Reporter**
 - **Family Law Reporter**
- Available from all Library computers.**

CD-ROMS

**Maryland Civil Procedure Forms – West, 2012 update
Kept at Reserve Desk**

**Maryland Limited Liability Company Forms,
2012 update
Kept at Reserve Desk**

**Qualifying and Attacking Expert Witnesses,
Dec. 2012 update
Kept at Reserve Desk**

**Search and Seizure Checklists,
Dec. 2012 update
Kept at Reserve Desk**

**UCC Pleading and Practice Forms,
4th ed. 2012 update
Kept at Reserve Desk**



LEG 394 - The Business Lifecycle: Protections and Pitfalls *(In Partnership with Anne Arundel Bar Association)* Make sure you have all the facts so you can confidently advise clients on which business entity is in their best interest. Review tax implications with starting a business entity. Prepare for negotiating mergers and acquisition deals so you can effectively advocate for your clients. Examine different types of dissolutions. \$55.00 (add'l \$5.00 if out of county resident)

Speakers: Jon Kagan, Esq., Joe Gormley, Esq.
Ron Jarashow, Esq.

When: Feb. 26, 2013 6 - 8:30 pm

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

LEG 382 - Interdisciplinary Collaborative Law Training: Basic Training - TWO DAYS

Focus of this two-day basic training is to introduce the collaborative model to attorneys and professionals. Learn the essence of the paradigm shift and team approach, including 4-way meetings and team dynamics. Upon completion, participants will be able to engage in a collaborative law case. \$300.00 (\$305.00 if an out-of-county resident)

Note: This training complies with the International Academy of Collaborative Professionals (IACP) Minimum Standards for Collaborative Basic Training and satisfies the minimum Collaborative Practitioner Standards of twelve (12) hours of training.

Speakers: Timothy Mummert, Esq. Anne Balcerzek, Esq.

When: Feb. 15 & 16, 2013 8:30 - 4 pm

Where: Room 253, Careers (CRSC) Center

LEG 393 - Nuts and Bolts of a Civil Jury Trial *(In Partnership with Anne Arundel Bar Association)* Gain knowledge on how to prepare and conduct a civil jury trial from start to finish. Learn to use the appropriate tone and substance in opening statements and how to push the envelope while avoiding objections. Sharpen your skills on direct and cross examinations. Discuss common trial errors from the judicial. \$55.00 (add'l \$5.00 if out of county resident)

Speakers: Hon. Michele Jaklitsch, and Debbie Potter, Esq.

When: March 27, 2013 6 - 8:30 pm

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

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April 9, 2013

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FAMILY LAW, MATTERS - TIPS FOR ATTORNEYS DEALING WITH PENSION BENEFITS | *by Master Thomas Rogers, Jr.*

I get a lot of questions from attorneys about pensions and pension orders. Most of the questions are very case-specific, however a number of attorneys have also asked me whether I know of a set of guidelines they could follow when they are dealing with pension matters. My usual response is that the subject regrettably defies simplification, but that there are some things to look out for in general that could become sources of liability if left unaddressed.

I have tried to come up with a short, but by no means exhaustive, list of issues that any practitioner who deals with pensions should consider. Not a simple guide to pension practice; more of a roll-call of potential pitfalls in pension cases. I have also included some basic information regarding pension matters that might be of use to the practitioner.

1. Liability: Unless you are confident that you understand how pension orders are worded, interpreted and processed, it might be better to avoid them all together and to refer your clients to an attorney that specializes in preparing pension orders. The potential liability for malpractice in handling pension matters is enormous. Using form or boilerplate pension orders, especially those provided by the pension plan, is an invitation to trouble (they only protect the pension plan). If you do decide to draft pension orders for your clients, you need to disclose the extent of all such work that you perform to your malpractice carrier, and to be prepared for an increase in your insurance premiums.

Why the need for additional malpractice coverage? Consider the following: failure to correctly draft and process a pension order can result in a client losing ALL monies they were due directly from their former spouse's pension in many instances. Sometimes the client can, with additional effort, recover these monies directly from the former spouse, but not always. In either of these situations, the attorney who handled the pension matter might end up on the hook for all monies

lost, which can often run into the hundreds of thousands of dollars.

And once you have that malpractice coverage in place to cover your pension-related work, you had better plan on keeping it in place for the foreseeable future. Pension orders are like ticking time-bombs. You prepare the order today, but it is not activated until years from now when someone retires. In other words, most claims of malpractice will first be made years after you perform the legal work, and after the time to alter or amend the underlying order has passed. If there is ultimately a problem with the order and claims of malpractice arise in the future, then it would be your *then-current* policy that will cover the claims, not the policy that was in place when the order was drafted.

2. Valuing pensions for purposes of trial: Valuation of pensions can be a tricky and expensive proposition, but there are times when it is necessary in order to ensure a proper division of marital assets. However, unless you notify the court and the opposing party of your intent to value a pension at least 60 days in advance of the date the Joint Statement of Marital Property is due, the court is required to apportion pension benefits using an "if, as and when" method (like the Bangs formula).

Family Law Article §8-204 states:

(a) Except as provided in subsection (b) of this section, the court shall determine the value of all marital property.

(b) (1) The court need not determine the value of a pension, retirement profit sharing, or deferred compensation plan, unless a party has given notice in accordance with paragraph (2) of this subsection that the party objects to a distribution of retirement benefits on an "if, as, and when" basis.

(2) If a party objects to the distribution of retirement benefits on an "if, as, and when" basis and intends

to present evidence of the value of the benefits, the party shall give written notice at least 60 days before the date the joint statement of the parties concerning marital and non-marital property is required to be filed under the Maryland Rules. If notice is not given in accordance with this paragraph, any objection to a distribution on an "if, as, and when" basis shall be deemed to be waived unless good cause is shown (emphasis added).

3. Retainer agreements: If you decide to handle pension orders for your clients, I advise that you prepare and execute a separate retainer agreement that covers just the pension matters. Spell out what you will do and not do, and the appropriate costs. For example, are you going to just draft the order and let the client get it processed, or are you going to handle drafting and processing with the court and the pension plan? It really doesn't matter what you decide to do, but it does matter as to what the client's expectations are and as to what tasks you will be obligated to handle (See "Liability" above).

4. Timing: If you are going to do pension orders for your clients, do them IMMEDIATELY after the conclusion of the trial, and always make sure the draft order contains language that the court retains on-going jurisdiction to alter or amend the order to bring it into compliance with the terms of the divorce judgment and the requirements of the pension plan. The majority of problems I have encountered regarding pension orders stem from the fact that someone (the attorney or client) forgot to actually prepare the pension order after the merits hearing and case ended, and each thought the other was going to do it. Even if you know that you will need additional information before the final order can be drafted, get a draft order prepared and start the approval process as soon as you can; you can always amend it later if need be (See "Liability" above).

5. Survivors benefits vs. pension benefits: Survivors benefits are different from pension benefits. They are both property rights, but they are two entirely separate animals and need to be individually pled and litigated. Many times the court will award them in tandem, whether asked for or not, but the law in Maryland is clear on this subject and you must request each separately in your pleadings and at trial. This issue usually comes up in regards survivor's benefits, where a party has not specifically asked for same in their prayers for relief. Failure to deal with these separate property rights appropriately can cause your client to lose out on potential benefits (See "Liability" above).

6. Types of pension plans: In general, retirement plans can be divided into two groups: *Defined Benefit Plans* and *Defined Contribution Plans*. The basic differences between the two types of plans are that *Contribution* plans (such as Thrift Savings Plans and 401(k) plans) usually have a determinable, interest/earnings bearing account balance, and are maintained in separate accounts for the benefit of the participants, while *Defined* plans (such as CSRS, FERS, and many traditional, private industry pension plans) have no such accounts, most are governed by ERISA (government plans are not but have many similar characteristics), and are based on the idea of paying the participant a monthly benefit for the rest of their lifetime based on a formula usually involving time-in-service credit.

When dividing a *Contribution* type of plan, the parties' shares are normally segregated into separate accounts which each party then owns absolutely subject to the rules of the plan, independent of the life or death of the other party. In many cases, but not all (see # 8 below), this obviates the need for a pre- or post-retirement survivor's benefit as your client owns their share of the benefit independently of the participant.

With *Defined Benefit Plans*, where there is a contractual type promise from the employer or plan to pay the participant employee a life-time pension based on some kind of formula (i.e. years of service multiplied by some financial factor), the matter is entirely different.

Many attorneys and clients are not aware that such a pension is payable only for the life-term of an individual (whether that life span is that of the participant (normally) or that of the former spouse), and that upon the death of that individual ALL pension benefits stop. Because all payments under such a plan stop when the individual whose life-term defines the benefits (again, usually, but not always, the participant) dies, former spouses may find themselves without any ongoing benefits from the retirement plan if they out-live the participant. Therefore, the method of division of a *Defined* plan and the negotiation of pre- and post-retirement survivor's annuity benefits are crucial considerations.

7. Defined Benefit Pension assets and Post-Retirement Survivor's benefits:

There are two basic approaches to dividing interests in a *Defined Benefit Plan*; the first is called the "*shared interest*" approach, and the other is commonly referred to as the "*separate interest*" approach.

The *shared interest* or payment approach is based upon the life span of the Plan participant, and the idea is that the former spouse will share a portion of the Plan participant's benefit as it is paid to the participant. So long as the participant is alive, the payments continue; upon the participant's death, the pension payments stop. Attorneys often use the term "if, as, and when" to describe this approach, implying that the former spouse will receive his/her share of the participant's benefit *if* the participant lives long enough to retire, *as* any such benefit is paid, and *when* it is paid to the participant. The key is that the participant must live long enough to begin receiving retirement funds.

The former spouse cannot, under the *shared interest* approach, obtain their share of the retirement benefits before the participant does, and their continued receipt of their share of the retirement benefit is entirely conditioned upon the participant's continued existence. Once the participant dies, the only way of ensuring that the former spouse will continue to receive a benefit of some kind is to require the participant to take their retirement in the form of a reduced "joint and survivor" annuity at the time of retirement, AND to

elect the former spouse as the beneficiary of said post-retirement survivor's annuity. There are costs associated with providing the post-retirement annuity, and these can be apportioned between the parties or paid entirely by either party.

In contrast, the *separate interest* approach is based not on the life of the participant, as in the shared approach, but on the life term of the *former spouse*. In this scenario, a former spouse's share of the pension benefit would be actuarially adjusted to take into account the former-spouse's lifespan. Pension plans are set up and geared towards providing benefits to the participant over his/her lifetime - they are not set up to so care for a former spouse in the same manner. Under the *separate interest* approach, the former spouse, in effect, often trades a "higher" pension benefit for a "lower" one but, in return, said benefit is not linked to the life or death of the participant but instead is tied to the life of the former spouse, and will be paid to the former spouse for the duration of their life.

With a *separate interest* approach it is usually not necessary for an attorney for the former spouse to include provisions for a post-retirement survivor's benefit, because the former spouse, by definition, is guaranteed a stream of payments over the course of their lifetime regardless of whether the participant lives or dies. Further, such an approach has a benefit for the participant - as the former spouse is protected, and as there is no need for a post retirement survivor annuity, the participant saves the potential cost of providing a post-retirement survivor's annuity benefit for the former spouse, and can elect ANY form of retirement with his/her remaining share, including electing a joint and survivor's benefit for a new spouse.

All plans permit a *shared* approach. Many private industry plans will permit a *separate* approach, while almost no government plans will (I have never encountered one that would). Remember: neither option affects the amount the plan participant receives, only what the alternate payee/former spouse receives, and when they receive it.

continued on next page

8. Pre-Retirement Survivors Benefits: It is normally assumed, when negotiating pension and survivor's benefits, that both parties will survive long enough for the participant to retire, or that the former spouse will make successful application for their separate share of the benefits before the participant dies. However, under either the *shared* or *separate interest* approaches outlined above, there is still a real possibility that the former spouse could be denied benefits: if the participant dies before retirement (in a *shared* approach to a *Defined* plan) or before the former spouse's benefits commence (in a *separate* approach to a *Defined* plan), or before the former spouse obtains an order to segregate their share of a *Contribution* plan, then the former spouse may indeed lose any and all claims to a pension benefit regardless of the method of division chosen, the type of plan involved, and the existence of a post-retirement survivor annuity. It is, therefore, important to secure a pre-retirement survivor annuity in each and every instance; that is, regardless of whether one is dealing with a *Defined Contribution Plan*, or with either a *separate interest* or a *shared interest* approach to a *Defined Benefit Plan*.

The good news is that pre-retirement survivor benefits, when they are available, are often provided at no cost to either party by the pension plan, or at a nominal cost. The parties are free to negotiate the level, extent, and coverage of such a pre-retirement survivor's

benefit (i.e. does the former spouse get 100%? 50%? Only what they would have gotten under the pension division had the participant lived long enough to retire?), but in every situation obtaining such protection for one's client is crucial.

[Tom Rogers is, to the continuing astonishment of many, a Master for the Family Division for the Circuit Court

for Prince George's County. He served as Attorney Advisor/Law Clerk to the Honorable Judge David Gray Ross of the Circuit Court for Prince George's County, and he practiced law (with a focus on family law litigation and criminal defense) for 15 years prior to being appointed to the bench in 2004. His experience in handling pension related matters is extensive, and his door is always open to attorneys who have questions about pension issues.]

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Prince George's County Bar Association
 PGCBA NewsJournal
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