PGCBA NewsJournal

Newsletter of the Prince George's County Bar Association, Inc. *November 2013*

President's Message

Calling all Veterans!

This November we recognize all veterans for their loyal service to our country and we thank them for the sacrifices they have made to keep our country free. On 14 November 2013 we will be holding a social hour at the DAV hall in Bowie, Maryland. This event is free and all members are invited.

I also encourage all members to attend Judge Sherrie Lavine Krauser's Retirement Celebration at 6:00 pm on Monday, 18 November 2013, at the Samuel Riggs IV Alumni Center, University of Maryland, College Park. Please call Amanda Appelbaum at 301.952.3640 for more information and registration.

Please also mark your calendar for Law Practice 101, at 4:00 pm on 7 November 2013 and Brown Bag lunch at 12 noon on 21 November 2013, presented by Judge Serrette on Health & Mental Hygiene reports. This event is also free for all members. Please call the bar headquarters for more information. At 4 pm on 21 November 2013, we will be remembering members Judge James Taylor, Judge Jacob Levin, Judge David Gray Ross, Joseph Blocher and Steven Lemmey at our Memorial Service in the Ceremonial Courtroom. They will not be forgotten.

I also invite all members to our annual holiday party and auction on 17 December 2013, at Newton White Mansion. On December 17th we will recognize and honor the long and distinguished careers of Judge Jean Szekeres Baron and Judge Patrick Ridgeway Duley. Their commitment to the District Court has served the community well. Please join us in celebrating the accomplishments of our honored guests.

Recognition this month also goes to Manuel "Manny" Geraldo, Esquire. On behalf of the Board, we congratulate board member, Manuel "Manny" Geraldo who will be presented with the Arthur W. Machen, Jr. Award, by the Maryland Legal Services Corporation, for his outstanding contribution in furthering access to justice on behalf of the underprivileged in our community. An upcoming opportunity your firm may take to give back to the community is by participating in National Adoption Day. On 20 November 2013, Prince George's County will celebrate National Adoption Day in the Courthouse. This is a ceremony where families, advocates, volunteers, lawyers and the judiciary are recognized for providing caring and stable environments for our community's children. If your firm would like to participate in the program by presenting small tokens to the adopted children, please call Judge Woodard's chambers.

Many of us, our family members and clients have endured the recent federal government shutdown. This made me think about disasters that affect our offices such as the 2002 LaPlata tornado. But, as stated by Stephen Zack (Committee on Disaster Response and Preparedness) what about disasters that don't make the headlines, but can nevertheless damage our law office and disrupt our business such as water damage from a burst pipe or other flooding? In August 2011 the American Bar Association's Committee on Disaster Response and Prepardness issued a guide to disaster planning. The article recommends

PGCBA
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PRINCE GEORGE'S COUNTY BAR ASSOCIATION
OVER A CENTURY OF SERVICE

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PGCBA NewsJournal

Published monthly (except Jul./Aug.) by
The Prince George's County Bar Association
Established 1902
Marlborough Professional Park
14330 Old Marlboro Pike
Upper Marlboro, MD 20772
Phone: 301-952-1442 Fax:301-952-1429
Email: gperry@pgcba.com
Website: http://www.pgcba.com

ANNUAL SUBSCRIPTIONS provided to PGCBA Members at no cost as part of annual dues; Non-Member subscriptions $75 per year.

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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
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the development of a business continuity plan which is a "written document that describes how your firm intends to continue carrying out critical business processes in the event of a disaster. It typically includes provisions for assessing the status of employees, workspaces, and resources, defining steps to recover essential business processes, and establishing procedures to return to normal business operations." Within the plan should also be your firm's Emergency Operating Records which are "those needed specifically for the continuation of essential processes such as dockets, client's files, order of succession, accounts receivables, insurance records and personnel records." These records also include contact numbers for your clients, the courts in which your firm litigates and the vendors who service your firm. Whatever method your firm uses to develop a business continuity plan and management of its emergency operating records, the point is to be prepared. As mentioned in the ABA article, no one operates their business in a "disaster free" zone. I hope this is helpful for your practice.

Thanks,
Jennifer L. Muskus
President, Prince George's County Bar Association

Member Announcements

Welcome New Members!

Ingrid Turner
Pr. Geo. Co. Council Member

Jennifer L. Petty Baldwin
Allstate Staff Counsel

Juliana Neelbauer
Neelbauer Law LLC

Donald C. Fontaine, Jr.
Silverman Theologou LLP

Michael Leslie Adams
Sasscer, Clagett & Bucher

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

Upcoming Events

Happy Hour
Nov. 14, 2013
DAV Hall - Bowie
Free to All Members

Annual Memorial Service
November 21, 2013
Court House

Holiday Party
December 17, 2013
Newton White Mansion

BROWN BAG LUNCH

FREE TO MEMBERS!

November 21, 2013 - 12:00 PM
Lawyer's Lounge, 3rd Floor
Duvall Wing

Speaker:
Judge Cathy Serrette

Topic:
Health and Mental Hygiene Reports

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CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

ANNOUNCEMENT

To: Members of the Bar
From: Judge Toni E. Clarke, Circuit Court for Prince George's County, Maryland
Date: October 15, 2013
Re: Foreclosure Cases

Dear Members of the Bar,

Due to the large number of foreclosure filings, it has become necessary to make a few changes. As of July 1, 2013, new cases filed in the Circuit Court for Prince George's County, Maryland, have been given the case caption designation of "**CAEF".** For ease of identifying incoming mail, please affix the case number on envelopes mailed to the Circuit Court for Prince George's County, Maryland. It is our hope that these changes will help expedite processing documents for filing. Your consideration is appreciated.

Thank you.

Correction on Alter Ego: Judge Joseph Wright's alter ego is Michael Lovelace (301-292-8300)

When Franks v. Delaware and It's Procedural Demands Meet Johnson v. State and It's "Smiling" and "Warrant Friendly" Attitude Towards Search Warrant Affidavits | *by Robert C. Bonsib, Esq.*

Does there really remain any meaningful opportunity to challenge the truthfulness and material completeness of the information a police officer includes in a search warrant affidavit? Can a police officer, with no fear of consequence or being exposed, exaggerate information, fail to include material information that might undercut a showing of probable cause, misrepresent information to a judge reviewing a search warrant application or simply be lazy in failing to prepare an objectively sufficient probable cause affidavit in support of a search warrant?

Combining the nearly insurmountable challenges placed in front of one seeking to controvert the truthfulness of information in a search warrant, with the presumption of validity afforded to search warrants where probable cause has been found to exist by the issuing judge, one can legitimately raise the question as to whether rather than simply encouraging a police officer to get search warrants the courts have created a virtually impenetrable shield that protects a police officer from having a search warrant reviewed no matter how "thin" the probable cause, how inaccurate the included information may be, or whether material information was purposely omitted.

This article will review the procedural challenges posed by Franks v. Delaware in challenging the contents of a search warrant and then review an interesting analysis by the Honorable Charles Moylan in a case decided late last year by the Court of Special Appeals that re-affirms that probable cause determinations by the issuing judge are nearly immune from subsequent review. Assuming, *arguendo*, there still exists the "theoretical" challenge to a search warrant affidavit on the basis that it fails the "bare bones" test for minimal probable sufficiency (An affidavit that is "bare bones" is an affidavit that might be considered to be "lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable" such that the Leon good faith exception would not apply. U.S. v. Leon, 468 U.S. 897, 923, 104 S. Ct. 3405, 3421 (9184); a "bare bones" affidavit is one that contains "wholly conclusory statements, which lack the facts and circumstances from which a magistrate can independently determine probable cause." United States v. Laury, 985 F.2d 1293, 1311 n. 23 (5th Cir.1993); Patterson v. State, 401 Md. 76, 106-7; 93 A.2d 348, 367 (2007)).

Judge Moylan, in his always entertaining style, reviews why any challenge to a probable cause finding by the issuing judge is essentially immune from a later meaningful review by a judge hearing a challenge to the search warrant. Judge Moylan directs that the reviewing court view the affidavit with a "smile."

The Franks' procedural thresholds combined with the warrant friendly analysis in Johnson. v. State, 208 Md. App. 573, 56 A.3d 830 (2012) make the daunting challenge of attacking the validity of a search warrant one that is even more unlikely to succeed.

The Franks Hearing

While normally a motions hearing court, in considering the sufficiency of an affidavit in support of a search warrant during a motion to suppress, is limited to reviewing the information contained within the "four corners" of the affidavit and will not permit a challenge to the accuracy or reliability of the information set forth within the "four corners" of the search warrant affidavit, there are limited occasions, at least theoretically, where deviation from the "four corners rule" is authorized. This procedure, commonly referred as a Franks hearing, is permitted where testimony or other proof is proffered by a defendant that the police officer who sought the warrant deliberately provided false material evidence to support the warrant or held a reckless disregard for whether information in the affidavit was truthful and accurate. Franks, v. Delaware, 438 U.S. 154, 171-2, 98 S.Ct. 2674, 2684-5 (1978); Greenstreet v. State, 392 Md. 652, 669, 898 A.2d 961, 971 (2006).

In Franks the Supreme Court stated the rule and procedure to be followed when a defendant seeks a Franks hearing;

> [W]here a defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless

> disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the warrant.

Franks, 438 U.S. at 155-56; accord Edwards v. State, 350 Md. 443, 449 (1998)

Striving to reach the point where a defendant meets the Franks test requires a herculean effort to prove that the affiant intentionally and knowingly included false information or recklessly included information without, in most instances, being permitted to call the affiant as a witness and given the opportunity to explore the manner in which the information contained within the affiant was obtained, why it was included in the manner in which it was, or why other information was purposely not included. This is particularly difficult as the intent and purpose of the affiant is a critical factor in proving the state of mind of the affiant. Many reported cases that have found incorrect information in an affidavit or material information omitted from the affidavit, have justified upholding the warrant on the basis that the officer only acted "negligently" and not "recklessly" or "intentionally" in preparing a misleading affidavit. See i.e. Holland v. State, 154 Md App. 351, 383 (2002); Braxton v. State, 123 Md. App. 599, 645-46 (1998); Emory v. State, 101 Md. App. 585, 632-33 (1994).

To prove intent and purpose in establishing that the affiant acted "intentionally" and/or "recklessly" when the affiant is shielded from inquiry as to his state of mind dooms nearly all efforts to cross the Franks' threshold.

Franks also requires that:

> "To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons."

Franks, 438 U.S. at 171

Johnson v. State – Looking at the Affidavit with a "Smile"

The Honorable Charles E. Moylan, Jr. has provided a road map for practitioners and judges as to the standard of review to be applied by a motions hearing judge considering a challenge to legal sufficiency of a search warrant authorized by another judge. In State v. Johnson, 208 Md. App. 573 (2012) the State appealed the granting of a motion to suppress on the basis that the search warrant was not supported by probable cause.

Beginning his analysis, Judge Moylan reviewed the relationship between the responsibilities of the suppression hearing judge and its determination of probable cause which, Judge Moylan described as "a tricky one." In the warrantless search the reviewing judge is the ultimate fact finder in determining the existence or absence of probable cause. However, where a judicially issued warrant is being reviewed, the suppression judge enjoys "no such free willing latitude" and "sits in an appellant-like capacity with all of the attendant appellant constraints." In such a capacity, the suppression hearing judge may well be called upon to uphold the warrant issuing judge for having had a substantial basis for the issuing of a warrant even if the suppression hearing judge himself would not have found probable cause from the same set of circumstances. Judge Moylan further notes that the preference for the police to resort to judicially issued warrants is "so hydraulically powerful that the courts by way of practical endorsement of that preference will uphold the warrant even should the warrant issuing judge have been technically wrong in the assessment of probable cause." Recalling an example given in State vs. Amerman, 84 Md. App. 461, 463, 581 A.2d 19 (1990), Judge Moylan reminded that the same discipline could indeed constrain the suppression hearing judge even when reviewing his own earlier issuance of a warrant. In such a circumstance, the reviewing judge, to quote Judge Moylan, might be faced with the conclusion that

> Although I would not, as a matter of fact, find probable cause from these circumstances today, I cannot say, as a matter of law, that I was legally in error when I did so yesterday. I, therefore, have no choice at this juncture and in this more confining capacity but to uphold my earlier warrant, although I am frank to admit that I would not reissue it.

208 Md. App. At 834, 56 A.3d at 579

In Johnson, Judge Moylan found that the reviewing judge applied the wrong test. The reviewing judge applied the standard of probable cause to determine whether or not the warrant should have issued when the proper standard of review for the reviewing judge was to determine whether there was a "substantial basis" for the issuing judge to issue the warrant. After a detailed review of the facts contained in the search warrant affidavit, the Court, through Judge Moylan, concluded that the warrant application provided a substantial basis to support the issuance of a search and seizure warrant. Whether the application established probable cause was not the issue "because on the issue of suppression

it simply does not matter. Probable cause is not the test." 208 Md. App. At 582; 56 A.3d at 836.

Beginning a detailed review of the law regarding the standard of review for the suppression hearing judge, Judge Moylan notes that after Illinois vs. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983), there is no doubt that reviewing courts, at the appellate level or at the suppression hearing level, have no business second guessing the probable cause determination of warrant issuing magistrates by way of *de novo* determinations of their own.

Characterizing what Judge Moylan refers to as "the preference for a warrant friendly attitude," he reminds that the thrust of the Johnson opinion is to communicate the Supreme Court's prime directive established over the course of 50 years, as well as Maryland's case law implementing that prime directive, that a reviewing court is enjoined to approach the examination of a judicially issued warrant with a "warrant friendly attitude." With characteristic Moylan language he notes that the cases reviewed in the Johnson opinion "reduce 50 years of rhetoric to a nutshell and what it says is that the reviewing judge should approach the warrant with a smile." (emphasis added) 208 Md. App. At 598; 56 A.3d at 845.

Johnson notes that terms such as "substantial basis" and "probable cause" can be frustrating and slippery. A substantial basis is less weighty and logically probative than probable cause. Some warrant applications that will pass muster under the lesser test would not pass muster on the more demanding test. Where the State "needed a grade of C to sustain a warrantless search, it will almost certainly squeak by with a grade of D if it had gone to the trouble of getting a search warrant."

Judge Moylan acknowledges that the Supreme Courts message in Gates makes is unmistakably clear that although rubber stamping a warrant might some times be a problem, holding a warrant to too high a standard can be a comparable problem and sometimes, at the hands of over demanding reviewers, even a greater problem. Rejecting the notion that "the seemingly latitudinal standard of review for a judicially issued warrant is not some "pro-state" or "anti-defendant" bias, it reflects rather a deliberate policy by the Supreme Court that the most effective way to protect the Fourth Amendment guarantees of citizens is to encourage police to askew reliance upon warrantless search and seizures and to defer to the impartial judgment of a neutral and detached magistrate. Continuing to quote Gates, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be imported to warrants.

Turning to the specifics of the Johnson case, Judge Moylan noted that the suppression hearing judge ruled that the application failed to establish probable cause because of its failure to show a nexus between the suspect's suspected criminal activities and his home. Noting that the suppression hearing judge raised serious questions about whether sufficient evidence had been presented in the search warrant affidavit to establish probable cause to believe that there was a nexus between the suspect's activities and the location to be served, again Judge Moylan tells us "the required "tilt" of the warrant reviewing court, however, is to seek out those inferences favorable to the warrant, not those adverse to it." The opinion criticizes the suppression hearing court as basically being "not warrant friendly."

After concluding that the suppression hearing court used the wrong standard of review, Judge Moylan then provides a mini-law school review on the law on the proof of nexus stating that under the Maryland case law that there is authority that could support both a pro-nexus and an anti-nexus conclusion when applied to the facts of the Johnson case. According to Judge Moylan, this creates an immediate problem for the defense, however, because it would, therefore, still be a circumstance where there is a substantial basis to support the warrant issuing judge's decision whichever way he should rule. Because of the way the review of warrants is structured under the existing case law the warrant issuing judge is in a "win/win" situation. Conversely he notes that parties seeking to challenge the decision of the warrant issuing judge will be in a "lose/lose" situation as the deck is unquestionably stacked in favor of the warrant issuing judge.

Conclusion

Does there remain any effective way to both encourage police officers to secure a warrant before seeking to conduct a search, but also to ensure that the court enforces a citizen's expectation that the decision to issue a search warrant is not simply a rubber-stamping of an application containing unreviewable information? The exclusionary rule is intended to sanction police misconduct. Franks and Johnson underscore the "warrant friendly" directive to suppression hearing judges to enforce high barriers to challenging the content and sufficiency of search warrant affidavits. This instruction to "smile" at affidavits that are objectively lacking in probable cause and that contain inaccurate or misleading information overlooks the need to also caution reviewing judges to have "raised eyebrows" and to legitimize judicial "frowning" at the contents of search warrant affidavits as the court exercises its responsibilities to protect the constitutional rights of our citizenry.

Robert C. Bonsib, Esq. is a partner at MarcusBonsib, LLC in Greenbelt, MD and concentrates his practice in the defense of state and federal criminal matters. He is Chair of the PGCBA Federal Practice Section. email:robertbonsib@marcusbonsib.com; website robertbonsib.com

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Legal Studies Institute

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

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Speakers: Robert Cawood, Esq., Rignal Baldwin, Esq Kathleen Meredith, Esq. **When**: **Dec. 4, 2013 9 – 11:30 a.m.**

Where: Delaplaine Visual Art Center, 40 S. Carroll St., Frederick, Maryland

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Speakers: Tara Taylor, Barbara Williams, Esq. **When**: **Nov. 6, 2013 6 – 8 pm**

Where: Room 255, Careers (CRSC) Center

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Speaker: Linda Deming **When: Dec. 10, 2013 6-8 pm**

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50 INSPIRING YEARS Anne Arundel Community College

Get Healthy Today: Fitness for Every Age |

by Edith Lawson-Jackson

Have you ever thought that you were too old to embark upon a new fitness regimen? Maybe you've never been particularly active or you think that it's too late to reverse all the damage you've done over the years. Can the arterial damage done from 40 years worth of pizza, donuts, and inactivity be "undone"? Of course it can! It's never to late to reap the benefits of exercise and a healthy life style…no matter how old you are, you're body can reap both current and future benefits of the healthful changes that you implement today. This month's column will look at the different stages the adult body goes through as it ages and what you can do through a healthy lifestyle to meet the changing needs of your maturing body, as you go from the 20s into the Golden Years.

If you begin exercising and leading a healthy lifestyle when you're in your 20s, you've taken the simple most important step for setting yourself up for success in the future. It's during this time that you can implement changes that will add years to your life by reducing the future risk of heart disease, osteoporosis, and decreasing the risk of developing cancer (including breast cancer in women by about 47 percent). As well, starting a workout regimen at this time in your life gets you accustomed to working out so that all you have to do in the decades to come is adjust your routine to meet the needs of your changing body.

What makes a consistent exercise program so crucial for those in their twenties, you might ask? One thing is that bone mass in the hips and spine peak in the mid to late twenties. Therefore, building as much bone mass as possible during this time ensures that there will be plenty to spare later in life, which decreases the chance of developing osteoporosis. How to do this? It's easy. All weight bearing activities that are responsible for muscular development also directly affect bones mass density. In more simplified terms, when you engage in weight-lifting or similar muscle building activities, the bones also respond by getting stronger and more dense in the area that's being stressed. In particular, multi-joint moves stress muscles and bones most, causing a better formation of dense bone mass. Multi-joint moves include squats, lunges, chest bench presses, shoulder presses, and rows. The best type of workout for the twenty-something year old is to do the traditional straight set workout of approximately eight different exercises, for 3 sets, with 10-15 rep sets, resting two minutes between each set. Three to four times a week is excellent, with a few 30 minute sessions of cardio thrown in during the week.

Once you hit your 30s, the aerobic capacity goes on the decline. This means you're more likely to be out of breath after climbing a flight of stairs or making four trips to bring all of the groceries into the house. How to combat this? Sprints. Yes, I did say sprints. But don't be afraid… they're not nearly as bad as you might think. You can increase your aerobic capacity by doing sprint intervals either outdoors, at home on a treadmill, or in the gym. I find that the neighborhood high school track is an excellent place for sprint intervals since there are usually many other people out there to lend company and motivation. Plus, you can visually track your distance covered, lending a sense of accomplishment.

This is what you want to do: Warm up first by walking briskly for 5 minutes. Next, sprint for 30 seconds at about 80 percent intensity, followed by a 90 second brisk walk or light jog. Repeat this for ten intervals. That will give you 25 minutes of cardiovascular activity (including the 5 minute warm-up) to boost your otherwise declining aerobic capacity. If you can, try to do this 4 times per week, but any number of times will provide some benefit. The difference that this increased aerobic capacity produces will be noticeable almost immediately. And as an added benefit, performing the sprint intervals will help you to burn calories at an accelerated rate….much more quickly than if you were to either walk or simply jog the entire 25 minutes. Which brings me to my next point: walking, running, or a combination thereof when you are in your 30s has proven to result in a 9 percent decrease in bodyfat later in life when you reach your 50s. So what you do today will have a sustained impact that affects your fitness levels at least 2 decades beyond.

Something else to take note of about the "good old thirties" - this is the time when you can expect to have a 50% chance to suffer from lower back pain. The key to preventing this back pain is a combination of muscular strength and endurance. Why endurance you might ask. Because while your back muscles do need to be strong enough to support the weight of your spine, what's more important is that these muscles need to be able to support your spine over long periods of time. So what should you do to strengthen your core, particularly your back muscles (which work best when you have both strong back AND abdominals to balance one another)? Side bridges to strengthen your side abdominals (obliques and serratuses for those of you who read September's column) and to strengthen your overall core area which is made up of your abdominals and back muscles. Additionally, an exercise called "good mornings" (because you bend at the hip as if you were greeting someone in Japan) with some resistance weight resting on your shoulders is an excellent back strengthener. Another excellent choice to really strengthen your core is planks. This is where you rest your elbows on the floor in a position like your going to do push-

ups, except your elbows are on the floor instead of your hands. Hold yourself in the "up" position of the push-up move for 15-30 seconds (or as long as you can), be fore lowering to the floor to rest for a minute. Repeat this move 5-9 times, depending on your level of strength. Soon, you'll notice that your back aches less frequently and things that used to trigger back pain simply have no power over you any longer.

So we now move on to the 40s. The single biggest loss in the 40s is loss of muscle mass. If you're not lifting weights with some consistency around age 45, your muscles will rapidly start to atrophy or shrink. This decrease in muscle mass not only makes it seem more difficult to carry that heavy briefcase that wasn't so heavy just 5 years ago, but it also leads to a slower metabolism which means you'll get fatter faster despite the fact that you haven't changed your eating habits (and you already experienced this to some degree after passing your 20s). So how do you combat this rapid loss of muscle? Incorporating more power moves into your exercise program. Power moves are ones aimed at making you stronger and increasing your muscular response to moving heavier weights. No…..you don't need to become a power lifter. But you do want to lift heavier weights than you've become accustomed to. The goal is to create substantial additional stress on the muscle fibers so that the response is the tear down and rebuilding of bigger stronger muscles. This typically will NOT be something that's highly noticeable visually, unless you choose to really go for an increase in muscle girth. And that accomplishment will take considerably more effort than you're probably willing to put forth, so don't worry that increasing your weights will make you look "bulky". What will happen instead is that your legs which may look soft and loose and maybe dimpled, will instead look more taut and firm and shapely. Your arms will look full and the skin on them will become tightly adhered to the muscle, which is now filling out that flabby skin that used to jiggle when you waved goodbye. This is a direct result of the increased muscle expanding and pushing up against the loose skin that's now just lined with fat, which offers no firmness or shaping benefits.

Following are the exercises aimed at increasing the rapidly declining muscle mass which occurs in your 40s. Squats, overhead dumbbell presses, Romanian deadlifts, lunges, dumbbell pullovers while lying on a bench, leg presses, jump squats, and chest dumbbell presses. All of these exercises can be done with moderately heavy weight. Incorporate a cluster of about eight of these exercises into a circuit-type routine where you perform mostly supersets (i.e. two exercises together, one immediately after the other in a single set), with 2 minutes rest between each of the 3 giant circuits you'll perform. This will allow you enough rest for your muscle to recuperate sufficiently to move moderately heavy weight without you allowing your muscles enough time to cool down.

Another factor in the 40's equation is to get more rest. When you're exerting as much energy as it takes to move heavier weights, you need to get sufficient rest. The bad thing is that most of us don't get a sufficient amount of sleep, particularly women in their 40s. Whether this is attributable to balancing the demands of a career with raising kids and keeping a tidy home, we can't say for sure. But that's probably the case. The fact remains that 40-somethings, particularly women, don't get enough rest. And this zaps energy, making you less likely to feel like plowing through an intensified training session. Well, one way to combat this problem of chronic sleep deprivation is to exercise in the morning. According to research, doing some exercise in the morning results in better night time sleep. As a result, women who exercised in the morning improved their fitness level, slept better, and were less likely to need sleep medications. So, if you can, try to perform your 20-25 minutes of cardio in the morning at least 3 days per week and then do your workouts with weights in the evenings or on weekends 2-3 days. But don't forget…. the decrease in metabolism means that you need to not only create more muscle to help burn those calories (muscle burns more calories at rest than fat), but you need to do other things to counteract that slowing metabolism NOW, until you've increased your muscle mass. That means get moving, as much as possible and as often as possible….cardio, Pilates, Yoga, cutting the grass, walking the fields during the kids' soccer games,…. anything that burns calories will do.

The Golden Years have finally arrived and you're in your 50s. Even if you've never exercised before, your body and mind need to be challenged to stay healthy and you can do things now to improve your quality of life and your health status. At this stage of the game, having reached your 5th decade means that you're probably experiencing some hormonal declines that affect your memory. Additionally, you're more susceptible than the younger folks to develop certain life threatening diseases such as cancer and high blood pressure.

The good news is that medical science has affirmed that exercise helps slow and even reverse the mental decline that accompanies aging. According to Charles Hillman, Ph. D., an associate professor of kinesiology at the University of Illinois, simply walking briskly for 3 days per week, and working in a hill or two, makes someone who's fifty-something less likely to forget their 60th birthday. Researchers have also found that the same "use it or lose it" rule that works for your muscles, applies to your brain. Simply completing a crossword puzzle or reading every day is the equivalent of doing crunches for your brain.

Additionally, burning substantial calories through exercise has been shown to reduce the risk of high blood pressure and development of certain types of cancer. For example, Harvard University researchers determined that postmenopausal women who burned more than 1,000 calories per week through physical activity (e.g. 30

minutes of jogging/walking intervals 4 times per week) had nearly half the risk of developing breast cancer than those who expended fewer than 1000 calories. And all activity counts, not just dedicated workout sessions. You can walk the stairs instead of taking the elevator, vacuum, rake the lawn, swim - as long as you get in a good 30 minutes total with some intervals of intensity (like walking every other flight of stairs at the courthouse very quickly). So just get moving! Do your gardening, stretch for 10 minutes daily, take a walk around the neighborhood, and get some mental exercise.

Here's a good workout for you to do: once a week take a yoga class, once a week take a brisk walk around the neighborhood that takes you 30 minutes, twice a week combine a workout that involves a 15 minute total body stretching session with 25 minutes of a circuit workout with light weights or gym machines (upper body one day and lower body the other day). This alone will offer disease fighting benefits and increase your overall level of fitness.

There are many other things you can do to combat aging and improve your health into your Golden Years and beyond. Here are some small changes that can add healthy years to your life: flossing 4-6 times per week, sleeping at least 7 hours per night, eating fish at least once a week, eating at least two servings of fiber each day, eating breakfast every morning, having at least 3 close friends, enjoy green tea 4-5 times per week (Try the green and white tea selections at Teavana), and the kicker…..gaining less than 10 pounds since you were 18. While that last goal may seem out of reach and may be a stop you've already missed along the road, you can always work backwards and see how close you can get to your college freshman weight. Reach for some of these goals and you'll accomplish them so that you'll live longer and enjoy a better quality of life into your golden years. Remember, it doesn't matter how old you are now or what you've done in the past - it's never too late to become healthier today so that your life tomorrow is more enjoyable.

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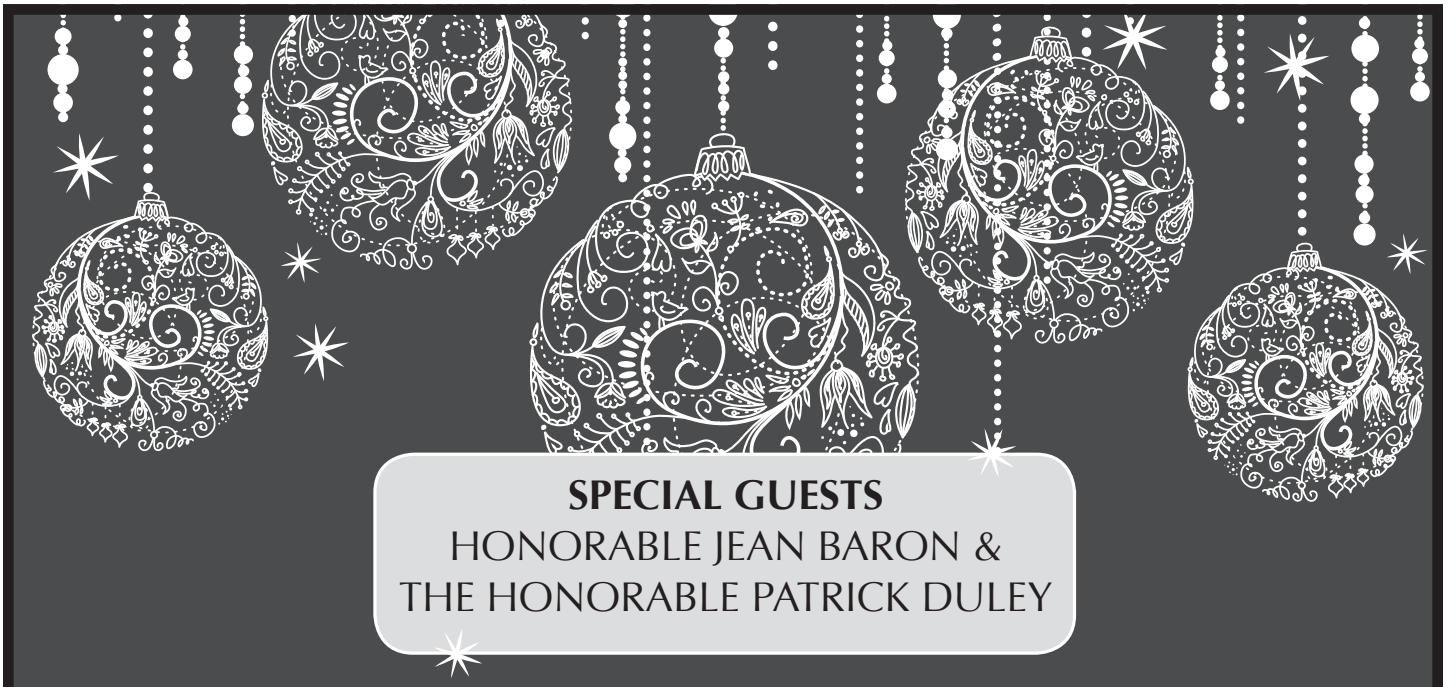
Judge Lawrence V. Hill, Jr.
and
Judge Nicholas E. Rattal
for the Brown Bag Lunch Seminar
they presented on Drug court.



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Family Law, Matters
Child Support Forever: Support for Destitute Adults

by Courtney N. Foster, Special Counsel, Prince George's County Office of Child Support Enforcement

Often when I am negotiating a child support case, a non-custodial parent (the obligor) will proclaim: "I'm sure glad that I only have (fill-in-the-blank) years left to pay child support. Then I'm done!" This sentiment reveals a level of naiveté because any parent with a child over the age of eighteen knows that an average eighteen year old cannot be truly emancipated and self-supporting. Even in the best case scenario adult children seek financial assistance from their parents. It is not uncommon for an adult with a college degree, career and their own home to get help from their parents with unexpected or even regular bills.

Although, I do remember my dearly departed grandfather telling me stories of a time when it was not uncommon for a father, when a child reached a certain age, to "break their plate." This was a message to the off-spring that it was time to establish and provide for their own household. I have no idea if he was exaggerating to make a point like the stories about walking five miles to school; uphill both ways; in a snowstorm (in Mississippi!). Nevertheless, I think most people in our time know that, as a parent, you have a moral obligation not to throw your legally adult children out on the street at eighteen and say "Nice knowing you" and "Don't forget to write. (Ok. Text)." However, few people are aware that parents have a legal obligation to financially support their adult children who are destitute (i.e. physically or mentally unable to financially support themselves). This is a legal obligation that, if not fulfilled, could cause one to be fined or jailed.

The legal obligation for one adult to provide for another adult is not a new concept. It has evolved from legislation beginning in 1896 when it was made illegal for a man to willfully fail to provide for his wife or minor child. This offense was punishable by a $100 fine and a year in prison. Then in 1916 it became illegal for an able adult person to willfully refuse to provide for a destitute parent. This was punishable by a $500 fine and up to a year in jail. It wasn't until 1947 that destitute adult children were added to the mix. The court recognized in *Borchert v. Borchert* 185 Md. 586 (1946) that while there was a statute that required an adult child to provide financially for a destitute parent, there was no statutory mechanism to force parents to support their destitute adult children. In 1947 (1947 Md. Laws, ch. 113 now codified in FL §§ 13-101-13-109) in response to the court's criticisms in *Borchert,* the Legislature expanded the criminal statute to include a duty for parents to support their destitute adult children. *Trembow v. Schonfeld,* 393 Md. 327 (2006).

Since the introduction of the 1947 legislation, the court has used the existence of the criminal statute to engage the equity jurisdiction of the court in family law proceedings. The court has defined and refined a parent's duty to support their destitute adult children because, although there are several statutes related to destitute adult children (FL § 5-1032 and §§ 13-101-109), they do not provide a complete definition of "destitute adult child" or fully describe a parent's duty to that child. The statute simply states that a "destitute adult child is an adult child who has no means of subsistence and cannot be self-supporting; due to mental or physical infirmity." FL § 13-101. Further, a parent who has or is able to earn sufficient means may not neglect or refuse to provide the destitute adult child with food, shelter, care, and clothing. If a parent fails to provide for a destitute adult child he or she can be fined up to $1,000 or jailed for up to one year. FL § 13-102.

In the Family Law context, often a custodial parent wants to continue a child support order for a child who will soon emancipate, but due to physical or mental infirmity continues to reside with the custodial parent and cannot be self supporting. Under § 5-1032 of the Family Law article, a child support order may continue for a destitute adult. However, while a parent caring for a destitute adult child may file an action to establish child support at any time, a proceeding to establish paternity for a destitute adult may not be initiated after the child's twenty-first birthday. See FL § 5-1006 (d) and *Trembow v. Schonfeld*.

The court has also recognized that a destitute adult child may seek child support from his or her parent(s) directly. See *Trembow v. Schonfeld*. Further, it has been determined that a destitute adult child does not have to be completely without resources to be eligible for child support. In cases where a child has employment and/or disability type benefits such as Supplemental Security Income (SSI), the court will apply the standard child support guidelines. *Goshorn v. Goshorn* 154 Md. App. 194 (2003). However, the court may consider the child's available resources when making a final child support determination. *Presley v. Presley* 65 Md. App. 265 (1985) and *Cutts v. Trippe*, 57 A.3rd 1006 (2012).

Interestingly, with all of the tens of thousands of child support cases in Prince George's County, there are comparatively few cases for destitute adult children. Typically, minor children with severe physical or mental disabilities emancipate under normal child support standards. Moreover, there are a large number of obligors with mental or physical disabilities being

cared for by a parent or relative who could qualify to receive child support themselves. I would like to think the reason for the lack of child support cases for destitute adult children, despite the great number of individuals who fit within that category, is that their families are fulfilling their obligations to provide for them outside of the court system. Unfortunately, I know that is not true and that it is more likely those destitute adult children and the parents or relatives who care for them simply aren't any more aware of the law than those naïve non-custodial parents who eagerly count down the days until their child's eighteenth birthday when they believe they will "be done" with child support forever.

Courtney Foster is a graduate of Duke University School of Law. She is a former Assistant State's Attorney for Prince George's County and has been Special Counsel for the Prince George's County Office of Child Support Enforcement since 2005.

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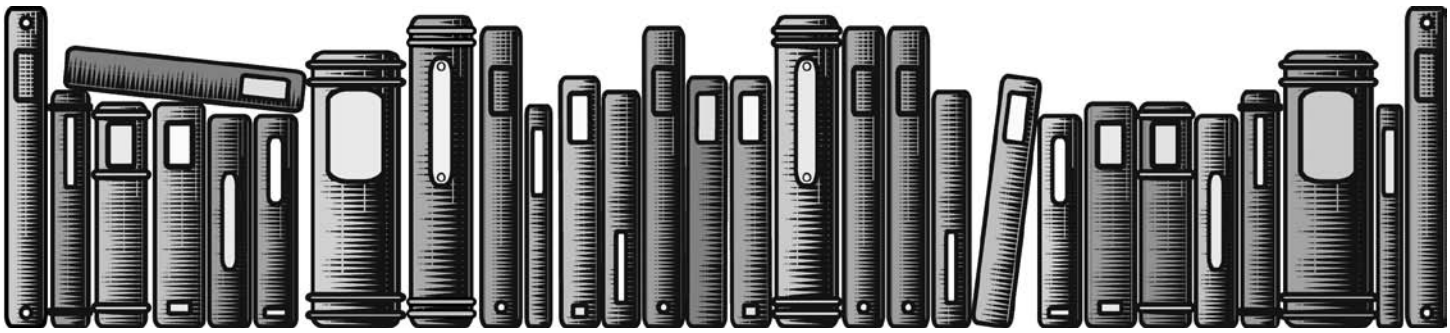

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