PGCBA NewsJournal

Newsletter of the Prince George's County Bar Association, Inc. *February 2014*

President's Message

Dear Colleagues,

Stress is the new normal.

Attorneys are trained to think like attorneys. Though in our cases we can separate ourselves from the emotions experienced by our clients we never stop thinking about their cases. When we wake up at 2 or 3 am worrying about our cases, it's likely the result of "high levels of stress" that if allowed to remain in the bloodstream at night, "makes restful sleep impossible." In an ABA article written by Jennifer Pirtle, dated 24 September 2006, titled Stressing Yourself Sick, she writes that in order to counteract the effects of stress, you should exercise after a stressful event. She writes, "If you don't metabolize the stress hormone, it can stay in your system up to 2 and ½ days." Other suggestions she has to counteract stress include: (1) "Putting your head down on your desk or lying down on the floor of your office for 5 to 10 minutes which can help restore your mind to alertness, particularly if you're not getting enough sleep;" and (2) "Taking 5 minutes at the end of your working day to jot down any thoughts, concerns or action items for the next day." "Then forget about them." "Taking work home or discussing work issues during the evening can trigger a stress response that will make sleep difficult." I hope this is helpful in your practice.

Also, be on the lookout for the annual Inter-County Softball Tournament. This is a great way to reduce stress while at the same time benefiting the Carol Jean Cancer Foundation. Please contact bar headquarters for more information.

In other news, I am proud to announce that our membership is up! It's a wonderful start for the New Year! Once again I would like to thank all members who attended the retirement celebration and holiday party in December and to Denise Bowman and Jeff Harding for their contributions to making our holiday party a success. I would also like to thank our auction donors for their generous donations and to Total Wine for the generous gift cards that were handed out to everyone who attended the party.

We have scheduled 3 CLE's: the **Goldstein Seminar** on 29 March 2014, the **Family Law Seminar** on 3 May 2014 and the T**ort Law Seminar** on 10 June 2014 (annual meeting); and 3 Free Happy Hours: **16 January 2014** at the DAV Hall located at 8205 Laurel Bowie Road, Bowie, Maryland, **20 March 2014** at the Olde Towne Inn located at 14745 Main St, Upper Marlboro, MD 20772, and **10 April 2014** at the DAV Hall located at 8205 Laurel Bowie Road, Bowie, Maryland. On the first Thursday of every month we will hold our Law Practice 101 (note that in Early Spring, Judge Green's coveted questions for qualifying an expert witness will be re-distributed) and on the third Thursday

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

INSIDE THIS ISSUE

PGCBA NewsJournal

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Email: rhadden@pgcba.com
Website: http://www.pgcba.com

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Call Elizabeth Anderson **301-952-1440**
for information and Client Referrals.

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Robin B. Hadden, Executive Director
Email: rhadden@pgcba.com
Telephone 301-952-8154

PGCBA Mission Statement

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

Lawyers in Need

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

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

Ethics Hotline

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

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

Designated Conciliator Program

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

President's Message, con't

of every month we will hold our Brown Bag lunches in the Lawyer's Lounge.

In the next few weeks, be on the lookout for an e-mail asking you to serve as a mentor to a new practitioner. Don't miss this wonderful opportunity!

In closing, I invite all members to join us at the 11 February 2014 Joint Meeting with the J. Franklyn Bourne Bar Association at 6:00 PM at the U.S. District Court for the District of Maryland, 6500 Cherrywood Lane, Greenbelt, Maryland. The guest speaker will be Larry S. Gibson, Professor of Law University of Maryland, Francis King Carey School of Law and Author of "Young Thurgood: The Making of a Supreme Court Justice. I look forward to seeing you at this historic event.

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

Member Announcements

Welcome New Members!

Alyson Leigh Wyman
Haskell & Zimmerman

Michael Reuben Plummer
Plummer Legal, LLC

Elizabeth Denise Mackay
Mackay Law Firm, LLC

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

Commissioner Manuel R. Geraldo receives Arthur W. Machen, Jr. Award

Commissioner Manuel R. Geraldo, a member of the Prince George's County Planning Board for the Maryland-National Capital Park and Planning Commission is the recipient of the **Arthur W. Machen, Jr. Award** given by the Maryland Legal Services Corporation. Manuel Geraldo was honored with the **Arthur W. Machen, Jr. Award** for providing outstanding civil legal services to the poor and for helping to improve civil legal service delivery to the impoverished community. Manuel Geraldo is an accomplished legal professional and principal in the Law Firm of Robinson & Geraldo which he organized in 1979.

Mr. Geraldo currently serves as Director and Vice President of the Pro Bono Resource Center, a member of the Maryland Court of Appeals Standing Committee on Pro Bono Service, Director on the Prince George's County Community Foundation's Board, a Director for the Portuguese American Leadership Council, Board member of the YMCA and Board Member of the Prince George's County Bar Association.

BROWN BAG LUNCH

FREE TO MEMBERS!

February 20, 2014 - 12:00 PM
Lawyer's Lounge, 3rd Floor
Duvall Wing

Speakers:
Hon. Sean D. Wallace, Circuit Court
Dr. Charles Thorne, Owner & Chiropractor ,
Multi-Specialty Healthcare

Topic:
Proving Medical injuries in Civil Cases

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The Prince George's County Bar Association

2014-2015 Open Season for

Lawyer

Referral

Service

Membership

APPLICATIONS ACCEPTED NOW!

Remember...one referral can lead to many!

Applications and details on line at pgcba.com

Law Practice 101

January 2, 2014

Thank You!

PRINCE GEORGE'S COUNTY BAR ASSOCIATION EXTENDS A THANK YOU TO TOTAL WINE & BEVERAGE AND JEFF HARDING FOR THEIR SUPPORT IN HELPING US HAVE A SUCCESSFUL HOLIDAY PARTY. DON'T FORGET TO USE YOUR GIFT CARD AS IT MAY EXPIRE IN JUNE 2014.

THE BILL OF PARTICULARS – ALIVE AND KICKIN' AGAIN! | *by Robert C. Bonsib, Esq. and Megan E. Coleman, Esq.*


With its decision in *Dzikowski v. State*, 2013 WL 6850029 (12-30-13) the Court of Appeals has infused new vitality into the use of a bill of particulars as a tool to ensure constitutional notice to one charged with a crime where a charging document has been drafted using the statutory short form or is otherwise very general in it allegations.

The question before the COA in *Dzikowski* was whether the State's response to the defendant's request for a bill of particulars met the statutory requirement if it merely directed the defendant to look to the discovery the State has provided where a defendant, upon timely request, is statutorily guaranteed a bill of particulars detailing the allegations against him and the factual basis of those allegations. The COA answered that question in the negative and found that the trial court abused its discretion with resulting prejudice to the defendant when it denied Dzikowski's exceptions to the State's nonspecific responses to the question posed in his demand for a bill of particulars.

The COA in *Dzikowski* held that merely directing a defendant to look to the discovery provided by the State cannot suffice as a substitute for a legally sufficient bill of particulars pursuant to CL 3-206(d)(5). Some criminal statutes provide for mandatory bills of particulars and other statutes, with no specific statutory entitlement to a bill of particulars, call upon the trial court to exercise its discretion in deciding whether or not to grant a defendant's request for a bill of particulars. The COA reviewed the statutory entitlement to a bill of particulars as to the charge of reckless endangerment in the *Dzikowski* case and concluded that the State's response to the defendant's demand was legally insufficient. The COA provided guidance on the parameters of a legally sufficient bill, finding that "discovery" does not pass constitutional muster in terms of notice of a charge.

In *Dzikowski* the focus was on the statute which permitted charging reckless endangerment in a short form and also included a statutory provision providing that a defendant was entitled to a bill of particulars. Upon review, the rationale used by the COA in enforcing the statutory right to a bill of particulars appears equally applicable to circumstances where a bill of particulars is filed under Maryland Rule 4-241, most specifically in those cases where the indictment or charging document is general in nature or in a statutory short form, even where the authority for the use of the short form does not also include the statutory right to demand particulars.

A charging document must satisfy the requirements imposed by Article 21 of the Maryland Declaration of Rights that each person charged with a crime be informed of the accusation against him by "first characterizing the crime and second, by so describing it as to inform the accused of the specific conduct with which he is charged." The COA noted that statutes permitting a short form of indictment, where the simplified form contains the essential elements of the crime it purports to charge, are generally upheld on the ground that the right of the defendant to demand particulars of the accusation protects him against lack of notice. When required, a bill of particulars, therefore, must, at the very least, provide the defendant with "a means of ascertaining the exact factual situation upon which he or she was charged."

In *Dzikowski* the COA held that the State violated CL section 3-206(d)(5) when it responded to the defendant's bill of particulars by simply directing him to the discovery that had been provided. In so doing, the COA noted that the State had switched the burden to the defendant to identify the facts underlying the indictment. It specifically stated "discovery, even open file discovery, that includes police reports and witness statements, is not the same and cannot substitute for a legally sufficient bill of particulars. While such discovery may contain the full facts of the case, when a defendant is charged using a short form indictment it is not and cannot be, a substitute, or satisfy a demand, for a bill of particulars. Discovery does not particularize or relate the factual information contained therein to the offense charged. It is this perspective and the relation of the factual information to the offense charged that satisfies the form in substance of a bill of particulars.

Rejecting the State's argument that the defendant was seeking the State's legal theory of the case, the COA stated the defendant's demand for bill of particulars did not seek the State's legal theory, only the factual basis underlying the reckless endangerment charges. The demand for particulars expressly asked that the State either describe or state the conduct and/or the facts supporting the reckless endangerment charge, not a "hypothesis of commission," and continued that if the mere existence of discovery were sufficient to provide a defendant with notice required by Article 21, CL 3-206(d)(5) would both be superfluous and surplusage and the right it prescribes nugatory.

The COA continued that the information requested by the defendant was that which the State, had it used a traditional charging document, would have been constitutionally required to furnish. It continued "were we to conclude otherwise, we would effectively permit the State to circumvent the obligations imposed upon it by the State Constitution through the use of a statutory short form charging document, which, by the terms

of the legislation authorizing it, shows the Legislature's intent to avoid such circumvention."

The COA also made clear that while the opinion in *Dzikowski* does not suggest that CL 3-206 or Rule 4-241 requires the State to make an election between the facts relevant to proving its case, merely directing a defendant to discovery is not responsive to a demand for bill of particulars and certainly does not provide the constitutionally required notice, which includes the element of the charges and their corresponding factual basis.

Factual Background in *Dzikowski*

Dzikowski was driving a vehicle with other passengers when he noticed Ramirez-Gavarete standing in the middle of the road. Dzikowski swerved to avoid colliding with Ramirez-Gavarete. At the suggestion of one of his passengers, Dzikowski returned to the scene and he and one of the passengers, Jones, got out of the vehicle. Ramirez-Gavarete appeared to be highly intoxicated and attempted to hug Dzikowski. Dzikowski pushed him away, almost knocking him into a slowly passing vehicle. Ramirez-Gavarete approached Jones who struck him in the face, knocking Ramirez-Gaverete down onto the roadway. Dzikowski and Jones drove away leaving Ramirez-Gavarete lying in the road. Shortly thereafter, another vehicle ran over Ramirez-Gavarete, killing him.

Procedural Background in *Dzikowski*

Dzikowski was charged with manslaughter, reckless endangerment, and conspiracy to commit assault. The State used the short form to charge in a reckless endangerment count that "on or about January 6, 2008, in Montgomery County, Maryland, [Dzikowski] committed reckless endangerment…"

Pursuant to § 3-206(d)(5), Dzikowski filed a bill of particulars demanding that the State particularize the conduct that constituted reckless endangerment, the facts that tended to prove that he acted recklessly, the conduct that created a substantial risk of death or serious physical injury, and all of the facts the State would rely on to prove he consciously disregarded a substantial risk of death or serious physical injury to another.

The State's response to each of those requests was that the facts are "contained in discovery."

Dzikowski timely filed exceptions to the State's responses, challenging the sufficiency of the State's response.
The trial court ruled that the State's responses to the particulars demanded which simply direct Dzikowski to look to the discovery satisfied the requirements of Maryland Rule 4-241(b).

In its opening statement, the State framed its theory of prosecution as one of "senseless violence" where Dzikowski pushed Ramirez-Gavarete. The State did not reference or mention that Dzikowski pushed the identified victim in the direction of a passing vehicle. The prosecutor focused on the connection between the actions of Dzikowski and Jones as related, not independent.

At the end of the State's case, the trial court granted the defendant's motion for judgment of acquittal as to manslaughter and conspiracy, but denied the motion as to the reckless endangerment count ruling that "the action of him pushing the victim into the car…is sufficient evidence from which a jury could conclude that there was reckless endangerment." "Armed with that ruling, the State thereafter proceeded on a new theory and factual basis. Instead of relying on the later act by Mr. Jones, the punching of the victim, knocking him down and leaving him in the road, to which the petitioner's earlier push was related, it relied on the fact that the petitioner pushed the victim in the direction of a slowly passing car, thus recklessly endangering him." Dzikowski was convicted of that count.

Analysis by the COA

Short Form Indictments Generally

Dzikowski reminds us that "[s]tatutes prescribing a short form of indictment – provided the simplified form contains the essential elements of the crime it purports to charge – are generally upheld on the ground that the defendant has a right to demand the particulars of the accusation and that right protects him against injury."

Short Form Indictments with Mandatory Bill of Particulars Language

CL § 3-206(d) allowing the short form indictment for reckless endangerment, "carries this principal a step further, by making a bill of particulars mandatory, if timely demanded, whenever a statutory short form indictment is used to charge that crime." (citing CL §3-206(d)(5)).

What makes a bill of particulars legally sufficient?

Dzikowski tells us that if particulars are provided, whether a defendant is statutorily entitled to the bill or not, a determination must still be made to see whether the particulars provided are legally sufficient. The parameters of the bill itself have never before been outlined. The COA reaffirmed that the purpose of the bill "is to guard against the taking of an accused by surprise by limiting the scope of the proof."

The COA held that although the indictment in *Dzikowski* sufficiently alleged the elements of the crime, it failed to provide a description of the particular act(s) alleged to have been committed so as to inform the accused of the specific conduct with which he was charged. The State's response of simply directing the petitioner to the defendant "switched the burden to the defendant to identify the facts underlying the indictment." The State should have specified the alleged conduct to which the subject charge relates. Discovery is not a substitute and does not satisfy a demand for a bill of particulars.

What, then, we can take away from Dzikowski – some thoughts follow:

1. Defendants are statutorily entitled to a legally sufficient bill of particulars when the statute provides such a right.

2. A defendant should file for particulars when charged using a statutory short form, even where the specific charging statute does not provide such a statutory right.

3. A defendant should file for particulars when the charging document, even if not charged using a statutory short form, fails to provide the notice required to effectively prepare a defense.

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The Bill of Particulars, Con't

Crimes that may be charged by statutory short form that include a statutory right to a bill of particulars

Assault Offenses
CL § 3-202 – 1st Degree Assault
CL § 3-203 – 2nd Degree Assault
CL § 3-204 – Reckless Endangerment
CL § 3-205 – Prison Employee – Contact with Bodily Fluid
CL §§ 3-206(b), (d)(5) – Charging Documents (include right to particulars)

Sex Offenses
CL § 3-303 – 1st Degree Rape
CL § 3-304 – 2nd Degree Rape
CL § 3-305 – 1st Degree Sex Offense
CL § 3-306 – 2nd Degree Sex Offense
CL § 3-307 – 3rd Degree Sex Offense
CL § 3-308 – 4th Degree Sex Offense
CL § 3-309 – Attempted Rape in the 1st Degree
CL § 3-310 – Attempted Rape in the 2nd Degree
CL § 3-311 – Attempted Sex Offense in the 1st Degree
CL § 3-312 – Attempted Sex Offense in the 2nd Degree
CL § 3-314 – Sexual Conduct between Correctional or Juvenile Justice Employee and Inmate or Confined Child
CL § 3-317(b) - Charging Documents (includes right to particulars)

Arson-Burning Offenses
CL § 6-102 – 1st Degree Arson
CL § 6-103 – 2nd Degree Arson
CL § 6-104 – Malicious Burning of Personal Property in the First Degree
CL § 6-105 – Malicious Burning of Personal Property in the Second Degree
CL § 6-106 – Burning with Intent to Defraud
CL § 6-107 – Threat of Arson
CL § 6-108 – Burning Trash Container
CL § 6-109 – Attempt to Burn Structure or Property
CL § 6-111(b) - Charging Documents (includes right to particulars)

Burglary – Breaking and Entering Offenses
CL § 6-202 – 1st Degree Burglary
CL § 6-203 – 2nd Degree Burglary
CL § 6-204 – 3rd Degree Burglary
CL § 6-205 – 4th Degree Burglary
CL § 6-206 – Breaking and Entering Motor Vehicle – Rogue and Vagabond
CL § 6-207 – Burglary with Destructive Devices
CL § 6-208 – Breaking and Entering a Research Facility
CL § 6-210(b) - Charging Documents (includes right to particulars)

Theft Offenses
CL § 7-104 – Theft
CL §7-105 – Motor Vehicle Theft
CL § 7-106 – Newspaper Theft
CL 7-108(c) – Charging Documents (includes right to particulars)

Crimes that may be charged by statutory short form but do not include statutory right to a bill of particulars

Conspiracy – Common Law
CL § 1-203. Conspiracy – Charging Document (short form only)

Homicide Offenses
CL § 2-203 – 1st Degree Murder
CL § 2-204 – 2nd Degree Murder
CL § 2-205 – Attempt to Commit 1st Degree Murder
CL § 2-206 – Attempt to Commit 2nd Degree Murder
CL §2-207 – Manslaughter
CL § 2-208. Murder and manslaughter -- Charging Document (short form only)

CL § 2-209 – Manslaughter by vehicle or vessel
CL § 2-209(e) Charging Document (short form only)

CL § 2-503 – Homicide by Motor Vehicle or Vessel While Under the Influence of Alcohol or Under the Influence of Alcohol Per Se
CL §2-504 – Homicide by Motor Vehicle or Vessel While Impaired by Alcohol
CL §2-505 – Homicide by Motor Vehicle or Vessel While Impaired by Drugs
CL § 2-506 – Homicide by Motor Vehicle or Vessel While Impaired by a Controlled Dangerous Substance
CL § 2-507 – Charging Documents (short form only)

CL § 3-211 – Life Threatening injury by motor vehicle or vessel while under the influence of alcohol and related crimes
CL § 3-212 – Charging Documents (short form only)

Robbery Offenses
CL § 3-402 - Robbery
CL § 3-403 - Robbery with Dangerous Weapon
CL § 3-404 Charging Documents (short form only)

Perjury Offenses
CL § 9-101(a) Perjury
CL § 9-101(c) Perjury – Contradictory Statements
CL §§ 9-103(a) and (b) Charging Document (short form only)

As noted in *Dzikowski*, the failure of the indictment to provide "such a description of the particular act to have been committed as to inform [the accused] of the specific conduct with which he is charged" is a failure that at common law "was required to be corrected by a bill of particulars supplementing the short form of the indictment."

In *Dzikowski* the COA pointed out that it "has encouraged defendants to seek such clarification on charges when appropriate." It is significant and important to remember that Rule 4-241(a) allows a defendant to file a demand for a bill of particulars regardless of whether a defendant has been charged by a statutory short form.

It's not right if you don't exercise it – You MUST comply with the Rules!!

For the decision in *Dzikowski* to be effectively utilized, defense counsel must follow the requirements of Rule 4-241(a) to enforce the relief being sought. This means:

1. Making a timely demand for a bill of particulars, which means within 15 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court. Rule 4-241(a).

2. Making this demand, in writing, unless otherwise ordered by the court as required by Rule 4-241(a).

3. Specifying the particulars sought. Rule 4-241(a). Asking for the conduct or the facts that comprise the charge would be a good way to provide the specific type of demand that is required. Be specific in what you are seeking in the way of particulars. Analyze each count. Particulars that may be properly requested for one count may not be the same for another count. Review what is alleged in each count and then decide what facts you need to have particularized to have fair understanding of what is being alleged.

4. Within 10 days after service of the demand, the State is required to file a bill of particulars that furnishes the particulars sought or the State must state the reason for its refusal to comply with the demand. Rule 4-241(b). If the State fails to file any response within 10 days after the service of the demand, you must file exceptions and may also want to file a motion to compel. If you do nothing, when the State does nothing, then don't expect the court to do anything either.

5. If the State files a response, and you believe that the State's response is insufficient, take exception to the response by filing a Reply Excepting to the State's Answer to Defendant's Bill of Particulars and it must be within 10 days after the service of the State's response to your bill of particulars.

6. With each request or exception, include a proposed Order with the specific relief that you are seeking. Examples follow:

   Upon consideration of the Defendant's Motion for Bill of Particulars it is this___ day of _____, 2014;
   ORDERED that the State shall, within 10 days of the date of this Order, with respect to count one, reckless endangerment, particularize the specific conduct that the Defendant is alleged to have engaged in that the State will rely upon to prove that the Defendant (i) acted recklessly; (ii) created a substantial risk of death or serious physical injury to another; and (iii) consciously disregarded a substantial risk of death or serious bodily injury to another or the State will be precluded at the trial of this matter from offering any evidence regarding the alleged conduct of the Defendant to prove the allegations in count one, reckless endangerment.

   or

   Upon consideration of the Defendant's Exception to the State's Answer (or failure to answer) to the Defendant's Motion for Bill of Particulars, it is this ____day of _____, 2014;
   ORDERED that the Defendant's Exceptions are sustained and the State is required to particularize the allegations in count one as demanded by the Defendant or the State will be precluded at the trial of this matter from offering any evidence regarding the alleged conduct of the Defendant to prove the allegations in count one, reckless endangerment.

   or

   Upon consideration of the Defendant's Exception to the State's Failure to Answer the Defendant's Motion for Bill of Particulars, it is this ____day of _____, 2014;
   ORDERED that within 10 days of the date of this Order the State is required to particularize the allegations in count one as demanded by the Defendant or the State will be precluded at the trial of this matter from offering any evidence regarding the alleged conduct of the Defendant to prove the allegations in count one, reckless endangerment.

Think about the relief you want and fashion your proposed Order accordingly. If the State is dilatory in responding to your demand, include proposed relief that gets the State's attention by specifically requesting that the Court limit the State's ability to introduce evidence as to any count with respect to which it has failed to provide particulars or has inadequately responded to the demand for particulars.

When the State says "go look for it in the discovery," *Dzikowski* says "not so."

When the States says "you are trying to box me in," *Dzikowski* says that's ok and that is one of the purposes of the bill of particulars.

The bill of particulars "lives again" and a well thought out use of the bill of particulars is a critical part of your pre-trial preparation.

Robert C. Bonsib, Esq. is a partner and Chair of the PGCBA Federal Practice Committee and Megan E. Coleman is an Associate at MarcusBonsib, LLC in Greenbelt, MD and both concentrate their practice in the defense of state and federal criminal matters. Email: robertbonsib@marcusbonsib.com – megancoleman@marcusbonsib.com Website: robertbonsib.com

Community Legal Services News | *Nora C. Eidelman, Deputy Director*

Collaborative Law Training for Volunteer Attorneys
April 23-25, 2014

There is a three-day training for Legal Aid Bureau attorneys and attorneys who volunteer for organizations funded by *Maryland Legal Services Corporation* such as **Community Legal Services**. The training is sponsored by the Judiciary's Department of Family Administration in partnership with the Pro Bono Resource Center.

The **Collaborative Law Practice** is an alternative legal process focused on minimizing conflicts and resolving disputes out of court. In this Practice each party has his/her own Collaborative-trained lawyer as well as the option of calling on other specialists such as mental health counselor, a neutral financial advisor, or a child specialist to provide additional support. The parties and both attorneys agree in writing to work together to find mutually agreeable resolutions and stay out of court. The Collaborative attorneys can only represent the parties in the Collaborative process and cannot represent the parties outside the Collaborative process.

This Practice is spearheaded by the Collaborative Project of Maryland, a non-profit organization. It aims to provide clients of modest means access to collaborative dispute resolution, either through the use of pro bono volunteers or on a reduced or subsidized-fee basis.

The training is offered at no cost to the attendees. Registration will require volunteer attorneys to commit to provide pro bono services with their local MLSC-funded legal service provider as part of the Department of Family Administration's Collaborative Law Pro Bono Project. You can register on line at: http://dfmaryland.eventbrite.com The training will take place at the Judiciary Education and Conference Center, Annapolis, MD, April 23-24 from 9:00 a.m. to 4:00 p.m.

SAVE THE DATE!!
CLS Pro Bono Awards Reception & Auction, Wednesday
April 2, 2014, 6:00 p.m. to 8:00 a.m
U.S. Federal Courthouse, Greenbelt, MD.

A special recognition will be given to **Former Chief Judge Robert M. Bell** of the Maryland Court of Appeals. We will honor some of our best volunteer attorneys with the following awards: **Jean K. Aelion, Esq.**, **August Gardner. Esq.**, **Nakia Gray, Esq.**, **Kwaku Ofori, Esq.**, **Bud Stephen Tayman, Esq.**

We Have Funding Available to Pay for Attorneys Fees!
CLS continues to refer cases under our Family Law Judicare Program. Funding for this program is made available by Maryland Legal Services Corporation. Attorneys receive $80.00 per hour up to $1,600.00 per case. Payment is made after the case is concluded.

Once again we are requesting acceptance of one pro bono case for each Judicare case. Your pro bono commitment does not need to be a family law matter. It can be in any area of civil law including foreclosure prevention.

Please contact Michael Udejiofor or Angela Wright at 240-391-6532 to be added to the list!

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

CONTINUING LEGAL EDUCATION

Legal Studies Institute

Anne Arundel Community College

LEG 515 Discovery: Practical Tips and Tactics (*In Partnership with Anne Arundel Bar Association*) Because of the technical nature of the rules and disastrous consequences, attorneys must navigate the waters of discovery with great care. Mastering the rules of discovery is essential to a successful civil practice and success in the courtroom. Learn practical tips from experts in the field on the scope of discovery, finding hidden assets, avoiding abusive discovery tactics, remedies and much more. *$55.00 (add'l $10.00 if out of county)*

Speakers: Hon. Laura Kiessling, Jim Milko, Esq., & Clint Rosso, Esq**.** **When:** February 25, 2014; 6-8:30 pm

LEG 514 Trial Strategies: The Art of Cross Examination (*In Partnership with Anne Arundel Bar Association*) Even well-planned cross examinations can go horribly wrong. Learn how to avoid pitfalls during cross examination of witnesses, how to handle hostile witnesses/parties, phrase questions to block witness evasions, and compel admissions on the key points. Discuss the keys to successfully preparing for cross examinations. *$55.00 (add'l $10.00 if out of county resident)*

Speakers: Jon Brassel, Esq., Stephen Krohn, Esq. Laura Robinson, Esq. **When**: March 26**,** 2014; 6-8:30 pm

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

Registration to Open Soon

April 2014
Evidence Refresher

Mediation Seminars and Trainings

LEG 355 - Mediator Ethics and Standards of Practice:* ***ONLINE*** Study ethical standards of practice in mediation using video clips, case discussion and role plays. Review MPME Standards of Conduct for Mediators, ABA Cannons of Mediator Ethics and the Maryland Rules. Explore the challenging issues surrounding self-determination, impartiality, conflicts of interest, competency and other ethical requirements in mediation. *$50.00 ($60.00 if an out-of-county resident)*

Speaker: Evelyn Cook, Esq. **When: Feb. 18, 2013 –*Online***

**Note:* *This course satisfies Title 17 continuing education requirements and MPME mandate for continuing education in ethics training.*

For easy and fast registration, print out a registration form from the website below and fax it to (410) 777-4325 or email a PDF to lehoward1@aacc.edu.

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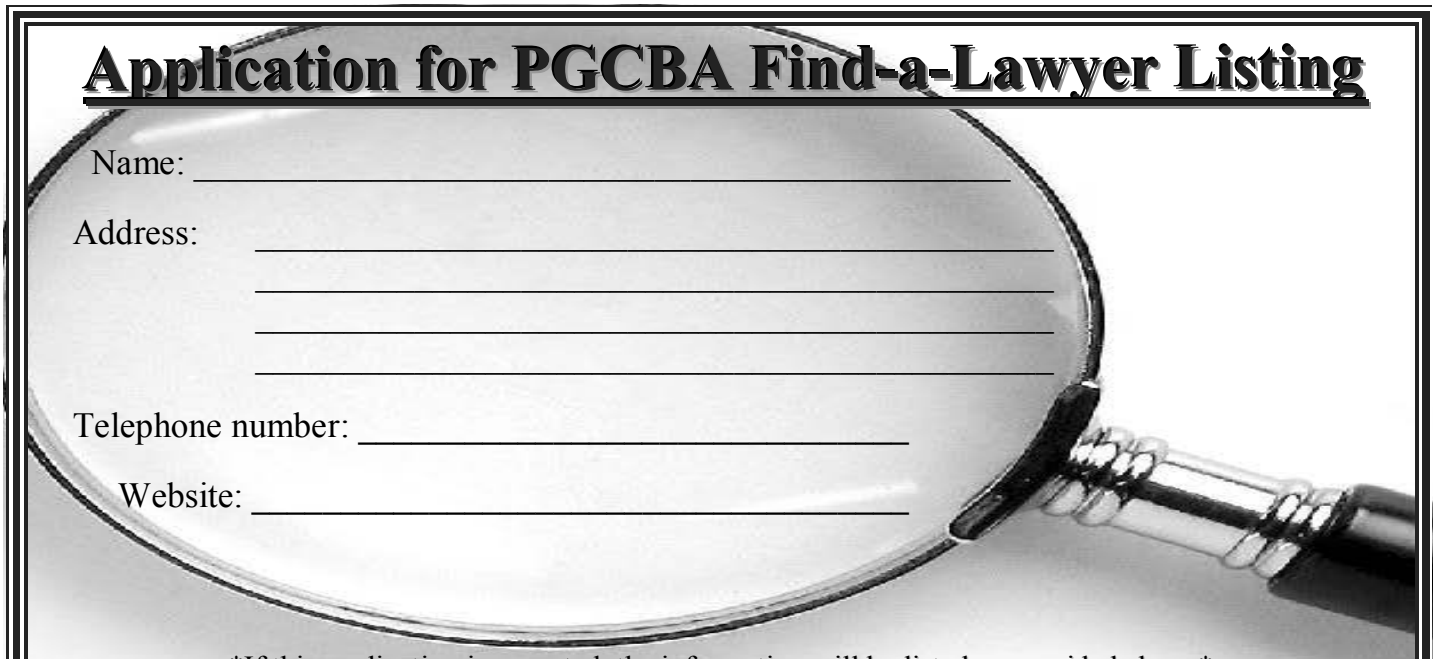

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Check for the payment, payable to the Prince George's County Bar Association, may be mailed to 14330 Old Marlboro Pike, Upper Marlboro, Maryland 20772 or the fee may be charged on a major credit card by calling 301-952-1442. This form can be mailed with the payment, faxed to 301-952-1429 or sent by email by clicking the button.

Family Law, Matters: Finding Out What You Need To Know - How To Conduct Discovery And Get The Information You Need | *by Emily B. Gelmann*

Conducting effective discovery is the heart of every successful case. Discovery is the process through which you find out all relevant information about your client, your opponent, and the case in general.

The Discovery process is governed by the Maryland Rules. Md. Rules §§ 2-401 et seq. Parties may obtain discovery through numerous methods: (1) depositions upon oral examination or written questions, (2) written interrogatories, (3) production or inspection of documents or other tangible things or permission to enter upon land or other property, (4) mental or physical examinations, and (5) requests for admission of facts and genuineness of documents. Md. Rule § 2-401(a).

Sequence and timing of Discovery is discretionary. Md. Rule § 2-401(b). However, it is common for Interrogatories, Request for Production of Documents, and Requests for Admission of Fact to be served on the opposing party before depositions are noted. Additionally, courts issue a Scheduling Order in each case; the Scheduling Order will specify a date by which all Discovery must be completed.

I. What to Propound

Lawyers like to call sending discovery requests "propounding discovery" – so just go with it. The following are various methods of propounding discovery.

A. Interrogatories

Interrogatories are a series of questions the opposing party must answer in writing. Interrogatory requests are governed by Maryland Rule § 2-421 which limits the total number of Interrogatories propounded on the opposing party to thirty (30). The opposing party has thirty (30) days from the date of service in which to provide written answers to Interrogatories.

Interrogatories are a wonderful tool to ask the opposing party the basics of everything you need or want to know. For example, almost every set of Interrogatories in a divorce case first asks for party's full name, date of birth, social security number, current home address, current work address, and with whom, if anyone, that party is currently residing. Interrogatories ask the opposing party to provide a narrative response to questions. Accordingly, they present a unique opportunity to ask what facts and circumstances led up to the existing litigation without resorting to deposition.

B. Request for Production of Documents

Documents are a powerful weapon in both litigation and settlement discussions. Requests for Production of Documents are governed by Maryland Rule § 2-422 and permit any party to serve one or more requests on an opposing party to produce any relevant document in the opposing party's possession, custody, or control. Such requests include writings, drawings, graphs, charts, photographs, sound recordings, images, data compilations, and any electronically stored information.

Requests for Production of Documents must set forth the items to be inspected either by category or individually with reasonable particularity. For example, you can request copies of any "Thrift Savings Plan account statements and summary plan description" or "any and all documents relating to any pension or retirement account."

The party from whom you request such document production must serve a written response to those requests within thirty (30) days after service of the request. This written response must address each individual request by noting if the relevant documents have been produced, are not being produced due to a permissible objection, do not exist, or are not within that party's possession or control.

C. Request for Admission of Facts

Requests for Admission of Facts is a very useful but highly underutilized discovery tool. Maryland Rule § 2-424 governs Requests for Admission and permits a party to serve one or more written requests on an opposing party for the admission of the genuineness of any relevant documents or the truth of any relevant matters of fact. Each request sets forth a different fact at issue in the case and asks the respondent to admit or deny that fact. For example, a request for admission may state "admit that for a period of six months in 2011 you did not see your children." The respondent must then submit a written response admitting or denying this fact.

The Rule requires that the recipient respond to a Request for Admission of Facts within thirty (30) days after service. Such a response only requires the recipient to "admit" or "deny" each allegation. However, each matter for which an admission is requested is deemed admitted if not answered within the thirty (30) days; such an admission is admissible in court. Requests for Admission of Facts present a wonderful opportunity to establish facts of the case early on, and can prove useful in impeaching a witness should litigation ensue.

D. Depositions

The common image that the term "deposition" elicits is an attorney questioning a party or witness in person with a court reporter present. This type of deposition - an oral deposition - is certainly useful. Oral depositions are governed by Maryland Rules §§ 2-411 – 2-419.

You must serve a notice of deposition upon the deponent at least ten (10) days before the date of the deposition. The notice must state the time and place for taking the deposition and the name and address of the person to be

deposed. The deposition notice must also specify the method of recording the deposition, if any.

You may require a deponent to bring documents or other tangible items to a deposition. However, note that any such request increases the notice you must give the deponent. A deposition notice requiring the deponent bring and provide documents to the deposition must be served thirty (30) days prior to the date of deposition.

At the actual deposition, the deponent must be put under oath by the officer of the court before whom the deposition is taken (usually the court reporter). The deposition is then recorded. Direct examination and cross-examination of the deponent is permitted as in trial. Any materials the deponent was required to produce at the deposition may be marked for identification (i.e. deposition exhibit #1).

After a deposition concludes, the transcript of the deposition is given to the deponent who may review it and submit any changes on an Errata Sheet.

i. Records Deposition

A commonly used tool among lawyers that is not explicitly found in the Maryland Rules is the Records Deposition. There are many instances where what you really want is to subpoena records, and an oral deposition is unnecessary. In these instances, lawyers take advantage of what is now known as a Records Deposition.

In a Records Deposition, a deposition notice is sent to the deponent, usually the custodian of records for an institution, requiring the person appear for a deposition at a date, time, and place certain. The deposition notice also requires the deponent to bring certain documents to the deposition – often financial documents. The deposition notice then states that if the documents are produced at the attorney's office a week before the noted deposition then the deponent will not have to appear.

For example, let's say you want the opposing party's bank records. You issue a Notice of Records Deposition to their bank, addressed to the bank's custodian of records. The Notice of Records Deposition lays out the documents the custodian of records is required to bring, and then states that production of those documents at the deposing lawyer's office will satisfy the requirements of the deposition.

If you choose to utilize this discovery tool, be sure to include a Certification of Records Authenticity with the Notice of Record Deposition. The Custodian of Records will fill out the certification and return it with the requested documents; the certification authenticates the documents for admission at trial – this is a way to comply with the hearsay rules.

II. What Does my Client Have to Answer?

Given the breadth of discovery, and how intrusive it can feel to clients, you may need to advise your client as to which discovery requests he/she needs to provide responses. You may object to certain discovery requests on the grounds that such requests are: (1) overly broad or burdensome, (2) outside the scope of the litigation, (3) not reasonably calculated to lead to the discovery of admissible evidence. Remember, the requesting party may always challenge these objections in a Motion to Compel.

i. Disclosing Information Protected by Privilege

Your client is not required to provide privileged information in his/her discovery responses. Maryland Rule § 2-402 governs claims of privilege or protection. If you or your client believe a discovery request is seeking information protected by the attorney-client, or other relevant, privilege, you may assert this in your response.

Under Maryland Rule § 2-402, where a party withholds information on the ground that it is privileged, the party asserting the privilege must describe the documents or information not produced in a manner that, without revealing the privileged or protected information, will enable other parties to assess the applicability of the privilege.

ii. Seeking a Protective Order

The Maryland Rules provide one more shield in the discovery process. Maryland Rule § 2-403 permits a party from whom discovery is sought to seek a protective order from the courts. When seeking a protective order, the moving party must show for good cause that justice requires the court to protect that party from annoyance, embarrassment, oppression, or undue burden or expense. The protective order may provide any of the following: (1) that the discovery not be had, (2) that the discovery not be had until other designated discovery has been completed, a pretrial conference has taken place, or some other event or proceeding has occurred, (3) that the discovery may be had only on specified terms and conditions, including an allocation of the expenses or a designation of the time or place, (4) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery, (5) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters, (6) that the discovery be conducted with no one present except persons designated by the court, (7) that a deposition, after being sealed, be opened only by order of the court, (8) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way, (9) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

III. What to file with the Court

It is important to note that neither your propounded discovery nor the answers to those discovery requests are filed with the court. Maryland Rule 2-401(d)(2) specifically provides that discovery

con't on next page...

material shall not be filed with the court. However, the party requesting discovery shall file with the court a Certificate Regarding Discovery. The Certificate must state (1) the type of discovery material served, (2) the date and manner of service, and (3) the party or person served. A similar Certificate must be filed with the court when you serve your discovery responses on the opposing party.

IV. Deficient Responses

Sometimes the discovery responses you receive will be insufficient. There may be documents missing, interrogatories that went unanswered, or requests answered with "will supplement." Regardless of the reason, you have not been given all the information requested, some of which may be very important at trial. Because discovery disputes are so common, the court seeks to limit its involvement in these conflicts.

Before the court will involve itself in a discovery dispute, both sides must make a good faith attempt to resolve the issue without the court's interference. Maryland Rule § 2-431 states that a court will not consider a discovery dispute unless the attorney seeking the court's interference files a certificate describing the good faith attempts to discuss a resolution with the opposing side, and certifies that they are unable to reach agreement on the disputed issues.

A. Deficiency Letter

The Deficiency Letter is the most common tool for showing a good faith effort to resolve a discovery dispute.

After you receive and review responses to your discovery requests, and note material deficiencies in those responses, you must give the opposing party an opportunity to remedy those deficiencies. In a deficiency letter note, request by request, what you asked for, what was provided, and what deficiency you note in the answer. For example:

Interrogatory No. 1: please state your full name, current home address, current work address, date of birth, social security number, and any persons with whom you reside.

Answer: James Jones, 5/30/1954.
Deficiency: your client failed to provide his current home address, current work address, social security number, and to list any persons with whom he resides.

Such an analysis is necessary for each deficient response. At the end of the letter give the opposing party a time certain by which you would like the deficiencies corrected (three to four weeks is usually sufficient), and note that the letter serves as your good faith attempt to resolve the discovery dispute.

B. Motion to Compel and for Sanctions

Should an opposing party fail to sufficiently answer discovery requests, even after receipt of a proper deficiency letter, you may seek remedy from the court.

i. Motion to Compel

Where a party refuses to answer certain discovery requests you may ask the court to order that party to provide discovery responses by filing a Motion to Compel. Once a good faith effort to resolve the discovery dispute is made, and the deficiency is not remedied, you may file a Motion to Compel where (1) a deponent fails to answer a question asked in deposition, (2) a party fails to answer an interrogatory, (3) a party fails to comply with a request for production or inspection of documents, (4) a party fails to supplement a response. Md. Rule § 2-432.

The Motion to Compel must set forth the question, interrogatory, or request made; the answer or objection; and the reasons why discovery should be compelled.

ii. Motion for Sanctions

Sanctions are the final remedy a party may seek where the opposing party fails to answer discovery requests. Usually, a Motion to Compel must precede or accompany a Motion for Sanctions. However, under Maryland Rule § 2-432(a) a party may seek immediate sanctions, without first obtaining an order compelling discovery, if a party, after proper notice, fails to appear for a deposition, serve a response to interrogatories or request for production of documents.

Available sanctions for failure to adequately respond to discovery are governed by Maryland Rule § 2-433, and include:

1. An order that the matters sought to be discovered, or any other designated facts, shall be accepted as established by the court;
2. An order refusing to allow the failing party to support or oppose designated claims or offenses, or prohibiting that party from introducing designated matters into evidence; or
3. An order striking out pleadings or parts of pleadings, or staying further proceeding until the discovery is provided, or dismissing the action or any part thereof, or entering a judgment by default.

The court may also order the failing party or the attorney advising the failure to pay the reasonable expenses, including attorney's fees, caused by the failure.

V. Conclusion

Discovery is an integral part of the legal process, and is often the turning point in either a settlement or litigation. Discovery is most often conducted through written Interrogatories, Request for Production of Documents, and Request for Admission of Facts as well through oral depositions and records depositions.

The discovery process is also rife with formalities. Written discovery requests must be answered in writing within thirty (30) days after service. You must give a deponent ten (10) days' notice for an oral

deposition, or thirty (30) days' notice if you request they bring documentation to the deposition.

Just because information is requested in discovery does not mean your client must automatically provide it. Your client may object to any request that seeks privileged information. Additionally, where responding to a request would cause your client annoyance, embarrassment, oppression, or undue burden or expense you may seek a Protective Order from the court.

If you deem an opposing party's discovery responses deficient, you must first make a good faith effort to resolve the deficiencies without the court's intervention. This is often done through a deficiency letter. If the opposing party fails to remedy the deficiency even after proper notice, you may enlist the court's intervention through a Motion to Compel and/or for Sanctions.

Emily B. Gelmann graduated cum laude from the University of Maryland School of Law where she served as the Executive Articles Editor of the Maryland Law Journal of Race Religion Gender and Class. Ms. Gelmann then clerked for the Honorable Sylvester B. Cox in the Circuit Court for Baltimore City. Currently practicing family law in Maryland, Ms. Gelmann focuses her practice, research, and writing on complex biological situations and non-traditional families with a specific emphasis on the rights of intended parents.

SHIPLEY & HORNE, P.A.

Shipley & Horne, P.A. is pleased to announce that L. Paul Jackson II, Esq. has joined the firm as an Associate Attorney.

Prior to joining Shipley & Horne, P.A., Paul practiced at the law firm of McNamee, Hosea, Jernigan, Kim, Greenan & Lynch, P. A. , and served as a judicial law clerk to the Honorable Sean D. Wallace, Circuit Court for Prince George's County, Maryland.

Paul graduated with a Juris Doctorate Degree from the University of Baltimore's School of Law. He received his Bachelor of Science Degree from the University of Maryland's College of Health and Human Performance. While attending the University of Maryland, Paul was also a member of the University of Maryland football team. "Go Terps!"

Paul is a member of the Maryland State Bar Association, the Prince George's County Bar Association, the J. Franklyn Bourne Bar Association and the District of Columbia Bar Association. His legal experience includes civil and corporate litigation, commercial and business law, finance, securities, sales and acquisitions of businesses, business contracts and real estate.

"We are excited to welcome Paul," commented Arthur J. Horne, Jr., President and Managing Partner of Shipley & Horne, P.A., "His past experiences coupled with his passion for the law and community service align with the mission and core values of our firm, and will bring an added benefit to our clients as we continue to grow the practice."

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Notice of New Rule 3-741 | *by Hon. Thomas J. Love*

Please be advised that the Court of Appeals has adopted Maryland Rules 2-701 – 705 and 3-741 concerning the award of attorneys' fees in civil cases. The Rules are new and are applicable to any civil case filed after January 1, 2014. Rule 3-741 deals with requests for attorneys' fees and "related expenses" in the District Court. A copy of the Rules may be obtained on the Judiciary's web site. Rule 3-741 generally provides:

- "Related expenses" include compensation for the services of paralegals and law clerks. Rule 2-701 (b).
- A claim for attorneys' fees must accompany the complaint. Evidence in support to the entitlement to attorneys' fees and the reasonableness of the amount requested shall be presented at trial. If the case if filed under affidavit, Rule 3-306, evidence establishing the right to attorneys' fees and the reasonableness of the requested fee must be included in an accompanying affidavit.
- A party requesting attorneys' fees shall apply the standards set forth in Rule 3-703 (f)(3), which are essentially the factors enumerated in Maryland Rule of Professional Conduct 1.5 and in *Monmouth Meadows v. Hamilton*, *416 Md. 325 (2010).*

However, in cases where the claim for attorneys' fees does not exceed the lesser of 15% of the principal found to be due or $4,500, the party need not address all of the factors set forth in Rule 2-703 (f)(3). Instead, the party claiming the fee must demonstrate that the amount is reasonable and does not exceed the amount that the party has agreed to pay that party's attorney and, in addition, must provide:

(A) a detailed description of the work performed, broken down by hours or fractions thereof expended on each task;

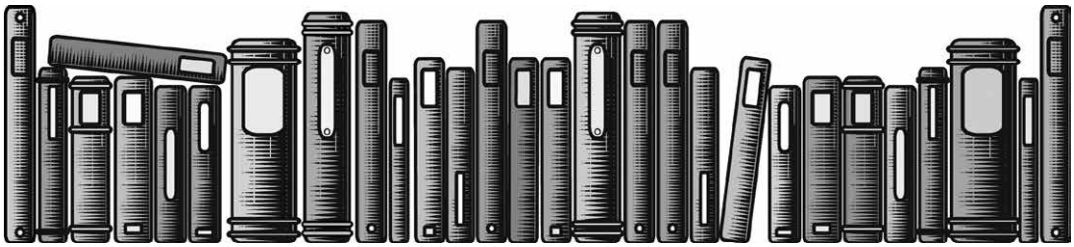
(B) the amount or rate charged or agreed to in writing by the requesting party and the attorney; and

(C) the attorney's customary fee for similar legal services.

Counsel should be cognizant of the requirements set forth in Rule 3-741 when attorneys' fees are requested in any case filed in our court after January 1, 2014.

THOMAS J. LOVE
Administrative Judge
District Five

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



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The Prince George's County Circuit Court Law Library presents a list of new materials acquired during December 2013. Feel free to visit the Library and review any materials, new or old.

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KF 1510.99 .B39 2014 RESERVE

Determining Child and Spousal Support, 2012 ed.
KF 549 .A15 D48 2012

Federal Civil Rules Handbook, 2014 ed.
KF 8816 .A2 2014 RESERVE

Law of Electronic Surveillance, February 2013 ed.
KF 9670 .A15 L39 2013

Maryland Civil Procedure Forms, 2013-2014 ed.
KFM 1730 .M3 2013 RESERVE

Maryland Evidence: Courtroom Manual, 2014 ed.
KFM 1740 .H67 2013 RESERVE

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NUMBER OF REFERRALS: 359

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February 11, 2014 - 6 PM
Federal Court House - Greenbelt
Guest Speaker: Larry S. Gibson, Professor of Law

Brown Bag Lunch
February 20, 2014
Lawyer's Lounge
See info. page 4

Law Practice 101
March 6, 2014
4 PM
More info. to come

March Madness
March 20, 2014
5 PM
Olde Towne Inn

Happy Hour
April 10, 2014
DAV-Bowie

District Five Town Meeting
May 7, 2014
Courtroom 357
3 PM
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