# PGCBA NewsJournal

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

## President's Message

***Dear Colleagues,***

It is said that great success comes from passion not position. On November 21, 2013, we honored 5 truly remarkable men at the Annual Memorial Service, Judge James Taylor, Judge Jacob Levin, Judge David Gray Ross, Joseph Blocher and Steven Lemmey. They were men who loved the law and the profession. They were practitioners, judges, family men, mentors to young attorneys and contributors to the community. Men after whom we should pattern our legal careers who understood that you could vigorously advocate for their clients, yet be courteous to their peers and the Court and those who appeared in front of them. Please see Judge Tillerson Adam's letter in this month's News Journal reminding us of the importance of giving tribute to the professional careers of our colleagues and showing support to their families. Please mark calendar now for 20 November 2014, at 4:00 pm in Courtroom 3400, Circuit Court for Prince George's County for next year's ceremony.

Carrying on the legacy of those who were recognized in November, Donnell Turner has accepted the position of Chair of the Mentoring Program. In the next few months, Donnell will be calling on experienced practitioners to pair with a new or relatively new practitioner in our County. The benefits to both are the same – talking through issues, answering questions and advising new practitioners how to avoid pitfalls and protecting our legal profession. Further, carrying on the traditions of professionalism, respect for the law, the community and the Court can be imparted on new practitioners.

On December 17th we had a wonderful holiday celebration. THANK YOU TO ALL MEMBERS WHO ATTENDED. I want to thank Judge Baron and Judge Duley for their contributions to the bar association and wish them best in their retirement. Thank you to our guest speakers, Judge Robert M. Bell and Toni Jarboe Duley for their wonderful tributes to our honorees. Thank you to Denise Bowman for her continued contribution to the success of the party, thank you to Judge Wright, the board of directors, and to Jeff Harding for being an outstanding emcee of the live auction. Thank you to members of our Circuit Court bench, District Court bench and Masters for the Family Division for supporting the event. Thank you also to Robin, Becky and Elizabeth for your hard work in planning the details of the party.

In closing I want to remind all members of the following upcoming events: Law Practice 101 will resume on 9 January 2014; Brown Bag lunch will resume on 16 January 2014, and join us on 16 January 2014 when Judge Devlin will

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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## 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

be hosting another social hour at the DAV hall located at 8205 Laurel Bowie Road, Bowie, Maryland, from 5:00 PM to 6:30 PM. This is a free event. On 25 January 2014, Ben Woolery's committee will be holding the Wills, Estates and Trusts Seminar. In February 2014, we look forward to our Joint Meeting with the J. Franklin Bourne Bar Association.

Also, please review your budgets and consider sponsoring a Law Links student for the 2014 session. For more information please contact the bar office. Each year I am more and more inspired by these rising stars and I know that you will feel the same.

Happy New Year!
Jennifer L. Muskus
President, Prince George's County Bar Association

# Member Announcements

## Welcome New Members!

Laura G. Zois
Miller & Zois, LLC

Viviana Westbrook
SUNEDISON

Heidi Kohler Hotz
H & H LawWorks, LLC

Shana Rae Ginsburg
Thatcher Law Firm, LLC

Thomas Edward Pyles
Law Office of Thomas E. Pyles

Gregory R. Singleton
Law Office of Gregory R. Singleton LLC

Reid M.Weinstein
Law Office of Reid M. Weinstein, LLC

Emily F. Belanger
DeCaro, Doran, Siciliano, Gallagher

Gizelle G. Babik
Attorney at Law

Shakisha Ayana O'Connor
Bacon, Thornton & Palmer

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

## BROWN BAG LUNCH

FREE TO MEMBERS!

January 16, 2014 - 12:00 PM
Lawyer's Lounge, 3rd Floor
Duvall Wing

Speaker:
Judge Thomas J. Love

Topic:
The District 5 Primer

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# The Prince George's County Bar Association

## *2014-2015 Open Season for*

# Lawyer

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# Service

# Membership

## *APPLICATIONS ACCEPTED NOW!*

**Remember...one referral can lead to many!**

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# Get Healthy Today | *by Edith Lawson-Jackson*

Eat, Drink And Be Merry?

During the Holiday season, the temptation to drink far more frequently than usual, can be an overwhelming one. There are numerous holiday parties starting with Thanksgiving and usually lasting a little after the New Year. And then there are those who indulge in excessive amounts of alcohol at social gatherings to drown their sorrows. The problem with all of this festive "holiday drinking" is that frequently consuming high-calorie alcoholic beverages combined with the high fat holiday treats we all love, can have disastrous results.

Research has shown that when alcoholic beverages are consumed while eating high fat and high sugar foods such as pies, cake, stuffing, and the like, people tend to eat many more calories than when they are consuming non-alcoholic beverages. And to add injury to insult, other studies have shown that the body is less able to process the food calories consumed together with alcoholic beverages than it is able to process food consumed with non-alcoholic beverages. Regardless of the extra pounds that alcohol may cause you to pack on, somehow the holidays aren't the holidays with a toast here and there. So if you must indulge, you might want to be a little discriminating in the drinks you choose. So here are some helpful tidbits of caloric information about popular holiday drinks:

Eggnog- One cup of eggnog (250ml) contains between 160 and 290 calories. If you add a shot of spirits, that'll add an additional 60 calories.

Wine – Both red and white wine contain about 125 calories per 5 ounce glass. For those with a sweeter tooth, dessert wines will cost you almost twice as many calories with about 235 calories per 5 ounce glass.

Beer – as far as beer goes, there are your regular beers and then there are your light beers. The most diet friendly of the regular beers is Corona Extra. A 12 ounce bottle contains about 148 calories and 14 grams of carbs. After that, Bass Ale is a close second with 160 calories and 13 grams of carbs. However, the "light" beers are much better for your waistline as they generally contain both fewer calories and fewer carbs. Beck's Premier Light is at the head of the class when it comes to light beers with only 64 calories and 4 grams of carbs. Michelob Ultra comes in second with 95 calories but only 2.6 grams of carbs. Next, you have Amstel Light which has 99 calories and 5.5 grams of carbs as compared to it's alternative Amstel's Cream Stout which contains substantially more calories, carbs, and alcohol content.

The hardest calories to burn-hard liquor and cocktails. A meager 1.5 ounce glass of 53 proof Kahlua, for example, will set you back 170 calories (the equivalent of a turkey breast and lettuce and tomato sandwich on a "sandwich thins" bun). Don't ask for a double shot of the tasty drink or add it to mixers or juices containing additional calories (so…anything other than water), else risk consuming the calories contained in a large chocolate frosted doughnut.

In the mood for a nice frozen, fruity holiday drink? A frozen margarita made with only 2 ounces tequila and 4.5 ounces of Jose Cuervo margarita mix will cost you about 246 calories while a 12 ounce rum and coke will cost you approximately 360 calories or the equivalent of a chicken filet sandwich. The lower calorie alternative mixed drinks include a 2 ounce Martini weighing in at about 120 or a 2 ounce Manhattan made with Whiskey and Vermouth and Bitters. This well mixed drink will set you back roughly 130 calories.

As your merriment and celebrations extend into the New Year, keep in mind the damage that your alcohol consumption may be doing to your waistline and adjust your intake accordingly. Remember that some libations contain substantially fewer calories than others and that it helps to insert some good old plain and pure H2O between your holiday treats and your holiday drinks. And certainly try to avoid turning your holiday drinks into holiday treats by adding sugar-laden mixers, creams, and toppings. So eat, drink, and be merry…but not too much, and not all at the same time. And aim to get in one glass of water as a chaser after each alcoholic beverage. Happy Holidays!

# Holiday Party
## December 17, 2013


Seventh Judicial Circuit of Maryland
COURT HOUSE
UPPER MARLBORO, MARYLAND 20772

SHEILA R. TILLERSON ADAMS
SEVENTH CIRCUIT ADMINISTRATIVE JUDGE
COUNTY ADMINISTRATIVE JUDGE

(301) 952-3766

December 4, 2013

Prince George's County Bar Association
14330 Old Marlboro Pike
Upper Marlboro, Maryland 20773

Subject: Open Letter to the Prince George's County Bar Association

Dear Members of the Prince George's County Bar Association:

On November 20, 2013, I had the privilege of presiding over the Annual Memorial Service of the Prince George's County Bar Association. A solemn yet moving ceremony for the families and friends in attendance. I would to thank President Jennifer Muskus, Esquire, for ensuring that this tradition continues and the Honorable William D. Missouri for coordinating the ceremony. The Bar memorialized **FIVE** members of our Association who passed away this year. They were **Joseph P. Blocher, Esquire, Steven P. Lemmey, Esquire, The Honorable Jacob S. Levin, The Honorable David Gray Ross, and The Honorable James H. Taylor.** The Eulogists were Midgett S. Parker, Jr., The Honorable Alexander Wright, Jr., David Levin, The Honorable C. Philip Nichols, Jr., and Elizabeth M. Hewlett, respectively. The decedents were men that made tremendous contributions to our community in their own right, at great personal sacrifice to the time available to share with their families. The law has that effect on all lawyers who truly love their craft. It was obvious to all in attendance that the families of these members of our Bar truly appreciated the tribute to their loved ones. It is hard for family members to truly appreciate why so much time is spent working, but when you hear in a public forum all the contributions their loved one has made to the greater community, it goes a long way to bring closure, instill pride and reinforce the respect that so many have for the lives that they lived, the respect that they garnered and the lessons learned.

Each time I sit through a memorial service, it is as if I have an opportunity to put a face on a piece of legal history in Prince George's County. I learned something that I did not know about why things are the way they are today. November 20th was no different. I looked around the Courtroom and saw retired Court of Special Appeals Judge John (Jack) Garrity. Over the years I learned about the contributions of attorneys like Joseph Finlayson and his work as a Patent lawyer (also a founder of the J. Franklyn Bourne Bar Association) and how the major law firms were formed in the County through the testimonies for Joseph A. DePaul, Thomas Farrington, Peter O'Malley, and Fred Joseph, just to name a few.

Each presenter this year did an excellent job of sharing the many contributions of our colleagues whose legacies continue to shape the fabric of our Bar today and have paved the pathway for many of us to prosper in the future. They built firms that have prospered across this State and surrounding jurisdictions, they prosecuted crimes, investigated Judges, worked in local law firms, transformed child support in this Country and desegregated the Town of Upper Marlboro with dignity and respect, just to name a few accomplishments. Yes, it was a dignified and necessary ceremony, the only thing missing was **YOU**, the members of the Bar Association. Where were **YOU**?

I know we are all busy, we have cases, hearings, depositions, appointments, just life, but this is important. Death is the great equalizer. I don't care how busy you are today, tomorrow or the next, whether you like it or not, one day your number will be called and your name will be on the list that we will gather to memorialize. So you might ask, why do we do this? We do it because we are members of a proud profession. A profession that is the foundation of our democracy and is the barometer to every aspect of our society. We do it because we are at the forefront of all injustices, we right wrongs, seek justice and protect the vulnerable. We do it because with each case, trial, contract, hearing, zoning decision, appeal or settlement, we affect the lives of the citizens we serve and create a legacy for future generations. We do it because we are proud of our profession and the role we play in society so that when we have argued our last case and closed our eyes for the last time, we have a sense of pride knowing that we have left this world better for those who follow. We are deserving of our Bar Association coming together for a brief pause to document our professional career and ensure that the record of that ceremony is made a permanent part of the records of this Court. Each of us has a story, no matter how grand or small our practice has been. Each of us has touched a life or made a difference in this community. I believe the families of each of our memorialized colleagues should feel the support of our Bar Association, whether you know that particular colleague or not.

So, I implore all of you to mark your calendars now for **November 20, 2014** at 4:00 pm, Courtroom 3400, Circuit Court for Prince George's County. Hopefully, we will have no loses next year and we can scratch that date off as it approaches, but if history is any indicator, we will assemble on that date next year. I trust I will see a **packed** courtroom next year if we have to assemble. Your presence will not only honor our colleagues but will be a true gift to the families that they leave behind.

Thank you for your attention to this matter.

Sincerely,

Sheila R. Tillerson Adams
Administrative Judge

cc: Jennifer Muskus, Esquire, President
Hon. William D. Missouri (Ret.), Chair, Memorial Committee

SRTA2013-0274

# Constructive Possession - 2013 - Part II | *by Robert C. Bonsib, Esq.*

This is the second of a two-part series reviewing appellate decisions discussing the factors and circumstances the appellate courts have identified as significant when reviewing the sufficiency of evidence necessary to support convictions for the constructive possession of contraband or other items. In the first article the focus was on the factors discussed in reported cases where the contraband or item was located in a vehicle. This article discusses constructive possession occurring within a premises.

In the first article, *Taylor v. State*, 346 Md. 452, 697 A.2d 462 (1997), a case occurring in a hotel room, was reviewed as it reminded us that to support a conviction on a constructive possession theory, the prosecution must prove that the defendant (i) had knowledge of the presence of the item; and (ii) that person exercised some dominion or control over the item.

***Smith v. State (evidence insufficient)***

We jump from *Taylor v State* in 1995, a case in which Taylor and 4 other people were found in a marihuana smoke filled room in a Days Inn in Ocean City, Maryland under circumstances which the COA found insufficient to support a constructive possession theory of conviction to 2006 and *Smith v. State,* a case where the operative facts were described by Judge Harrell as:

> "[r]eminiscent of a scene from a Cheech & Chong movie where Baltimore City police officers, on 6 December 2006, executed a search warrant on a dwelling at 1932 Lanvale Street where the occupants on one floor were found shrouded in a haze of marijuana smoke. Despite the appearance of the police, [Smith], one of those present, behaved as though everything remained "groovy." Smith was seated in a chair at a table within arm's reach of a smoldering marijuana blunt and next to another chair over which was draped a jacket with fifteen baggies of marijuana in one of its pockets."

*Smith v. State*, 415 Md. 174, 177, 999 A.2d 986 (2010)

In *Smith* proximity and knowledge were found sufficient to support a conviction for possession of marihuana. *Taylor* and *Smith* provide a good contrast of the types of circumstances that may influence how appellate courts analyze sufficiency questions. *Smith* distinguishes its holding from that in *Taylor* first by summarizing the facts in *Taylor.* The record in *Taylor* established only that "Taylor was present in a room where marijuana had been smoked recently, that he was aware that it had been smoked, and that Taylor was in proximity to contraband that was concealed in a container belonging to another." Continuing, the COA stated that although Taylor had a possessory interest in the hotel room, he was not in exclusive possession of the room and its contents and the drugs were "secreted in a hidden place not otherwise shown to be within [Taylor's] control. Accordingly, a rational inference could not be drawn that he possessed the controlled dangerous substance. The COA in *Taylor* concluded by holding that:

> "Taylor's presence in a room in which marijuana had been smoked, and his awareness that marijuana had been smoked, cannot permit a rational trier of fact to infer that Taylor exercised a restraining or directing influence over marijuana that was concealed in personal carrying bags of another occupant of the room." Any finding that he was in possession of the marijuana was based solely on "speculation or conjecture." Accordingly, we held that the evidence was insufficient to support his conviction."

In *Smith*, in affirming the conviction, the COA found significant that not only was Smith in close proximity to the known marijuana in the blunt, the lit and partially-consumed marijuana blunt was in [Smith's] view but that the blunt was accessible easily to him, and it was reasonable to infer from the circumstances that he was engaging in the mutual use and enjoyment of the marijuana. The COA concluded that the inferences made by the jury in convicting Smith were supported by the evidence and that "[t]hese inferences are the very type of inferences that juries are charged with making-to make findings of fact based on the evidentiary facts and their common sense reasoning." The COA further rejected, as "not relevant," a consideration as to whether it also may have been reasonable to infer that Smith was merely an innocent bystander as the jury had determined otherwise. The COA deferred to the jury's finding that Smith had knowledge of and exercised dominion or control over the marijuana.

Judge Green dissented in *Smith* and in so doing highlighted the danger of a holding that essentially says that knowledge and mere presence is sufficient to support a conviction. Judge Green summarized his view quoting, in part, with approval from Mr. Mackey [a South Park character] that -

> while "[d]rugs are bad," the law imposes no legal duty, as opposed to moral duty, to stop others from using drugs, or to run away from people who are using drugs. It is unreasonable to infer from Smith's proximity to others who are or may have been using marijuana that Smith possessed marijuana on the basis of his association. Thus, because the State has not presented any indicia of Smith's restraining or direct influence over the marijuana blunt, I would reverse the judgment of the Court of Special Appeals."

While the facts in *Smith* and *Taylor* seem similar in many respects, the failure to prove that Taylor knew of the location and presence of the drugs of which he was convicted (despite the clouds of marihuana smoke in the air) was differentiated from Smith's apparent knowledge that the drugs were present in that they were in his direct presence. Upon review of other constructive

possession cases, this distinction does not always seem to explain the results in all cases.

***Garrison v. State (evidence insufficient)***
The need to prove something more than mere presence or proximity to contraband was discussed in *Garrison v. State,* 272 Md. 123, 321 A.2d 767 (1974). In *Garrison,* the accused's husband was found attempting to flush heroin down the toilet at the time that a search warrant was being executed. The COA found the evidence insufficient to support a conviction of the wife where, although she shared a residence with her husband, she was not shown to have been involved in selling the drugs that were found in the residence. This was so even though the evidence established that the wife had old needle marks on her arms (estimated to be 10-14 days old) and that she had a possessory interest in the premises. The COA noted that the wife and her husband may well have jointly participated in the distribution of heroin, but on the record there was no substantial evidence offered which showed directly or supported a rational inference that the wife exercised either actual or constructive dominion or control - solely or jointly with her husband - over the 173 glassine bags of heroin seized while being discarded by the husband.

*Garrison*'s holding suggests that proximity to and knowledge of the presence of contraband and even a possessory interest in the premises where the contraband is located is insufficient to support a conviction on a constructive possession basis without some evidence that proves that the accused exercised dominion or control over the item at issue.

***Pearson v. State (evidence sufficient)***
In *Pearson v. State*, 126 Md. App. 530, 730 A.2nd 700 (1999) the evidence was held to be sufficient where it consisted of facts showing that there was a controlled delivery of a box of marijuana to Pearson's apartment that was signed for by Pearson's roommate who signed Pearson's name as Pearson entered the room. Immediately after the package was delivered, Pearson tried to stop the delivery driver (an undercover detective), but was unsuccessful in doing so. Shortly thereafter Pearson's apartment was searched and the package of marijuana was discovered unopened near the front door. In addition, the officer seized 5 bags of boxes of plastic baggies, 2 boxes of plastic wrap and a large digital scale that was recovered from beneath Pearson's bed. Noting that the courts and other states have generally concluded that the mere fact that a package containing controlled substances is received in a controlled delivery or through the mail is insufficient to establish evidence of the knowledge of the contents of the package, the presence of a large number of baggies, the large scale found in Pearson's bedroom and the fact that the sender of such a large amount of contraband "would be careful to place the correct address on the package" all caused the CSA to conclude that there was sufficient evidence to establish not only Pearson's knowledge of the contents of the box, but to establish the requisite dominion and control over the controlled substances. In *Pearson* there were factors clearly proven beyond mere proximity including not only an ownership interest in the premises, but also evidence that Pearson had in his bedroom paraphernalia that was consistent with that of narcotics distribution activity.

***Moye v. State (evidence insufficient)***
In *Moye v. State*, 369 Md. 2, 796 A. 2nd 821 (2002) the COA reversed the CSA holding evidence insufficient that established only that Moye had been staying in a house and that he had, for some undetermined period of time, been present in the dwelling's basement where drugs were found inside open or partially open drawers. It noted that no drugs were found on Moye when he was arrested and that Moye had not been tested for drugs at the time of his arrest. The CSA had held that Moye's "residence at a house in which the marijuana and cocaine were found in plain view", combined with his presence in the specific area the drugs were located, was sufficient evidence to affirm Moye's conviction. The CSA attempted to distinguish the facts in Moye's case from *Taylor* and the cases cited in *Taylor* on the basis that those cases involved factual situations where controlled substances were located in a closed container or outside the plain view of the accused.

The COA reversed Moye's conviction rejecting a constructive possession conviction characterized by the COA as based strictly upon Moye's proximity to controlled substances. While emphasizing that a valid conviction could be based solely upon circumstantial evidence, the COA cautioned that "it cannot be sustained on proof amounting only to strong suspicion or mere probability". The COA found that there was insufficient evidence to show that Moye exercised dominion or control over the narcotics, noting that Moye had no ownership or possessory right in the premises where the drugs or paraphernalia were found. Although there was testimony that Moye was "living at the house", there was insufficient evidence to establish how long he had been at the home and one could not conclude that Moye had any ownership or possessory right to or interest in the home. The record failed to establish Moye's proximity (or lack thereof) to the drugs at the time that he was in the basement where the drugs were found. The COA held that there was no reasonable inference could be drawn that Moye was participating with others in the mutual enjoyment of the contraband.

***Parker v. State (evidence insufficient)***
In *Parker v. State*, 402 Md. 372, 936 A.2d 862 (2007), Parker was convicted of the unlawful possession of a firearm found in a second floor hall. The COA reversed, holding that as in *Moye,* nothing in the record established Parker's ownership of or a possessory interest in the home and the evidence did not show whether Parker was residing in the home at the time of the search of the residence or simply visiting an person who did live there. There was more evidence in *Moye,* where

*con't on next page...*

# Constructive Possession, Con't

the evidence was found insufficient, even though the State had established that Moye was residing in the home and had been on the same floor as the contraband. In *Parker* there is even less evidence to support Parker's conviction. The State failed to establish that Parker had any proximity to the handgun found in a three story home, where the gun was found on the second story and where nothing in the record indicated where the police observed Parker in the home at the time the gun was located, whether he had access to the second floor, whether he had ever been on the second floor, whether the handgun was in plain view or even how long Parker had been in the house.

In reversing the conviction, the COA concluded that the record failed to contain evidence supporting a reasonable inference that Parker had ever seen the gun, had the opportunity to see the gun, or was aware of it. With no established interest or residence in the house, it could not reasonably be inferred that Parker was cognizant of all of the house's contents.

***Leach v. State (evidence insufficient)***

Stephen Leach was tried jointly with his brother, Michael Leach at a bench trial at which the essential question was whether Stephen constructively possessed the PCP and paraphernalia found in a one-bedroom apartment on the second floor of a rowhouse in Baltimore City. *State v. Leach*, 296 Md. 591, 463 A.2d 872 (1983). The COA found the evidence was not sufficient.

The trial court found "[t]he evidence in this case [to be] abundantly clear that Michael Leach was the occupant, possessor of the apartment ...." As to Stephen Leach, the trial court, in finding the evidence sufficient to convict Stephen Leach on a constructive possession theory explained it ruling stating that:

> [b]ased on the evidence in the case, primarily the evidence of Mr. Stephen Leach's access to the apartment, the fact he had the key to the apartment, the fact he had at one point the motorcycle registered at the apartment, the fact that he gave this apartment as his address at the time of the arrest, I believe there is sufficient evidence to justify a ... finding of guilty [of] ... possession of Phencyclindine, and, in addition, I find that this evidence is buttressed by the ... photograph in evidence bearing the date December, 1979 ....[a photograph with an unknown individual and the Leach brothers in the background and a notation on the back of the photograph which said "John Potter holding greens" – "greens" being described by a narcotics officer as PCP]

The COA rejected the trial court's sufficiency analysis. It stated that inasmuch as the trial court had found that that Michael Leach was the occupant of the premises, such a finding precluded an inference that Stephen had joint dominion and control with Michael over the entire apartment and over everything contained anywhere in it. Even though Stephen had ready access to the apartment, the COA concluded that it could not be reasonably inferred that he exercised restraining or directing influence over PCP in a closed container on the bedroom dresser or over paraphernalia in the bedroom closet and even if one assumes that the scales and magnifier found in plain view in the kitchen at the time of the search were always kept there, still those items were intrinsically innocuous and only become significant by association with drugs or cutting agents. Stephen Leach was walking his dog a mile and half from the premises when the search of the premises was conducted.

***Handy v. State – evidence sufficient***

In *Handy v. State*, 175 Md. App. 53, 930 A.2d 1111 (2007), the evidence was held to be sufficient to convict Handy even though a total of eight adults were found in the residence at the time of the raid and even though Handy did not have any possessory interest in the premises, noting that Handy was in the kitchen at the time of the raid, a kitchen that was described as small and that he was within arms' reach of four firearms as well as drugs and paraphernalia all of which were in plain view from Handy's location. There was a smell of marihuana in the residence and a narcotics officer opined that the circumstances present at the time of the raid were of such a nature as to indicate that the premises were being used as the basis for a drug operation. Handy countered and offered testimony that he had only been at the residence for 2-3 minutes before the raid.

The CSA held that the fact that Handy did not have a possessory or proprietary interest in the premises was not a dispositive factor. While characterizing the case as a "close case," it concluded that the jury could properly have chosen to disbelieve Handy's explanation for his presence and infer from the evidence that he was in constructive possession of the firearms, drugs and paraphernalia.

***Summary***

There is no bright line to be drawn from a review of the constructive possession cases. It is worth remembering that these are sufficiency cases. Simply because a trier of fact on a particular set of facts chose to draw an inference that an accused exercised dominion and control over an item does not mean that was a required conclusion. On the other hand, when the question is sufficiency, either on appeal or at an argument on a motion for judgment of acquittal, cases such as *Smith, Handy* and *Pearson* support the proposition that the trier of fact should be permitted to draw inference of guilt even though an alternate inference might also be reasonable.

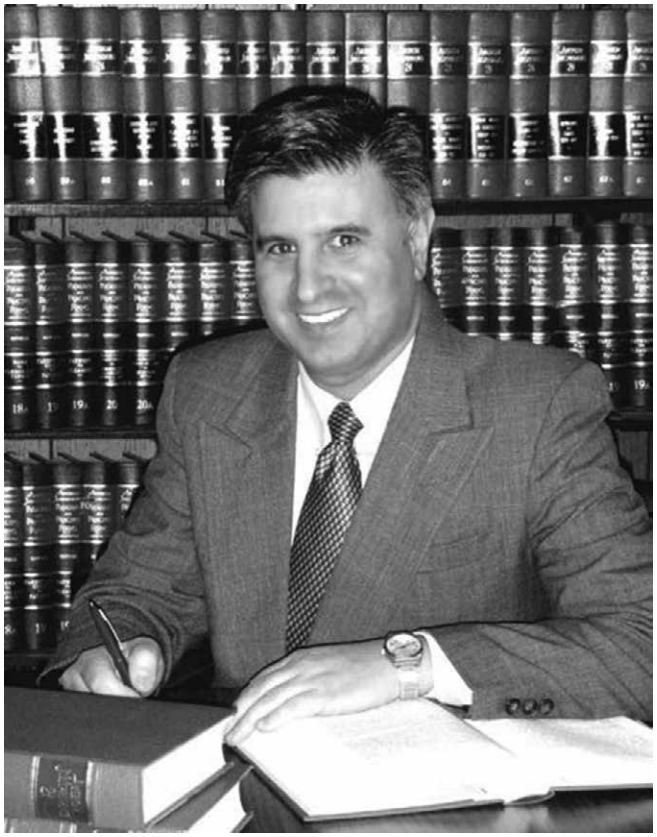
The major factors in these constructive possession cases that seem to control the courts' holdings are presence, proximity, knowledge and whether there are others present on the premises or with equal access to the contraband or items at issue. In cases where there is presence and proximity, but where the items were not visible or the evidence does not establish that the accused had reason to know of the item's presence, the courts generally have concluded that such evidence is insufficient to support a finding of

guilt. Where there is evidence that the contraband or item was in plain view and within close proximity to the accused, even where there may be a total absence of direct evidence of the accused's possession of the item and where the accused may have no possessory or proprietary interest in the premises and even where the evidence may suggest that the accused's presence has been limited in duration at that location, such presence, proximity and knowledge has been more often than not held sufficient for the trier of fact to infer an accused's dominion and control over the contraband or item.

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







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

**CLS PRO BONO AWARDS RECEPTION**
**Wednesday, April 2, 2014**
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:

Fred R. Joseph Award:
**Nakia Gray, Esq.**
New Attorney Award:
**August Gardner. Esq.**
Pro Bono Award:
**Bud Stephen Tayman, Esq.**
Pro Bono Award:
**Kwaku Ofori, Esq.**
Pro Bono Award:
**Jean K. Aelion, Esq.**

**Foreclosure Success Story**
Beltsville homeowner and her housing counselor attempted unsuccessfully to obtain modification. Homeowner was frustrated because she previously paid a private attorney to resolve the foreclosure but had negative results. Her HOPE counselor referred her to CLS for additional assistance. Despite a reduction in income, separation and 12 months delinquency, a CLS volunteer attorney was able to negotiate with Provident Lending to acquire a three months trial period. After completion, Homeowner was granted an affordable final modification. The homeowner is very pleased with the CLS volunteer attorney professional services which lead to the retention of her home and final closure to this very stressful event.

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 513 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**: **January 14, 2014 6-8:30 pm**

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

***Registration to Open Soon***

February
Discovery: Practical Tips on How to Get What you Need for Your Case

***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.*

***Registration to Open Soon***

**LEG 505 – *40 Hr. Mediation and Conflict Resolution Training*:*** Review conflict resolution and the skills required to be a Maryland mediator. Practice interviewing, negotiation techniques, communication and problem solving skills. Study mediation theory, conduct, ethics, rules and statutes governing mediation in the Circuit Courts and Maryland. *$800.00 ($810.00 if an out-of-county resident)*

**Note: Satisfies Maryland Rules, Title 17 requirement of 40-hour mediation training for designation as a Mediator by Maryland Circuit Courts.*

**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.**

101 College Parkway Arnold, MD 21012 410-777-7323

For registration, speaker and seminar information, visit www.aacc.edu/legalstudies/cle

50 INSPIRING YEARS Anne Arundel Community College

# The Probate, Estates & Trusts Seminar of the Prince George's County Bar Association

## Saturday, January 25, 2014
## 9:00 AM – 1:00 PM

**TOPICS**:

| | |
|---|---|
| **Timothy P. O'Brien & Suzanne G. Duvall** | **"Basic Estate planning for Estates Between $1 million and $5.34 million."** |
| **Brian Ritter & Jessica Estes** | **"How to squeeze out your fee when the Court has asked you to take a temporary Property Guardian appointment for an Alleged Disabled when an Application for Medicaid is on the immediate horizon"** |
| **Sharon Y. Christmas-DeBerry** | **"A Primer on Adult Guardianship from the New Trust Attorney"** |
| **Invited Speaker: Sharon Sirota Rubin** | **"The New Face of Maryland's Medicaid Liens Office"** |

**Committee Co-Chairs:** **Benjamin J. Woolery & Walter W. Green**

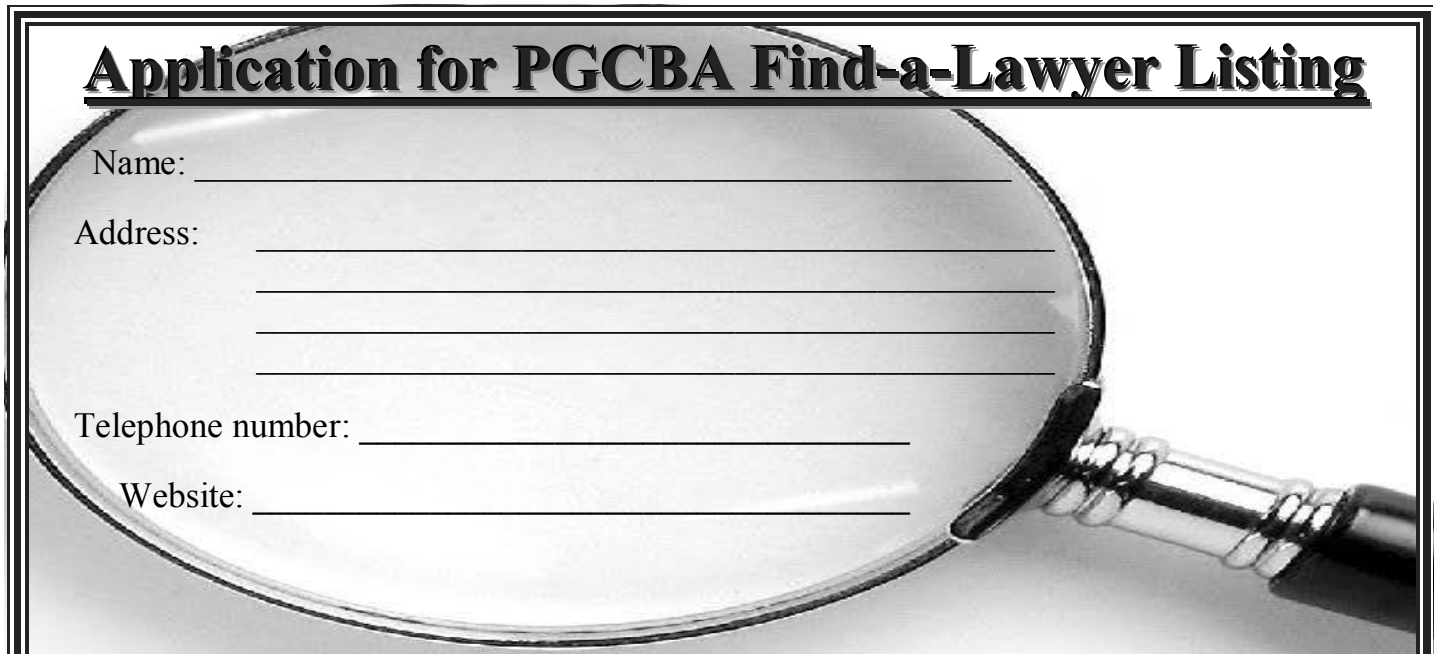
**Jury Assembly Room**
**Courthouse – Upper Marlboro**

**$55.00 members until January 17, 2014, $65 after**
**$75.00 non-member until January 17, 2014, $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 for the appropriate amount to**
**PGCBA**
**14330 Old Marlboro Pike**
**Upper Marlboro, Maryland 20772**

**14330 Old Marlboro Pike**
**Upper Marlboro, Md. 20772**

# Application for PGCBA Find-a-Lawyer Listing



Name: _____

Address: _____

_____

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Telephone number: _____

Website: _____

*If this application is accepted, the information will be listed as provided above*

| Please be advised that I am applying for listing on the PGCBA Find-a-Lawyer pages in the following categories: | | |
|---|---|---|
| Administrative | Elder Law | Landlord & Tenant |
| Appeals | Employment | Military |
| Business | Environmental | Personal Injury |
| Bankruptcy | Family Law | Real Estate |
| Civil Litigation | Juvenile | Social Security/Disability Law |
| Collections | Health Care | Tax |
| Consumer Protection | Immigration | Traffic |
| Contracts | Insurance Disputes | Wills & Estates |
| Criminal | Intellectual Property | Workers Compensation |

I understand that listing on these pages is available to individual attorneys only (not law firms) who are current on all PGCBA obligations including dues. The fee for listing is $120 (includes one category) and $20 for each category annually. The program runs from January 1, 2014 until December 31, 2014. **Failure to remain current in all obligations or to pay the listing fee when notified will result in removal from the site without further notice.**

This information is being provided as a service to the public and our members. The Prince George's County Bar Association does not screen the qualifications of the attorneys appearing in this listing, if they maintain certain levels of malpractice insurance or whether they hold a level of experience in the category presented.

| I am enclosing/providing payment for the following to the PGCBA | |
|---|---|
| LISTING FEE | $120.00 (Includes 1 category) |
| CATEGORIES | ____X $20.00 = $ |
| **TOTAL** | **$** |

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: Maryland's Protective Order Statute - A Work in Progress | *by Judith A. Wolfer, Esq.*

How up-to-date are you on the latest changes to Maryland's Domestic Violence Protective Order law? Given the number of amendments to the Act over the past several years, you might be surprised at some of the changes in the law. Take this quick self-test to see how current you are with the Protection from Domestic Violence Act.

| | (Circle one) | |
|---|---|---|
| 1. A Temporary Protective Order can only be extended for up to 30 days in order to effectuate service. | TRUE | FALSE |
| 2. Police may be ordered to retrieve children in a Temporary or a Final Protective Order. | TRUE | FALSE |
| 3. The court can award possession of family pets. | TRUE | FALSE |
| 4. A Protective Order may be awarded for up to 2 years. | TRUE | FALSE |
| 5. Once a Protective Order is issued, a Respondent must turn over guns to law enforcement unless the guns are a requirement of the Respondent's job. | TRUE | FALSE |
| 6. If a Petitioner files a motion to extend a Protective Order but the Protective Order expires before the motion is heard, the court may still consider the motion. | TRUE | FALSE |
| 7. If a Protective Order is dismissed or denied at any stage of the process, a Respondent may have the entire record removed from Case Search. | TRUE | FALSE |
| 8. If a Respondent consents to the entry of a Final Protective Order in the District Court, he may still file a *de novo* appeal and be heard in the Circuit Court. | TRUE | FALSE |

ANSWERS: True - (# 2, 3, 4, 7)
False – (# 1, 5, 6, 8)

Surprised at your test results? Here's the low-down. . .

The Protection from Domestic Violence Act is Maryland's domestic violence protective order statute, located at MD Code Annot., Family Law § 4-501 *et seq*. This law provides criminally enforceable protections and other civil relief for persons who are in family-type relationships (family members, current and former spouses, couples with children, and cohabitants), who have experienced particular types of abuse (assault, serious bodily harm, threats of imminent serious bodily harm, sexual assault or attempted sexual assault, false imprisonment or stalking). This law should be distinguished from Maryland's Peace Order statute, which provides much more limited protections and relief to individuals who are *not* in the family-type relationships that are covered by the Protective Order statute. Because the Peace Order statute does not cover abuse in family relationships, it is located at MD Code Annot., Cts. & Jud. Proc. § 3-1501 *et seq*.

Contrary to popular belief, protective orders are more than a piece of paper. Three long-term research studies have demonstrated that the entry of a protective order significantly decreases a victim's risk of being abused in the 12 months following the entry of a final protective order. The almost annual changes to Maryland's Protective Order statute speak to its effectiveness and vibrancy as a legal remedy for these families, and how much the law is still a work in progress.

A petitioner for a Protective Order must first file for a temporary protective order.[1] The respondent must be served with a copy of that order by a law enforcement officer before the final

1 If the courts are closed, a petitioner may apply for an interim protective order from a court commissioner. This interim order is effective until the date of the temporary protective order hearing, or the end of the second business day that the District Court is open, whichever occurs first. *See* FL § 4-504.1(h).

protective order hearing may proceed.[2] The temporary protective order is usually issued for 7 days, with the final protective order hearing scheduled on the 7th day.[3] But what happens if the respondent is not served by the 7th day? The court will typically continue the temporary protective order for several more weeks in order to allow law enforcement the opportunity to find and serve the respondent.[4] If it appears that the respondent is proving difficult to serve, the court can sign a Waiver of Appearance Form, which excuses the petitioner from appearing in court until the respondent is served. The court now has the power to extend the temporary protective order for up to 6 months in order to effectuate service.[5] (ANSWER #1)

The relief available to a petitioner is different at each stage of the protective order process, so it is important to review those sections carefully. While temporary custody may be ordered at each stage, gaining the return of that child from a respondent has proven to be difficult in many cases. The court now has the ability to order law enforcement to "use all reasonable and necessary force to return the minor child to the custodial parent" at every stage of the protective order process.[6] (ANSWER #2)

While some readers may think it is a bit frivolous to worry about Fido immediately after an incident of domestic violence, research has highlighted the fact that many domestic violence victims remain in a battering home in order to protect pets from neglect or abuse. To remedy this worry, the court can now award possession of pets at the interim, temporary and final protective order stages.[7] (ANSWER #3)

In 1980, when the Protective Order law was first enacted, protective orders could only be issued for 15 days. In 1992, the General Assembly increased the duration to 300 days. Now, if a petitioner is seeking a protective order for the first time, she can receive a final protective order for up to one year.[8] If she is re-abused while a protective order is in effect, she can apply for a 2-year protective order.[9] Also, if her first protective order expires and she is re-abused during the year following the expiration of the first order, she can be awarded a 2-year order.[10] (ANSWER #4)

Guns are the most frequently used weapon in domestic fatalities. So the gun removal portion of the protective order is extremely important. Both State and federal law prohibit a respondent to possess a firearm during a protective order's term. Under Maryland's law, there are no exceptions, even if the respondent has a job that requires him to carry a firearm.[11] (ANSWER #5)

While a protective order is in effect, a petitioner may file to extend it for an additional 6 months upon a showing of good cause.[12] The statute's language is clear that the order must still be in effect when the motion to extend is filed. But until recently, it was not clear if a court could still hear the motion to extend if the protective order had expired. In June of 2013, the Maryland Court of Appeals issued its opinion in *LaValle v. LaValle*, 432 Md. 343 (2013), holding that a trial court lacked the authority to hear a motion to extend a protective order after the expiration date of the order, even if the motion was timely filed. (ANSWER #6) Keep posted, however – there may be changes affecting this decision in the next legislative session.

Case Search has been both a boon and a curse to many of our clients, and many attorneys have expressed concern about the potentially prejudicial consequences of public access to protective order filings that were either dismissed or denied. In 2010, the Maryland Legislature added a provision to the law that allows a respondent to request the shielding of that protective order information from public access if the protective order was either denied or dismissed.[13] (ANSWER #7)

The protective order law permits a *de novo* appeal from the grant or denial of a District Court protective order.[14] But does the respondent give up his right to appeal the order if he consents to the entry of a District Court protective order? In *Suter v. Stuckey,* 402 Md. 211 (2007), the Court of Appeals answered that question in the affirmative. If a respondent consents to the entry of a protective order in either the District or Circuit Court, he consents to an end to the litigation and cannot appeal the case. (ANSWER #8)

As you can see, Maryland's protective order statute has come a long way since 1980 with its 15-day "cooling off" order. We now know so much more about the pervasiveness and repetitiveness of domestic violence, and of the many strategies that help to interrupt its cycle. And as we learn even more about effective interventions, it is certain that Maryland's protective order law will continue to evolve.

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Managing Attorney
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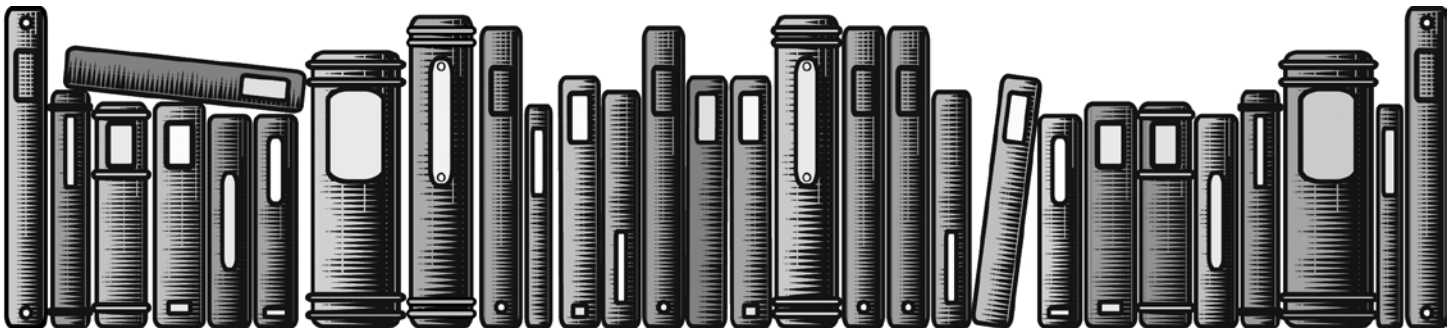
Domestic Violence Legal Clinic,
2201 Argonne Drive,
Baltimore, MD. 21218
410-554-8459
410-243-3014 (fx)
Jwolfer@hruthmd.org

2 FL § 4-505 (b).
3 FL § 4-505 (c).
4 FL § 4-505 (c)(2).
5 FL § 4-505 (c)(2).
6 FL § 4-504.1 (d); § 4-505 (a)(3); § 4-506 (g).
7 FL § 4-504.1 (c)(9); § 4-505 (a)(2)(ix); § 4-506 (d)(13).
8 FL § 4-506 (j).
9 FL § 4-507 (a)(3).
10 FL § 4-506 (j)(2).
11 FL § 4-506 (f); FL § 4-506.1.
12 FL § 4-507 (a)(2).
13 FL § 4-512.
14 FL § 4-506 (b).

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



**New Titles! New Editions!At the Prince George's County Circuit Court Law Library**

*The Prince George's County Circuit Court Law Library presents a list of new materials acquired during November 2013.*

*Feel free to visit the Library and review any materials, new or old.*

## New titles at the Law Library - November 2013

BOOKS

Advertising Law Institute, 2012
KF 1348 .A38 A157 2012

DSM-5 Clinical Cases
RC 473 .D54 2014 RESERVE

Form Your Own Limited Liability Company, 7th ed.
KF 1380 .M36 2011 RESERVE

Immigration Employment Compliance Handbook, 2012-2013 ed.
KF 4829 .Z9 I43 2012

Law of Modern Commercial Practices, 2nd rev. ed.
KF 872 .L39 2012

Maryland Law of Confessions, 2013-2014 ed.
KFM 1780 .J49 2013 RESERVE

Maryland Vehicle Law Annotated, 2013 ed.
KFM 1497 .A29 M374 2013 RESERVE

CD-ROMS

Form Your Own Limited Liability Company, 7th ed.
Kept at Reserve Desk

Maryland Corporate Practice and Forms, 2013 supplement
Kept at Reserve Desk

Modern Real Estate Practice Forms and Commentary, 2013 update
Kept at Reserve Desk

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Per Month

PGCBA Members:
2 lines (minimum) $15,
3 lines $19,
4 lines $23,
each additional line $4

Non-Members:
2 lines (minimum) $17, 3 lines $21,
4 lines $25, each additional line $5

Internal Box Responses $5 add'l.

Post-publication billing;
automatic renewal each month
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Deadline for Submission: 15th of
month preceding publication.

## CONFERENCE ROOM RENTALS

**UPPER MARLBORO: CLOSE TO COURTHOUSE - PGCBA Bar Office Conference Room (Wifi now available) Hourly Rentals-**Schedule your next committee meeting, deposition, arbitration, mediation or client/attorney conference by calling (301) 952-1442. **Members: $15 per hour; Non-Members $30 per hour.**

**Lawyer's Lounge Conference Room- Courthouse** - available for members to rent at $15 per hour. Call (301) 952-1442 to schedule.

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**BOWIE-IRRESISTIBLE TERMS:** Attractive Office. All amenities. Call Robert Law at (301) 464-3900.

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**FULL TIME & OCCASSIONAL USE OPTIONS-GREENBELT:** Great location at Beltway (Exit 23-Kenilworth Ave.) between U of MD and NASA, & near METRO & U.S. District Court. Bus stop at property. Easy access to U.M., S.S., Rkv., D.C., Balt., & I-95 and B.W. Parkway. Windowed furnished office in Law office suite with other attorneys, conference room, phone, copier, fax, and other amenities. Options for full time or occasional use and for use on part-time basis. Call Ken Folstein at (301) 982-3080.

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**ECONOMIST:** Dr. Richard Edelman. Lost Income Valuation. See Ad on page 6.

**LAWYER REFERRAL SERVICE REPORT: 11/15/13-12/15/13**

**NUMBER OF CALLS: 603**

**NUMBER OF REFERRALS: 456**

**TOP 5 AREAS OF LAW:**

1. TORTS
2. REAL ESTATE
3. FAMILY
4. CONSUMER
5. EMPLOYMENT

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ADDRESS SERVICE REQUESTED

# ***Upcoming Events***

## Brown Bag Lunch
January 16, 2014
(See Page 4)

## Happy Hour
January 16, 2014
The DAV Hall
8205 Laurel Bowie Road
Bowie, Md.
6-8 PM

## Probate, Estates & Trusts Seminar
Saturday, January 25, 2014
(See Flyer, Page 16)

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

## Joint Meeting J. Franklyn Bourne
February 11, 2014
6 PM
Federal Court House - Greenbelt
More info. to come

## Brown Bag Lunch
February 20, 2014
Lawyer's Lounge
12 PM - More info. to come