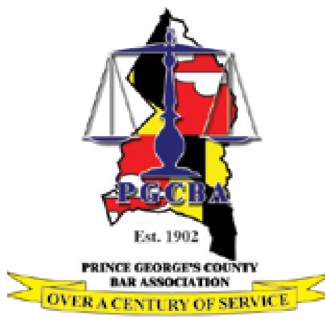
PGCBA NewsJournal

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

www.pgcba.com *March 2015*



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President's Message

Colleagues,

It is March again and for basketball fans it means just one thing: March Madness!

The collegiate tradition is upon us. If you're a die-hard fan who may storm the court or paint your face in your team colors -- you are not alone. Many will continue to watch, even if their team has been eliminated, just for the drama and excitement or the possibility of seeing the "Cinderella" team take it all. Don't let the madness end with basketball, join the frenzy and put on your jersey for the Prince George's County Bar Association March Madness. Let's see if you can complete each of our brackets by taking advantage of each event and program to become a PGCBA Bar Association Champion, and get recognized at the Annual Meeting in June.

Good luck to you all! (See page 3 for brackets)

Denise

Like us on Facebook!

Next Big Events!

30th Annual Alan Goldstein Memorial Criminal Practice Seminar

Saturday, March 28th, 2015
8:30 P.M.

Jury Assembly Room

See page 21

Spring Membership Meeting

Monday, April 29, 2015
6:00 P.M.

Newton White Mansion

See page 22

PGCBA NewsJournal

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

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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.

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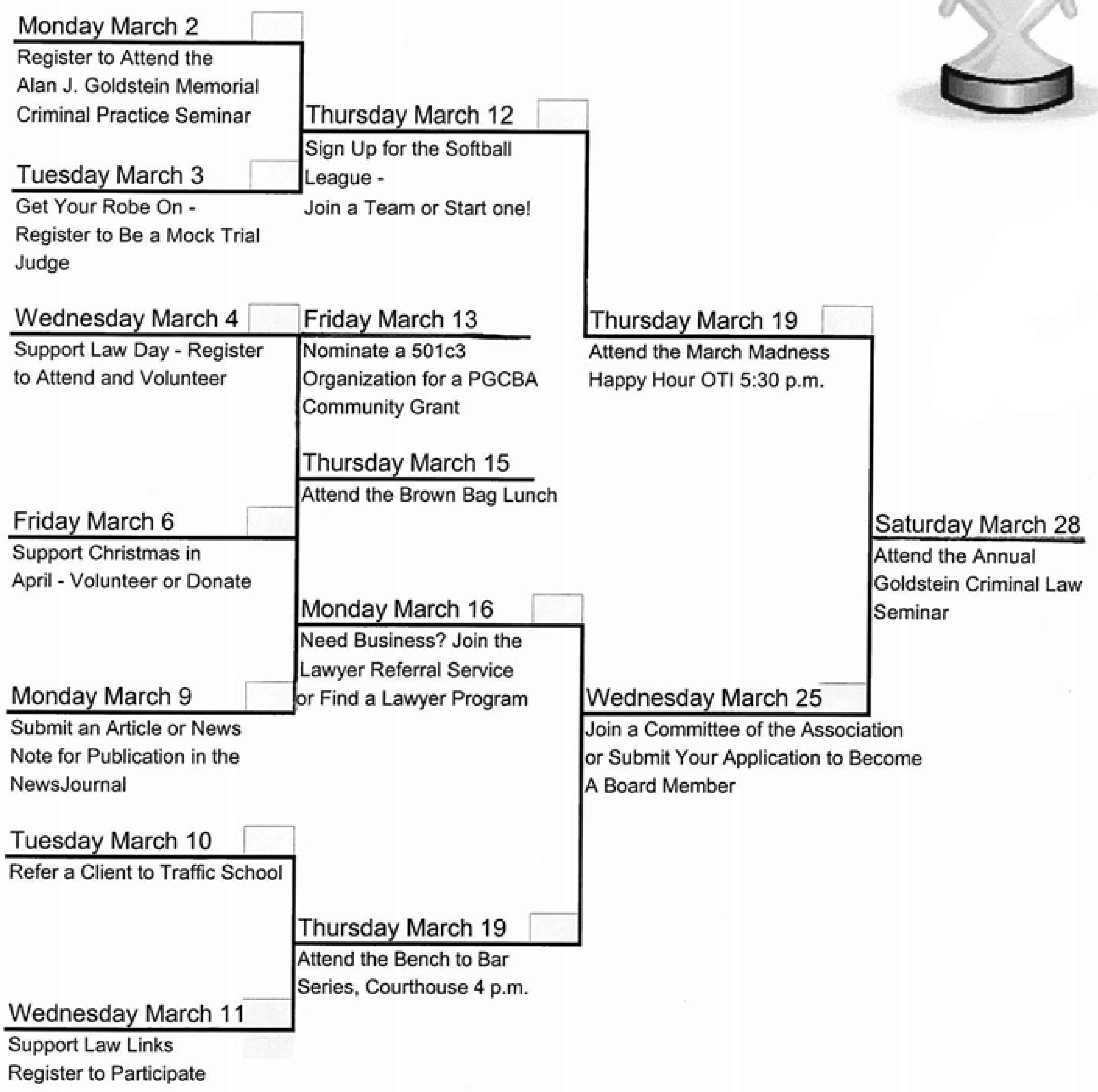
Annual subscriptions provided to PGCBA Members at no cost as part of annual dues; Non-Member subscriptions $75 per year.

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

President's Message, Con't



Member Announcements

FREE • FREE • FREE • FREE • FREE • FREE

BROWN BAG LUNCH

March 5, 2015
12:00 PM

Lawyer's Lounge, 3rd Floor
Duvall Wing

Speakers: The Honorable Albert Northrop and The Honorable James Salmon

Topic: "Guardianship of the Person of a Minor—Selecting the Forum Between the Circuit and Orphans' Courts"

April 2, 2015
12:00 PM

Lawyer's Lounge, 3rd Floor
Duvall Wing

Speaker: The Honorable Joseph L. Wright

Topic: "Presentation of District Court Automobile Tort Case"

FREE • FREE • FREE • FREE • FREE • FREE
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Welcome New Members!

Jermaine Darnell Hammonds
Law Office of Jermaine D. Hammonds

Maria G. Mendoza
Aziz, Jewell & Mendoza

Monica Nichole Goldblatt
Law Office of Tom Mooney

Jasmine Fisher
Law Clerk, District Court – Prince George's County Maryland

Karyne Constance Messina
State's Attorney's Office

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

Submission Deadline:
10th of the month

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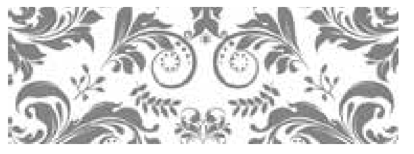
The deadline for submissions is March 10th for the April Newsjournal.



Save the Date!

Bench to Bar Panel Discussion
April 16, 2015
4 pm - Courthouse
Topic: Five Most Common Criminal District and Circuit Court Cases: Practice Tips

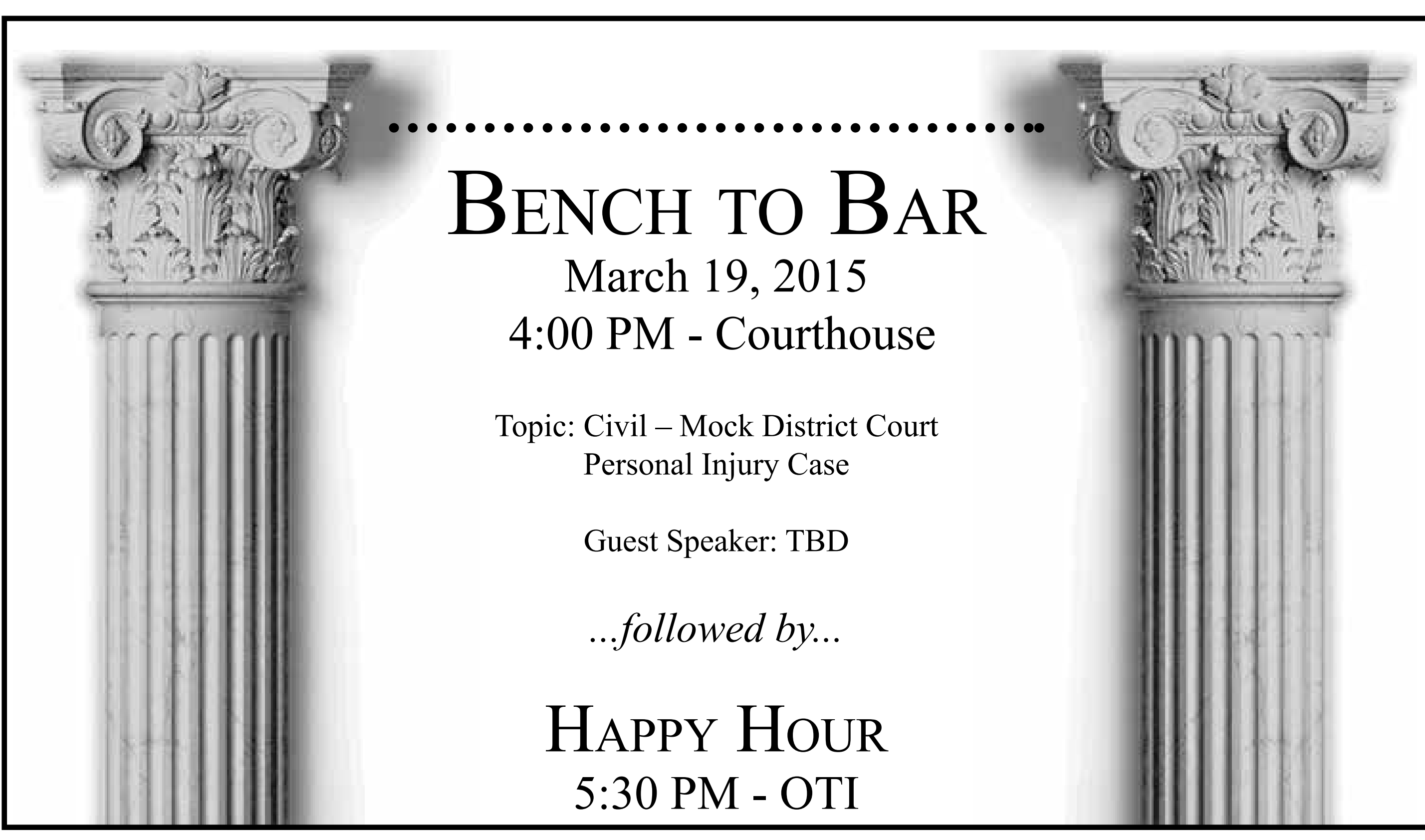
...followed by...

Happy Hour, 5:30 pm, OTI

• •

Young Lawyers Happy Hour
April 30, 2015, 5:30 pm
TBD

Member Announcements, Con't



The McCammon Group

is pleased to announce our newest Neutral

Hon. A. Michael Chapdelaine (Ret.)

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The Honorable Michael Chapdelaine served the Circuit Court for Prince George's County as a Master for Domestic Relations for five years and as an Associate Judge for more than four years. Prior to his service on the bench, he enjoyed a successful private practice with an emphasis on family law. He is a past Member of the Board of Directors of the Bowie Chamber of Commerce and a Life Fellow of the Community Legal Services of Prince George's County. Since his retirement from the bench in 2011, he has been mediating and arbitrating family law disputes. He now brings this distinguished record of service and 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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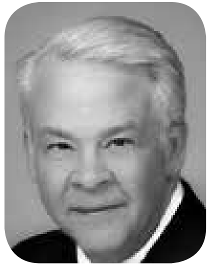
SPEEDY TRIAL – A PRIMER AND REFRESHER
Part One - State Speedy Trial Considerations

by Robert C. Bonsib, Esq. and Megan E. Coleman, Esq.



This is the first of a multi-part article on speedy trial issues. This article and the next article will address Maryland Rule 4-271, Criminal Procedure Article 6-103, and *Hicks* and its progeny. In a subsequent article will address the 6th Amendment of the U.S. Constitution, *Barker v. Wingo* and its progeny. We hope this series will serve as a primer, reminder and resource for those raising or defending against speedy trial claims.

Trial within 180 days or dismissal of charges unless good cause is shown

Maryland law requires that a criminal case be brought to trial within 180 days of the appearance of counsel or the appearance of the defendant before the circuit court, whichever occurs first. *See* § 6–103 of the Criminal Procedure Article ("C.P."); Md. Rule 4–271(a). A county administrative judge or that judge's designee may, however, grant a postponement beyond the 180–day deadline "for good cause shown." *Id.*

Dismissal is the appropriate remedy where the State fails to bring the case to trial within the 180–day period and good cause has not been established. *State v. Hicks,* 285 Md. 310, 318, 403 A.2d 356, 360 (1979), *on motion for reconsideration,* 285 Md. at 334, 403 A.2d at 368 (1979). This has become known as the *Hicks* rule.

The *Hicks* Rule serves as a means of protecting society's interest in the efficient administration of justice and the actual or apparent benefits from C.P. 6-103 and Rule 4-271 are purely incidental. *State v. Price*, 385 Md. 261, 278 (2005). Thus, the *Hicks* rule is a statement of public policy and not a source of individual rights like the Sixth Amendment. *Choate v. State*, 214 Md. App. 118, 140, *cert. denied,* 436 Md. 328 (2013). The chief purpose of Rule 4-271 and C.P. § 6-103 is to operate as a "prophylactic measure" to further society's interest in the prompt disposition of criminal trials. *Id.* Citing *State v. Hicks,* 285 Md. 310, 318, 403 A.2d 356 (1979).

What must occur by the 180th day and what is the critical postponement?

For purposes of Rule 4-271 and C.P. § 6-103(a), the trial begins upon the start of *voir dire*. *Markham v. State*, 189 Md. App. 140, 167 (2009). It does not matter that the jury has not been sworn on the 180th day, or that there may be a delay in the trial after the start of *voir dire*. *State v. Farinholt*, 54 Md.App. 124, 129 (1983), *aff'd*, 299 Md. 32 (1984).

"[T]he critical postponement for purposes of Rule 4–271 is the one that carries the case beyond the 180 day deadline." *See State v. Brown,* 355 Md. 89, 108–09, 733 A.2d 1044, 1054 (1999).

If defense asks for postponement beyond 180 Days, defense cannot then ask for a dismissal based upon a violation of *Hicks*

"[E]ven when a circuit court criminal case has been postponed beyond the 180–day time limit in violation of [CP § 6–103] and [Maryland Rule 4–271], the sanction of dismissal is inapplicable 'where the defendant, either individually or by his attorney, seeks or expressly consents to a trial date in violation of [Maryland Rule 4–271].'" *State v. Brown,* 307 Md. 651, 658 (1986) (citations omitted). This is not because the defendant, by his action or consent, has "waived" the requirements of [CP § 6–103] and [Maryland Rule 4–271], so that the requirements are inapplicable. Rather, it is because "it would be entirely inappropriate for the defendant to gain advantage from a violation of the rule when he was a party to that violation." *Id.*

In *Jules v. State*, 171 Md. App. 458, 480-81 (2006), the defendant asked for a trial date beyond the 180-day period and executed an effective waiver. A nol pros was entered three months after the *Hicks* period had expired. The nol pros could not have have had the necessary and actual effect of extending the trial date beyond the 180-day period. Rule 4-271 was no longer applicable after the administrative judge made a good cause finding to extend the trial beyond the 180 days. Stated otherwise, the 180th day is the "bright line" beyond which dismissal is not available as a sanction once the trial date, in compliance with the rule and the statutory provision, has crossed that line.

In *Ashton v. State*, 185 Md.App. 607, 620 (2009), the defendant filed a motion for a continuance beyond *Hicks* to assess DNA evidence and prepare for trial. On appeal, Ashton contended that he was coerced into seeking the continuance beyond 180 days. The CSA held that because the trial court found good cause to continue the case and did so for the time requested, that Ashton's rights under 4-271 were not violated.

If you are a defense attorney, just because you may not have a *Hicks* remedy does not mean that you do not have a constitutional speedy trial right remedy. That argument is still alive and will be discussed in a subsequent article.

Cases where Good Cause has been found to postpone beyond 180 Days:

In *Choate v. State*, 214 Md. App. 118, 140, *cert. denied,* 436 Md. 328 (2013), the CSA found that the good cause finding by the trial court was not an abuse of discretion where the State represented that a DNA analyst would be unavailable to testify on the scheduled trial date and that the prosecutor was scheduled for trial in another case on the same day.

In *State v. Toney*, 315 Md. 122, 135 (1989), the COA upheld the good cause finding based upon the unavailability of a prosecutor due to her involvement in other

cases. The COA said that the State is not necessarily required to resolve schedule conflicts by reassigning prosecutors, because "the State's interest in maintaining prosecutorial continuity is a significant interest which in some instances may qualify as good cause for a postponement."

In *Moody v. State*, 209 Md.App. 366 (2013), the CSA found good cause for a postponement beyond 180 days when the State was seeking DNA evidence and the trial court found that it pertained to conviction or acquittal. In that case, however, defense counsel never objected to the continuance.

In *Fields v. State*, 172 Md.App. 496, 522 (2007), the CSA found that there was good cause to postpone beyond *Hicks* where the attorney for a co-defendant was ill, and the prosecutor stated that there was a disappearance of a witness and that the prosecutor had another case beginning the week that the co-defendant's attorney was expected to recuperate.

What happens if the State nol prosses the case before the 180th day but then recharges the same offenses later?

The General Rule

"[W]hen criminal charges are nol prossed and later refiled, the time period for commencing trial ordinarily begins to run anew after the refiling." *Curley v. State*, 299 Md. 449, 458 (1984). There are however two exceptions.

The Exceptions

"If, however, it is shown that the nol pros had the **purpose** or the **effect** of circumventing the requirements [of the rule], the 180-day period will commence to run with the arraignment or first appearance of counsel under the first prosecution." *Curley*, 299 Md. at 462. The "effect" of circumventing the requirements of the rule has been clarified to mean a "**necessary effect**" rather than just any effect.

Application of the General Rule and Exceptions

The Nol Pros Circumvented the Rule

1. The nol pros had the necessary effect of circumventing the rule in *Curley v. State*

In *Curley v. State*, 299 Md. 449 (1984), Curley was charged with automobile manslaughter and related charges. Defense counsel requested a continuance of the initial trial date two months after entering his appearance because of a scheduling conflict. The request was granted but a new trial date was never assigned. On the last day for trial under the Rule, the prosecutor entered a nol pros for all the charges and wrote a letter to defense that "[t]his disposition was made based on the combined factors of the apparent inadmissibility of the blood alcohol content test as performed in this case and upon the request made of the State by the family of the victim." *Id.* at 453.

Three months later the State filed a second criminal information charging Curley with the same offenses. Defense counsel filed a motion to dismiss on constitutional speedy trial grounds and for a violation of the 180-day rule. The motion was denied. Trial commenced six months after the second charges were filed and Curley was convicted of automobile manslaughter and related counts. Curley appealed.

The COA said that the general rule is that where there is a nol pros and refiling of charges, "the only existing prosecution or case is that begun by the new charging document," and that it is this new prosecution for which trial must be timely commenced. *Curley,* 299 Md. at 460.

However, the COA identified two exceptions to this general rule: Where (1) the purpose of the State's nol pros, or (2) the necessary effect of its entry, is to circumvent the statute and rule governing time limits for trial, the 180–day period for trial begins with the triggering event under the initial prosecution, rather than beginning anew with the second prosecution. *Id.* at 459. Without the *Curley* exceptions and the *Hicks* dismissal remedy, the State could evade the 180–day period, whenever it desired a trial postponement beyond 180 days, by merely nol prossing the case and refiling the same charges, a tactic that would make the requirements of the statute and rule "meaningless." *Curley,* 299 Md. at 461, 474 A.2d at 508. However, the COA noted that these exceptions will not apply where the prosecution acts "in good faith or so as to not 'evade' or 'circumvent' the requirements of the statute or rule setting a deadline for trial." *Id.* at 459.

In *Curley*, the nol pros clearly circumvented the Rule when it was entered the final day for trial in the 180-day period. At that time a trial date had not even been assigned. The case could not have been tried because the defendant, his counsel, and witnesses were not present. Thus the case would have had to have been dismissed on that day. The COA said that regardless of the prosecuting attorney's motives, the necessary effect of the nol pros was an attempt to evade the dismissal resulting from the failure to try the case within 180 days.

2. The purpose of the nol pros was to circumvent the rule in Ross v. State

In *Ross v. State,* 117 Md.App. 357 (1997), on the trial date, the State sought a continuance because the drugs had not yet been analyzed. The judge denied the requested continuance and the judge said that the case could not be put back in because the docket was too crowded and therefore it could not be put back in before *Hicks* runs. The State responded that with that ruling it would enter the matter nolle prosequi. A new indictment was subsequently filed. The CSA viewed the administrative judge's comments about the crowded docket as a ruling and therefore the State's purpose in nol

cont'd on next page...

prossing the charges was to circumvent the 180 day rule.

3. The purpose of the nol pros was to circumvent the rule in State v. Price

In *State v. Price*, 385 Md. 261 (2005), Price was indicted for robbery and assault and counsel entered his appearance on May 22, 2002. Trial was set for July 23, 2002. At a status conference on June 21, 2002, the prosecutor said it was unavailable on the trial date due to a conflict with trial of another case and the State requested a continuance. The defense objected because Price was incarcerated, but the continuance was granted. The trial was continued to August 12, 2002 after confirming that both counsel were available on that date.

On August 5, 2002, the State filed a motion to continue the trial date again. This time the State was subject to a court order to respond to Price's motion to compel discovery. The court order stated that "in the event that the State fails to abide by this Order, the State shall be prohibited from producing any witness, or evidence at trial or hearing which relates in any way to the State's non-disclosure." *Id*. at 265. The State had 10 days to respond in writing to the defense. On August 12, 2002, the Court had a hearing on the State's motion. The State said it had not received DNA analysis of evidence submitted to the crime lab on May 10, 2002. The State said the lab requires a subpoena with a trial date before conducting the analysis and that the State didn't know they were to advise the lab of the trial date, but that even if they had known, the analysis would not be ready for the August 12th trial date as it takes them four to six weeks to do testing. The State argued that the *Hicks* date doesn't run until the end of November and the case was just indicted at the end of May and is very serious. The trial court characterized the State's request for a continuance as a "pitiful excuse" and refused to keep Price "sitting in jail" and denied the motion for continuance. The State believed the DNA evidence was needed as part of its case and declined to go to trial without it so it entered the charges nolle prosqui. The State said it would be getting a new charging document that day; however, the State obtained an indictment on the identical charges five weeks later on September 19, 2002.

Price thereafter filed a motion to dismiss for violation of *Hicks* and the hearing on the motion was held on November 27, 2002. Price argued that he consistently demanded compliance with *Hicks* and the court's order compelling discovery. The November 27th hearing was after the 180 day mark. The discovery order had not been complied with before the State even nol prossed the first indictment. Price argued that the State nol prossed to get around the order compelling discovery and to get around *Hicks*. The State countered that it nol prossed on the 83rd day and there were 97 days remaining to reset the case and that the sole purpose of requesting a continuance was to get DNA testing done.

The COA found that the administrative judge expressly found that there was no good cause for a continuance, thus the State had to go forward and risk getting an acquittal or dismissing the case. To avoid those results the State nol prossed the case. The COA concluded that this was for the purpose of circumventing the authority and decision of the administrative judge. The State was in the position of being in violation of a discovery order and risked sanctions for non-compliance. The nol pros had the necessary effect of circumventing that order. The COA affirmed the trial court's denial of the continuance and the CSA decision.

4. The nol pros had the necessary effect of circumventing the rule in Alther v. State

In *Alther v. State,* 157 Md.App. 316 (2004), Alther was charged in the district court with first degree rape and nine other related offenses on September 17, 2002. On October 28, 2002, the State filed a new charging document in circuit court reducing the charges to six counts and eliminating first degree rape. On November 6, 2002, defense counsel entered his appearance and demanded a speedy trial. Trial had to occur on or before May 5, 2003. Trial was initially scheduled for January 13, 2003. On December 31, 2002, the State requested a postponement which was granted over Alther's objection. Trial was rescheduled for March 27, 2003. On February 24, 2003, the State requested another postponement which was granted over Alther's objection. Trial was rescheduled for May 1, 2003 (four days before Hicks). On March 24, 2003, the State decided to re-charge first degree rape and the State filed a new charging document in district court on March 28, 2003. A preliminary hearing was set for April 23, 2003. On that day the first degree rape charge was charged in the circuit court and the State moved to consolidate this charge with the charges already contained in the October 2002 charging document, so as to bring the first degree rape charge into the May 1, 2003 trial. Alther opposed this motion. On April 30, 2003, the circuit court denied the State's motion to consolidate and indicated that there would be no postponement of trial.

On May 1, 2003, the State nol prossed the charges in the October 2002 charging document, now leaving the sole first degree rape charge. On May 2, 2003, the State filed in district court a new charging document with ten charges, not including first degree rape, but including related charges. A preliminary hearing was scheduled for June 11, 2003. The State then filed a charging document containing the same ten charges in circuit court, planning to proceed on both these charges and the first degree rape charge together at trial on August 6, 2003. In June 2003, Alther filed a motion to dismiss all charges based on a violation of *Hicks*, arguing that the nol pros of the replacement charge and the re-filing of the ten charges was a deliberate attempt to circumvent the 180 day requirement. The circuit court denied the motion to dismiss finding that the State was not acting to circumvent the 180 day rule.

The CSA found that by entering the nol pros, the State effectively circumvented the decision of the circuit court denying its motion to consolidate. This Court addressed an analogous situation in *Price,* 152 Md.App. at 653, where the State entered a nol pros after an administrative

SPEEDY TRIAL , Con't

judge determined that the State had failed to show good cause as to why it deserved a continuance. When the court denied the State's consolidation request, the court expressly indicated there was no good cause for a postponement. *Alther*, 157 Md.App. at 336. Although the State contends that it was prepared to go ahead with its case on May 1, 2003, there is no possible way the case could have been re-filed and tried in just four days once the nol pros was entered. The State did not have alternatives on May 1st and the court had made a judicial determination with respect to the scheduling of the case where it specifically denied the State's request to consolidate the charges prior to the nol pros and indicated that it would deny a postponement, if requested. *Id*. at 338. Thus the entering of the nol pros four days before *Hicks* had the necessary effect of circumventing the rule. *Id*.

5. The nol pros was not entered for the purpose of circumventing the rule but it did have the necessary effect of circumventing the rule in Wheeler v. State

In *Wheeler v. State*, 165 Md. App. 210 (2005), the defendant was indicted for murder in September, 2002. The State's theory was that Wheeler was the getaway driver for the two shooters. On February 14, 2003 the crime lab conducted a DNA analysis on some of the items that were recovered from the getaway vehicle and there was no match to Wheeler's known DNA sample. The State contacted defense counsel seeking a continuance to test the remaining items. Trial was previously set for March 3, 2003. On the day of trial, the prosecutor requested the continuance for additional DNA testing. 19 days remained in *Hicks*. The trial court denied the continuance noting it did not amount to good cause. The prosecutor then entered a nol pros to the case "in light of the court's decision denying the State's request for continuance and in light of the fact there's been an ongoing investigation."

One month later DNA testing was completed and Wheelers's DNA matched a t-shirt on the driver's side floorboard of the getaway van. The State then filed a new application for statement of charges and Wheeler was arrested and indicted. The prosecutor tried to schedule the 2nd trial within 19 days of Wheeler's second indictment because that was how much time was left in the original 180 day period. The Court granted the emergency motion to advance trial date and set trial for July 28, 2003. Wheeler appeared in court, but no one from the public defender's office had entered their appearance so the case was postponed. Wheeler then filed a motion to dismiss the indictment, alleging that by entering a nol pros of the first indictment, the prosecutor intentionally tried to circumvent the requirements of the 180-day rule. A hearing was conducted on the motion.

At that hearing, the prosecutor who entered the nol pros testified that one month prior to the first trial, she asked the DNA lab to expedite the analysis because the lab hadn't started testing yet. The lab told the prosecutor it would not be completed in time for the first trial. The prosecutor and the analyst then picked the most valuable pieces of evidence to analyze. All of the items for analysis, except for the oral swab from Wheeler, had been in the State's possession since August 2, 2002 but she had not tested them because she believed she was going to resolve this case by way of a plea. The prosecutor initially had cooperation plea discussions with an attorney who intended to be retained by Wheeler, but ultimately was not retained. Then the public defender's office entered on September 23, 2002. The prosecutor gave that lawyer a plea letter on October 30, 2002 but heard nothing in November, and by December 30, the prosecutor worried the case would not be resolved by way of a plea which the prosecutor said she anticipated.

The prosecutor also testified that the DNA lab could not test the other items within the 19 days remaining in *Hicks*. The prosecutor testified that she could not have gone forward with the trial against Wheeler on March 3rd. The prosecutor testified it was not her intent to circumvent the 180 day requirement, but rather to stop the trial proceedings so she could finish up the DNA analysis. The motions judge, without comment, denied Wheeler's motion to dismiss the indictment based on *Hicks* and Wheeler was tried on the second indictment and convicted.

On appeal, the CSA concluded that the motions judge did not err in finding that the nol pros was not entered for the purpose of evading the 180-day requirement because the prosecutor was operating under the erroneous belief that she could stop the prosecution and carry the remaining 19 days forward in the second prosecution. *Id.* at 232. However, the mistaken belief did not save the entry of the nol pros from having the "necessary effect" of circumventing the 180 day rule. This is because, as in *Curley* and in contrast to *Brown*, the State could not have proceeded to trial against Wheeler on the date of the nol pros or in the ensuing 19 days. The CSA said that *Wheeler* closely resembles *Ross*. As in *Ross*, the prosecutor requested a continuance on the date of trial and that request was denied. In both cases, the presiding judge found the absence of good cause to continue the case or to go beyond *Hicks*. As in *Ross*, the State immediately entered a nol pros. Because the nol pros had the necessary effect of avoiding the *Hicks* rule the CSA vacated the judgments and remanded with direction to dismiss the charges against Wheeler.

Next Article

In the next article we will continue our discussion of *Hicks* issues and discuss those cases where the dismissal of cases was held not to be violative of *Hicks,* CP 6-103 or Maryland Rule 4-271.

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

“Brown Bag Lunch”

February 5, 2015

Speakers: Judge DaNeeka Cotton and
Sharon Y. Christmas-DeBerry, Trust Attorney

“Guardianship and Everything Attorneys Need to Know When Seeking Guardianships on Behalf of Clients”

PGCBA Community and Public Service Program

2015 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 $102,000 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 sent 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 2015.

SCHEDULE

March 2015 – Begin advertising the availability of the community service funds.

March 16, 2015 – The application process will be opened and the committee will begin to receive applications **via email at rhadden@pgcba.com**

May 15, 2015- The application process will be closed and no applications will be accepted after 5:00 PM on the 15th of May.

July 2015 – The recipients of the community service funds will be announced.

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RECENT MARYLAND CASES | *By Erin Hebert Cancienne, Esquire, DeCaro Doran Siciliano Gallagher & DeBlasis, LLC*

State v. Joseph William Payne & Jason Bond –

Qualifications of Police Detectives as Expert Witnesses

During a murder investigation, detectives recovered a scrap of paper from the bedroom of the victim, Glen Stewart, containing two names and associated phone numbers. From one of those names and the related phone records, detectives identified numbers associated with other people, including the two defendants in this case. This led to a further collection of phone records and resulted in thousands of pages of phone records being obtained. This information was narrowed down to less than two pages, which contained the timeframe from August 26 to August 27, 2007, under the headings of "Duration", "Direction", "Dialed", "Beginning Tower", "Ending Tower", "Lat" and "Long". These pages were admitted into evidence during the joint criminal trial of Payne and Bond.

Both men were convicted of felony murder and kidnapping, along with the use of a handgun in the commission of a felony. These convictions were based, in part, on the testimony of a detective who testified that by interpreting the cell phone records for the period from August 26 to August 27, 2007, he was able to determine the location of cell phone towers through which particular calls were routed and to plot the locations of those towers on a map in relation to the crime scene. The detective was never qualified as an expert under Maryland Rule 5-702. The defense attorneys had objected to this testimony from a non-expert. However, the trial court allowed the jury to hear it.

The Court of Special Appeals and the Court of Appeals reversed Payne's and Bond's convictions, ruling that the trial court erred in admitting the testimony without his having been qualified as an expert witness. The detective needed to be qualified as an expert under Maryland Rule 5-702 before being allowed to testify as to his process for determining the communication path of Payne's and Bond's cell phones, as well as his conclusion that the cell towers were the most pertinent to the case. Expert testimony is governed by Maryland Rule 5-702, which provides that expert testimony "may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue."

The detective in this case engaged in a process to derive his conclusion that Payne's and Bond's cell phones communicated through the cell towers that was beyond the ken of an average person; his conclusions regarding the communication path also required that he be qualified as an expert witness.

Asphalt & Concrete Services, Inc. v. Perry -

Admissibility of Lack of Insurance

Morgan Perry was struck by a dump truck and suffered significant injuries. He sued the driver, the owner of the dump truck, and Asphalt & Concrete Services, Inc. ("ACS"). The dump truck was carrying materials on behalf of ACS at the time of the accident. The driver did not have a valid driver's license and his insurance had been revoked for non-payment.

By the time of the trial, the main defendant was ACS. At trial, Perry moved into evidence the driver's failure to maintain insurance, over ACS's objection. The Court admitted the evidence, stating that it was relevant to the claim of negligent hiring. The jury returned a verdict in the amount of $529,520 against ACS and found that Johnson was both an employee of ACS and that ACS negligently hired Johnson. ACS appealed.

The Court of Special Appeals addressed the propriety of admitting the insurance information. Generally, Maryland Rule 5-411, prohibits the admission of evidence related to insurance. However, there are some exceptions to the rule, specifically for claims regarding negligence hiring. The lack of insurance was evidence of negligent hiring, since insurance was a necessary predicate for operating a dump truck on the road. Even so, admission of this evidence was only proper if it was a proximate cause of the harm.

Proximate cause consists of two elements: (1) cause in fact and (2) legally cognizable cause. Causation in fact raises the threshold question of "whether the defendant's conduct actually produced an injury." Two tests are used to determine whether cause in fact exists, "the 'but for' test and the 'substantial factor test.'" The "'but for' test applies when the injury would not have occurred in the absence of the defendant's negligent act." The "substantial factor" test appears when "two independent causes concur to bring about an injury, and either cause, standing alone, would have wrought the identical harm."

In this case, that the lack of insurance for non-payment was not a proximate cause of the collision with Perry. Without this causal connection, admission of Johnson's lack of insurance was prejudicial to ACS. The Court reversed the judgment for Perry and remanded for a new trial.

Hiob, et al. v. Progressive American Insurance Company, et al.

Final Judgment- Time for Filing Appeal

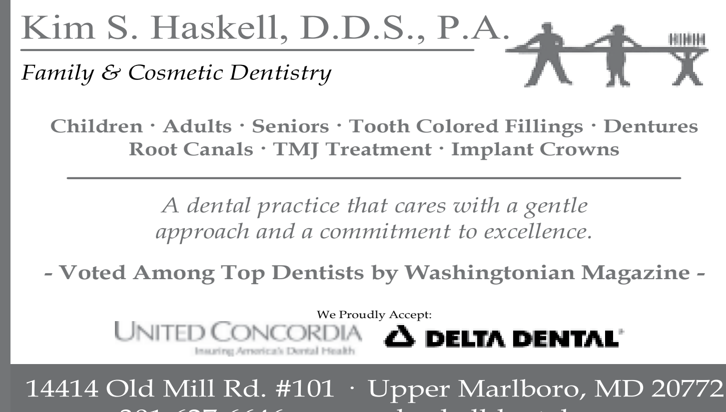
This case considered when a final judgment occurs that would start the 30-day clock for filing a notice of appeal. In this case, there were multiple plaintiffs and defendants. All of the plaintiffs had claims against one defendant, but that defendant was awarded summary judgment in October 2009 as to all of the plaintiffs. Only one plaintiff had a claim against the co-defendant. The award of summary judgment as to the first defendant was not

a final judgment as it did not resolve the claim against the second defendant. The claim as to the remaining co-defendant was voluntarily dismissed by means of a voluntary stipulation of dismissal, which was filed in January 2011. At the same time the Stipulation of Dismissal was filed, a “Motion to Reduce Order of October 7, 2009 to Final Judgment” was also filed with the trial court. On February 8, 2011, the Motion to Reduce was granted and the Order stated that final judgment was entered. That Order was not docketed until February 25, 2011.

The Plaintiffs appealed the earlier adverse summary judgment ruling as to the first defendant on February 15, 2011. This Notice of Appeal was filed prior to the docketing of the Order, but more than 30 days since the Stipulation of Dismissal was docketed. The question arose as to when the 30 days to file an appeal began to run. The Defendant challenged the Notice of Appeal as untimely because it was filed more than 30 days after the Stipulation of Dismissal was docketed. The Plaintiffs argued that the Notice of Appeal was timely as it was filed prior to the docketing of the Order.

Under Maryland Rule 8-202(a), a “notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.” The date of entry of judgment is determined under Maryland Rule 2-601. Under that rule, a final judgment is not effective unless it is set forth on a separate document and is entered on the docket. The date on which the separate document is docketed triggers the 30-day deadline for filing a notice of appeal under Rule 8-202(a).

The Court of Appeals held that the stipulation of dismissal did not satisfy the requirements of Rule 2-601 for a separate document. The Court noted that the stipulation of dismissal was not in the form of a judgment, was not signed by either the judge or the clerk as required by the rule, and was not docketed consistent with the rule. As such, the Court concluded that the docketing of the stipulation of dismissal did not trigger the time for filing an appeal of the order awarding summary judgment. The Court held that the requirements of Rule 2-601 were satisfied only when the trial court subsequently signed the Order that incorporated the summary judgment ruling into a final judgment and that order was entered on the docket. Because the plaintiffs filed a notice of appeal between the signing and the docketing of that order, the Court held that the appeal was timely.



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It's that time again - Christmas in April time! This organization repairs the homes of the elderly and/or disabled residents of Prince George's County that are unable to help themselves. The event is scheduled for April 25, 2015, rain or shine. We will be partnering with the J. Franklyn Bourne Bar Association to repair the home of an elderly woman, ShaRon Kelsey will be the house captain. The home requires interior painting, power washing of the house exterior and fence along with bringing the handicap ramp back up to code. We will need help as well as donated supplies. Any and all skilled and unskilled persons and/or persons with contacts, please email me at MEMcNeil@co.pg.md.us.
Cash donations are also accepted for hardware supplies and refreshments for volunteers.

If you cannot make the event, please visit www.christmasinaprilpg.org and make a donation of any kind to Christmas in April by clicking on the GoFundMe link. Thank you, in advance, for your help with this most worthwhile organization.

Maurene McNeil
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January 22, 2015

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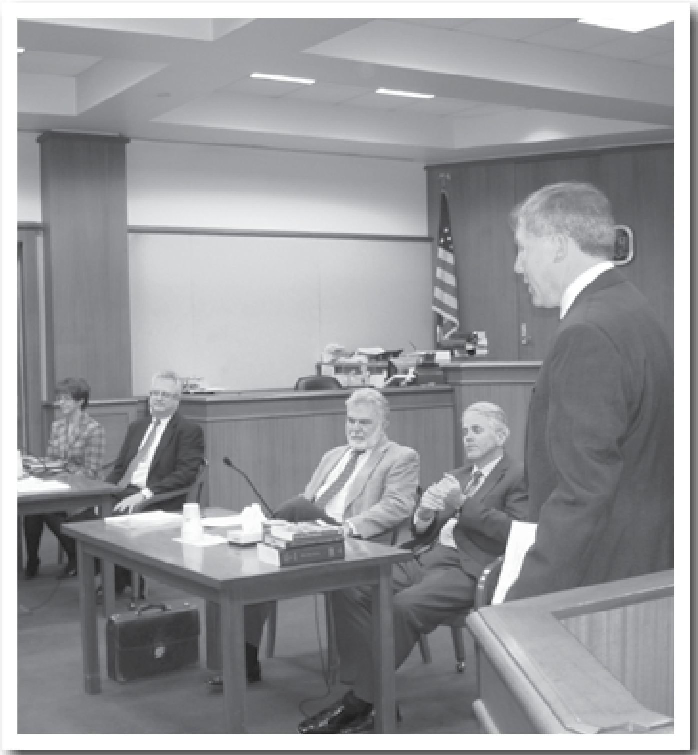

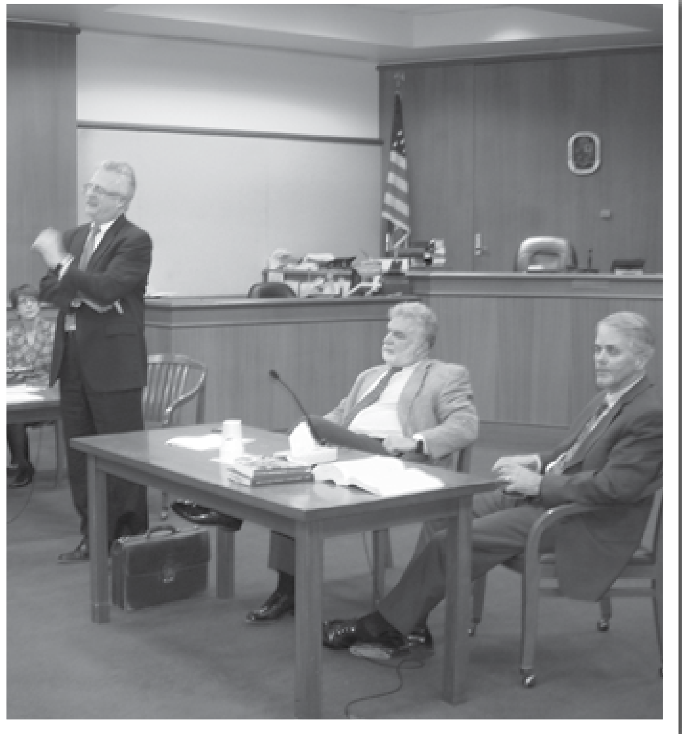

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The title sponsor, Clay Goldsborough of the First Financial Group invited a few of his celebrity and Redskin friends including Rick "Doc" Walker and others. Over 115 golfers enjoyed the course and networked during lunch. The golf clinic had an impressive number of participants who also stayed for the network luncheon. The event could not have been such a success without thanking our sponsors. The PGCBA would like to publicly acknowledge our sponsors of the 2014 golf outing:

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This year the tournament is on June 23, 2015, again at Lake Presidential Golf Club. Get your foursomes together early. For more information contact the Prince George's County Bar office at 301-952-1442.

The Prince George's County Bar Association
Golf Committee

Pictured with PGCBA Members are Marcus Johnson, Jazz Artist and Musician and Brian Mitchell, former running back for the Washington Redskins.

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The NewsJournal is published nine times a year by the PGCBA. We welcome the submission of articles and other items of interest to the Bar members and also encourage your comments on the NewsJournal's articles, columns, and letters.

The PGCBA may reject or suggest edits for content, style and length of any submission. Anonymous submissions are not published. The views expressed in the articles, letters and columns reflect the opinions of the authors and may not reflect the views of the PGCBA, its officers, or directors.

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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 February 1, 2015 until January 31, 2016. **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.

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

On February 10, 2015 the CLS Pro Bono Family Law Clinic bid a tearful farewell to **Nakia V. Gray, Esq.**, of *Joseph, Greenwald & Laake*. Ms. Gray has led the Clinic for the past three years with dedication and gusto. Every first Tuesday of the month, CLS volunteer attorneys made the pilgrimage to her office to attend the Clinic. Ms. Gray gave practical and tactical advice on practicing family law, handling cases, working with clients, and more. Karin Dalichow, Esq., from our staff presented Nakia with a Plaque of Appreciation on behalf of CLS. We hope that the Clinic will continue. Please contact Karin Dalichow at dalichow@clspgc.org to get an update on or sign up for the Clinic.

We are grateful to announce that **Nakia V. Gray** has joined our Board of Directors. We welcome our additional new board members: **Anthony Davis II, Esq.**, **Benjamin E. Dzieketey**, **Hon. Ann Wagner-Stewart** and **Edwin J. Shim, Esq.** We look forward to working with all of you!

"WE HONOR OUR PAST, SHOWCASE THE PRESENT AND INSPIRE OUR FUTURE"

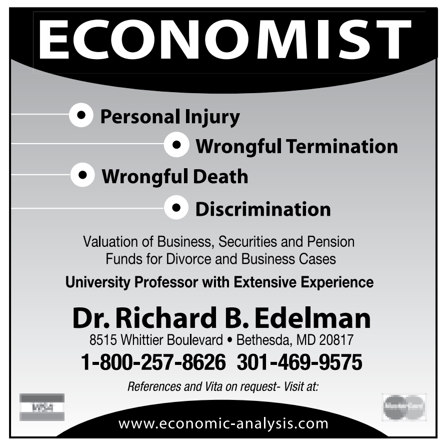
Our Annual **Pro Bono Awards Reception & Silent Auction** will be held at the United States Courthouse in Greenbelt, Maryland on April 30, 2015. We will honor our top volunteer attorneys. A special recognition of CLS Past President the **Honorable Julia B. Weatherly** will take place. Please mark your calendars.

We are accepting items to be auctioned. Typically items that have been donated in the past for this event include weekend getaways, wines, resort packages, sports tickets/packages and memorabilia items, luxury items such as handbags, upscale restaurant gift cards, retail gift cards, and the like. CLS also accepts contributions which help to fund the event. Please submit your donations early. Your generosity is appreciated and will help CLS to continue to fulfill the mission of the organization to provide legal services to the indigent.

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. Please contact Michael Udejiofor 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.



The Jaklitsch Law Group

Welcomes Matt Trollinger to the Firm

Matt Trollinger

The Jaklitsch Law Group is pleased to announce that **Matt Trollinger** has joined the firm. Native Marylander, Matt comes to the JLG with more than five years of trial experience as an advocate for the rights of injury victims.

Matt graduated with a law degree from Regent University in Virginia Beach, Va. He is a graduate of the International Law & Human Rights Program in Strasbourg, France and studied abroad at Oxford University, Hertford College in Oxford, England. He will be handling a variety of personal injury cases including auto and truck crashes, throughout Maryland.

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BAR ASSOCIATION LEADERSHIP OPPORTUNITIES

Positions Available: Secretary – Director

PGCBA's Nominating Committee, chaired by Immediate Past President, Jennifer Muskus, is seeking candidates for the positions of Secretary and Directors for the Prince George's County Bar Association Board.

The deadline for submitting applications is Friday, April 10, 2015. Elections will be held at the Bar Association's Annual Meeting on Tuesday, June 9, 2015.

Minimum qualifications for an officer position are delineated by the By-laws. Generally, anyone who has been an Active PGCBA member in good standing for two years and has served on the Board OR as a chair or co-chair of a standing or special committee or section for two years may be a candidate for the office of Secretary.

Any active member currently in good standing may seek nomination as a candidate for a two-year term as a Director. The Board of Directors generally meets the first Tuesday of each month (depending upon scheduling) except for June and/or July, when the annual Retreat is held. The regular Board meeting schedule is determined by the President at the beginning of the new Bar year.

The Board of Directors manages the affairs of the PGCBA and provisions of the PGCBA Bylaws state in part that a nominee for a directorship commits that:

1. **he or she will serve as an active member of the Board and chair or liaison of at least one committee or section;**
2. **miss no more than two Board meetings without good cause and;**
3. **attend the Board's annual retreat.**

Anyone who would like to be considered for the position of Secretary or Director is requested to fill out the Application for Bar Leadership form and return the form, together with a brief summary of professional and bar activities, with a current photo through email to the Bar Association office, at rhadden@pgcba.com prior to the Friday, April 10, 2015 deadline. Questions may be directed to Immediate Past President Jennifer Muskus at 301-651-5270, or to Robin Hadden at 301-952-1442.

APPLICATION FOR BAR LEADERSHIP
DEADLINE FOR SUBMISSION: April 10, 2015

TO: Jennifer Muskus
Prince George's County Bar Association
14330 Old Marlboro Pike, Upper Marlboro, MD 20772-2840

Applicant: ______________________________

Firm: ______________________________

Address: ______________________________

____

Please check a box: Secretary [ ] Director [ ]

Please email the form, a brief summary of professional and bar activities with a current photo

TO RHADDEN@PGCBA.COM NO LATER THAN FRIDAY, APRIL 10, 2015

(PHOTOCOPIES OF THIS FORM ARE ACCEPTABLE)

THIS APPLICATION IS ALSO AVAILABLE AT WWW.PGCBA.COM

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DISTRICT COURT

ROUNDTABLE SYMPOSIUM

(formerly the District Court Town Hall Meeting)

WEDNESDAY, MAY 6, 2015
1:30 PM – 4:30 PM

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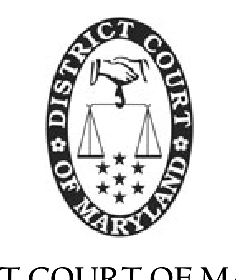

Tiffany H. Anderson
Administrative Judge

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District Five

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Upper Marlboro, Maryland 20772
(301) 298-4081

Hyattsville District Court Building
4990 Rhode Island Avenue, Suite 250
Hyattsville, Maryland 20781
(301) 298-4220

February 13, 2015

OUR BENCH MEETINGS DATES HAVE CHANGED*
There are two months – ***March*** and ***October*** when the bench meeting will **NOT** take place on the first Wednesday of the month.
There will be no afternoon dockets on these dates.

2015 Bench Meeting Dates

Wednesday, January 7

Wednesday, February 4

Friday, March 6*

Wednesday, April 1

Wednesday, May 6

Wednesday, June 3

Wednesday, July 1

Wednesday, August 5

Wednesday, September 2

Friday, October 9*

Wednesday, November 4

Wednesday, December 2

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LEG 520 - Effective Presentation of Damages in a Civil Jury Gain knowledge on how to prepare and present a claim for damages effectively in a civil jury trial. Learn what is beneficial and what is detrimental to enhancing a jury's award for damages. Learn the fundamentals of analyzing the types of damages, documenting the extent of the injury and assesses the injury's effect on the plaintiff as well as how to maximize the size of the award. *$55.00 (add $10.00 if out of county)*

Speakers: Allen Cohen, Esq. & Deborah Potter, Esq

When: March 24, 2014 6–8:15 pm

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

Coming Soon

Medicaid Planning
Candace Beckett, Esq. and Elena Boisvert, Esq.
April 28, 2015

Mediation Seminars and Trainings

LEG 396 – 20 hour Child Access Mediation Training: *$350.00 ($355.00 if an out-of-county resident) Note: This training meets Maryland Rule, Title 17-104(b)(2) requirements for mediating child access disputes.*

Speakers: Robert A. McFarland, Esq., Patricia Cummings, LCSW-C

When: April 9-11, 2015

Where: Room 134, Center for Applied Learning Technologies (CALT) Bldg.

LEG 358 - Mediator Ethics: Confidentiality: Examine mediator's and parties' responsibility for confidentiality, including communications during mediation, confidentiality of written agreements, permitted disclosures, and admissibility of discoverable material. Develop strategies for handling confidentiality issues during a mediation session. *$50.00 ($60.00 if an out-of-county resident)*

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

Speaker: Nancy Hirshman

When: April 29, 2015 6–8:15 pm

Where: Room 253, Careers (CRSC) Center

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

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2 lines (minimum) $15,
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Deadline for Submission: 10th of
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CONFERENCE ROOM RENTALS

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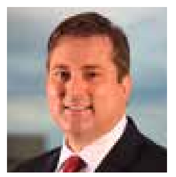

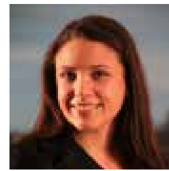

Joseph M. Creed | Anne E. Grover | Darin L. Rumer | Allison McFadden

Joseph, Greenwald & Laake, P.A. is pleased to announce that it has elevated Joseph M. Creed and Anne E. Grover from senior counsel to principals. In addition, Darin L. Rumer has been elevated from associate to senior counsel and Allison McFadden has been elevated from staff attorney to associate.

Mr. Creed is a member of the firm's Civil Litigation and Labor & Employment groups. Ms. Grover, Mr. Rumer and Ms. McFadden are members of the firm's Family Law group.

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