

PGCBA NewsJournal

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

May 2014

PRESIDENT'S MESSAGE



Leaning forward towards pro bono service...

As my term as President of the Prince George's County Bar Association comes to an end, I look back with many thanks to the Executive Committee – Denise Bowman, Judge Joe Wright, Jeff Harding, Walter Green, Ben Rupert and Bryon Bereano and to the entire Board of Directors for making this year a success.

Instead of reflecting on the successes of our past year, I thought it better to write about the many opportunities that are available to attorneys to serve those with limited income in pro bono matters and to encourage everyone to consider accepting a pro bono case. Another option for our more experienced attorneys is to mentor a newer practitioner involving a pro bono matter. Newer practitioners typically take on more pro bono matters than the more experienced practitioners with the goal of creating a client base. But newer practitioners have questions and need mentors. Maybe you don't have the time to devote to handling a pro bono matter, but you may have time to mentor someone who does.

I encourage everyone to attend our 10 June 2014 annual meeting and tort law seminar. The tort law seminar will begin at 4:30 pm and will be followed by our annual meeting and the election of our new board members. More importantly, we will be recognizing Walter Laake, Esquire, who is this year's recipient of the Judge James H. Taylor award for his outstanding contributions to the bar association and to the community. The annual award was created by Judge Rattal and his Board of Directors in 2011 and named after Judge Taylor for his outstanding leadership. We will be formally presenting this year's award to Mr. Laake on June 10th, and on behalf of the Prince George's County Bar Association, we thank Mr. Laake for setting an example in the profession and for inspiring all of us with his commitment to the community.

In another news, please mark your calendar for the annual Golf Classic to benefit the J. Franklyn Bourne Scholarship and Operation Homefront. The event will take place on Tuesday, 13 May 2014 at Lake Presidential Golf Course. Registration and sponsorship opportunities are available, contact Robin Hadden at the bar office.

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Marlborough Professional Park

14330 Old Marlboro Pike

Upper Marlboro, MD 20772

Phone: 301-952-1442 Fax:301-952-1429

Email: rhadden@pgcba.com

Website: <http://www.pgcba.com>

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Robin B. Hadden..... 301-952-1442

Assistant Editor

Becky Tippett..... 301-952-1442

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PUBLICATION DEADLINE 15th of preceding month. Approved advertising accepted; rates submitted upon request. Statements or opinions expressed herein are those of the authors and do not necessarily reflect those of the Prince George's County Bar Association, its Officers, Board of Directors or the Editor. Publishing an advertisement does not imply endorsement of any product or service offered.

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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

In closing, I want to thank Judge Erik Nyce and Ben Rupert for their time, hard work and dedication to the Law Practice 101 and Brown Bag Lunch programs. I also wish to thank the Bar and Bench for providing their valuable time and experience to our members. Also, thank you to our sponsors, Multi-Specialty Healthcare, Maryland Health Care Clinics, the Olde Town Inn and to Judge Devlin and the DAV Hall for hosting our meetings and events.

In closing, it's been a great year. I look forward to celebrating with everyone on June 10th and welcoming Denise Bowman as our incoming President.

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

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The McCammon Group is pleased to announce our newest Neutral



Hon. Alexander Williams, Jr. (Ret.)
Retired Judge
United States District Court, District of Maryland

Judge Alexander Williams, Jr. retired recently after serving his court with distinction for nearly twenty years. Prior to his appointment to the bench, Judge Williams served Prince George's County in many capacities, including as State's Attorney (elected for two terms), Public Defender, Hearing Examiner, Special Counsel, and as a Substitute Juvenile Master. Judge Williams also enjoyed a successful career in private practice in Maryland and DC. He is a Founder and the First President of the J. Franklyn Bourne Bar Association, Inc. and has served for many years as a Professor at Howard University Law School. Judge Williams now brings his distinguished record of accomplishment to The McCammon Group to serve the mediation, arbitration, and special master needs of lawyers and litigants throughout Maryland, DC, and beyond.



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MEMBER ANNOUNCEMENTS



ELECTION BALLOTS
BALLOTS FOR BOARD POSITIONS WILL BE
AVAILABLE IN THE BAR OFFICE AS OF
MAY 1, 2014 OR AT THE ANNUAL MEETING ONLY!

OUR NEW BAR YEAR BEGINS JULY 1, 2014
MEMBERSHIP DUES & NEW PARKING PASS RENEWALS WILL BE
MAILED OUT THE END OF MAY AND DUE BY JULY 1, 2014.

BROWN BAG LUNCH

FREE TO MEMBERS!

May 15, 2014 - 12:00 PM
Lawyer's Lounge, 3rd Floor
Duvall Wing

Speakers:

Honorable Robin Bright, District Court
Letoria Knight, Assistant Chief,
District Court Division
Office of the State's Attorney

Guest Speaker:

Rebecca Mitch McKee, PhD, LCPC
Clinical/Forensic Psychotherapist
AAC - Prince George's County

Topic:

Criminal Diversion Programs & Forensic
Programming

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WELCOME NEW MEMBERS!

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

PGCBA COMMUNITY AND PUBLIC SERVICE PROGRAM 2014 AWARDS SOLICITATION

The PGCBA is soliciting applications for its Community and Public Service Project Awards. Awards are financed by the income received from the PGCBA's Traffic School Program. Since the program's inception in 2000, the PGCBA has awarded over \$95,000 to numerous community, public service and other charitable projects benefiting the citizens of Prince George's County.

Bar members are invited to nominate programs which serve the Prince George's County community.* The organization must be a 501 (C) 3 to apply. Applications are available on our website www.pgcba.com. You may also contact Robin Hadden at rhadden@pgcba.com if you would like an application mailed to an organization that you think would be interested. The Public Grants Committee, under the leadership of Manuel Geraldo will review all applications. Awards will be announced in July 2014.

SCHEDULE

March 2014 – Begin advertising the availability of the community service funds.

March 17, 2014 – The application process will be opened and the committee will begin to receive applications.

May 16, 2014- The application process will be closed and no applications will be accepted after 5:00 PM on the 16th of May.

July 15, 2014 – The recipients of the community service funds will be announced.

Need a referral for Virginia or DC criminal/traffic cases?



Jonathan R. Oates

Virginia criminal attorney, **Jonathan Oates**, has tried two first-degree murder cases before a jury. Jon has handled hundreds of criminal and traffic cases in all northern Virginia jurisdictions, and regularly meets clients in our Falls Church office. Jon is fluent in Spanish. **His cell is (202) 320-4160.**

Washington, DC criminal attorney, **David Wooten**, has tried many felony cases before a jury, including a recent acquittal in a sex offense case. David is fluent in Spanish, having served in the Peace Corps for two years in Ecuador. **His cell is (202) 770-8006.**



David M. Wooten

Law Offices of Jezic, Krum & Moyse, LLC.



Andrew V. Jezic

In 2011 and 2013, **Andrew Jezic**, a former prosecutor, was selected to the list of best criminal lawyers by *Washingtonian* magazine. From 2011-2014, Mr. Jezic has been recognized as a *Super Lawyer*. He has tried 85 cases before a jury. Andy is co-author of the treatise, *Maryland Law of Confessions*, published by West, and is fluent in Spanish. **His cell is (240) 687-2986.**

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CANDIDATE PROFILE FOR THE POSITION OF SECRETARY



Walter W. Green has been a member of the Prince George’s County Bar Association since 2001 and has served on the Prince George’s County Bar Association Board of Directors since 2010. Mr. Green is the Co-Chair of the Estates, Trusts & Probate/Elder Law Committee for the Prince George’s County Bar Association and also serves on the holiday auction committee. Mr. Green has served on the Executive Committee for the Prince George’s County Bar Association since 2012. As part of his service on the Executive Committee, Mr. Green has had the opportunity to work closely with the current and immediate past President, the officers and Executive Director of the Prince George’s County Bar Association, and if elected Secretary will have an opportunity to build upon the experience gained serving on the Executive Committee.

Mr. Green was born and raised in Prince George’s County and resides in College Park, Maryland with his four children. Mr. Green is the principal of the Law Offices of Walter W. Green in College Park, Maryland. Mr. Green concentrates his practice in real estate litigation, estate and probate litigation, appellate practice, insurance claims litigation, and business litigation. Mr. Green is appointed to the Peer Review Committee of the Attorney Grievance Commission of the State of Maryland and has served as a volunteer Alternative Dispute Resolution Mediator in the District Court of Maryland for Prince George’s County and is appointed to the Maryland Fourth Appellate Circuit Character Committee. Mr. Green is a member of the American Inn of Court of Southern Maryland and is a mentor in the Court of Appeals of Maryland Mentoring Program for New Admittees. Mr. Green is a graduate of the University of Maryland and the University of Baltimore School of Law and is a member of the Maryland State Bar Association.

CANDIDATE PROFILES FOR THE POSITION OF DIRECTOR



Erek L. Barron is Counsel in the Litigation Section of Whiteford, Taylor & Preston, LLP where he focuses on appellate litigation, white collar criminal defense, and general civil litigation in state and federal courts. Erek has served in a variety of state and federal government positions, including as an Assistant State’s Attorney for Prince George’s County.

His bar activities have been numerous and currently include serving as President-Elect of the J. Franklyn Bourne Bar Association and as a Maryland Delegate to the American Bar Association House of Delegates. He serves on several committees of the Maryland State Bar Association (MSBA) and has previously served as chair of the MSBA Young Lawyers’ Section and as a member of the MSBA Board of Governors. Erek lives in Mitchellville, worships at Reid Temple AME in Glenn Dale, and desires to further serve the county’s vibrant legal community.



Jason A. DeLoach is an attorney with Alexander & Cleaver, P.A. where he focuses on civil litigation, municipal law, wills, estates, and administrative law. Jason was raised in Prince George’s County and graduated from the University of Maryland, College Park. Jason is a member of the Maryland State Bar Association, Prince George’s County Bar Association, the J. Franklyn Bourne Bar Association, and currently serves as Treasurer of the Maryland Municipal Attorneys Association. Jason is also on the Board of Directors for the Prince George’s County Chamber of Commerce, where he also serves as its General Counsel.

Jason has been a member of the Prince George’s County Bar Association for 15 years and has just completed his first term on the Board of Directors. Jason regularly serves as an ADR volunteer for the District Court for Prince George’s County and has participated as a judge in the Mock Trial Competition. Jason frequently provides pro bono legal services to members of the community and has spoken numerous times at a local school about pursuing a career in the law. He recently served as Principal for a Day at a local elementary school.

CANDIDATE PROFILES FOR THE POSITION OF DIRECTOR



Manuel R. Geraldo, Esq. was appointed to the Prince George’s County Planning Board and The Maryland-National Capital Park and Planning Commission in July, 2012. Mr. Geraldo is an accomplished legal professional and principal in the law firm of Robinson & Geraldo, which he organized in 1979. His areas of practice include business litigation, contract dispute, workers compensation, family law and real estate litigation. Mr. Geraldo’s prior professional positions include Director and General Counsel for the District of Columbia Private Industry Council, litigation and legislative Counsel in the Office of the General Counsel for the U.S. Department of Housing and Urban Development, membership on the Newark Commission on Human Rights, and Executive Director for the Congress of Portuguese Speaking People. Mr. Geraldo was appointed by Governor Martin O’Malley to the Board of Airport Zoning Appeals in 2010 and as Chair of the Board in 2012. He also previously served as a Commissioner on the Washington Suburban Sanitary Commission, including a term as Chair of the Commission.

A long-time, committed community activist and volunteer, Mr. Geraldo currently serves as a Director on the Board of the Prince George’s County Community Foundation, a Director for the Portuguese American Leadership Council, Director and Secretary of the Pro Bono Resource Center, Board member of the YMCA, and a member of the Maryland Court of Appeals Standing Committee on Pro Bono Service. Formerly he was Chair of the Prince George’s County Local Pro Bono Committee. He has received awards for his pro bono and public service from the Pro Bono Resource Center, Maryland Legal Services Corporation, Community Legal Services, and the Maryland Hispanic Bar Association. As a member of the Court of Appeals Standing Committee and PBRC, Mr. Geraldo advocates for the legally unrepresented in Prince George’s County and the Latino and Portuguese Speaking Community to foster equal access for justice for all. He is a current director on the Prince George’s County Bar Association and chairs the Grants Committee which makes grants on behalf of the Bar Association to non-profits in Prince George’s County.

Mr. Geraldo earned a Bachelor of Science degree from Seton Hall University in 1972, a Juris Doctorate from Rutgers School of Law in 1977 and a Masters degree in International and Comparative Law from Georgetown University in 1984.

Mr. Geraldo is admitted to the Maryland, Pennsylvania, New Jersey, District of Columbia and Virginia Bars. A resident of Fort Washington, Maryland, he and his wife have three children. Mr. Geraldo is fluent in Portuguese and Spanish.



Giancarlo M. Ghiardi served this past year as an appointed Board of Director for the Prince George’s County Bar Association. He has been a member of this association since 1990. He is currently Co-Chair of the Prince George’s County Bar Association Tort Law Subcommittee.

Giancarlo has been a civil defense trial attorney for the past 23 years, with now over 220 jury trials to verdict, with the majority in Prince George’s County and Southern Maryland Counties. Mr. Ghiardi began his career as a law clerk to the Honorable Judge Albert T. Blackwell. He was an attorney with county firms of Sasscer, Clagett and Bucher and Decaro, Doran, Siciliano, Gallagher and DeBlasis.

He is presently a Senior Attorney with Timothy S. Smith & Associates, assisting Timothy S. Smith with the management of a 19 attorney office in Greenbelt, Maryland.



CANDIDATE PROFILES CONTINUED ON NEXT PAGE

CANDIDATE PROFILES FOR THE POSITION OF DIRECTOR



Nakia Gray is a domestic relations lawyer with extensive experience representing clients in a wide range of family law matters at Joseph, Greenwald & Laake, P. A. A long-time supporter of the Community Legal Services Pro bono Family Law Clinic, Ms. Gray dedicates countless hours each month not only as a volunteer attorney but she also serves as the Mentor of the Law Clinic, holding monthly meetings and offering support and guidance to the participating volunteer attorneys. She recently received the prestigious Fred Joseph Award from Community Legal Services for her commitment to pro bono service in Prince George’s County.

She is quite active in several professional and civic organizations, including:

- J. Franklyn Bourne Bar Association, Judicial Nominations Committee
- District of Columbia Bar Association
- American Bar Association
- Greater Washington Chapter of the Women Lawyer’s Division of the National Bar Association (GWAC)
- Taste Prince George’s Advisory Council
- Prince George’s County Bar Association, Board of Directors, 2010–2013
- Maryland State Bar Association, Young Lawyers Section Council 2011- 2012
- J. Franklyn Bourne Bar Association, Board of Directors, 2008–2011
- Leadership Prince George’s, Class of 2010



Llamilet Gutierrez is an Assistant Public Defender in Prince George’s County. Prior to her service to the Office of the Public Defender, she was a judicial law clerk for the Hon. Nicholas E. Rattal. Llamilet has been a member of the Prince George’s County Bar Association since 2012 and currently serves as a Board Member. She is a member of the Prince George’s County Bar Association/J. Franklyn Bourne Golf Committee. She attends City of Zion Church in Laurel, MD, where she is a part of the Thomas J.S. Waxter’s Prison Ministry. Llamilet is also a member of the Maryland Hispanic Bar Association since 2012 and serves on the Board of Directors. She serves as the Maryland Deputy for the Hispanic National Bar Association.



Donnaka V. Lewis is an Assistant State’s Attorney for Prince George’s County and has served in that capacity since 2004. She is presently a Team Leader within the Major Crimes Unit. In this position, Donnaka supervises a team of six Assistant State’s Attorneys who prosecute complex and serious violent crimes, including attempted murders and armed robberies.

Donnaka currently serves on the Board of Directors for the Prince George’s County Bar Association. She was appointed to the Board by the current President, Jennifer Muskus, for a one-year term that will expire in June. She has found her service on the Board to be a professionally satisfying experience, and believes that she, along with her fellow directors, have provided exceptional service to members of the organization. Accordingly, she is now running for election as a member of the Board so that she may continue to serve.

Donnaka has lived in Prince George’s County since she was ten months old and attended schools in the county throughout her elementary and secondary years. She completed her undergraduate education at Hampton University and obtained a Masters in Psychology from American University. She graduated from the University of Maryland School of Law. Donnaka has been married for 12 years and is the proud mother of three beautiful children, ages 5, 4, and 2.

CANDIDATE PROFILES FOR THE POSITION OF DIRECTOR



Stacy McCormack, Esq. joined the Prince George’s County Bar Association last spring after joining the Jaklitsch Law Group. In addition to the Prince George’s County Bar Association, she is currently a member of the Maryland State Bar Association, Maryland Bar Foundation Fellows, Anne Arundel Bar Association, and Maryland Association for Justice. Stacy served on the Board for CLREP for several years and was a Board Member for the Anne Arundel Bar Association in 2012-2013. As a member of AABA and CLREP, she served as the Mock Trial Coordinator for Baltimore City, judged Mock Trial competitions including the Championship competitions in 2009 and 2011, presented at the Maryland Summer Center for Law & Government, participated in the annual Thanksgiving Dinner Drive and presented at Law Day. She is also a former adjunct professor at the University of Baltimore, School of Law, having taught Criminal Law, Appellate Advocacy and the Appellate Practice Clinic.



Veronica Nannis has been working for Joseph, Greenwald & Laake in its Greenbelt office since 2001. She started there as a law clerk while getting her JD and Masters in psychology from the Catholic University Columbus School of Law. Ms. Nannis is now a partner at the Firm, managing the Civil Litigation Department. Barred in Maryland and D.C., her practice includes complex, civil litigation in state and federal courts including: commercial litigation, labor and employment and whistleblower cases involving health care fraud and abuse.

Among her community activities, since 2010, Ms. Nannis has proudly served on the DC Bar’s Lawyers Assistance Committee, acting as the Chair of its Outreach to Law Students sub-committee and frequently presenting to Professional Responsibility classes in area law schools.



Ben Rupert has served on the PGCBA Board of Directors since 2011. In that capacity, he has been responsible for organizing the Brown Bag Lunch seminars that began in December 2011 and the Expungement Program that began in 2013. He received the President’s award in 2012 from past-President Deborah Davis for the Brown Bag Lunch program and the PGCBA won the Maryland State Bar Association’s best project award in 2013 in the “service to the public” category for the Expungement Program. In addition to serving on the Board of Directors, he has chaired the PGCBA Young Lawyers Section since 2011 and is a member of the Prince George’s County Pro Bono Committee.

In addition to the PGCBA, Ben has been active in the Maryland State Bar Association. He had the privilege to attend the Bar Presidents Conference and the Young Lawyers Summit in both 2011 and 2012. He also served on the MSBA Special Committee on Law Reform from 2011-2012 and

currently sits on the section council of the MSBA Young Lawyers Section as co-chair of the Pro Bono Committee.

He was appointed as a prosecutor at the Office of the State’s Attorney in 2010 and currently works in the Grand Jury Division. He enjoys representing the people of Prince George’s County and works very hard toward achieving justice for the victims in our community.

He was married in August of last year to his lovely wife, Julia, who will graduate law school this year and be Judge Rattal’s law clerk beginning in August. They live in Brandywine with their dog Patti.

CANDIDATE PROFILES CONTINUED ON NEXT PAGE

CANDIDATE PROFILES FOR THE POSITION OF DIRECTOR



Elsa W. Smith is a sole practitioner and owner of the Law Offices of Elsa W. Smith, LLC, where she focuses on criminal defense, personal injury and immigration. Though born in San Juan, Puerto Rico, Mrs. Smith is the daughter of Cuban immigrants who fled the country's communist regime. Mrs. Smith earned her B.B.A. from the University of Miami School of Business, followed by her J.D. at the University of Miami School of Law in Coral Gables, Florida. Since relocating to Maryland, Mrs. Smith has become a member of the Maryland State Bar Association, the Maryland Criminal Defense Attorneys Association and the J. Franklyn Bourne Bar Association. She is also admitted to practice before the U.S. District Court for the District of Maryland. Mrs. Smith is a member of both the Maryland Hispanic Chamber of Commerce and the Laurel Board of Trade.

Mrs. Smith has been a member of the Prince George's County Bar since 2012. She has served the Bar by providing pro bono legal services to the community. Those service opportunities included criminal expungement clinics at Casa de Maryland, the Hyattsville Public Library and Mission of

Love Charities in Capitol Heights. Mrs. Smith and her husband are the proud parents of an adopted rescue dog, Doc.



Katina S. Steuart is currently employed as an Assistant State's Attorney and Team Leader with the Major Crimes Unit of the Office of the State's Attorney for Prince George's County. Ms. Steuart is a member of the J. Franklyn Bourne Bar Association and the Maryland State Bar Association, and she has been a member of the Prince George's County Bar Association since 2010.

Ms. Steuart is married with three children and lives in Prince George's County.



Judy Lynn Woodall currently serves as a Domestic Relations Master for Prince George's County, Maryland and has served in this capacity since November 2002. In addition, she is currently teaching Family Law Practice at Howard University School of Law. She has taught at Howard Law since 1995 (past courses include Criminal Law and Criminal Procedure, Business Organizations, Public Service Ethics, Child Welfare and Introduction to Family Law). While at Howard she was asked to participate in a Bar Support Program. She remains involved with students in their preparation for the Maryland Bar by providing the space and the opportunity for students to practice their writing skills.

Appointed to the position of Assistant State's Attorney in 1987 and after approximately eight years of service, she joined the firm of Regan and Associates Chartered as a staff attorney and later managing attorney. Her practice included cases in criminal, family, civil, probate, landlord and tenant, immigration and bankruptcy law.

Judy is admitted to the practice of law in Maryland, District of Columbia, the United States District Court for Maryland and United States Court of Appeals for the District of Columbia. In addition to the bar admissions listed above, she is a member of several Professional Bar Associations to include the Maryland State Bar Association (Family Law Section Council) Prince George's County Bar Association (Board of Directors), J. Franklyn Bourne Bar Association and the Fourth Judicial Circuit Conference (permanent member). She continues to participate in the Prince George's County Teen Court Program and Mock Trial Competition Court Programs.

CANDIDATE PROFILES FOR THE POSITION OF DIRECTOR



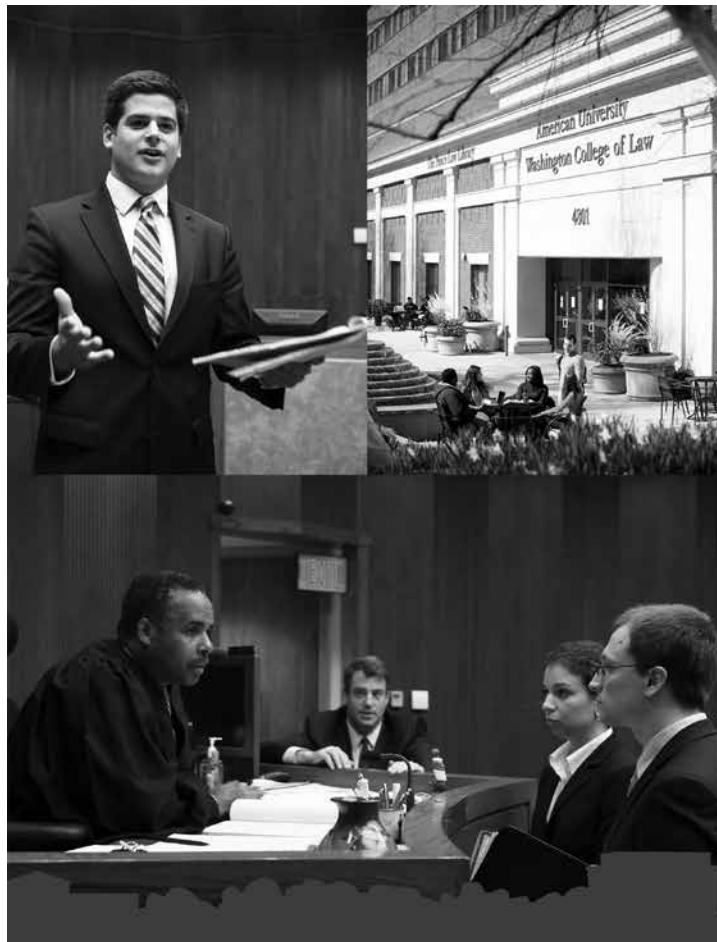
Benjamin Woolery was admitted to the Bar of Maryland in 1988 after serving as a Law Clerk to the District Court of Maryland for Prince George’s County (1986), the Prince George’s County Office of Law (1986-1987), and The Honorable Arthur M. Ahalt of the Circuit Court for Prince George’s County, Maryland (1987-1988); Benjamin joined ‘The Law Offices of Richard M. McGill’ in December 1988 as an associate attorney.

Mr. McGill’s general practice firm allowed for service in the early years as a panel attorney for the Office of the Public Defender, as well as contract work with the Prince George’s County government in zoning and other matters of administrative law (including eight years as Counsel to the Prince George’s County Board of Administrative and Zoning Appeals, 1995 - 2003), and the practice included the standard private-sector work of family law, criminal law, and personal injury, with some efforts devoted to various other fields such as bankruptcy. As junior partner of “McGill & Woolery” since 1994 and the firm’s absorption of “The Law Offices of A. Michael Chapdelaine” in 2001,

Benjamin has maintained a general practice, with a focus on Elder Law.

Besides membership in the Prince George’s County Bar Association since 1988 and Chair/Co-Chair of the county bar’s Probate, Estates & Trusts Committee for the past decade, he has served on the Maryland State Bar Association’s Elder Law Section Council (Chair 2002-2003) and the Estates & Trusts Section Council (member 2013 to present); Benjamin has also been President of the Greater Bowie Chamber of Commerce (2003-2004), currently serves on the panels of the Attorney Grievance Commission Peer Review Committee (2010 to present), and has been on the City of Bowie Ethics Commission since 2002 (Chair 2006 to present).

Besides his practice before the Court of Appeals of Maryland, Benjamin is admitted to practice in the District of Columbia, the United States Fourth Circuit Court of Appeals, the United States District Court for the District of Maryland, and the United States Supreme Court.



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CONFLICT OF INTEREST - THE RULES & THE RISKS & COMMON SENSE | *by Robert C. Bonsib, Esq. and Megan E. Coleman, Esq.*



In *Alexis v. State* (COA filed 3-24-14, 2014 WL 1159666) we are reminded and cautioned regarding the need to be vigilant in circumstances where current or prior representation of one client may create an actual or potential conflict-of-interest with respect to the representation of another client.

Maryland Rules of Professional Conduct Re: Conflicts of Interest

As always, we first review the applicable Rules.

Rule 1.7 of the Maryland Rules of Professional Conduct (MRPC) Rule 1.7 – Conflict of Interest: General Rule prohibits, in pertinent part, the representation of a client where such representation involves a conflict of interest and states that a conflict exists where the representation of one client will be directly adverse to the representation of another or where there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibility to another client or a former client.

While Rule 1.7 also provides circumstances under which one may, despite a conflict of interest, represent a client. In a criminal case, representation by the criminal defense attorney is most likely not going to be possible despite the exceptions available under the Rule.

MRPC 1.8 – Conflict of Interest: Current Clients: Specific Rules - provides specific rules regarding conflict of interest. Most applicable to representation of a criminal client is provision (b) which prohibits a

lawyer from using information relating to the representation of one client to the disadvantage of the other client unless the other client gives informed consent, except as permitted by the rules, and provision (g) which prohibits a lawyer who represents two or more clients from participating in an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in writing signed by the client, or confirmed on the record before the court which shall include in the disclosure the existence and nature of all the pleas involved and the participation of each person in the settlement.

The application of 1.8 further cautions that if the Rule applies to one attorney in a firm, it applies to all in the firm.

MRPC 1.9 – Duties to Former Clients – prohibits the representation of one person in a matter in which the lawyer has formerly represented another person in the same or substantially related matter in which that person’s interests are materially adverse to the interest of the former client unless the former client gives informed consent, confirmed in writing. It further prohibits a lawyer from using information acquired during the prior representation to the disadvantage of the former client, unless the information has become generally known.

MRPC 1.10 – Imputation of Conflicts of Interest – generally imputes to all members of a firm the conflict of interest that exists with respect to any member of a firm.

MRPC 1.11 - Special Rules relating to Conflicts of Interests for Former Government Officers and Employers – deals with issues which are not specifically discussed in this article, but should be reviewed by criminal defense counsel who may previously have worked for the government, particularly in a prosecutor’s office, where the subject matter of the current

representation may have been an active matter while the lawyer was employed in the prosecutor’s office.

For conflicts within the public defender’s office, *see Duvall v. State*, 399 Md. 210 (2007) (holding that each district office of the public defender should be treated as a private law firm for conflict of interest purposes).

The Circumstances in Alexis

Alexis was convicted in two consolidated trials of second degree murder, robbery with a dangerous weapon, use of a handgun in the commission of a crime of violence, conspiracy to commit theft, theft, and solicitation to obstruct justice. Alexis was sentenced to a total of 140 years of incarceration.

Prior to the trials, the trial court disqualified Alexis’ counsel of choice from continuing to represent him on the basis that he had previously represented a key State’s witness, Amadu Sulamon Jalloh, in an unrelated and earlier criminal matter. Jalloh refused to waive any conflict of interest. Jalloh contended that he had overheard Alexis confess to the killing while they were both incarcerated at the Prince George’s County Detention Center.

Several months after Alexis’ lawyer had entered his appearance, the State filed a motion to strike the appearance of Alexis’ lawyer. The State argued that because Jalloh was a material witness in the homicide case and because Jalloh’s credibility would be a significant issue in the prosecution, Alexis’ lawyer possessed confidential information acquired during his representation of Jalloh, information which would make it a conflict of interest for Alexis’ lawyer to cross-examine Jalloh. Additionally, after representation of Jalloh had been terminated, Jalloh had filed a complaint against that same lawyer with the Attorney Grievance Commission.

CONFLICT OF INTEREST, Cont'd

While Alexis' lawyer maintained that the representation of Jalloh was brief and for a limited period of time and that the information that had been obtained during his prior representation of Jalloh had become generally known, the trial court rejected that position.

Additionally, Alexis' lawyer suggested that effective safeguards during Alexis' trial could be implemented that would eliminate any conflicts associated with his prior representation of Jalloh. He suggested that another lawyer would enter his appearance as co-counsel for the limited purpose of cross-examining Jalloh, arguing that that procedure would create a "Chinese Wall" to effectively isolate any conflict of interest. The trial court rejected that suggestion as "folly."

The trial court granted the State's motion to strike defense counsel's appearance concluding that there was a significant conflict of interest and a conflict with defense counsel's duty of loyalty to Jalloh.

The COA concluded that the trial court's disqualification of defense counsel was not an abuse of discretion and reviewed the standards and principles pertinent to deciding conflict of interest issues in these circumstances.

"While the right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment, the essential aim of the Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by lawyer whom he prefers." *Wheat v. U.S.*, 486 U.S. 153, 159 (1988) (citing *Morris v. Slappy*, 461 U.S. 1, 13-14 (1983)). "Accordingly, the right of a defendant to counsel of choice is 'circumscribed in several important respects.'" *Alexis*, 2014 WL 1159666 at *8 (citing *Wheat*, 486 U.S. at 159).

The COA noted that the trial court "must be allowed substantial latitude in

refusing waivers of conflict of interest not only in those rare cases where an actual conflict may be demonstrated before trial, but in the more common cases where a potential for conflict exists which may or may not burgeon into an actual conflict as the trial progresses." 2014 WL 1159666 at *8 (citing *Wheat*, 486 U.S. at 163). The COA further reviewed the observation in *Wheat* that these decisions have to be made, not with the benefit of hindsight after the trial has taken place, but in the "murkier pre-trial context when relationships between parties are seen through a glass, darkly." *Id.* at *9 (citing *Wheat*, 486 at 162-63). The COA continued that "[t]hese imponderables are difficult enough for a lawyer to assess, and even more difficult to convey by way of explaining to a criminal defendant untutored in the niceties of legal ethics." *Id.*

Reviewing what the Court addressed in *State v. Goldsberry*, 419 Md. 100 (2011), the COA again reviewed what is required of a trial court in this circumstance, that is "that the proper balance is struck when 'the [trial] court recognizes a presumption in favor of the defendant's counsel of choice,' which 'may be overcome not only by a demonstration of actual conflict but by a showing of a serious potential for conflict.'" *Goldsberry*, 419 Md. at 120 (quoting *Wheat*, 486 U.S. at 164). The trial court is commanded to "conduct a hearing on the matter" and to "scrutinize closely the basis for the claim" of conflict of interest and "make evidence-based findings to determine whether there is 'actual or serious potential for conflict' that overcomes the presumption the defendant has to his or her counsel of choice." *Goldsberry*, 419 Md. at 123. The findings should be based upon factors such as (1) "the likelihood that defense counsel will have divided loyalties;" (2) "the State's right to a fair trial;" (3) "the appearance of impropriety should the jury learn of the conflict;" and (4) "the likelihood that permitting defense counsel's continued representation

'will provide grounds for overturning the conviction.'" *Goldsberry*, 419 Md. at 124 (quoting *Illinois v. Ortega*, 209 Ill.2d 354 (2004)).

The COA in *Alexis* concluded that the trial court gave satisfactory consideration to these factors when it concluded that the conflict was a significant one that could not be cured and that the risk of conflict outweighed Alexis' right to counsel.

A Sampling of Cases Discussing Conflict of Interest Issues

State v. Goldsberry, 419 Md. 100 (2011) Goldsberry's conviction was reversed because the trial counsel disqualified one of Goldsberry's three trial counsel without developing a factual record to support its decision, and that decision denied Goldsberry his Sixth Amendment right to counsel of his choice.

The disqualified lawyer (third lawyer) had spoken to Goldsberry's co-defendant prior to the trial and this fact was brought to the attention of the trial court by the co-defendant's attorney. The trial court concluded that the third lawyer had not conveyed the substance of any conversations he had with the co-defendant to other counsel and that there was nothing wrong with the third lawyer having conversations with the co-defendant at a time prior to the co-defendant's being represented by counsel. Nevertheless, the trial court initially permitted the third lawyer to remain at trial table but was prohibited from revealing anything related to his earlier conversation with the co-defendant. The trial court was then advised that one of its witnesses told the State that she had been "coached" by Goldsberry and the third lawyer before her grand jury testimony. With that additional information, the trial court then ordered the third lawyer not to participate in the trial and reversed its earlier decision ruling that the third lawyer would not be permitted to sit at trial table. At the close

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CONFLICT OF INTEREST, Cont'd

of the case, defense counsel moved for a mistrial raising the Sixth Amendment issue noting that because the third lawyer had been excluded from the courtroom and listed as a possible witness (thus implicating the rule on witnesses and barring remaining trial counsel from discussing what had occurred during the trial with the third lawyer), the third lawyer had been barred from any participation in the trial or consultation with other defense counsel. The motion was denied.

The COA ordered a new trial. It did not hold that there were no reasons to disqualify the third lawyer, but rather, that “before a trial court is permitted to disqualify a criminal defendant’s privately obtained counsel (regardless of whether counsel is the defendant’s only attorney or one of several on the defense team), the court must conduct a hearing on the matter, ‘scrutinize closely the basis for the claim,’ and make evidence-based findings to determine, based on factors...whether there is ‘actual or serious potential for conflict’ that overcomes the presumption the defendant has to his or her counsel of choice.” *Id.* at 123 (internal citations omitted). “The record must reflect that the trial court contemplated relevant factors in conducting the test that balances the right to one’s counsel of choice against the necessity to uphold ‘the ethical standards of the profession’ that ensure that ‘legal proceedings appear fair to all who observe them.’” *Id.* at 124 (citing *Wheat*, 486 U.S. at 160).

United States v. Tatum, 943 F.2d 370 (4th Cir. 1991)

Tatum was convicted of bankruptcy fraud. The conviction was reversed based upon a finding that Tatum was denied effective assistance of counsel because of multiple conflicts of interest.

Tatum retained an attorney (original counsel) to represent him during the grand jury stage of the investigation. Original counsel also represented a grand jury witness during the investigation, and another attorney in original counsel’s

office who testified before the grand jury. Additionally, there was a third attorney in original counsel’s office that had provided Tatum with bankruptcy advice, advice that Tatum contended he relied upon when he completed the bankruptcy schedules that were part of the basis for the subsequent criminal prosecution.

The government became aware of the potential conflicts and informed original counsel of its concerns. Several months prior to the trial, another attorney (trial counsel), not a member of original counsel’s firm, entered his appearance and took the lead at the trial. However, original counsel sat at the trial table and provided assistance to trial counsel. The two attorneys who were members of original counsel’s firm and the grand jury witness were all called as witnesses during the trial of the case.

The Fourth Circuit noted that a *mere possibility* of a conflict is not sufficient and that the Sixth Amendment is implicated only when the representation of counsel is adversely affected by an *actual* conflict of interest. Where there is an actual conflict of interest and the conflict adversely affects counsel’s performance in the defense of the defendant, prejudice to the defendant is presumed and a new trial must be ordered and is never considered harmless error.

Here, the Fourth Circuit found multiple irreconcilable conflicts on the part of original counsel when he represented Tatum and the grand jury witness who was also under investigation. Each shared attorney-client information with original counsel with the reliance that that information would not be used against each respective client. This was aggravated by the fact that two law partners of original counsel were identified as witnesses, one for the government and one for the defense. As an example, the court noted that when Tatum took the position that he relied upon the advice of original counsel’s law partner in preparing his bankruptcy schedules, original counsel could not fully develop the defense as an attempt

to do so would shift responsibility to his law firm.

In such a conflict situation not only does the conflict put the lawyer in the position of seeking to serve two masters, the effect of his decision to seek advantage for one will adversely affect the position of the other. Moreover, the Court cautioned that an adverse effect may not always be revealed from a review of the affirmative actions taken, but rather, the failure to take actions that are clearly suggested from the circumstances can be equally prejudicial to the client.

Original counsel could not pursue the possibility of negotiating a plea agreement that might require Tatum to testify against original counsel’s other clients, even if such an agreement might be of substantial advantage to Tatum. Original counsel was criticized by the Court for “gross insensitivity” to his ethical responsibilities.

The Court then considered whether original counsel’s conflicts infected trial counsel, as nothing in the record indicated that trial counsel improperly represented conflicting interests. Because trial counsel depended upon original counsel’s knowledge and avenues of defense depended upon original counsel’s more complete knowledge of the case, original counsel’s assistance to trial counsel, and trial counsel’s dependence on original counsel, tainted trial counsel’s representation of Tatum and the conflicts were imputed to trial counsel.

United States v. Ross, 33 F.3d 1507 (11th Cir. 1994)

In reviewing the issues pertinent to deciding disqualification, the Eleventh Circuit advised that it first examines whether the subject matter of the first representation is substantially related to that of the second. The Court then seeks to discover whether the defense lawyer has divided loyalties that prevent him from effectively representing the defendant. If the conflict could cause the defense attorney improperly to use

CONFLICT OF INTEREST, Cont'd

privileged communications in cross-examination, then disqualification is appropriate. Disqualification is equally appropriate if the conflict could deter the defense attorney from intense probing of the witness on cross-examination to protect privileged communications with the former client or to advance the attorney's own personal interest. The Eleventh Circuit notes that the trial court must protect its independent interest in ensuring that the integrity of the judicial system is preserved and that trials are conducted within ethical standards.

The Court concluded in *Ross* that defense counsel suffered insurmountable conflict of interest problems. First, in a prior case, a potential witness had been represented by counsel from the disqualified law firm in a case that involved a conspiracy to import and distribute narcotics and the government intended to show that Ross joined this conspiracy to obtain a source for drugs to distribute as part of the ongoing conspiracy. Further, at the time the Court disqualified Ross' counsel, a serious potential for conflict of interest existed. The former client claimed that he gave money to Ross' disqualified lawyer as a retainer. Testimony about this transaction would have opened the door to potential conflict, as defense counsel could either have tread dangerously close to confidential matters in attempting to explain this transaction or, alternatively, could have improperly avoided related issues. Considering these factors, the Court found that there were actual and potential conflicts that could have impeded the trial and undermined the integrity of the judicial system.

The Court observed that even where an actual conflict exists subjecting the attorney to disqualification, the client may waive this conflict of interest and elect to have the attorney continue representation, so long as that waiver is knowing, intelligent, and voluntary. Here Ross expressly and unconditionally waived his right to conflict-free representation. Nonetheless, a court is not required to accept a waiver of the right citing to *Wheat*, 486 U.S. at 162

(holding that trial courts may refuse waivers of conflicts of interest to ensure adequacy of representation, to protect integrity of court, and to preserve trial judge's interest to be free from future attacks over adequacy of waiver and fairness of trial). "The courts have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them.... Not only the interest of a criminal defendant but the institutional interest in the rendition of just verdicts in criminal cases may be jeopardized by unregulated multiple representation." *Wheat* at 160.

The *Ross* Court stated that the district court was confronted with several actual or potential conflicts of interest and, if realized, any of the identified conflicts would have rendered the court's verdict suspect and Ross' assistance of counsel unethical and ineffective. The district court did not abuse its discretion by refusing to accept Ross's waiver of his right to conflict-free representation and by disqualifying Appellant's first choice of counsel.

Taylor v. State, 428 Md. 386 (2012)

Where, during the course of representation, defense counsel filed suit against his client for unpaid legal fees and did such, without obtained informed consent from his client to continue representation notwithstanding such conflict, did such circumstances create the real potential of an ethical conflict of interest? The COA stated that an "actual conflict of interest" is a conflict that adversely affects counsel's representation of the defendant. The determination of such an inquiry is circumstance-specific. While the post-conviction court in *Taylor* found that defense counsel's representation was infected with an "actual conflict of interest" it did not indicate that the assumed ethical conflict of interest adversely affected defense counsel's representation so as to give rise to a violation of the right to counsel. The COA remanded the case for the

trial court to consider the case-specific facts to determine whether Taylor can establish (1) a plausible alternative defense strategy or tact that his defense counsel might have pursued; (2) that the alternative strategy or tactic was objectively reasonable under the facts of the case known to the attorney; and (3) that the defense counsel's failure to pursue the strategy or tactic was linked to the actual conflict.

Avoid the Possibility of the Conflict

Defense counsel faces a myriad of possible scenarios where the issues of conflict of interest can arise. Representing an individual who is part of drug conspiracy that has been active over a number of years presents the possibility that current representation of a newly charged member of the conspiracy may put counsel in the position of having to consider whether the new client may have information that could be adverse to the interests of a former client (and this may arise when it is the former client who is the source of the referral for the new client).

What if the girlfriend of your prospective client comes to you to retain you for her boyfriend? She tells you that their house was raided and guns and drugs were seized. She has a grand jury subpoena to testify. She starts to tell you what she knows about the presence of the drugs and guns that her boyfriend is charged with. Is she telling you this to get your initial guidance and advice as to how she should respond to the grand jury subpoena? When you discuss this matter with her, are you giving her legal advice? Is she disclosing information to you with the expectation that it is confidential? Do the circumstances permit her to conclude that you are giving her legal advice? Have you now put yourself in a position where you cannot represent her boyfriend? Clearly the advice you give her may protect her and, if she contends she had no knowledge or involvement in the items seized from their residence that will push the inferences more strongly towards possession by her boyfriend.

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CONFLICT OF INTEREST, Cont'd

Perhaps if you make it clear to her before she tells you anything that your conversation with her is not privileged, that your only attorney-client relationship is with her boyfriend, and that while she can give you information, that information can be used and disclosed as you determine appropriate in representing her boyfriend. Better yet, advise her not to discuss any information that she may have and refer her to a lawyer that can independently provide her personal legal advice. Any appropriate information sharing can then occur through the attorneys and the issue is avoided.

What is the proper procedure when there is a potential conflict, but not an actual conflict, and you wish to seek a waiver of a possible conflict from a former client? Can you request the former client give a waiver? Do you advise the former client about the possible adverse consequences to the former client of agreeing to waive the conflict? If the case is significant enough to justify the expense, you may wish to retain independent counsel to

advise the former client as to whether or not to waive the conflict.

When do you have to disclose to the court or the government the possibility of a conflict? Does such a disclosure run the risk of disclosing privileged information to the government? In the earlier example, do you want the government to know that someone who may be associated with your client in the drug conspiracy is the one who referred your current client to you?

One of the most cautious steps when confronted with one of these circumstances or similar circumstances is to consult with a colleague who is both experienced in criminal law matters and is someone whom you have confidence has a good set of "antennae" regarding what is right, wrong or close to the line. Usually, but not always, if you are sufficiently uncomfortable with the situation, the answer is obvious that there exists the type of conflict or potential conflict you should avoid. If you consult with a colleague, full disclosure is necessary to receive advice that you can

rely upon. Memoranda to both your file and your colleague's file documenting the conversation and the advice may later be critical to support your rationale for whatever course is taken.

No one case is worth being the subject of a reported decision granting a new trial or post-conviction relief for ineffective assistance of counsel where your name appears (as is the case with a number of the cases discussed in this article) with critical comments by the court regarding conflict of interest and ethical decision making.

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*

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HAPPY HOUR AT DAV WITH OUR GUEST, MICHAEL J. BAXTER, PRESIDENT, MARYLAND STATE BAR ASSOCIATION



HOW TO HANDLE A DISTRICT COURT CASE: A CRIMINAL MOCK TRIAL

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JUNE 10, 2014

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Judge John P. Morrissey Named Maryland District Court Chief Judge

(ANNAPOLIS, Md. — April 15, 2014) Maryland Court of Appeals Chief Judge Mary Ellen Barbera has named Prince George’s County District Court Judge John P. Morrissey as Chief Judge of the District Court of Maryland, effective June 1.



Judge Morrissey, 49, was appointed as an associate judge for the District Court in 2005. He succeeds District Court Chief Judge Ben C. Clyburn, who will retire May 31 after nearly two decades of Judiciary service. Chief Judge Clyburn was appointed to the bench in 1995 and named District Court Chief Judge in 2004.

“It is a great honor to be selected for this key leadership position, and I look forward to supporting the mission and vision for this branch of government,” Judge Morrissey said. “I, too, share Chief Judge Barbera’s dedication to advancing the District Court as a model for fairness and efficiency, and I look forward to continuing the work that has made Maryland a model for others to follow. I thank Chief Judge Clyburn for his tremendous leadership and I look forward to working with him to ensure a seamless transition.”

As the administrative head of the statewide court, Judge Morrissey will oversee the operations of 34 locations and nearly 2,000 employees, including 116 state judges. The District Court of Maryland has an annual budget of \$165 million and processes more than 1.7 million cases a year. District Court is typically the first point of contact for members of the public who interact with the court system. Judge Morrissey will also manage the launch the Maryland Electronic Courts (MDEC) initiative, which includes e-filing and other online capabilities, within the District Court system.

“I am pleased to welcome Judge Morrissey as a member of my leadership team. He is a seasoned jurist with an exceptional background in complex administrative and civil litigation who can provide an invaluable perspective on many policy and fiscal matters facing our state courts,” Chief Judge Barbera said.

“Chief Judge Clyburn has established a tremendous legacy of fiscal responsibility and accountability, enhanced access to justice, and the integration of technology to streamline court processes,” Chief Judge Barbera added. “I want to thank him for his dedicated service. He will be greatly missed.”

Judge Morrissey will serve as a member of the Judicial Cabinet and the Judicial Council to advise Chief Judge Barbera on policies affecting the judicial system and to assist in the superintendence of the state courts. He will also serve on the Judiciary’s Legislative Committee and the Maryland Access to Justice Commission to ensure greater access to the state’s civil justice system.

“I believe Judge Morrissey is a great selection,” said Chief Judge Clyburn. “He has a wealth of knowledge and experience. He is a person of great integrity and is a staunch advocate for judicial professionalism.”

Since his appointment to the District Court in 2006, Judge Morrissey has presided over domestic violence, criminal, motor vehicle, civil, landlord-tenant, and bail review cases. He is a member of the Maryland Judicial Ethics Committee, the Maryland State Commission on Criminal Sentencing Policy, and chairs the Guidelines Committee. Judge Morrissey also serves on several technology committees created to integrate advanced technologies into the courts. He was named Judge of the Year in 2013-2014 by the Maryland State Bar Association Litigation Section.

Born in Washington, D.C., Judge Morrissey has been a resident of Prince George’s County for more than 40 years. He is a *cum laude* graduate of the University of Baltimore School of Law, serving as Editor-in-Chief of the University of Baltimore *Law Review*. He also holds a bachelor’s degree in business administration, *magna cum laude*, from James Madison University. He is a member of the Maryland State Bar Association and the Prince George’s County Bar Association, among other legal and civic organizations.

MARCH MADNESS HAPPY HOUR

MARCH 20, 2014





CLS was delighted to honor some of our best volunteer attorneys at our 2014 Pro Bono Awards Reception & Action. **The Fred R. Joseph Award** went to **Nakia Gray, Esq.**, in recognition of her diligent mentoring of colleagues and promoting quality legal services for families. Our **New Attorney Award** went **August Gardner, Esq.**, in appreciation for her enthusiastic support and effective advocacy for families in our communities, and our appreciation for her services to children

in need of a secure home and environment. Our **Bankruptcy Pro Bono Award** went to **Bud Stephen Tayman, Esq.**, for his many years of providing valuable reassurance to residents facing unique financial situations and our special appreciation for his mentoring of CLS staff. Our **Foreclosure Pro Bono Award** went **Kwaku Ofori, Esq.**, in recognition of his continued contribution and effective legal representation of the homeowners of Prince George's County in pursuit of the American dream of home ownership. Our **Self Represented Family Law Clinic Pro Bono Award** went **Jean K. Aelion, Esq.**, in recognition of her outstanding advocacy by her support of our Self Represented



Holding plaque, August Gardner, Esq.



Holding plaque, Bud Stephen Tayman, Esq.



Holding plaque, Jean K. Aelion, Esq.



Holding plaque, Kwaku Ofori, Esq.



Holding plaque, Nakia Gray, Esq.



Judge Cathy Serrette, one of our evening's speakers.

Family Law Clinic and her unrelenting commitment to expanding public access to our judicial system.

We thank the following sponsors for their support of our Pro Bono Awards: Joseph, Greenwald & Laake, Mack-Cali, McNamee Hosea, McMillan Metro, Meyers, Rodbell & Rosenbaum. We want to recognize **The Eleanor Roosevelt High School Clarinet Choir's** students who provided the music for the evening, namely Jose Martinez, Emily Moy, Matthew Spooner and Laura Tompkins. We thank all our Board members and staff for their invaluable support which made this event successful!



WILLS FOR HEROES – Volunteer needed to benefit Prince George’s County Fire Department!
May 3 & 17, 2014

The Maryland State Bar Association’s Young Lawyers Section, as an affiliate of the **Wills for Heroes Foundation** is sponsoring the **Wills for Heroes** program.

The Wills for Heroes Foundation is a national non-profit organization that provides free wills, advance directives and powers of attorney to first responders, including police officers, firefighters, paramedics, corrections and probation officers.

Date/Time: Saturday, May 3, 2014 - Volunteers will receive training from 9:00 a.m. to 11:00 a.m., and then will see clients for one (1) hour appointments starting at 11:00 am and ending at 5:00 pm.

Location: Prince George’s County Fire Department, at Bowie VFD - Co. 43 Training Facility, 16408 Pointer Ridge Drive, Bowie, MD

Date/Time: Saturday, May 17, 2014 - Volunteers will receive training from 9:00

a.m. to 11:00 a.m., and then will see clients for one (1) hour appointments starting at 11:00 am and ending at 5:00 pm.

Location: Prince George’s County Fire Department, at 16701 Melford Blvd., Suite 124, Bowie, MD 20715

Malpractice coverage for both events is available to all members in good standing of the Maryland bar through **Community Legal Services**. To volunteer, or to learn more about the program, contact Maryland Wills for Heroes coordinator Sarah Cline at: sccline@shulmanrogers.com or (301) 945-9245. No experience in trusts and estates law is required to participate, although we welcome experienced practitioners. For more information visit: www.willsforheroes.org

SAVE THE DATE!!

Date/Time: Saturday, October 18, 2014, 10:00-2:00

Location: Greenbelt Library, Greenbelt, Maryland

Sponsors: Community Legal Services, NAACP Legal Redress Committee Pro Bono Resource Center, Maryland Volunteer Lawyers Service

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.

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THE 29TH ANNUAL ALAN GOLDSTEIN CRIMINAL LAW SEMINAR

by C. Todd M. Stuart, Esquire

The 29th Annual Alan Goldstein Criminal Law Seminar was a resounding success. I would like to thank all the lecturers for their dedication to their craft and the Prince George's County Bar Association. This program would not succeed without their tireless efforts in advancing legal education and therefore, the fellow lecturers and contributors need to be recognized:

First, Dolores Dorsainvil, Senior Staff Attorney for the Office of Bar Counsel in the District of Columbia (formerly of the Attorney Grievance Commission for the State of Maryland) was peppered with questions from the private bar as how to avoid correspondence on the letterhead from the Attorney Grievance Commission (a prospect that will make any attorney in private practice immediately seek a prescription for an anti-anxiety medication and/or a 5th of Jim Beam). I was very pleased that all attendees seemed eager to

participate in proffering various scenarios to Ms. Dorsainvil and she in kind was gracious in her responses; she assuaged many a private attorney's innermost fears and convinced them that if they are diligent in their practice they have nothing to fear (other than getting that aforementioned letter).

Second, Robert Bonsib, Esquire performed impeccably as usual. He came prepared with props to properly illustrate the various scenarios that present themselves in the constructive possession paradigm. The props and levity for which Mr. Bonsib brought to his segment certainly allowed each attendee to fully appreciate the dangers attached to a constructive possession case, i.e., an unwitting car passenger is convicted of possession of a firearm and/or narcotics. His presentation certainly should give us all pause to the inherent dangers of such a prosecution. (I will add, however, for

my former prosecutorial buddies: there are times in which a conviction under the theory of constructive possession is entirely appropriate and warranted).

Third, Ivan Yacub, Esquire and Himes V. Chicas, Esquire performed immaculately in their presentation of Immigration Law. Many a practitioner will feel the primordial desire to curl up into the fetal position when confronted with an immigration issue (yours truly included). My father, R. Calvert Stuart, Esquire (who provides grunt work for this seminar) confided in both Ivan and Himes that their presentation illustrated to him an area of law that he just knows nothing about (a feeling felt by many of our fellow practitioners). Immigration Law is a weighty issue and I truly appreciate Ivan and Himes' expense of their time to hand hold their fellow brothers and sisters through this process.



Fourth, Andrew Jezic, Esquire and Assistant State's Attorney Dorothy Engel provided the grand finale of the seminar: Nuts and Bolts of Maryland's Confession Law: Point/Counterpoint. Mr. Jezic has always been very gracious in assembling case law for the Bar Association relating to the mine field that is: Confession Law. Mr. Jezic and Mrs. Engel navigated us through this mine field with expert efficiency and professionalism.

Last, but certainly not least, I would like to especially thank Leonard R. Stamm,

Esquire, Goldstein and Stamm, P.A. for providing the Fourth Amendment and Search and Seizure Update included in the seminar's handbook. Mr. Stamm, (many of us know him as "Lenny"), though not a speaker this year, though I anticipate he will be on the bill next year with a very interesting topic, took time out of his busy schedule to provide us these updates.


I have organized the criminal law seminar for the past three years and each year around January I feel the inherent traces of heartburn manifest itself when

contemplating the speakers for the upcoming seminar and therefore, I would say to all the lecturers and contributors, with all my gratitude.....THANK YOU!!!!!!

(P.S. – Let's set a new record of attendees next year so I can avoid the constant hounding from David M. Simpson that I have yet to beat his number – Let's win one for Steu.) I remain,

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FAMILY LAW, MATTERS: THE PRINCE GEORGE'S COUNTY MODEL COURT PROGRAM, "A MODEL FOR CHANGE"

by Master Althea R. Stewart Jones

In the summer of 2010, the Circuit Court for Prince George's County succeeded in its efforts to be designated a Child Welfare Model Court with the National Council of Juvenile and Family Court Judges. Funding was secured through Maryland's Foster Care Court Improvement Project. Among other things, being designated a Model Court provides the Court with access to important technical assistance through the National Council of Juvenile and Family Court Judges and networking with other model courts throughout the United States towards achieving best practices in addressing the needs of children and families involved in child protection cases.

Model Courts are continually assessing their child abuse and neglect case processing, focusing on barriers to timely permanency, developing and instituting plans for court improvement, and working collaboratively to effect systems change. Model Courts serve as national "laboratories" for meaningful systems change in how child abuse and neglect cases are processed through the court and through the child protection system. Moreover, Lead Judges and Model Court Team members develop expertise in a wide variety of areas related to improved court practice and systems change efforts.

The Honorable Larnzell Martin is the Lead Judge for the Prince George's County Model Court Team. The mission of the Prince George's County Model Court is to *ensure that every child and family that enters the juvenile court system in Prince George's County receives the best, culturally competent services and support needed to effectuate safe and timely permanence.* Members of the Model Court Team consist of Department of Social Services (DSS) and Department of Juvenile Services (DJS) representatives, attorneys for the children, parents, and the Departments; Court-Appointed Special Advocates; Board of Education representatives, and other agencies tasked with working with our children and families.

The current goals of the Prince George's County Model Court Team are:

- To Identify All Relatives and Family of Youth (Including Paternal) as Early as Possible and to Involve Them as Early as Possible (Chairperson, Master Kristin Hileman-Adams)
- To Implement a One Judge/Master and One Family Model; (Chairperson, Judge Cathy Serrette);
- To Achieve Better Outcomes for Youth with APPLA (Another Planned Permanent Living Arrangement) Plans and Who May Be Emancipating Out of the System; (Chairperson, Master Althea Jones)
- To Reduce Disproportionate Minority Representation; (Chairperson, Ms. Gloria L. Brown, Director, Department of Social Services) and,
- To Achieve Better Educational Outcomes for our Youth (Chairperson, Patricia Waldman, Esq., Supervising Attorney, Child Advocacy Unit, Legal Aid Bureau, Inc.)

Since its inception, the Model Court Team has been working to accomplish its goals and improve the child welfare practice. Some of the accomplishments and/or changes in practice are outlined below by its respective goals and subcommittees:

Goal #1: To Identify All Relatives and Family of Youth (Including Paternal) as Early as Possible and to Involve Them as Early as Possible

This goal involved ensuring that as many family members as possible would be identified early in the case so that the youth would have more potential resources for placement and other supports. In order to accomplish this task, the subcommittee requested that birth certificates of all children in the foster care system be provided at the initial hearings. This would increase the numbers of fathers that are identified early so that fathers and paternal family members are explored as placement and visitation resources. In the majority of cases, birth certificates are being provided. As part of this goal, DNA tests are scheduled and monitored in a more timely fashion. The Court also documents paternity findings and which relatives are present at each

hearing. The court also began to regularly request DSS to make referrals for Absent Parent Locator services and referrals to Family Finding (a DSS program to locate people in a child's family tree). These efforts have resulted in more family member involvement and have increased the likelihood that a child will be able to be placed with a non-offending parent or both maternal and paternal relatives.

Goal #2: One Judge/Master, One Family Model

One of the best practice principles in child welfare cases are for cases involving members of the same family be heard by the same judge or master. Funds were obtained for the Model Court to secure technical assistance on how to best revise our Court processes to implement this practice. The Model Court Team secured the assistance of the Center for Juvenile Justice Reform (CJJR) at Georgetown University Public Policy Institute. Twenty states, with some states having multiple sites, have adopted the Crossover Youth Practice Model (CYPM) to better serve children in both the delinquency and CINA systems. The goals of the CYPM are to reduce the number of youth placed in out of home care; reduce the number of youth placed in congregate care; reduce the disproportionate representation of children of color; particularly in the crossover population; and reduce the number of youth crossing over and/or becoming dually-adjudicated.

The Model Court CYPM Implementation Team has been working with CJJR to create a model in which youth involved in the child welfare and delinquency systems are being handled by the same judge or master. Several workgroups have been developed to devise the protocols, training programs, and court calendaring mechanisms needed to fully and effectively implement this practice in Prince George's County.

Goal #3: To Achieve Better Outcomes for Youth with APPLA Plans and Who May Be Emancipating Out of the System

This goal focused on youth in the foster care system whose plan was to become self-sufficient and emancipate from the

system. Several practice changes were put into place.

Development of Emancipation Manuals:

Each youth who emancipates from the foster care system receives an Emancipation Manual that was developed by the Model Court Team. The manual is a binder of documents and resources that will assist the youth once he or she has emancipated from the foster care system. The first manuals were distributed in July 2012. The Court gives the manual to the youth the last hearing before he or she emancipates. If the youth does not appear for the hearing, the Department worker, CASA, or counsel for the youth will ensure that the youth receives the manual. The binder is accompanied by an electronic copy on a flash drive.

Emancipation Checklist:

This checklist was developed and is used as a tool by the Court to ascertain the status of the youth emancipating or aging out of the system. Implementation began on February 1, 2012. Baseline data was gathered using the checklist with cases of youth 18 and older whose cases closed from July 1, 2010 through December 31, 2011. The Court has been collecting data every six months to determine the needs of our youth who are aging out and whether there has been improvement in whether our youth are more self-sufficient.

Transitional Planning Hearings Pilot Program:

These hearings began in June 2012 and are handled by the Model Court Lead Judge, Judge Martin. The pilot program consists of the youth 17 and older who are on Judge Martin's existing child welfare caseload. The hearings focus on the youth who are emancipating from the foster care system to ensure their readiness to be self-sufficient. The hearings are more extensive than other cases and would enjoy more flexibility in scheduling. A brief survey has recently been distributed to all those who have participated in Transitional Planning Hearings. The Model Court Team will review and analyze the results of the survey to determine if the hearings are an effective tool to ensure self-sufficiency for our emancipating youth.

Fast Track to Permanency Pilot Program:

While the focus of this subcommittee is to focus on our older youth, the subcommittee

surmised that if foster youth were reunified sooner or placed in permanent homes earlier in the case, there would be less children 18 to 21 years old emancipating from the system. Therefore, a pilot program, Fast Track to Permanency, commenced implementation in the spring of 2012. Thirty-five cases were identified that were being heard by the two full-time juvenile masters. The masters scheduled an additional hearing, Fast Track Review hearing prior to the initial permanency planning hearing. The initial permanency planning hearing was usually scheduled five to 6 months after the Disposition hearing; however, the Fast Track Review hearing was scheduled 2 to 3 months after the Disposition hearing to ensure that all services were in place and that the Department and families were working well together. A script was developed so that the masters would relay the same message to all parties immediately after the Disposition hearing regarding the need for permanency for the child. The script emphasized the plan of reunification and that all parties were expected to work swiftly and cooperatively. A specific order was also drafted. The first Fast Track Review hearings were held in July 2012. The 36 Fast Track to Permanency Cases are being compared to the next 40 cases that were on the two masters' dockets.

Coordinate Access to Life Skills Resources

The subcommittee planned the first Independent Living Fair that was co-sponsored by the DSS and the CASA program. The Independent Living Fair was held in October 2012 at the Prince George's Community College. Several of our youth who had plans to emancipate from the system attended. Various vendors and agencies were represented. A second Independent Living Fair is in the process of being planned by the subcommittee.

Goal #4: To Reduce Disproportionate Minority Representation

Two full-day training programs were held for Model Court team members and other child welfare stakeholders. The first training program was held in June 2011 and focused on implementing Best Practices principles as outlined in the NCJFCJ's *Resource Guidelines* and *Adoption and Permanency Guidelines*. The second training program was held in September 2012 and focused on *Courageous Conversation* and Benchcard

training to help reduce disproportionate representation of children of color in our child welfare system. Follow up is needed to review the use of the benchcard and ensure use by the judges and masters of the benchcard. Members of the Model Court team have traveled to national training programs and to two other Model Court Sites to learn about best practices in the child welfare system.

Goal #5: To Achieve Better Educational Outcomes for our Youth

The Model Court Team has not fully engaged in implementing this goal. Master Jones is a member of the Foster Care Court Improvement Project Outreach and Programming Subcommittee and is actively participating in the development of the Education Checklist that will be proposed for use throughout the State.

For more information on the practice reform efforts of the Model Court Program and continuing progress, you may contact Judge Larnzell Martin or the Chairpersons of the respective subcommittees.

MASTER ALTHEA R. STEWART JONES

Circuit Court for Prince George's County
Althea R. Stewart Jones is a master for the Family Division in the Circuit Court for Prince George's County. She has served as a master since May 2007 and is one of the two full-time juvenile masters. Before her appointment as a master, she was the Deputy Director of the Department of Family Administration at the Administrative Office of the Courts (AOC). Some of her duties included staffing the Judicial Conference's Custody Subcommittee of the Family Law Committee and overseeing the grant process for Family Division and Special Projects grants. Master Jones was initially hired by the AOC in 1997 to serve as the Director of Maryland's Foster Care Court Improvement Project (FCCIP). Prior to her tenure at the AOC, Master Jones was an attorney with the Prince George's County/Metropolitan Office of the Legal Aid Bureau where she held the positions of Deputy Chief Attorney, Supervising Attorney for the Child Advocacy Unit, and staff attorney. Master Jones is an active member of the Judicial Conference's Foster Care Court Improvement Project Outreach and Programming Subcommittee; the FCCIP Model Court Orders Workgroup; and the Model Court Team of the Circuit Court for Prince George's County.

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LOOKING AHEAD: PLANNING FOR YOUR FUTURE

by *Thomas E. Lynch, III and The Honorable Michele D. Hotten*

As advocates and jurists, we may sometimes forget that we are the caretakers and stewards for our system of justice and the rule of law which constitutes the centerpiece of our fragile democracy. In the heat of battle (and particularly in our struggle to make a living), we may say or do something which tarnishes the image of this noble profession and diminishes the respect of our citizens for our Courts. Erosion of confidence of the American people in our system of justice is something about which we, the lawyers and judges in this State and country, need to be conscious because the very rule of law rests upon citizens' trust and confidence in the impartiality of decisions founded in the law. It is precisely these concerns which underlie the efforts to promote and enhance professionalism in this State and many of our sister states. This initiative is taking on a new face in Maryland – The Maryland Professionalism Center, Inc.

By way of background, members of the Bar who have practiced for a number of years will recall that in 2002 and 2003, the Court of Appeals created a Professionalism Task Force and Judge Bell and Judge Battaglia travelled throughout the 24 jurisdictions in the State soliciting input on the issue of professionalism. That outreach effort led to certain conclusions, including the conclusion that there had been an erosion of professionalism which was more acute in the urban areas (in part due to the infrequency of contact lawyers and judges have with each other) and less acute in the rural areas. Domestic practice also seemed to be the area of practice which produced the most contentious relationships among lawyers. These efforts led to a recommendation to create a Professionalism Commission which the Court constituted by Court Order in 2004.

The Professionalism Commission, over its tenure, produced certain memorable outcomes including the development of a mentoring program, revamping the professionalism course for new lawyers and developing the Ideals of Professionalism which are attached as an Appendix

after Rule 8.5 of the Maryland Rules of Professional Conduct. It was recognized, however, by those on the Commission that, to better ensure professionalism remains front and center in the consciousness of Maryland judges and lawyers, there needed to be an organization and structure committed to the purpose.

As a consequence, on September 12, 2012, the Court of Appeals entered an Order rescinding the Order creating the Professionalism Commission and establishing instead a new Professionalism Center. Since the date of that Order, a non-profit organization called the Maryland Professionalism Center, Inc. has been created. The organization has offices in the judicial training facilities just outside of Annapolis and the Executive Director of the organization is Monise Brown, Esquire, who comes to the position from a distinguished career as a prosecutor in Charles County, Maryland. Her Honor, Judge Battaglia is the Chair of the Board of the organization and the Board, appointed by the Court of Appeals, consists of lawyers and judges from throughout the State, including the Deans of our two law schools. Various committees have been created with a member of the Board chairing each committee. The several committees are dedicated to (1) revamping the professionalism course; (2) mentoring; (3) establishing a professionalism course for judges and courthouse staff; (4) evaluating the need for continuing legal education; (5) establishing outreach to law students; (6) establishing outreach to the community; (7) long range planning; (8) organizing and holding convocations and symposiums; and (9) studying the issues of aging, substance abuse and other factors affecting professionalism.

The "Aging Lawyer" subcommittee, on which your co-authors are participants, is composed of a very knowledgeable group of professionals, including Glenn Grossman, Bar Counsel, Al Frederick, Jim Quinn, who serves as the Director of the MSBA Lawyer Assistance Program; Karen Federman-Henry, William P. Young, Jr.,

Steve Kehoe, Tim Maloney, Paul Bekman and Jack Quinn.

As a subcommittee, our first order of business will be to address a concern about the very significant number of lawyers (particularly "baby boomers") who are approaching the age at which they will consider retirement or continue practicing, potentially with infirmities and impairments that develop with age. This is a national phenomenon not unique to the State of Maryland. The National Organization of Bar Counsel ("NOBC") has identified this as a priority issue for that organization. It is our expectation, as a subcommittee, that we will make a recommendation to the Professionalism Board of various steps to assist lawyers, as they age, transition from the practice into retirement and potentially further legal and/or public service. Our senior lawyers are a valuable resource we should cherish.

Subcommittee members recognize that failure to address the "greying bar" could lead to devastating consequences for both our aging lawyers and their clients. Each one of us has probably experienced in our practice an instance in which an aging client stubbornly refuses to address such things such as the generational transition of assets or a business. The client's state of denial stems, in part, because the client's identity frequently is wrapped around a career or being an indispensable element of a business. Inertia, however, can cause suffering for all, particularly if the client unexpectedly becomes impaired or passes away.

Much the same is the case for some of our aging lawyers who, in a state of denial, refuse to acknowledge growing impairments. The result, much like for the business and family described above, can be frustrating for the lawyers' clients and for colleagues who find themselves unable or unwilling to confront the situation. As a subcommittee, we have come to learn that it is not all that uncommon for a Judge or a colleague to contact the MSBA Lawyer Assistance Program about a lawyer who

LOOKING AHEAD: PLANNING FOR YOUR FUTURE, Cont'd

has appeared in Court or continued to represent clients but who has difficulty responding to questions, addressing legal issues, handling paper and, in essence, no longer possesses the capacity to represent clients effectively. When contacted by representatives of the Lawyer Assistance Program, some of our aging lawyers may acknowledge anxiety and fear about being forced to retire. For some of us, our whole life (and therefore our identity) is wrapped up in the practice and, therefore, it is difficult to envision what life would be like outside of the law. The question for all of us is how can we best help achieve the balance of preserving the interests of the clients and the dignity of the aging professional.

These are just a few examples to explain why this issue is so important now as our lawyer demographic changes. We will keep you apprised of our progress

as a Subcommittee. Right now, we are keeping abreast of NOBC's efforts and have received a report from Glenn Grossman of the results of a conference in San Francisco where a draft of a report addressing this issue was considered and approved. In addition, with Jim Quinn's help, we are evaluating what actions have been taken in other states, including Ohio, Illinois, Florida and others. We recognize that the concern is not one, however, limited to age. Our clients can become "lawyer orphans" for many reasons including accidental injury, illness or other conditions which make it impossible for one of our colleagues to continue to provide capable services.

Stay tuned for developments in this area because it is a matter that we expect to address with some sense of expedience. If any of you have any thoughts or anecdotes that you would like to share in confidence,

please do not hesitate to bring them to our attention or to the attention of any other member of the subcommittee.

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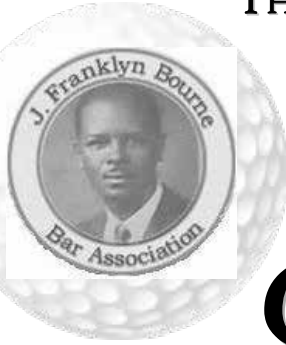
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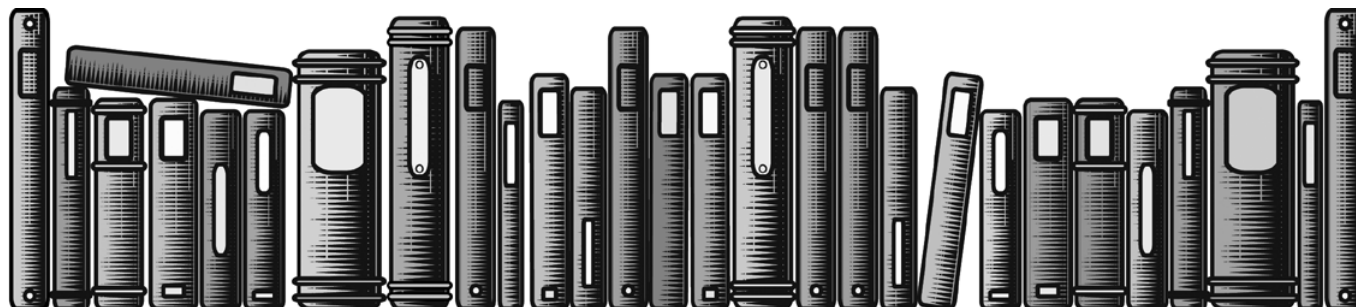
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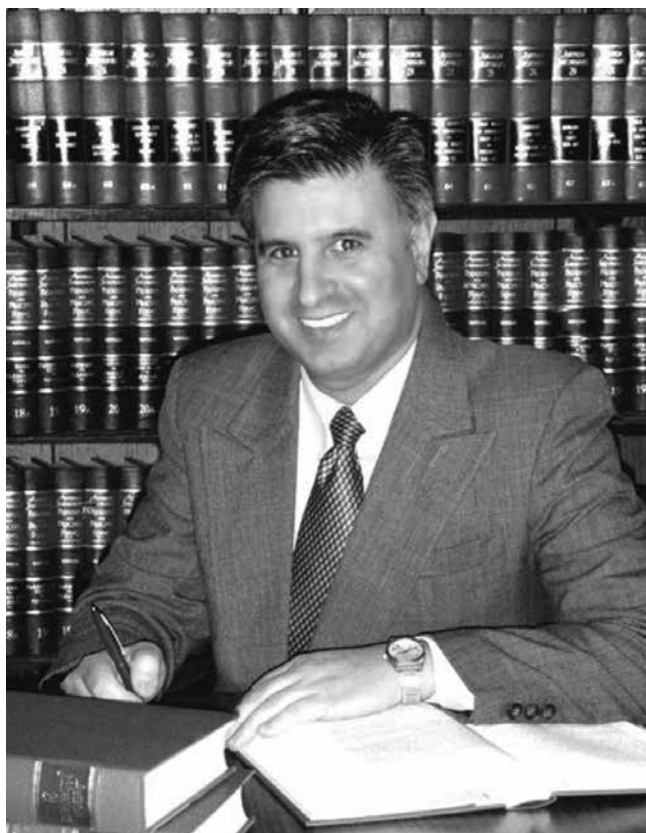
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Prince George's County Bar Association
PGCBA *NewsJournal*
14330 Old Marlboro Pike
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ADDRESS SERVICE REQUESTED

ANNUAL MEETING/ELECTIONS

JUNE 10, 2014

NEWTON WHITE MANSION

6:30 P.M.

(IMMEDIATELY AFTER THE TORT SEMINAR - SEE PAGE 27)

\$40 FOR MEMBERS • \$50 FOR NON-MEMBERS

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