

PGCBA NewsJournal

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

www.pgcba.com

December 2014



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PRESIDENT'S MESSAGE



Colleagues,

“We make a living by what we get, but we make a life by what we give.”

– Winston Churchill

The seasons of thanks, giving, and celebration have arrived!

Thanks –

I want to first give thanks to those who have helped the Bar Association achieve its mission over the past six months. Thanks goes to the Bar Association's Board, Executive Board, Executive Director and staff. As well thanks goes to the guests of our last two membership meetings, Chief Judge of the District Court John Morrissey, Senate President Thomas v. “Mike” Miller, Chairman Joseph Vallario, State's Attorney Angela Alsobrooks, Chairman of the Prince George's County Council Mel Franklin along with all of our guest presenters at the Brown Bag Lunches, and the Bench to Bar Series. A special thanks goes to our Sponsors who have helped make events possible. Thanks to all members who have submitted articles and assisted with improving the NewsJournal; those who have volunteered in community programs so far this year, including the Expungement Program, Wills for Heroes and Traffic School; as well as those who have volunteered to provide services to our members, such as the annual Memorial Service, Young Lawyers programs, Fee Disputes, and Lawyers in Need. To those who are working diligently to serve you by preparing and developing upcoming programs, seminars and community services of the Bar Association – Thank you.

Giving -

The Bar Association is a success based on what is given. The mission of the Bar Association encompasses a commitment to serve the community by promoting justice and respect for the law. The Bar Association gives in many ways throughout the year. This past year the Bar Association has given in excess of \$7,000 in community grants to seven (7) non-profit organizations and has expended funds to support programs such as Operation Homefront, Camp Friendship
cont'd on page 3

NEXT BIG EVENT!

*Holiday Party
& Auction*

December 16, 2014

Newton White Mansion
See page 11.



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PGCBA NewsJournal

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

Published monthly (except Jul./Aug.) by the PGCBA

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.

PGCBA OFFICES

MARLBOROUGH PROFESSIONAL PARK
14330 OLD MARLBORO PIKE
UPPER MARLBORO, MD 20772
Office: 301-952-1442
Fax: 301-952-1429
www.pgcbacom

EXECUTIVE DIRECTOR

ROBIN B. HADDEN
rhadden@pgcbacom

PGCBA LAWYER REFERRAL SERVICE

ELIZABETH ANDERSON
301-952-1440
LRS@PGCBA.COM

PGCBA TRAFFIC SCHOOL

ROBIN HADDEN
301-952-8154
rhadden@pgcbacom

NEWSJOURNAL

ROBIN B. HADDEN
EDITOR
rhadden@pgcbacom

ASSISTANT EDITOR

VERONICA POPE
301-952-1442
vpope@pgcbacom

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

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

Publication Deadline 10th of preceding month. Approved advertising accepted; rates submitted upon request. Statements or opinions expressed herein are those of the authors and do not necessarily reflect those of the Prince George's County Bar Association, its Officers, Board of Directors or the Editor. Publishing an advertisement does not imply endorsement of any product or service offered.

PRESIDENT'S MESSAGE, CON'T

– Carol Jean Cancer Foundation, and National Adoption Day. We have more opportunities for you to support our community service projects such as Law Links and Mock Trials. I hope you will join in the giving by volunteering your time and services or funds (that are tax deductible) to

one of the programs supported by the Bar Association.

Celebration-

As we close the year, I hope you will come enjoy the comradery and fun at the Annual Holiday Celebration and Auction on Tuesday,

December 16, 2014. This event will give you another opportunity to consider giving by purchasing one of the exciting auction items. The proceeds of the auction help the Bar Association continue its programs.

Denise



COMMITTEE CHAIRS;

We want your articles!

Submit them to

Ben Woolery before the 10th of the month at
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BROWN BAG LUNCH

January 8, 2015
12:00 PM
Lawyer's Lounge
3rd Floor
Duvall Wing

Speaker: TBD

Topic: "TBD"

February 5, 2015
12:00 PM
Lawyer's Lounge
3rd Floor
Duvall Wing

Speaker: TBD

Topic: "TBD"

FREE • FREE • FREE • FREE • FREE • FREE

WELCOME NEW MEMBERS!

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

Save the Date!

DECEMBER 18, 2014
Young Lawyer's Happy Hour
5:30 PM

Young Lawyer's Happy Hour, 5:30 pm, Location: Law
Offices of Sasscer, Clagett & Bucher

JANUARY 22, 2015
Bench to Bar Panel Discussion
4:00 PM

Courthouse-TBA

"Rules and Strategies in Taking/Defending Depositions"
Guest Speakers Charles Spigelman, Esq. and Gian Ghiardi, Esq. ,
Guest Judge: The Honorable Leo Green,
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NOVEMBER 6, 2014 BROWN BAG LUNCH

“HOW TO WORK A ROOM”

SPEAKER JUDGE JOSEPH L. WRIGHT



VETERANS IN MARYLAND AND HOW WE CAN HELP |

by C. Philip Nichols, Jr.

This past June the Maryland State Bar Association created its 30th Section, The Veterans Affairs and Military Law Section. The section has over 100 members and dues are currently free. The Maryland State Bar Association (MSBA) granted the Section its status in order to better address the issues arising from more than a decade of war in two countries.

Veterans in Maryland

Maryland is home to a large number of our nation's veterans. The United States Department of Veterans Affairs (VA) recently estimated that our state has approximately 436,000 veterans, of whom 61,000 reside in Prince George's County.¹ Nationally, there are nearly twenty-two million veterans.² Sadly, veterans comprise approximately 8 to 10 percent of the jail populations across the country. Our veterans have seen and witnessed horror unlike most citizens. Frankly, we have a major divide in our nation's civil-military relations with less than one percent of the population ever having served in uniform. It is a serious concern and while most are supportive of veterans issues, the length of the wars and rotations back and forth to war zones have undoubtedly taken a toll on the military and their families.

Post-Traumatic Stress Disorder

One of the major stressors that our veterans face is post-traumatic stress disorder (PTSD). About 7 to 8 out of every 100 people (or 7 to 8 percent of the population) will have PTSD at some point in their lives.³ Experts believe that PTSD occurs in about 11-20% of veterans of the Iraq and

Afghanistan wars and in approximately 30% of Vietnam Veterans.⁴ PTSD is sometimes responsible for conduct that is socially unacceptable, whether criminal or otherwise. Recently, these unfortunate events have become news fodder, playing out on the White House Lawn and national television. An Iraq War veteran who served in the Army for more than a decade stands charged with several federal offenses, including unlawfully entering a restricted building or grounds while carrying a deadly or dangerous weapon, in relation to his break-in at the White House.⁵

Veterans Affairs

The United States Department of Veterans' Affairs has made a strong commitment to serve veterans who have returned in numbers that have overwhelmed the military health care systems. The Washington, D.C. VA medical center, which provides care to veterans residing in D.C. and portions of Virginia and Maryland, treats over 50,000 veterans and has over 500,000 outpatient visits each year.⁶ Maryland's VA Healthcare System served 55,614 veterans in 2013, with over 693,000 outpatient visits.⁷ Recently, the VA has come under criticism for its failure to provide adequate healthcare services to veterans.⁸ This criticism, alongside calls for drastic VA healthcare system reform ultimately caused the then Secretary to resign.⁹

Specialized Legal Training and Aid

In order to represent veterans in claims for VA benefits, attorneys must be accredited by the Department of Veterans' Affairs.¹⁰ The MSBA periodically sponsors training for lawyers to become certified to represent veterans in the appeal of benefits process. A veteran's eligibility for VA benefits is dependent largely upon his or her discharge status.¹¹ Types of discharges include (i) Honorable Discharge, (ii) General Discharge Under Honorable conditions, (iii) Other Than Honorable (OTH) Discharge, (iv) Bad Conduct Discharge, and (v) Dishonorable Discharge.¹² An OTH discharge, Bad Conduct Discharge, or Dishonorable Discharge bars a veteran from receiving most if not all VA benefits, including the ability to participate in veterans' programs such as the American Legion.¹³ Sometimes, a discharged veteran may be upgraded in discharge status, resulting in an increase in benefits. In such a case, step one is obtaining the upgrade to the discharge status and step two is applying for benefits.

Veterans' Courts

As of December 2013, veterans' courts have been established in over 34 states, and there are plans to establish more.¹⁴ In Maryland, the legislature and the MSBA have made the creation of these problem-solving courts for veterans a priority. Veterans' courts have a

4. Id.

5. White House Intruder Omar Gonzalez Indicted on Federal Charges. Retrieved October 2, 2014 from <http://www.nbcnews.com/news/us-news/white-house-intruder-omar-gonzalez-indicted-federal-charges-n215246>

6. Washington DC VA Medical Center. Retrieved September 23, 2014, from <http://www.washingtondc.va.gov/about/index.asp>

7. VA Maryland Health Care System. Retrieved October 2, 2014 from <http://www.maryland.va.gov/about/statistics.asp>

8. Shinseki Resigns, But Will That Improve Things At VA Hospitals? Retrieved October 2, 2014 from <http://www.cnn.com/2014/05/30/politics/va-hospitals-shinseki/>

9. Id.

10. VA Accreditation. Retrieved October 3, 2014 from <http://www.va.gov/ogc/accreditation.asp>

11. Veterans Benefits Administration. Retrieved October 2, 2014 from http://www.benefits.va.gov/benefits/character_of_discharge.asp

12. Military Discharges: What's In A Name? Retrieved on October 2, 2014 from <http://www.shrm.org/hrdisciplines/staffingmanagement/articles/pages/military-discharges.aspx>

13. Id.

14. Vet Court Con: The Nation's 1st Conference Dedicated to Veterans Treatment Courts and Justice-Involved Veterans Kicks Off Monday. Retrieved from <http://globenezuszure.com/news-release/2013/12/01/593592110059902/en/Vet-Court-Con-The-Nation-s-1st-Conference-Dedicated-to-Veterans-Treatment-Courts-and-Justice-Involved-Veterans-Kicks-Off-Monday-December-2.html>

unique ability to bring VA services and resources to those who need them. Our own Senator Douglas J.J. Peters, an Iraq war veteran and Army Captain, has played a leading role in making advances in the local veterans' courts system happen.

Challenges

Perhaps one of the seminal challenges is the early identification of veterans in the criminal justice system. The MSBA is working to streamline this identification process in order to ensure that veterans who find themselves facing criminal charges are connected with veterans' support services as early in the adjudication process as possible. The Chief Judge of the District Court has agreed to explore the possibility of revising the District Court initial appearance forms to include a question concerning prior military services. However, this effort is complicated by the *DeWolfe v. Richmond* decision and a subsequent initiative "rewrite" computer code to accommodate the decision's bail/release mandate.¹⁵

Servicemembers Civil Relief Act

The Servicemembers Civil Relief Act (SCRA) is a federal statute, codified

at 50 App. U.S.C. §§ 501-97b, that provides specific protections to military servicemembers entering, called into, or deployed on active duty. The law relieves servicemembers of certain civil obligations for the duration of their active service, with the intent of enabling these individuals to focus their energy and attention on serving their nation. Among the protections offered by the law are provisions restricting entrance of default judgments against servicemembers and mandating stays of certain civil proceedings that commence prior to or during active duty terms.¹⁶ Mike Lyons of our Bar has created an SCRA "toolbox" that is available on our Section of the MSBA website with the aim of increasing attorneys' awareness and capabilities in this highly specialized area of the law.

Lawyers

What can lawyers do? They can develop their expertise to include representation of those veterans who need assistance getting their discharges upgraded and applying for VA benefits. Although attorneys cannot charge fees for initial claims, VA accredited attorneys can charge a "presumed...reasonable" rate of 20% of past-due benefits on

administrative appeal.¹⁷ Given that the Baltimore VA Regional Office has the highest 12 month error rate in its region, there is a good chance that an initial claim will develop into a fee generating appeal.¹⁸ In fact, the VA will typically pay the attorney directly from the past-due award if set out in the retainer and fee agreement with the veteran client.¹⁹ Becoming educated and experienced in veterans' law offers attorneys the opportunity to do as professionals, what we do best: take care of those need help and can who can no longer take care of themselves. There is no greater professional responsibility. A lawyer can bring services to elevate a homeless veteran out of poverty or return a newly returned veteran spouse or family member to productive society. We can and should provide that help to those men and women who already sacrificed for their country.

15 Maryland Pretrial Commission Will Hear How D.C. Does It. Retrieved on October 1, 2014 from <http://thedailyrecord.com/2014/09/22/maryland-pretial-commission-will-hear-how-d-c-does-it/>


16 SCRA Questions and Answers for Servicemembers. Retrieved on October 2, 2014 from http://www.justice.gov/crt/about/hce/documents/scra_qa_5-26-11.pdf

17 See 38 C.F.R. § 14.636(f)

18 See September 2014 Veteran Benefit Administration Reports, <http://www.app.hospitalcompare.va.gov/index.cfm>

19 See 38 C.F.R. § 14.636(h)

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Bar Association*

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**THE PROBATE, ESTATES, TRUST,
AND ELDER LAW SEMINAR (JANUARY 31ST)**

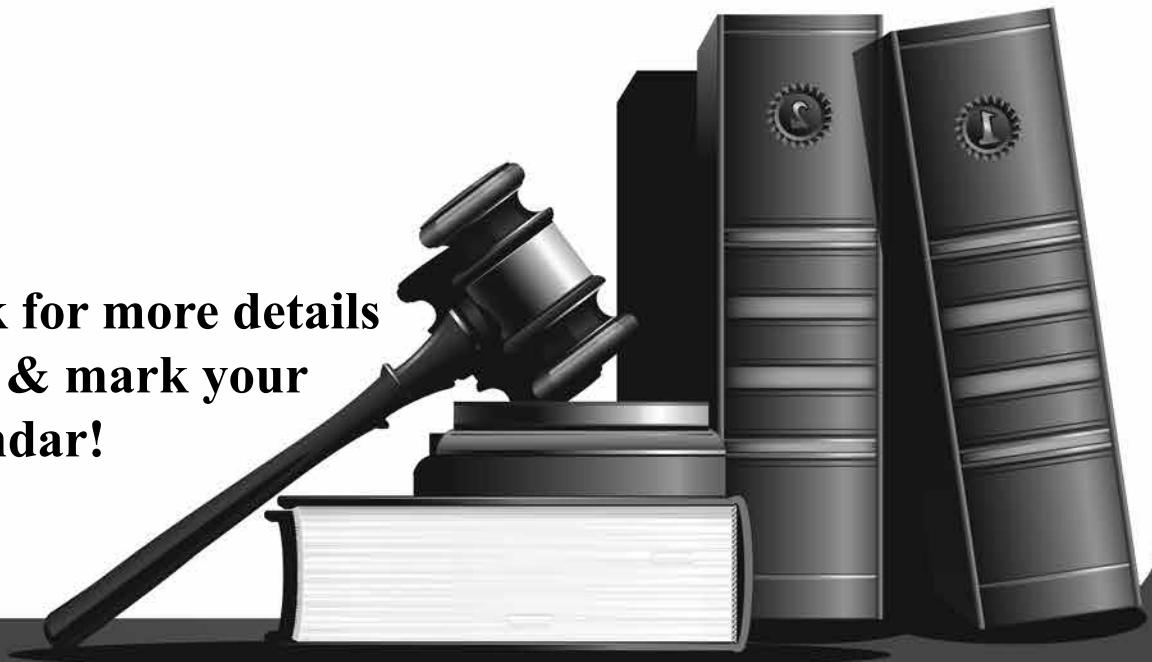
THE BANKRUPTCY SEMINAR (TBA)

THE GOLDSTEIN SEMINAR (MARCH 28TH)

THE FAMILY LAW SEMINAR (MAY 30TH)

TORT SEMINAR (JUNE 9TH)

**Look for more details
soon & mark your
calendar!**



Prince George's County Bar Association
Presents
The Probate, Estates, Trusts, and Elder Law Seminar

Saturday, January 31, 2015

8:30 AM Light Breakfast

9:00 AM – 1:00 PM

TOPICS

Brian R. Della Rocca, L.L.M. (Taxation)

**Overview of the New Maryland Trust Act
(effective January 1, 2015)**

Brian Ritter & Benjamin Woolery

**Maryland Medical Assistance Program in
2015**

**Drew Grigg
Role of Assistant State's Attorney
Economic Crimes Unit**

**Financial Exploitation and Elder Abuse;
the Office of the State's Attorney**

**Judge Wendy A. Cartwright
Other Judges TBA
Orphans' Court**

TBA

M & T Bank Representative

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More Details to Follow

Committee Co-Chairs:

Benjamin J. Woolery, Timothy O'Brien, &
Kathy Brissette-Minus

**Jury Assembly Room
Courthouse – Upper Marlboro**

**\$55.00 members until January 16, 2015, \$65 after
\$75.00 non-member until January 16, 2015, \$85 after
Includes printed materials and light breakfast**

Reservations Required

**Call 301-952-1442 to make your reservation using a credit card or
send a check to: PGCBA, 14330 Old Marlboro Pike, Upper Marlboro, Maryland 20772**

FAMILY LAW, MATTERS - THE RAY RICE EQUATION |

by Judith A. Wolfer, Esq., Managing Attorney, House of Ruth Maryland

The ceiling surveillance camera shows a man in front of an elevator, looking at his cell phone. A young woman walks in front of him and shoves him angrily. Soundlessly, he follows her into an open elevator. Obviously, they are together but are not happy with one another. We next see the couple enter the elevator from the vantage point of the elevator ceiling camera. The young woman enters first and tucks into the corner of the elevator, near the elevator buttons. The man stands too close to her – there’s no one else in the elevator. He says something to her. She looks at him and he shoves her. She shoves him back and he shoves her again, this time into the elevator wall. He backs up and she lunges across the elevator towards him. His punch to her head is so fast that the surveillance camera can’t catch the moment of impact. It does show, however, the young woman’s head bounce off the elevator railing and wall. She falls to the floor, limp and unconscious.

The elevator doors open and he moves her from the middle of the elevator to the side. The doors open again and he drags her, face-down, out of the elevator, her dress hitching up. He drops her to the ground and her head bounces again on the floor. He nudges her hip with his foot. Her feet are still in the elevator doors. For some reason, he picks up one of her sandals, which has come off of her foot. Then he steps over her body, grazing her. Another man’s legs appear in the video. He is a security guard. Only then does the first man attempt to revive the young woman. He tries to get her up into a sitting position, but she is still unconscious. The guard, oddly, stands at the elevator doorway, making no attempt to help the woman. He moves into the elevator doorway and keeps the doors from closing. For some time, these two men just stand over her – no one attempts to render aid to her. We watch as the young woman rouses a little. She tries to pull herself

together, touching her head in a vague and confused fashion. The man who punched the young woman approaches her again and takes her other sandal from under her.

Several sets of legs and feet appear outside the elevator – more people have arrived. A woman crouches down and rubs the young woman’s shoulder. She helps the young woman up; the young woman is still unsteady and wobbly on her feet. As they start to walk away, her boyfriend puts his hand out to assist her, which she weakly bats away.

This is what happened to Janay Rice in February of 2014, now wife of the infamous Ravens football team running back, Ray Rice. Upon the release of this video footage, the nation reacted uniformly with horror and shock. Many saw for the first time, from the silent and dispassionate remove of a surveillance camera, how fast, vicious and mundane an act of domestic violence can be. There were no witnesses. Janay probably had no visible injuries. Yet there is absolutely no question in any of us who watched that video that this was a very serious, potentially lethal, assault.

Despite the incontrovertible truth of what happened, the question that flooded the talk shows, blogospheres, and Op Ed articles about this incident wasn’t why Ray did this to Janay, why the security guard did nothing to assist her, why Ray’s criminal charges were diverted despite unimpeachable evidence of an assault, or what is the best method to prevent this from happening again. It was all about Janay – why she stayed with him, even married him, after being knocked out by him in a casino elevator.

The fact that we are still asking this question got me thinking. Those of us who work with victims of domestic violence know the answer to why she stays because we have asked victims this

question for over 40 years. She stays with him because she is tied to him on many levels that defy easy extrication: they have a child together and she doesn’t want to break up the family; she is financially dependent upon him and doesn’t want to be homeless or destitute; he promises her that this was an fluke, that he will never do it again, and she believes him; her family, pastor and friends urge her to give him a second chance and she trusts them; she loves him and wants to support him when everyone else vilifies him; he tells her no one will believe her if she reports, and police do nothing when she calls for help or a judge tells her she has no evidence; she is afraid the violence will get worse if she leaves him. Despite being accurate descriptions of her thought process, these reasons still aren’t convincing enough to many of us. So we keep asking why she stays.

She stays because it’s even more complicated than this. I realized that for every adverse consequence that Ray Rice received for his assault on Janay, she experienced them too. On top of all the pain, humiliation and anger that come with being beaten publicly by your boyfriend, Janay also experienced personally each and every consequence that Ray did. When he was disciplined by the NFL with a 2-game suspension, it directly affected her life. When that 2-game suspension was converted to an indefinite suspension, she too was punished by Ray’s abrupt loss of income and future livelihood. Ray Rice’s public apology and humiliation was also hers. It’s precisely because there’s this bounce-back of consequences on the victim that many victims elect not to impose consequences on their abusers after weighing the risks and benefits. When the bounce-back of consequences costs too much, victims decide not to report acts of abuse, pursue criminal charges, or leave their abusers.

When you are assaulted by a stranger,

you don't hesitate to cut off all contact with them or file criminal charges against them because you are not touched in any way by the consequences of those actions. There is no bounce-back to you. But when you are tied to that abuser – by children, by finances, by family and emotions, the equation of consequences works out to a different math altogether. The stranger-violence equation is like simple subtraction, there are few variables and the answer is simple. Domestic violence, on the other hand, is like calculus, with numerous, ever-changing variables, and the answer is anything but simple. The math is completely different because of the crucial difference in connectedness of victim and abuser. When we ask

why a victim stays with the abuser, we are erroneously applying the stranger-violence equation to a domestic violence equation. We're applying the wrong math.

So let's stop asking why she stays. Let's focus instead on the variables that will make it easier for a victim of domestic violence to get what *she* wants – which is almost always an intact, safe and secure home. Let's focus on interventions that actually change the abuser's behavior and mindset, that support bystander intervention, and on strengthening support systems that minimize the bounce-back on victims, whether they leave or stay. Let's start doing the calculus.

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PRACTICE TIP - MD. RULE 4-213: INITIAL APPEARANCE OF DEFENDANT | by Joseph A. Trevino, Esq.

Yogi Berra's homely epigram, "It's amazing how much you can observe by just watching," pretty much sums up my take on the workings of the preliminary hearing provision of Maryland Rule 4-213 (a)(3), which requires a judicial officer to advise the Defendant who has been charged with a felony not within the jurisdiction of the District Court and not yet indicted, that the Defendant is entitled to a preliminary hearing requested at that time or within 10 days; otherwise, it is waived (" . . . failure to make a timely request will result in the waiver of a preliminary hearing."). Applying Yogi Berra's colorful declaration, which I think means the subconscious absorption of knowledge by osmosis, I too have observed a lot by just watching this provision of the rule being used (or not) and I have come to believe that it is of limited use, or worse, a mere surplusage in the rules.

The rule was intended to provide an added safety net for the Defendant in an overabundance of concern that the Defendant is facing serious charges contained in a mere criminal information, over which a commissioner has already ruled, on the face of the allegations, that probable cause exists. Therefore, the Defendant has to be afforded a forum before a duly appointed judge where he can traverse the allegations. Looks good on paper. But from a practical standpoint, the rule does not seem to have any real application or "teeth" if you will. It appears pointless. It is neither a useful arrow in your quiver nor a shield on your arm. Normally, for the time being, the Defendant remains locked up with a high bond or no bond while his attorney will try to get the bond reduced, but the plain face of the charge states he is facing a felony and the bond judge is bound by the written charges.

No one ever successfully argued that the failure to provide Defendant with this opportunity to have a preliminary hearing deprived the Court of jurisdiction on the felony. So the rule to which we refer is fundamentally a procedural mechanism to control the flow of cases.

Convictions are never overturned for failure

to provide a preliminary hearing. In *Powell v State*, 324 Md. 341(1991), the Defendant claimed he was never advised of his rights to have a preliminary hearing. He had been charged by criminal information in the Circuit Court and the information contained new felony charges added to those brought in the District Court. Whether a preliminary hearing was requested, whether Defendant was not advised as to one and whether he did or did not expressly waive, the Court perceived no problem in affirming the conviction. For the prosecution too, the rule offers challenges, so it is often circumvented and used only in extreme circumstances.

Sure, one can conceive a serious case, say a suspected serial killer, where continued detention with no bond is warranted and the state has been unable to obtain an indictment and the defense is alleging that there is insufficient evidence. Not very likely, but is theoretically possible. The hearing will be set, but it goes well beyond the Rule 4-213 (a)(3) requirement - it is a full blown, substantive "detention" hearing dealing with fairness and due process, not merely a procedural rule. The Defense almost certainly will object to a continuance. The State probably would much prefer to get the indictment than have to go through a live preliminary hearing and give away much of their case. How hard can it be to get an indictment? Not very. But it could happen that no grand jury has been assembled. In most cases, however, where the Defendant bonded out the State can and will enter the matter *Nolle Pros* and later seek an indictment, if it so wishes.

The key point of all this is that the rule has little to do with all this posturing. In fact, a felony or an "infamous crime" can be tried on criminal information only. The guarantees of Article V of the U.S. constitution providing that a "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury" do not apply. Maryland's *Declaration of Rights* simply provides that an accused "hath the right to be informed of the accusation against him; to have a copy of the indictment, or charge to prepare his

defense." And although the *Declaration of Rights* also provides that the inhabitants of this state shall be entitled to the Common Law of England, which does provide for the "oath of twelve men" before the accused will be required to answer for a felonious charge, that provision of the Common Law apparently has been repealed.

We can proudly exalt and praise this golden edifice of the Law, and well we should. It has worked well for over two hundred years and we ought to honor it every day so that it may honor us someday. It is a wonderful system loaded with complicated rules designed to be overprotective, but it is analogous to religion. We pay tribute, but in the final analysis, in a practical sense, the average practitioner will try to obtain the best result for his or her client without being too constrained. After 30 years of active practice I have yet to see a *bona fide* preliminary hearing where the issue of whether to charge the Defendant with a felony hangs in the balance. Of course, it goes without saying that a timely indictment trumps everything; the Grand Jury speaketh! The issues related to the preliminary hearing become moot. But even in the absence of an indictment the felony can still proceed. In the so-called "crime of the century", *People vs O J Simpson*, there was no indictment because, as it turned out, the Nicole Simpson 911 tape was leaked to the media while the Grand Jury was deliberating and the process had to be aborted with the State later having to proceed on the criminal information.

It is nice to know the Rule is there if we ever need it. But it is simply a guidepost, a traffic signal controlling the flow of cases through the system. In my opinion, this rule, being part (a)(3) of Maryland Rule 4-213, should be automatically triggered whenever any Defendant is charged with a felony. It should never be deemed waived, although this is being done in practice already. Thereby the waiver and the notice of waiver are irrelevant. This would set the case in a straight path.

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PROBATE LAW PRACTICE POINTER: WHO KNOWS WHEN YOU'VE GOTTEN INTO 'JUDICIAL PROBATE'? IT MIGHT BE A MATTER OF "BONDING" | by Benjamin J. Woolery, Esq.

A recent upswing in modest probate estates where the Petitioner cannot qualify to be Personal Representative because of their credit record has caused some practitioners to see an increase in clients needing help just to "get bonded." This practice pointer is offered as you try to help the Petitioner navigate the probate court's processes in such a situation.

Many practitioners have some difficulty realizing when they have departed the Administrative Probate process of the Register of Wills offices, and transitioned over to the judges' domain - even some clerks and judges don't notice the transition even though, quite simply, it occurs **at** any hearing (How does one know it's a Hearing? That the Register puts it before the Court with a "Notice of Hearing" would be a good indicator, so just show up with your client/Petitioner and then work your magic).

A recent significant up-tick in denials of "bond" as set by the Register of Wills in Small Estate matters, where Insurance Agents deny Personal Representatives as applicants to their respective Insurance Company principals, prompts this analysis; as the practitioners know, a bond "set" by the Register under E&T Section 5-604 does not result in the actual issuance of 'Letter of Administration' until the bond is **posted** - the inability to have an Insurance Company back up the Personal Representative by **posting** the Bond means the assets cannot be accessed, thus bringing the process to an abrupt halt due to the lack of bond (no bond = no "Letters of Administration" to bring to a bank, a Realtor, or even just the Motor Vehicle Administration). As indicated, an increase in folks proceeding "against the bond" in Great Recession-era estates has reportedly caused the Insurance Industry to tighten up its criteria, or at least that seems to be the cause of this new twist.

It takes a specific example to explain both the actual problem, and how there's

a solution outside of Administrative Probate. The baseline is that the Register opening any given Small Estate must set a bond for an estate with net probate assets over \$10,000.00 "Unless bond is expressly excused by the will or by the written waiver by all interested persons" (Estates & Trusts Sec. 5-604); on the other hand, Maryland's modern Estates & Trusts Article provides that: "The purpose of the estates of decedents law is to simplify the administration of estates, to reduce the expenses of administration, to clarify the law governing estates of decedents, and to eliminate any provisions of prior law which are archaic, often meaningless under modern procedure and no longer useful. This article shall be liberally construed and applied to promote its underlying purpose" (E & T Sec. 1-105, emphasis added); and, "The court may conduct judicial probate, direct the conduct of a personal representative, and pass orders which may be required in the course of administration of an estate," E & T Sec. 2-102, emphasis added. It's important to note that this broad grant of authority to the court does not mention any particular "petition" or "motion" as a prerequisite or condition precedent, *cf.* part (c) of E&T Sec. 2-102)

In this hypothetical example, the Decedent's assets total \$42,440.00, so it's a Small Estate, and his widow has collected his mail at their home through the six month "creditors' claims" window so we (1) know he probably had no debts, (2) know no claims were filed, and (3) have to deal with a full bond of \$43,000.00 for the widow to meet as Personal Representative; assume the Register's fee(s) are at about \$200.00 to notify the Decedent's other relatives, etc., a Funeral Expense of \$7,000.00, then her Widow Allowance of \$10,000.00 - with no minor(s) surviving as off-spring of the Decedent [a believable scenario, right?], this lowers the assets from \$32,440.00 with "expenses and allowances" (part (a) of Estates & Trusts Section 5-604)

down to \$25,000.00 - assuming further in our hypothetical example that the Decedent has four adult children that are not uniformly fond of their step-mother [believable too, right?] **and** she gets the next \$15,000.00 as her initial inheritance, this leaves \$10,240.00 for Intestate Distribution (half of that goes to the Widow, and the other half is divided amongst the four children - \$5,120.00 into four equal parts means \$1,280.00 per child).

Here's the difficult part for many families: at the Register's level of Administrative Probate, bond for an Intestate Estate cannot be waived "unless expressly excused by the written waiver of **all** interested persons" (part (a)(1) of Estate & Trusts Section 5-604, emphasis added); when the Widow fails to "return" a bond **and** fails to have **all** four children waive bond, the Register will schedule a "Show Cause" hearing. For counsel, this should bring the matter to the easy part for us, the part where we can try to fashion a practical solution to the problem once it gets to the Hearing, and encourage the Orphans' Court in the midst of the Hearing to "pass orders which may be required in the course of the administration of an estate of a decedent." Section 2-102 of Maryland's Estates & Trusts Article. In short, upon the Oath being administered to any Witness(es), including presumably the Petitioner, there's every reason to think the Judge(s) will consider something creative, including an order to "direct the conduct of a personal representative" (E & T Sec. 2-102) - within any judicially-created structure, the Bond could be waived by the Orphans' Court even if the Register of Wills was not able to 'waive' bond.

Thus, in the example given, what works? The physical reality is that the Personal Representative will be allowed to access the Decedent's funds at the bank once they appear there with "Letters of Administration." Even if

the Judge(s) simply have no basis for trusting the Petitioner to carry out the duties as Personal Representative upon appointment, an alternative exists: upon the Judge(s) being satisfied from the sworn testimony that the Estate's assets are as represented and so then the distributions among the four children will be \$1,280.00 per child, and assuming the six month period for creditors' claims has passed so that we know what the estate's exposure is from that angle, then a follow-up Hearing would allow the Petitioner to get certified checks for each child, for instance, bring those to the next Hearing, and then walk away with the "Letters of Administration" so as to have the Decedent's actual funds all to himself or herself - the problem may be solved.

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President Denise Bowman
Prince George's County Bar Association
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Dear President Bowman:

The Prince George's County Bar Association Traffic School will celebrate its 20th Anniversary this December. The genesis of the idea came from an article in the Bar Executive magazine the year following my service as Bar President.

My successor as President, Judge Michael Whalen and the then Board of Directors provided a rather substantial stake to get it started without any promise of success. An exploratory committee was formed. Former President Walter Laake and Deborah Johnston served with me. Walter even created our first phone number, "1-800-TSCHOOL." The Maryland Motor Vehicle Administration (MVA) gave its blessing and allowed us to offer the Defensive Driver Course as an alternative provider for the course they offered. In fact, the MVA Administrator at the time, even appeared in our Hyattsville Courthouse with a speeding ticket only to see why we were so busy (I placed him on an "indefinite" period of probation, just in case). We operated for many years out of the "trunk of a car." The first instructor was Pat Burley of the Prince George's County Police. Pat developed a close working relationship with Judge Steve Platt and they reached a rather simple accommodation, where he would write him a ticket every other stop and for one point and Steve agreed not to contest it. A fair bargain if ever there was one. It is clear we needed a traffic school.

Pat enlisted Dick Ratcliff as the second instructor. Dick still serves and is the second (and soon to be) longest serving member of the traffic school family. We had a series of very helpful Executive Directors that included, Pearl LaPlaca, Alicia Corle, Georgia Perry, Kathy Cook, Becky Tippet and Robin Hadden. The Glendale Fire Station has been our home from the beginning. They are accommodating and helpful at all times. We could not ask for better landlords. Our District Court Judges and Vince Femia sent the students. Without them there would be no traffic school.

Our purpose was primarily to provide for an educational component to traffic offense cases. The county began the school under the direction of then Sergeant John Rhoads who later became our Chief of Police. It was then taken over by the State and later abandoned for budget reasons. For many years, there was no traffic school.

While it began as a result of reading a magazine article, it had the practical effect of making our highways safer as our graduates statistically got fewer citations and are involved in fewer accidents. Almost as beneficial, it had the unintended consequence of raising literally hundreds of thousands of dollars for the Bar's pro bono work and philanthropy. We have become the Bar's largest source of non-dues income.

I am grateful to President Mike Whalen and the then Board, as well as all their successors, including you, for giving me the chance to lead this worthy endeavor. But with all things good, the time has come for me to step down in favor of a new leader who will bring more energy and fresh ideas to continue our success.

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BREAKING THE FOURTH WALL: A LAWYER'S VIEW ON HOLIDAY MUSIC AND MOVIES | *by Bryon S. Bereano*

Every year, the holiday season seems to be upon us earlier and earlier. At this point it feels like that as soon as Halloween was over, the Holiday season began. In the beginning of November alone I saw where Homestead Gardens had its wonderful holiday lights up and ready for the season and the Beechtree Community already had its holiday decorations out for all of Route 301 to see. The new trend this year seems to be retail stores moving away from Black Friday (as opposed to last year's trend of opening on Thanksgiving) and making it more of a shopping week before Thanksgiving. Truth is, however, if you have not purchased your holiday presents by the time you are reading this article, you may want to stop reading this article and head to the mall.

While some people get into the retail aspects of the holiday season, I have always liked the cultural aspects of the holiday season: specifically, the holiday music and holiday movies. For me, the holidays do not truly start until I have heard three specific holiday songs: (1) "Grandma Got Run Over by a Reindeer" by Elmo & Patsy; (2) "Santa Clause is Coming to Town," the Bruce Springsteen live version; and (3) "Do They Know it's Christmas" by Band Aid. (Yes, I am very much a child of the 80's.) There is something about those three songs that for me, remind me of holiday seasons of the past. It used to be more of a challenge with music only being available on the radio; you had to wait for your favorite holiday song to come on. But now with YouTube and streaming music services, you can pull up your favorite holiday songs in June. I would imagine that for many of you, there are a number of amazing holiday songs out there that help you get into the holiday spirit. Certainly, Mariah Carey's "All I Want For Christmas" has to be up there along with Adam Sandler's "Hanukkah" song (parts I, II and III). If you attended the Prince George's County Bar Association's holiday party from a couple of years back at the Newton White Mansion, we all got to see a different side

of Judge Joseph Wright when he brought his own collection of holiday music to entertain the Bar Association which may or may not have included the Boyz II Men Christmas Album. There are so many great (and not so great) holiday songs out there that I bet it would be interesting to compare our favorites with fellow attorneys while you are waiting for your case to be called (Assuming that court is not already in session. Remember the recording devices are very sensitive to whispered conversations). Stop me in the courthouse when you see me and tell me some of your favorite holiday songs.

Now when it comes to holiday movies, people's tastes can be all over the place. I am a fan of the classics. For me, "Miracle on 34th Street" (the original version) is one of my favorite holiday movies. A lot of it probably has to do with the famous courtroom scene in the movie. However, holiday movies really can run the gamut of all types of movies. For example I would consider "Love Actually" a holiday movie since it takes place during Christmas time in London. Yes, it is considered a "Rom-Com" but many people enjoy watching the movie during the holiday season. On the other end of the spectrum is probably "Die Hard." "Die Hard" has a special place in movie history because not only is this movie considered a holiday movie (remember, Bruce Willis has traveled to Los Angeles to visit his estranged wife on Christmas Eve and, surprisingly runs into some terrorists/bank thieves) but it is probably considered one of the first blockbuster action movies that we seem to get now every year. Somewhere in the middle I would place "Home Alone" as a holiday movie. I'm also partial to "Christmas Vacation" with Chevy Chase. That movie to me is an underrated classic. Sure, it doesn't have the charm of the first "Vacation" movie and it is not as good as the "European Vacation" movie ("Look kids, Parliament, Big Ben") but it does have a lot of funny moments. So many people that I know swear by "A Christmas Story" although, I have to

admit, I have never seen the movie. It must be popular considering every year TBS runs a 24 hour marathon of the movie. Other classics include "It's A Wonderful Life" (I may cry at the end of the movie every now and again), "White Christmas", "Bad Santa" (for those that like dark comedies) and "Elf."

Even if you do not have a favorite holiday movie or just do not like holiday movies, the holidays seem to be a great time to get out and get to the movies. I have been told that people still go to the movies, (Fun fact: this year's box office is \$3 million behind the box office from this same time last year) but with a toddler at home, I rarely get the chance to make it to the movies (or I fall asleep.) I have great memories of years past (i.e. prior to having a child) of anxiously awaiting the "Lord of the Rings" movies to come out around the holiday season. This year, I will enjoy watching all of the trailers, then have fun watching the movies at home sometime around April.

Since this will be the last column for the 2014 calendar year, I wanted to wish everyone a safe and happy holiday season. The next column will appear in January 2015 where I will make a brave attempt to discuss the rise of comic book movies from the perspective of someone who does not like comic book movies.

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AUTHENTICATION OF E-MAILS ADMISSIBLE BY CIRCUMSTANTIAL EVIDENCE ACCORDING TO THE COURT OF SPECIAL APPEALS |

By: Steven B. Vinick, partner at Joseph, Greenwald & Laake, P.A.

In *Donati v. State*, 215 Md. App. 1686, 84 A.3d 156 (2014), the Court of Special Appeals, in a case of first impression, held that the State properly authenticated emails as being sent from the defendant, and further held that the evidence was sufficient to support convictions for e-mail harassment. *Donati* was convicted by a jury in Montgomery County Circuit Court of one count of distribution of marijuana, two counts of obstruction of justice, two counts of making a false statement to a police officer, two counts of intimidating a witness and fifteen counts of electronic mail harassment. He was sentenced to a total of thirty-two years imprisonment.

Among the many grounds for appeal that appellant raised, the primary issue appellant asserted was that the circuit court abused its discretion by admitting e-mails that were not properly authenticated. Although the court recognized that Maryland appellate courts have addressed the authentication of other forms of electronically stored information, see *Griffin v. State*, 419 Md. 343, 358, 19 A.3d 415 (2011) (pages printed from a social networking site); *Dickens v. State*, 175 Md. App. 231, 239, 927 A.2d 32 (2007) (text messages), the court noted that there had been no prior reported opinions in Maryland addressing specifically the authentication requirements for the admissibility of e-mail messages.

The Court began its analysis by reviewing Maryland Rule 5-901, which addresses the requirements to authenticate evidence, including electronically stored evidence. The Rule states that authentication is a condition precedent to admissibility and is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. The court further recognized that subsection (b) of Rule 9-501 provides examples, by way of illustration only, of how to authenticate evidence. These

examples include the testimony of a witness with knowledge, comparison with authenticated specimens, and circumstantial evidence, such as “appearance contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be.” Maryland Rule 9-501(b)(4). The court also took note of *Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534, 544 (D. Md. 2007) (“the methods identified by Rule 901(b) are non-exclusive”).

The court then analyzed the appellant’s contentions that the e-mails were not properly authenticated. The court held that while many of the e-mails were not supported by direct evidence, the emails were properly authenticated by circumstantial evidence that allows a finder of fact to determine that the e-mails are what the State claims them to be. The court found as sufficient evidence that included e-mail addresses found on a paper in appellant’s home and on his computer, as well as the common theme of the e-mails from various addresses. *Donati*, 215 Md. App. at 714. The court looked at the many names and e-mail addresses that were used, as well as the common theme and context of the emails, as they all referenced the same subject matter, a marijuana grow in State parks that

was linked to appellant. Additionally, evidence was presented that showed that appellant received an email with one of the subject e-mail addresses only three minutes after the investigating detective sent out a call. Ultimately, the court held that the circumstantial evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that appellant was the author of the harassing emails. *Id.* at 718. In upholding the sufficiency, the court stated that it does not “distinguish between circumstantial and direct evidence because [a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence.” *Id.* quoting *Morris v. State*, 192 Md. App. 1, 31,993 A.2d 716 (2010).

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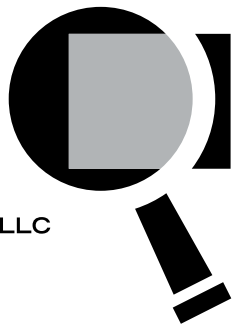
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