

BAR BULLETIN

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MARYLAND STATE BAR ASSOCIATION NEWSLETTER

FEBRUARY 15, 2018

Frederick Welcomes MSBA'S Velazquez



MSBA hosted a meet-and-greet with Executive Director Victor Velazquez for MSBA and Bar Association of Frederick County (BAFC) members on January 25, 2018, at La Paz Mexican Restaurant in Frederick. Approximately 75 people attended the event, designed to provide a social forum for bar members to interact and learn more about their bar associations.

BACF President Marshall Horman said that he is "excited by the movement toward" more collaborative and localized interactions between the State and Local Bars.

"So many [MSBA] events occur in the Baltimore-Washington corridor," said Frederick County Administrative Judge Julie Solt, an active member of both MSBA and BAFC. "Having something in Frederick makes it much easier for Western Maryland attorneys to come

and attend state bar functions."

"It's important that the State Bar is represented in all corners of the state," said Velazquez, "and our commitment is that we are going to be visiting every single county all year long to ensure that we are connecting to the local specialty bars and that we are connecting to

the attorneys that don't necessarily go to Baltimore, or the places where they think they would typically find the state bar."

Watch a video about the event at bit.ly/VelazquezFrederickVideo.

View more photos from the evening at bit.ly/VelazquezFrederickPhotos.



bit.ly/VelazquezFrederickVideo

MD Bar Foundation Honors Legal Excellence

By Patrick Tandy

Each year, the Maryland Bar Foundation (MBF) - MSBA's philanthropic arm - awards roughly \$60,000 to Maryland organizations working to promote MBF's shared goals of improving the administration of justice, fostering integrity of the legal profession, and continuing legal education.

But MBF also takes time to recognize people whose efforts to those ends go above and beyond the norm. On January 11, 2018, MBF honored five such individuals at its 25th Annual Professional Legal Excellence Awards Reception in College Park. This year's honorees included:

- **James Archibald, Esq.**, The Advancement of Professional Competence
- **Debbie Johnston, Esq.** (posthumously), The Steven P. Lemmey Legal Excellence Award for the Advancement of Public Service Responsibility
- **Laure Ruth, Esq.**, The Advancement of Advocacy of Justice
- **Hon. George Lipman**, The Advancement of the Rights of the Disadvantaged
- **Irwin Kramer, Esq.**, The Advancement of Public Understanding of the Law

"Many lawyers do lots of good work in the community and in the system of justice, but these are people that we think need to be recognized because they've gone so far above and beyond," said MBF President Natalie McSherry.

The more than 100 legal lumi-



naries in attendance included Chief Judge Mary Ellen Barbera, Court of Appeals of Maryland, who praised MBF for reminding the state's lawyers and judges "what a privilege it is to serve, what a noble profession [the law] is, and how important it is to the people we do serve."

Since 2000, MBF has awarded over \$400,000 in grants to nonprofits in support of projects that advance the MBF mission. Founded in 1965, the Maryland Bar Foundation is a non-profitable charitable corporation that, through its grants and contributions, works to foster and maintain the honor and integrity of the profession of the law; improve and facilitate the administration of justice; and promote the study of the law, the diffusion of legal knowledge, and the continuing education of lawyers. Learn more at www.marylandbarfoundation.org.

Enjoy a video from the Awards Reception at bit.ly/videoLEA.

View additional photos from the reception online at bit.ly/photosLEA.

MSBA Raises Over \$10k for Special Olympics Maryland by Participating in the 22nd Annual MSP Polar Bear Plunge



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FEBRUARY

17 You are invited to attend the **Asian Pacific American Bar Association, Maryland Chapter's Lunar New Year Gala** on Saturday, February 17, 2018 from 6:30 p.m. - 9:30 p.m. at Glenview Mansion, 603 Edmonston Drive, Rockville, Maryland 20851. To purchase tickets, and for more information, visit www.apaba-md.com/lny.

21 Join **MSBA's Law Office Management Assistance** for their webinar *Practice Dojo: Top 5 Cyber-crimes Threatening Lawyers in 2018* with Sherri Davidoff from 2:00 p.m. - 3:00 p.m. Register online at <https://attendee.gotowebinar.com/register/7552047680860409347>. After registering, you will receive a confirmation email containing information about joining the webinar.

22 This networking event from the **State & Local Government Section** will explore the impact of the First Amendment on expanded uses of social media in the government sector—from use by government employees to use by elected officials. Speakers include: Cynthia Peltzman, Senior Assistant County Solicitor, Howard County Office of Law, and Robert Drummer, Senior

Legislative Attorney, Montgomery County Council. Scheduled from 5 p.m. - 7 p.m. at the Arundel Center, 44 Calvert St, Annapolis, MD 21401. Register online at www.msba.org/eventpayment.aspx?eventid=14323. Law students may attend for free by RSVPing to Angela Munro (angela@msba.org).

24 MSBA's Young Lawyers Section is proud to sponsor the Wills for Heroes program to benefit the Prince George's County Fire Department on Saturday, February 24, 2018, at 16701 Melford Blvd., Suite 124, Bowie, MD 20715. 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 a.m. and ending at 4:00 p.m. 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. To volunteer, or to learn more about the program, contact Maryland Wills for Heroes coordinator Bill Kiniry at william.kiniryiii@dlapiper.com. You must pre-register as a volunteer with Bill Kiniry

in order to obtain malpractice coverage through Community Legal Services. YLS extends its thanks to Community Legal Services for co-sponsoring the event and providing malpractice coverage.

28 Join **MSBA's Law Office Management Assistance** from 2:00 p.m. - 3:00 p.m. for their webinar *Practice Dojo: A Lawyer's Ethical Duty to Maintain Data Security*. Mike Oliver, a tech-savvy Maryland lawyer discusses the ethical duty and steps one can take to maintain sufficient data security. Register online at <https://attendee.gotowebinar.com/register/5028042870813783554>.

MARCH

14 Join **MSBA's Law Office Management Assistance** from 2:00 p.m. - 3:00 p.m. for their webinar *Practice Dojo: Conveying Passion in Your Practice*. Join Artika Tyner, author of *The Lawyer as Leader and The Leader's Journey*, to discuss the power of finding and communicating your authentic brand to build clients. Register online at <https://attendee.gotowebinar.com/register/7951476063791267074>.

22 Join the **Maryland Volunteer Lawyers Service (MVLS)** for another slam dunk event at their March Madness Benefit. From 6:00 p.m. - 9:00 p.m. at M & T Bank Stadium, 1101 Russel Street, Baltimore, MD 21230. Enjoy upscale tailgate fare, open beer and wine bar, live music, exciting silent auction, interactive basketball games and more! All funds raised from this event supports MVLS' mission of providing quality civil legal services to low-income Marylanders. Purchase tickets and find more information online at <https://mvlslaw.org/2018benefit>.

24 Save the Date for **Anne Arundel Bar Association's** Barrister's Ball 2018. The Anne Arundel County Bar Foundation cordially invites you to join them for an evening of dining, dancing and celebrating those who have served our country. From 6:00 p.m. - 10:00 p.m. at the Navy - Marine Corps Memorial Stadium, 550 Taylor Avenue, Annapolis, MD United States 21401. Additional information and tickets available online at <http://www.aabar.org>.

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MSBA Ethics Hotline

FEBRUARY

HON. WILLIAM A. SNODDY
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(301) 952-3808

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MARCH

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Members should address their written ethics inquiries to Patricia Weaver, Chair, Ethics Committee, 4800 Hampden Lane, Suite 700, Bethesda, MD 20814, or call (301) 951-9360, or e-mail tweaver@paleyrothman.com. Opinions of the Ethics Committee are available online at www.msba.org. Please consult the Rules and MSBA Ethics Opinion Website before calling.

The McCammon Group

is pleased to announce our newest Neutral

Hon. Daniel M. Long (Ret.)

Retired Judge, Circuit Court for Somerset County

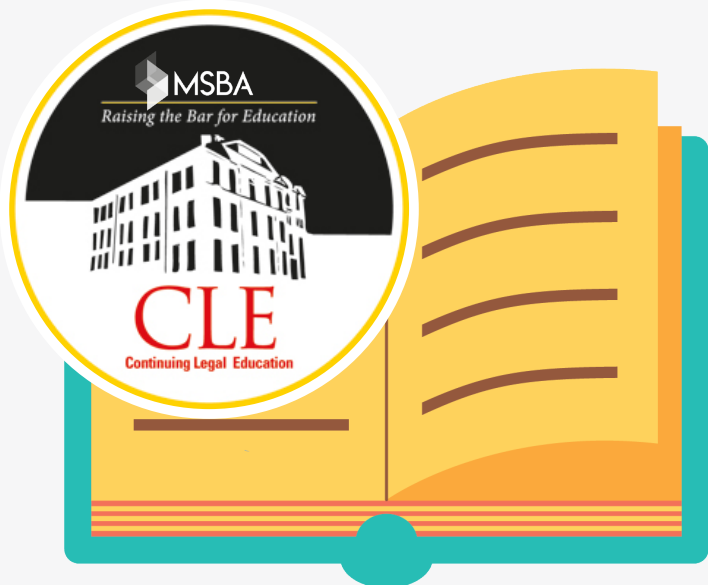
The Honorable Daniel M. Long recently retired after over thirty years of distinguished public service. Judge Long served as Judge for the Circuit Court of Somerset County for twenty-six years, during which time he served as Circuit Administration Judge and County Administrative Judge. Prior to his appointment to the bench, Judge Long was elected as a Member of the Maryland House of Delegates, where he served admirably for seven years while also maintaining a successful private law practice in Somerset and Worcester Counties. Judge Long is a Recipient of the Judge Anselm Sodaro Judicial Civility Award from the Maryland State Bar Association, and he was selected as 2015's "Judge of the Year" by the Litigation Section of the Maryland State Bar Association. Judge Long now brings this exemplary record of service and achievement to The McCammon Group to serve the mediation, arbitration, and special master needs of lawyers and litigants throughout Maryland and beyond.



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- MELVIN J. SYKES, ESQ.

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MSBA Young Lawyers Unlock Mysteries Behind “Coding For Lawyers”

The MSBA Young Lawyers Section (YLS) works tirelessly to help new attorneys better position themselves in a quickly evolving legal market. On January 24, 2018, YLS teamed up with Maryland Volunteer Lawyers Service (MVLS) and Legal Hackers Baltimore to present a free hands-on training on “Coding for Lawyers” at the University of Baltimore School of Law.

YLS Technology Committee Chair and MVLS Information Technology Director Matthew Stubenberg said his biggest hope was that the more than 100 registrants left the three-hour training “knowing that coding is not this

mysterious force that only people born with a super-genius IQ and have been studying math for years can do. It’s something that anybody can pick up, and I really hope a lot of these lawyers...really take this kind of information to heart and change their practice based on it. Try to find a document that can be automated. Try to find some data that can be aggregated. And really try to affect the way they help their clients [by] using IT and technology.”

Watch a video about the event at bit.ly/MSBACoding and view additional photos online at bit.ly/MSBACodingPhotos.



bit.ly/MSBACoding

Adelberg Rudow Turns 90

Happy 90th birthday to Adelberg, Rudow, Dorf & Hendler, LLC! The firm marked the occasion with an Open House at its Baltimore office on January 10, 2018.

Pictured, from left: Adelberg (and active MSBA) Members David B. Rudow, Geoffrey W. Washington, and Tracy L. Steedman. [Photo: Adelberg Rudow]



Thank you Ms. Ruth!

If you have telephoned MSBA Headquarters over the last 16 years, chances are Ruth Hooper (seated at center) answered your call. On January

24, the MSBA staff threw a retirement party for “Ms. Ruth”, who retired from the Association on January 31. Best wishes, Ms. Ruth!

PRO BONO Profile.....

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These statewide awards will be presented at the Maryland State Bar Association's Annual Meeting in Ocean City in June 2018. If someone you know has made an impact by donating their professional time and expertise, please consider nominating them for a 2018 Maryland Pro Bono Service Award.

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Jaci Jones, Marketing and Communications Coordinator
jjones@probonomd.org | 443-703-3053



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is on **THURSDAY, APRIL 26, 2018**

SNEAK PEEK AT SOME OF THE 2018 PANEL TOPICS:

- *Post-(In)equality: An Exploration of Legal Issues Impacting LGBTQ Marylanders*
- *The Safety Net for the Safety Net: Supporting Our Undocumented Immigrant Neighbors*
- *Access to Justice for Youth Experiencing Homelessness*
- *Fair Housing Act: New Frontiers after 50 Years*
- *Community Partnering -- Best Practices and Case Studies*
- *Pushing Back on School Pushout in Maryland*

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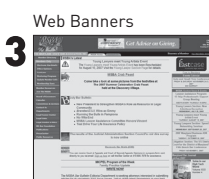
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THE YOUNG LAWYERS SECTION

is pleased to announce that the following
individuals have been nominated to serve as
officers for the 2018-19 bar year:

Chair-Elect: Nathaniel K. Risch

Secretary: Alicia L. Shelton

Treasurer: Elizabeth M. Rosen

The election shall occur at the annual meeting of the
Section. Any qualifying young lawyer seeking to file a
Petition of nomination shall submit a Petition signed by
not less than twenty-five (25) members of the Young
Lawyers Section. The Petition shall be submitted to
Jeffrey P. Bowman, Chair, Nominating Committee,
MSBA Section of Young Lawyers, 520 West Fay-
ette Street, Baltimore, Maryland 21201. Applications
may also be submitted via email to Angela Munro at
amunro@msba.org. The Petition must be received by
Tuesday, February 27, 2018 at 4:30 pm. If you have any
questions, please contact either Jeffrey P. Bowman
at 410-268-2255 or Angela Munro at 410-685-7878
extension 3016.

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Upcoming Practice Dojo Webinars

Join MSBA's Law Office Management Assistance program on the 2nd and 4th Wednesday of each month from 2-3 p.m. for our **Practice Dojo Series**. The series covers a wide array of topics, from practice management and marketing to work-life balance and technology. Speakers are ABA published authors and thought leaders who bring their passion and expertise to the MSBA. Each presentation will also be recorded and become available to members online.

FEBRUARY 21

*Top 5 Cybercrimes Threatening
Lawyers in 2018*
Sherri Davidoff

FEBRUARY 28

*A Lawyer's Ethical Duty
to Maintain Data Security*
Mike Oliver

MARCH 14

Conveying Passion in Your Practice
Artika Tyner

MARCH 28

*Preventing Cybersecurity Breaches
(and Recovering After One)*
Heinan Landa

For more information, contact
Charity Anastasio canastasio@msba.org

Expungement: Just Do It.

By Mimi Teahan

2018 New Year's Resolutions: lose weight, save money, expunge eligible cases. One of these is easily accomplished. And it doesn't involve stepping on a scale or skipping the line at Starbucks.

For the most part, I am a big fan of Maryland Judiciary Case Search. As a practitioner, I find it a quick and easy way to look up case numbers, to locate impeachment information on potential witnesses, and to double check that my new DUI client is correctly providing me with all of their outstanding tickets. I like that Maryland Judiciary Case Search is accessible to the public. I find many of my clients check on the status of their cases almost daily. By the time I call or email them to provide a new trial date notice, I often find that they are already aware of the information, as they have been checking the matter on Maryland Judiciary Case Search.

However, the very fact that Maryland Judiciary Case Search is such an accessible tool is the very reason why defense attorneys

should be pro-active about providing expungement services for clients with eligible matters. The tool allows potential employers to check the background of prospective employees. Maryland Judiciary Case Search allows one neighbor to check the background of other neighbors. A curious citizen with a computer and a free afternoon, can access a great deal of information through Case Search.

So, in light of all of this, I ask myself this question: How does it serve my client to have a prospective employer/neighbor/whomever know that he or she had a prior theft that was not prosecuted? It doesn't.

Many clients incorrectly assume that a criminal case that results in a nolle prosequi is automatically expunged. This is incorrect. While there have been a number of bills considered by the Maryland General Assembly which would provide such relief, as of this writing, none of them have been successful.

I volunteered at an expungement clinic in Silver Spring, Maryland where one of the participants had over ten cases eligible for expungement. He had a huge smile on

his face walking out of that clinic. I don't believe this individual is alone or unique. For most of my clients, I have found that a Petition for Expungement takes only minutes to complete.

Once granted, an expungement order is a gift that keeps on giving. It is impossible to calculate all the benefits. For the time investment, there are few legal documents that can carry as great an impact for a client as an expungement petition.

Expunge eligible cases in 2018: it's a New Year's Resolution all of us should keep.

Mimi Teahan is Senior Counsel at Ethridge, Quinn, Kemp, McAuliffe, Rowan & Hartinger, where she works primarily from the Frederick office representing clients in DUI, criminal and family law matters. For over twenty years, she worked as a trial attorney with the Office of the Public Defender, and also served as the agency representative in the Maryland General Assembly. She is a member of the Frederick County Bar Association, the Maryland Bar Foundation and the Maryland State Bar Association, where she serves on the Criminal Law and Practice Section Council, the Committee on Laws and the Board of Governors.



Prior Convictions – An Evidentiary Primer

By Robert C. Bonsib, Esq. & Megan E. Coleman, Esq.

This article provides a quick guide to what prior convictions may be used for impeachment of truth, veracity, and credibility of a witness, pursuant to Maryland Rule 5-609. It should be noted from the outset that Rule 5-609 has specific language that is not found in other rules on impeachment that relate to character of a pertinent trait, see Rules 5-404 and 5-405, or bias, interest, or motive, see Rule 5-616. Therefore, limits or expansions that the appellate Courts have given to Rule 5-609 should not prevent an advocate from trying to offer the impeachable offense/conduct under a different rule or based upon an another evidentiary theory.

In *State v. Westpoint*, 404 Md. 455, 473-79 (2008), the Court of Appeals (COA) highlighted issues presented when the question before the trial court is related to

the proper use of prior convictions, noting that it is difficult to draw distinct lines as to what crimes may be used to impeach. The Maryland law on this subject may be generally summarized as holding that to be admissible for impeachment purposes, a conviction must be either a felony at common law or a *crimen falsi* and thus infamous, or a lesser crime bearing upon the witness's credibility.

Stated another way, crimes, other than those that are infamous, whether misdemeanors or statutory felonies, fall into the class of lesser crimes and may or may not reflect on one's tendency to be truthful. If the crime being offered to impeach says nothing about the likelihood of the witness's propensity to be truthful under oath, it is irrelevant on that issue and should not be admitted.

If the prior conviction passes this relevancy test, then the trial court must determine if its probative value outweighs its prejudicial

effect. In other words, just because evidence is legally admissible does not necessarily require its admission. Only if the trial judge, in the exercise of his/her discretion, feels that the prior conviction rationally carries probative value on the issue of truth and veracity of the witness, should the evidence be admitted.

In *Jackson v. State*, 340 Md. 7-5, 712-13 (1995), the COA noted the three-part analysis that is applicable under Rule 5-609.

First, a conviction must fall within the eligible universe to be admissible. This universe consists of two categories: (1) infamous crimes, and (2) other crimes relevant to the witness's credibility. Md. Rule 5-609(a).

Second, if the crime falls within one of these two categories, the proponent must establish that the conviction is less than fifteen years old. Md. Rule 5-609(b).

Third, the trial court must weigh the probative value of the

impeaching evidence against the danger of unfair prejudice to the defendant. Md. Rule 5-609(c).

The COA reminded that:

The danger in admitting prior convictions as evidence to impeach the defendant stems from the risk of prejudice. The jury may improperly infer that the defendant has a history of criminal activity and therefore is not entitled to a favorable verdict. Such evidence may detract from careful attention to the facts, despite instructions from the court, influencing the jury to conclude that if the defendant is wrongfully found guilty no real harm is done. Where the crime for which the defendant is on trial is identical or similar to the crime for which he has been previously convicted the danger is greater, as the jury may conclude that because he did it before he most likely has

done it again. The net effect of such evidence is often to discourage the defendant from taking the stand.

Thus, the role of the trial judge takes on added importance. It becomes his function to admit only those prior convictions which will assist the jury in assessing the credibility of the defendant. The trial judge must weigh the probative value of the convictions against the prejudice to the defendant in asserting his defense.

Jackson, 340 Md. at 715-16, quoting *Ricketts v. State*, 291 Md. 701, 703-04 (1981).

To begin the discussion, it is necessary to first identify those offenses that fall into the universe of offenses that may be impeachable. The following Guide provides a quick index as to which offenses pass Step One as to impeachment admissibility.

A QUICK REFERENCE GUIDE TO IMPEACHABLE OFFENSES

STEP ONE: Is it an Impeachable Offense?

Arson	Yes	<i>Cure v. State</i> , 421 Md. 300, 324 (2011) *common law felony
Assault	No*	<i>State v. Duckett</i> , 306 Md. 503, 512 (1986) *but may be used to impeach character for peacefulness – <i>Williams v. State</i> , No. 25, Sept. Term, 2017 (COA January 19, 2018)
Assault on a Police Officer	No	<i>Thurman v. State</i> , 211 Md.App. 455 (2013)
Assault with Intent to Murder	No	<i>Thurman v. State</i> , 211 Md.App. 455 (2013) <i>Fulp v. State</i> , 130 Md.App. 157 (2000)
Attempt to commit second-degree murder	No	<i>Jones v. State</i> , 217 Md. App. 676, 708(2014)
Burglary	Yes	<i>Cure v. State</i> , 421 Md. 300, 324 (2011) *common law felony
Carrying a Concealed Weapon	No	<i>Anderson v. State</i> , 227 Md. App. 329, 340 (2016)
Conspiracy	Depends	<i>In re Gary T.</i> , 222 Md. App. 374, 386 (2015) – it depends on the object of the conspiracy, if the object is relevant to credibility, such as distribution of CDS in this case, then it is an impeachable offense, abrogating <i>Wallach v. Board of Education</i> , 99 Md. App. 386 (1994).
Disorderly Conduct	No	<i>Morales v. State</i> , 325 Md. 330, 339 (1992)
Drug Distribution (and PWID)	Yes	<i>Brewer v. State</i> , 220 Md. App. 89 (2014) <i>Summers v. State</i> , 152 Md.App. 362, cert. denied, 378 Md. 619 (2003) <i>State v. Giddens</i> , 335 Md. 205, 217 (1994)
Drug Manufacturing	Yes	<i>Carter v. State</i> , 80 Md.App. 686, 693 (1989)
Drug Possession	No	<i>Morales v. State</i> , 325 Md. 330, 339 (1992) <i>Lowery v. State</i> , 292 Md. 2, 2 (1981) <i>Cason v. State</i> , 66 Md.App. 757, 774 (1986)

Embezzlement	Yes	<i>Garitee v. Bond</i> , 102 Md. 379 (1905) <i>Fulp v. State</i> , 130 Md.App. 157 (2000) <i>Prout v. State</i> , 311 Md. 348, 360 (1988)
Failure to Register as a Sex Offender	No	<i>Correll v. State</i> , 215 Md. App. 483 (2013)
False Pretense	Yes	<i>Garitee v. Bond</i> , 102 Md. 379 (1905) <i>Fulp v. State</i> , 130 Md.App. 157 (2000) <i>Prout v. State</i> , 311 Md. 348, 360 (1988)
False Statement	Yes	<i>Garitee v. Bond</i> , 102 Md. 379 (1905) <i>Fulp v. State</i> , 130 Md.App. 157 (2000) <i>Prout v. State</i> , 311 Md. 348, 360 (1988)
Fleeing from a Police Officer	No	<i>Thurman v. State</i> , 211 Md.App. 455 (2013)
Fraud	Yes	<i>Garitee v. Bond</i> , 102 Md. 379 (1905) <i>Fulp v. State</i> , 130 Md.App. 157 (2000) <i>Prout v. State</i> , 311 Md. 348, 360 (1988)
Forgery	Yes	<i>Garitee v. Bond</i> , 102 Md. 379 (1905) <i>Fulp v. State</i> , 130 Md.App. 157 (2000) <i>Prout v. State</i> , 311 Md. 348, 360 (1988)
Indecent Exposure	No	<i>Ricketts v. State</i> , 291 Md. 701 (1981)
Manslaughter	Yes	<i>Hall v. State</i> , 233 Md. App. 118, 131 (2017) <i>Cure v. State</i> , 421 Md. 300, 324 (2011) <i>Hairston v. State</i> , 68 Md. App. 230, 235 (1986) *common law felony
Mayhem	Yes	<i>Cure v. State</i> , 421 Md. 300, 324 (2011) *common law felony
Murder	Yes	<i>Cure v. State</i> , 421 Md. 300, 324 (2011) *common law felony
Obstruction of Justice	Yes	<i>Garitee v. Bond</i> , 102 Md. 379 (1905) <i>Fulp v. State</i> , 130 Md.App. 157 (2000) <i>Prout v. State</i> , 311 Md. 348, 360 (1988)

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Perjury	Yes	<i>Garitee v. Bond</i> , 102 Md. 379 (1905) <i>Fulp v. State</i> , 130 Md.App. 157 (2000) <i>Prout v. State</i> , 311 Md. 348, 360 (1988)
Prostitution	No	<i>Matthews v. State</i> , 68 Md.App. 282 (1986)
Rape	Yes	<i>Cure v. State</i> , 421 Md. 300, 324 (2011) *common law felony
Resisting Arrest	No	<i>Banks v. State</i> , 213 Md.App. 195 (2013)
Robbery	Yes	<i>Facon v. State</i> , 144 Md. App. 1, <i>reconsideration denied, cert. granted and reversed</i> , 375 Md. 435 (2002) <i>Cure v. State</i> , 421 Md. 300, 324 (2011) *common law felony

Sex Offense 3rd Degree	No	<i>State v. Westpoint</i> , 404 Md. 455 (2008)
Sodomy	Yes	<i>Cure v. State</i> , 421 Md. 300, 324 (2011) *common law felony
Theft	Yes	<i>Cure v. State</i> , 421 Md. 300, 324 (2011) *common law felony
Traffic Offenses	No	<i>Morales v. State</i> , 325 Md. 330, 339 (1992)
Treason	Yes	<i>State v. Duckett</i> , 306 Md. 503, 512 (1986) <i>Garitee v. Bond</i> , 102 Md. 379 (1905) <i>Fulp v. State</i> , 130 Md.App. 157 (2000) <i>Prout v. State</i> , 311 Md. 348, 360 (1988)

What is a "conviction" and what may the jury learn about the conviction?

A conviction includes:

- A plea of nolo contendere followed by a sentence, whether or not the sentence is suspended.
- Evidence of juvenile adjudication may be admissible under the Confrontation Clause to show bias, see *Davis v. Alaska*, 415 U.S. 308 (1974) and Courts Article § 3-8A-23.

The jury may hear about the conviction only as to:

- The name of the crime
- The time and place of conviction
- The sentence received

The jury may not be told the underlying details of the prior conviction. *State v. Giddens*, 335 Md. 205, 222 (1994).

"The rule and statute are limited to final convictions and do not extend to pending charges. Thus, pending charges themselves are not admissible to attack credibility." *Peterson v. State*, 444 Md. 105, 135 (2015). It should be noted, however, that in the case of a witness testifying for the State in a criminal case, if the witness expects some benefit with respect to pending charges as a result of testimony on behalf of the prosecution, it is the answer to such a question that is admissible under Rule 5-616(a)(4). *Peterson*, 444 Md. at 135.

STEP TWO: Additional Prerequisites to the Admissibility of an Impeachable Conviction

Rule 5-609 provides threshold bars to the admissibility of a prior conviction. A prior conviction is NOT admissible if it is:

- More than 15 years old. This 15 year limitation is expressly written into Rule 5-609. The COA recently declined to read a 15 year limitation into Rule 5-404

where none exists, and allowed impeachment of a defendant's character for peacefulness with a conviction that was more than 15 years old. See *Williams v. State*, --A.3d--, 2018 WL 477341 (January 19, 2018).

- Pending an appeal (or the time for noting an appeal or filing an application for leave to appeal has not expired)
- Reversed on appeal
- Pardoned
- Stricken and a probation before judgment is entered (See *Molter v. State*, 201 Md.App. 155 (2011)).

STEP THREE: The Probative Value of the Prior Impeachable Conviction Must Outweigh the Danger of Unfair Prejudice to the Witness or Objecting Party

Rule 5-609 does not provide a per se ground for admissibility simply because the prior conviction is within the category of potentially admissible convictions. Even in those instances where the prior conviction passes Steps One and Two, the trial court must still conduct a balancing test to determine whether the probative value of the prior impeachable conviction is outweighed by its potential unfair prejudice to the defendant or a witness. In addressing how the trial court conducts this weighing process, the COA identified five factors for trial judges to consider when weighing the probative value of a past conviction against its prejudicial effects:

1. The impeachment value of the prior crime;
2. The length of time since the conviction and the witness's subsequent history;
3. The similarity between the past crime and the charged crime (the similarity between the prior conviction and the crime for which a defendant

is being tried does not *per se* preclude impeachment with that conviction. *Facon v. State*, 144 Md.App. 1, 47, 48, (2002), *rev'd on other grounds*, 375 Md. 435 (2003)).

4. The importance of the witness's testimony to the case, and the relative need for the evidence relevant to the witness's credibility; and
5. The risk of unfair prejudice, which is particularly high if the witness sought to be impeached is the accused, *King v. State*, 407 Md. 682, 704-06 (2009), and the prior conviction is for a crime similar to that for which the accused is on trial. See *Prout v. State*, 311 Md. 348, 364 (1998), *Jackson v. State*, 340 Md. 705, 717 (1995), *Cure v. State*, 421 Md. 300, 329-31 (2011).

An example of an instance when the trial court failed to properly conduct such a weighing occurred in *Beales v. State*, 329 Md. 263, 273-75 (1993) wherein the COA concluded that the trial court did not adequately conduct a balancing of a 14-year-old theft conviction in terms of the light it might shed on the witness's truthfulness against its potentially unfair prejudice to Beales' defense. It noted that the trial court's elliptical remarks did not sufficiently demonstrate that it assessed the relative weights of probative value and prejudicial danger. First, the trial court focused largely on the proper form of the impeaching question, rather than on its possible impact. Second, the trial court insisted that the State had a "right" to inform the jury of the witness' conviction, a word that suggests obligatory admissibility of the evidence, rather than discretionary admissibility based on the balancing test. Third, the trial court admitted the evidence knowing only that the witness had been convicted of theft, but not knowing when he had been convicted. The witness testified that his conviction was fourteen years old

only at the very end of the exchange, after the trial court had ruled. The remoteness of a prior conviction is a critical factor to be weighed in the balance. Here it was not.

As the COA noted as even more compelling, the Rule places a cap of fifteen years on prior convictions used to impeach. Had the witness's conviction been sixteen years old, it would have been barred altogether by the Rule. The trial court's failure to ascertain the vintage of the conviction before deciding the question indicates strongly that it adhered to the former law of impeachment permitting *per se* use of convictions of infamous crimes no matter how remote. The COA was concerned as the trial court let in the evidence solely because the witness had been convicted of theft, a *crimen falsi* and an infamous crime, as was proper under the old impeachment statute. The record thus demonstrated that the trial court did not appropriately apply the Rule. At the trial, the prosecution and the defense presented dramatically different accounts of the incident leading to Beales' arrest. The relative validity of those accounts depended largely on the credibility of the witnesses. The witness was a primary defense eye-witness, the observer closest to the scene of the altercation. His credibility was tainted, to a degree that the COA noted it could not specify without speculating, by evidence that he was a convicted thief. The State in its closing argument reminded the jury of that fact by saying: "Judge [the witness]. He told you he was convicted of theft. Why is that important? Not because he did it, but because he's been [Beales's] friend for ten years and maybe he's not telling the truth." Reviewing the record before it, the COA held that it could not say, beyond a reasonable doubt that evidence of the [witness'] theft conviction did not sway the jury that found Beales guilty of battery.

A REMINDER - A Limiting Instruction Should be Requested When Evidence of a Prior Conviction is Admissible

While criminal law practitioners understand the limitation the law provides concerning the use that may be properly made of prior convictions, the jury needs to be instructed that the conviction may be considered only with regard to the witness' credibility.

The Maryland Pattern Criminal Jury Instructions provide a pattern instruction as to this issue.

MPJI-Cr 3:22 -Impeachment by Prior Conviction

A. Defendant

You have heard evidence that the defendant has been convicted of a crime. You may consider this evidence in deciding whether the defendant is telling the truth, but for no other purpose. You must not consider the conviction as evidence that the defendant committed the crime charged in this case.

B. Witness

You have heard evidence that [defendant] has been convicted of a crime. You may consider this evidence in deciding whether the witness is telling the truth, but you cannot consider this evidence for any other purpose.

PRESERVATION OF THE PRIOR CONVICTION ISSUE

Does the election not to testify fail to preserve a ruling that a prior conviction is admissible?

In *Cure v. State*, 421 Md. 300, 321-23 (2011), the COA held that when a defendant elects to testify and, in so doing, testifies affirmatively on direct examination as to the existence of a prior conviction in order to "draw the sting out" of that conviction, he

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or she does not waive necessarily his or her right to appellate review of the merits of the trial judges' prior in limine determination that the prosecution may use the conviction for impeachment purposes.

The limited setting as to when this applies occurs where (1) the State makes clear that it intends to offer the conviction if the defendant testifies, (2) the defendant makes a clear objection to the evidence, (3) the court makes a definitive ruling, intended to be final, that the evidence will be admitted, and (4) the defendant testifies and, to blunt the force of the conviction, reveals it on direct examination.

In *Cure*, the prosecutor stated explicitly that "[t]he State would like to bring that up" (referring to the arson conviction), satisfying the first prong. As to the second prong, defense counsel made a clear objection during argument on the motion *in limine*, stating "Yes, Your Honor, and certainly we would object" to the trial judge's ruling "I'd let [the prior arson conviction] in." Fulfilling the third prong, the court made an unequivocal and definitive ruling allowing the use of the prior arson conviction for impeachment, but not the prior attempted murder conviction, offering nothing that would lead a reasonable person to believe that the trial judge would reconsider his decision on the motion. Moreover, when defense counsel advised Cure, before he elected to testify, that his prior conviction would be admissible for impeachment purposes, the trial court made no attempt to revisit the issue. Finally, satisfying the fourth prong, Cure testified to the conviction under direct examination in the defense case-in-chief in an obvious

attempt to blunt its force. Thus, the COA concluded that Cure did not waive the opportunity to seek appellate review of the admissibility of his prior arson conviction for impeachment purposes.

An example of where *Cure* may not be applicable occurred in *Dallas v. State*, 413 Md. 569, 573-76 (2010). The COA instructed that there are the times when a trial court can and, therefore, should decide a motion *in limine* involving a Rule 5-609 issue before the defendant makes the election. For example, when it is clear that a prior conviction is ineligible for impeachment under Rule 5-609, the court need not hear the defendant's testimony to know how to rule on a motion to exclude that proposed impeachment evidence. Similarly, the trial court certainly can recognize when the risk of unfair prejudice of the proposed impeachment evidence far outweighs its probative value, no matter how the defendant might testify. Moreover, the court may be satisfied that it has a sufficient basis upon which to make an *in limine* ruling without hearing the defendant's direct testimony if the court has learned, through other means, how the defendant is likely to testify. For example, a court may hear admissions that the defense makes during the defense's opening statement, or the court may accept a proffer of the defendant's direct testimony. In any of these circumstances, fairness to the defendant argues in favor of the trial court's ruling on the motion before the defendant elects to testify or remain silent.

However, in *Dallas*, the COA indicated that it remained for it to decide whether the trial court abused its discretion in deferring its ruling

on his motion *in limine* seeking to prohibit the State from impeaching him with evidence of his prior felony drug convictions.

During the lengthy discussion on the subject, the trial court explained that, in light of the similarity between the pending charges and the prior convictions, it was necessary to await Dallas' testimony before deciding whether the probative value of the proposed impeachment evidence outweighed the danger of unfair prejudice. To be sure, the trial court was aware that the defense to the felony charge was to concede the possession of the cocaine and marijuana the police found on Dallas but deny that the cocaine was for distribution. Yet, the court could not be certain what Dallas's testimony would be until the court heard it. The COA noted that the trial court, not unreasonably, envisioned that, had Dallas taken the stand, he might not have confined his testimony (consistent with counsel's opening statement) to a denial of an intent to distribute the drugs found in his possession; he might instead have testified that he had never before distributed illegal drugs. Had his testimony been consistent with defense counsel's opening statement, then the trial court might have decided that evidence of the prior convictions carried a risk of unfair prejudice. Had Dallas testified more expansively, the trial court might have decided that the State should be permitted to impeach him with the prior convictions. Given the plausibility of either scenario, the court was not required to rule on the motion without first hearing Dallas' direct testimony.

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The Cause of Action in Maryland Arising from Accidental Electrocution

Preparing the Civil Case

By Christopher L. Beard

The Electrical Safety Foundation International estimates the total economic losses in this country due to electrical hazards to exceed \$4 billion annually as last reported in 2006. On average 400 die from electrocution and 4,400 are injured each year because of electrical hazards in the United States. The importance of legal representation in these types of cases cannot be understated. The purpose of this article is to identify some of the issues that would confront an attorney representing family members most affected by this unexpected and horrific loss of a loved one.

Tools for Initial Investigation

Crucial in these types of cases is the ability to capture and preserve photographic and documentary evidence as well as arranging immediate evaluation by experts at the site. Electrocution cases may require a forensic pathologist, an electrical and a civil engineer.

Also, depending on the case, it may be necessary to consult with a construction safety expert. A licensed electrician is necessary

to inspect any wiring and electrical panels, especially where parts need to be removed or tested, for example, as to the voltage or the integrity of any wiring.

Proof of the significant emotional impact of the loss of a family member may require a psychiatrist or psychologist to perform an evaluation. In addition, an economist may be required to do a study of the monetary losses of the decedent that would affect his spouse or dependent children.

The client is well served by retaining an attorney who has a knowledge or rapport with a broad range of experts who can offer assistance in electrocution cases. Interviewing several candidates for retention is the key as expertise can vary for the type of case. Has the expert ever investigated an electrical shock arising from old residential wiring, for example? Has the one expert been qualified as an electrical engineer in court for a similar event?

Wrongful Death and Survival Claims

Wrongful death is an action separate from a survival claim. In a wrongful death

action, damages are measured in terms of the harm to others from the loss of the victim, and it is no different for an electrocution case.

The statutory basis for the survival action in Maryland is found at § 7-401 of the Maryland Estates and Trusts Code Annotated. This statutory provision permits the personal representative of an estate to bring a cause of action to recover damages that the decedent could have recovered if he had survived.

In a survival action, damages are measured in terms of the harm to the victim. The personal representative of the estate of that person brings a survival action on behalf of the deceased person. There, the personal representative seeks recovery for the injuries suffered by the decedent. Economic damages in a survival action, which are recoverable, include the decedent's lost wages and medical expenses incurred between the time of injury and death, in addition to funeral expenses of up to \$10,000.

Non-economic damages recoverable include compensation for the pain and suffering endured by the deceased person after the injury and before his or her death. It includes

compensation for such emotional distress and mental anguish as are capable of objective determination for pre-impact fright, which can be shown whenever death was protracted during the electrocution event because the electric circuit did not pass through the victim's head causing sudden loss of consciousness.

Experts in Electrical Current, aka Electricity

A licensed electrician can present based on his training, education, and experience, as to his opinions at trial as to approximate age, date of installation, model and manufacturer of electrical equipment as well as deficiencies and improper repairs in the wiring, electrical panels, and equipment.

The grounds for the opinion of an electrical engineer, on the other hand, can be based on his site inspection, review of the electrical codes and standards, photographic evidence, permits, records of local authorities, the power company, and the owner's most recent electrician, as well as his knowledge, training and experience,

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By Andrea Terry

Coming up in April is the Labor and Employment Law Section's popular Employment Law Institute. Held just every two years, experienced practitioners and jurists will present updates on state and federal law, provide views from the bench, administrative process and more. Join us in Columbia on April 18th, 2018 for this comprehensive program focused on topics critical to employment law practitioners. Go to msba.inreachce.com for more information and to register. If you cannot attend the live program in person, it will be concurrently webcast to enjoy anywhere in the state, and it will be available online, on-demand approximately 6-10 days after the live program. All online programming carries CLE credit with surrounding MCLE states just like our live programs. See below for details.

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MSBA LAWYER ASSISTANCE PROGRAM WELLNESS TIPSHEET

Letting Go of the Need to Control

By Lisa Caplan

What do we actually have control over? When I ask my clients why they need to be in control, I get a lot of answers, but one common response is that it helps them feel calmer and more relaxed when they know what is going on. If they don't have control, they feel agitated, nervous, frustrated, scared and even angry. So, I'm concluding that most people are on an emotional rollercoaster - feeling relaxed when they think they can control a situation and it goes their way, and anxious when they can't. It seems like this approach to life may result in a constant state of uncertainty, because we actually have control over very little. I'm guilty of trying to control too, but think about it, the only things that we can actually control are our

own actions and choices. We can't control other people, the weather, society, etc. Letting go of that need to control can free you from a lot of angst that you don't need.

Here are some tips to help you to start letting go of the need to control:

1. Admit to yourself that you need control. The first step in changing anything is to admit that you do it. Once you do, you can begin to make changes. Make a list of how you feel when you think you have control of a situation and when you don't. This can help you recognize the feelings behind your need to control.

2. Let go of the need to control. Once you recognize that you like to be in control, letting go of that need is empowering. When I realize that I don't have control over a situation I feel a sense of calm. I often ask

myself if I have control over a situation, and, if the answer is "no," then spending a lot of emotional energy on it is exhausting. Like anything, this takes practice and patience to look at a situation and decide to let go instead of trying to control.

3. Break it down. Since you know that you can control your own actions and choices, break down the situation to see what you can control. Usually what you find is that you can change your reaction to the situation and decide what is best for you.

4. Your way isn't necessarily always the best way. We often believe that we know best, and holding onto that belief can cause a lot of anxiety and emotional struggle. It can also cause us to make choices that don't turn out and may have had a better outcome if handled

differently. History repeats itself. If you often make choices that don't turn out well, then you will probably continue to do so. Maybe it is time to not control, and listen to someone else's ideas.

5. Take a mental and physical break. Sometimes we just need to take a step back physically and emotionally from a situation to get clarity. Everyone does this differently. I start each day with less than 10 minutes of yoga and stretching. It helps to ground me before I start my day. It also helps me manage the rest of my day and be able to take a deep breath when my day gets stressful. You may want to step away from your desk and go for a walk around the building or down the hall, find a hobby, exercise, or practice a breathing exercise. Find tools to build into your life that

allow you to take a step back.

6. Cut back on social media. Social media will suck the life right out of you. I think I might offend some people by saying that I prefer to live in the real world not the virtual world. Social media is all about comparing yourself to other people and their lives. First of all, most of what you read is hype. Most people don't advertise the rough parts of their life on social media. They talk about all the "great things" going on and often exaggerate. I have talked with many people who I know are having a very rough time but you would never know from looking at their social media. You have to decide what is best for you, but if looking at social media leaves you feeling bad about yourself, maybe you need a social media vacation.

See Control Page 17

Compensation Plan Considerations

By Charity Anastasio

Compensation plans still predominantly worship at the altar of fees collected in most law firms. But that should not be the only consideration when devising a compensation plan or considering a new position. Here are 17 factors that could contribute to a compensation plan and what it may mean for the firm:

Seniority. Some systems are predominantly seniority ("lock step systems"), but this can reward longevity as if it is equal when not all lawyers progress or perform equally. On the other hand, there is growing recognition that stability and heritage strengthen an organization.

Fees Collected. The most determinative factor in compensation, considered because it is easily measurable. Billable hour is falling out of favor in some research and firm structures recently, though it is still very common to find as a key factor in compensation plans. A healthy nuance is distinguishing those with a high realization rate, meaning those who have a high rate of collecting what they bill (and sometimes considered those who bill all of what they work and do not write down bills), instead of just those who bill the most overall.

Origination/Sales is also weighed heavily in most systems, sometimes perpetuating client hoarding, unproductive competitiveness. There is a continuing debate with formal origination credit systems as to when the credit should end for a senior lawyer. Ask When does the client become more the firm's than the individual who originally brought the client in?

Client Retention. This factor may adhere to the lawyer responsible for client relations and/or the lawyer responsible for getting favorable results, even if work is delegated to others.

Practice Management. Management is essential for the longevity and resilience of a law firm and takes more time and skill as a firm grows. Sometimes it is split between a committee of three, each covering an aspect of management (financials, marketing, and leadership). Other

times all aspects of management are vested in one individual. Whichever structure, recognize that those managing will have fewer billable hours, but still contribute significantly to the success of the law firm.

Expertise or Specialization. The special knowledge and reputation as the expert in a particular niche or type of law can be of great value to a law firm.

Teaching, Writing, or Speaking. This can be a part of developing expertise, and may be recognized in that factor instead. It is also an avenue of networking and being active in the legal community and building the individual lawyer's and the law firm's reputation. Some firms give credit for this factor while others do not.

Training/Mentoring Internally. More and more the value of a skilled trainer is considered in compensation plans. The ability to teach others how to perform tasks better, analyze and develop protocols, learn technology and explain it, etc. may be viewed as practice management as well, when determining factors.

Team Spirit. Someone who appears to create harmony and collaboration is valued over someone who appears to have disinterest or distaste for the team perspective. Probably more consideration in a team oriented firm and less in a confederacy style firm. Trending upwards in consideration.

Productivity. A trending factor in compensation plans, those who can serve clients faster with lower overhead and staffing will be more profitable. This can be used to compare different locations, workgroups, individuals, or other factors. This factor awards the early adopters of new technology and makes the connection between efficiency and profitability explicit, incentivizing lawyers to learn to work smarter, not harder.

Profitability. Revenues generated compared to overhead and resources required to generate may be one aspect of this analysis. The other may be the time it takes a partner to collect and the realization rate of those accounts. Instead of only considering billable hours, this factor is considering if the billable

hours are then billed and collected successfully or not.

Quality. While some firms will view this as essential to the ethical practice of law, other client-centric firms view it as part of client satisfaction and therefore deem it a factor in determining compensation.

Pro Bono Work. While many firms have pro bono goals and programs, it is rarely a factor considered when determining compensation. Nonetheless, certain core values and goals could make this a factor considered.

Community Involvement and Bar Activities. This is similar to pro bono work in that it is often expected, but not always valued. But if it is part of a firm-wide rainmaking plan or fundamental to core values, it could carry weight. Some firms may penalize over-involvement if it does not match the firm goals or generate referrals.

Ownership. Usually ownership interests are separated from compensation. This factor is trending downward in consideration, though the allocation of ownership interests remains a sensitive and important issue.

Leadership. A firm must have leadership. This is usually seen as part and parcel of management, but it does not have to be. It is often inherent in the founders of the firm, but it may also be taught, and it should be a quality sought when hiring a successor.

Other Qualities. There may be other factors fundamental to the culture of the firm and the clients it serves that directly link to the firm's vision, mission and values. These may have a place in the compensation plan considerations as well.

Does your firm need a revised compensation plan? Rate the importance of each of these and compare it to your current compensation plan. (Yes, even if you are a solo. You have a compensation plan, even if it only considers fees collected. A solo practice that wants to grow should think about having a compensation plan, to be competitive and connected to the firm's values.) If it needs revisions, the next step is to be a force for change, but that is another story.

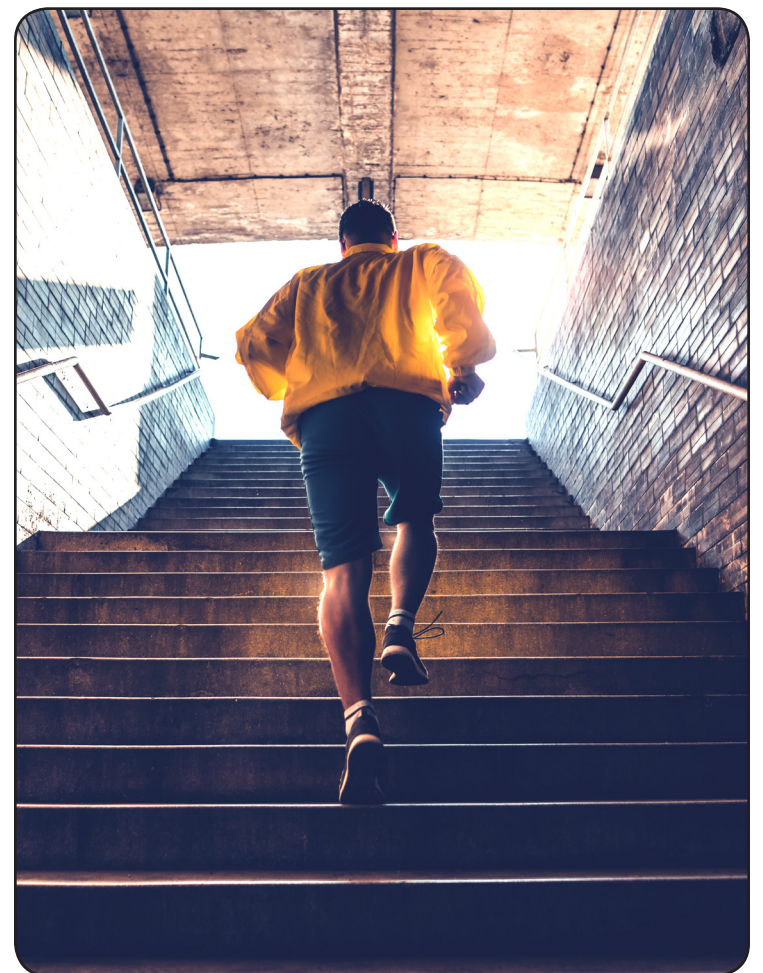
Motivational Tricks Fitness Enthusiasts Use to Stay Motivated

By Haley Shaw

We have all been there; you get home late from work, need to cook dinner and still get your workout in. Or the alarm buzzes and chirps in your ear in the wee hours of the morning, before a busy work day.

out; do it! Find an execution plan and follow through with it. If you know you cannot get to the gym until after work, pack up your workout clothes, gym shoes and post workout shake. This prior preparation will save you time and energy.

Working out in the morning?



How do the "fitness enthusiasts" do it? How do they stay motivated even with a full-blown schedule on their plate?

Here are 5 tricks the "fitness enthusiasts" use to hit their next fitness and health goals, which can help you accomplish your fitness and health goals too.

1. Get To Your Starting Point

If you're thinking of working

Here are two options:

Option 1: Sleep in your workout clothes (sounds crazy, but it works).

Option 2:

Step 1: Set your clothes, shoes, head phones and phone all by each other.

Step 2: Set your alarm on your phone (which is by your gym clothes) and place across your room.

See Fitness Page 17

TECHNOLOGY-TALK

Tech to Help You Turn Off

By Tanya Roberts

The working world has changed drastically over the last five years, with the great advancements allowed by smartphones, tablets, and WiFi. People are driven to distraction constantly - they rarely take a moment to consider that their multitasking is not as effective as they might think. There are a few reasons you need to unplug, and here are some tips and tricks to help you manage your digital distractions. Whether you are driving, working, or on vacation, maximize your time by cutting down on distractions.

While Driving

According to Time Magazine, texting while driving now kills more teenagers than drunk driving - but teens are not the only people who can be affected by this distraction. Adults text while driving even more than teens do. Also, in the state of Maryland, it is illegal to text, and you can make calls only with a hands-free device.

AT&T and T-Mobile offer free apps that allow you to turn off notifications while driving and set a response (similar to an out-of-office reply), but they rely on the user to turn them on. More reliable is a GPS-enabled or accelerometer-based app, which turns on as the device begins moving quickly. Sprint has an app called DriveFirst, which turns on as soon as your car is moving faster than 10 mph. This is a more restrictive app, probably more ideal for parents with driving teens.

On Android, one app is called De-Text, which locks out just the texting portion of the phone while the car is moving, based on a driver's GPS speeds, and automatically responds with an away message.

Another multi-platform app is called DriveSafe.ly (www.drivesafe.ly). When activated, this app will read text messages and emails aloud while you are driving, and has the option to automatically respond with a busy message, completely hands-free. The "Pro" version, allows for up to 500 words read, voice responses to texts, different reading voices and talking speeds, and an ad-free auto-responder. While not restrictive enough for teens, this is a good compromise for adults who can be trusted to turn on the service when needed.

While Working

Nothing is worse than trying to get work done on a computer while getting distracted by the computer. Not to mention smartphones, telephones, and other miscellaneous workday interruptions. Corral the distractions you can manage with a few easy-to-install browser extensions to help you restrict time spent with time wasters like social media, news sites, and other media sites.

Set your phone to only accept email pushes every four hours and not at all during vacation. Turn off Facebook notifications and other social media attention-stealers. Focus on quality time, not digital time.

If you're a Firefox user, go to your menu and select Tools > Add-ons. Here you can browse for any

number of addons for your browser. Take a look at one called Leech-Block. You can use this extension to block out as many sites as you need, based on type of site, based on URLs, and specify when they should be blocked so you can get your real work done. You can set up the extension to only allow access to those sites for a certain amount of time each day.

Other extensions in Firefox that may help you be more productive include Pocket, which allows you to save websites for later reading, and syncs to your phone, tablet, or computer, and is available without an internet connection. To help you stay on task, try Todoist, an online to-do list and task manager available in your Firefox web browser. Since I do so much Internet-based work, to-do lists are a great way to remind me to stay on task throughout the day.

If you use Google Chrome, check out an extension called Stay-Focused. This extension can also block sites by URL, or only allow a certain amount of activity at that site each day. Depending on how much you need to focus, there are light to strict control options.

For something more heavy-duty than a browser add-on, consider the multi-platform utility called RescueTime (www.rescuetime.com). This utility is available both for free with limited features or full-featured for a monthly fee. This utility helps you identify poorly used

See Tech Page 19



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and findings regarding the issues of causation.

A well versed electrical engineer can testify in court as to liability, causation, standards of care including the National Electric Code safety provisions, breach of standards of care – including all aspects of power distribution within the home, or site, electrical causes of electric shock, electrocution or shock hazards, and premises safety, in addition to failure analysis.

The form of the cause of action will be the negligence of the owner or possessor in a premises liability case. The defective nature of a product can be the basis not only for negligence, too, as well as theories of strict liability and breach of warranty, among others.

In conjunction with the testimony of the electrical engineer, a forensic pathologist who has investigated and published on electrocution accidents can testify as to the path and duration of the electrical current involved in the electrocution of the victim.

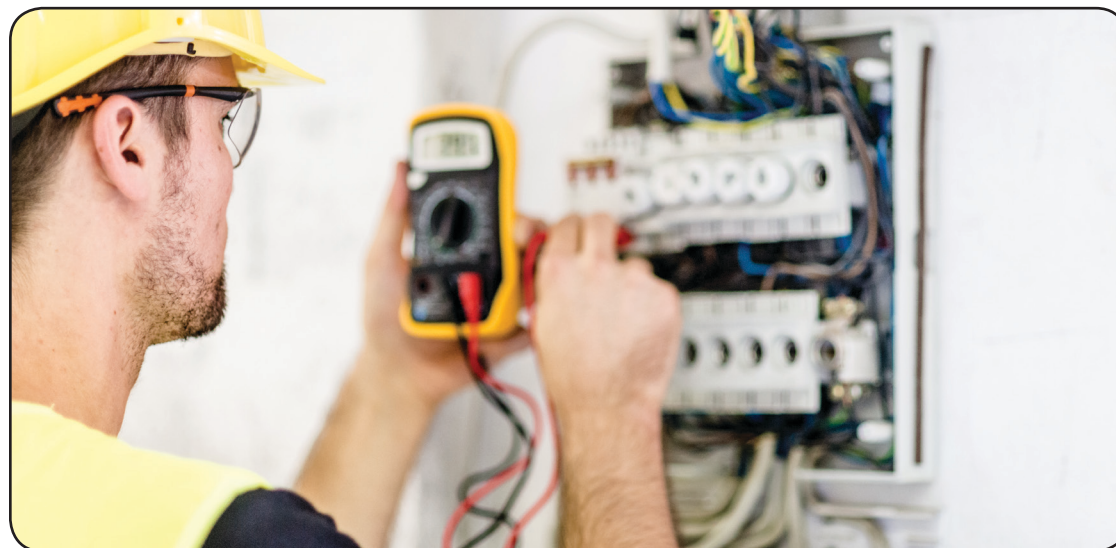
The groundbreaking study – known as the Red Wing Studies, – that were published in 1943 by a research team led by the pioneering clinical neurologist, Herman Kabat, M.D., Ph.D., which showed that the timeframe from arrest of blood supply to unconsciousness was from four up to 10 seconds in duration.

In a 2016 article in the *Journal of Critical Care*, the official publication of the World Federation of Societies of Intensive and Critical Care Medicine, this leading international and peer-reviewed medical journal, completed a “scoping review” or compilation of the literature regarding the time required to lose brain function and activity during circulatory arrest. After paring down 1524 articles to 39 that were reviewed – 19 involving human studies and 20 performed in animal subjects – the *Journal* concluded that most studies showed that the period between circulatory arrest and unconsciousness was within 30 seconds, a longer period than originally thought by researchers.

The medical examiner along with the assigned investigator will testify as to their findings from their post-mortem examination and the cause of death of electrocution by accident. The grounds for their opinions will be based upon their autopsy of the decedent, as well as the findings from the post-mortem examination report as well as photographs of the scene and autopsy.

Because the medical examiner will not offer opinions apart from the manner and the cause of death, a private forensic pathologist must be retained to testify as to these areas as well as medical condition and life expectancy of the deceased.

Apart from the liability experts are the damage experts including the economist, who is an impor-



tant expert witness to consider. The grounds for the economist's opinions are based on his independent study, and his review of income and expense records including income tax records and social security benefits, so that he can make findings regarding the issues of economic losses and damages.

Lay Witnesses

Not to be overlooked at the valuable witnesses who appeared at the scene. These persons are the other workers and any eyewitnesses, first responders, police investigators and photographers, as well as assigned personnel of Maryland Occupational Safety and Health Administration (MOSH). The power company may have investigated the incident to check the level of power being supplied or to warn of unsafe conditions for which it was determined that the electrical service required prompt termination.

Eyewitnesses along with persons arriving at the scene can provide their observation of the actual shock event and support the basis of expert testimony as to the path and level of the current.

The Use of Codes and Standards

The Internet as a starting point provides a wealth of articles, safety organizations, research studies, and discussion forums that can provide a foundation for developing the cause of action, particularly the standards of care. Armed with this material an attorney can begin to understand the

safety principles such as the National Electric Code and municipal codes that supply the standards of care, such as for buildings and the owners of premises.

Personnel at permit offices and librarians for private and public organizations are helpful as a resource for locating documents and safety procedures. As part of its commit-

ment to enhancing public safety and to serving the public's increasing interest in technical information, the National Fire Protection Association (NFPA) makes its codes and standards available online for free.

Motions Practice in Electrocution Cases

Frequently, the defendant can be expected to file a summary judgment motion to test the validity and strength of a plaintiff's case and the underlying theory of causation and fault. In addition, the matter of pain and suffering is not an easily understood concept – one that will be the subject of depositions questions.

In Maryland, the issue of negligence is ordinarily a question of fact to be determined by jury. It is only when there is neither evidence of negligence nor evidence from which negligence can legally be inferred that a directed verdict for the defendant can be sustained.

It is not necessary that there be proof that the inviter had actual knowledge of the conditions creating the peril; it is enough if it appear that it could have discovered them by the exercise of ordinary care. A premises owner owes a duty to business invitees to keep the premises in reasonably safe condition and to remove hazards of which she has actual knowledge, or which have continued long enough to charge her with constructive notice of their existence.

Also, the importance can not be understated of a motion *in limine* to prevent unique or unproven as well as untested theories of current and its effects on the human body. MD Ct. Rule 5-205 next requires that expert testimony be appropriate on the particular subject. The Maryland Court of Appeals has upheld the Frye-Reed “general acceptance” test

for admissibility of expert testimony. Under the Frye-Reed standard, where there is a dearth of scientific methodology in an expert's opinion, and therefore it is not shown to be “generally accepted” in the relevant scientific community, the expert's testimony should be excluded

Defenses of Contributory Negligence and Assumption of Risk

Here, these defenses arise due to the duties owed by each party, including the plaintiff. Contributory negligence is an affirmative defense, with the defendant having the burden of proof. That burden is a high one in an electrocution case without details of the actual knowledge of the deceased victim in many situations.

In cases where children climb trees and are fatally shocked by overhead electrical lines that the child knew had electricity, the courts have held the supplier of electrical power have a high burden nonetheless. In order to succeed on a defense of contributory negligence, a defendant would have to persuade the jury that the child was aware, or chargeable with being aware, of the danger of contact with an overhead electric line. Moreover, the defendant must show that he knew or should have known of the presence of the wire among the branches of the tree when he undertook to climb the tree.

A defendant would have to establish, for example, that the victim was aware or should have been

aware of the danger of contact with the energized wiring or product or should have known that there was a live wire or conductor that came into contact with a metal object, for example to energize the object and of its location that he then touched in the object.

Under Maryland law, assumption of risk requires knowledge and appreciation of the risk in a voluntary choice to encounter it. A plaintiff is said to have assumed the risk of injury when, with full knowledge and understanding of an obvious danger, he voluntarily abandons his right to complain by exposing himself to that particular risk.

The defendant's burden of proof for assumption of risk is to show actual knowledge on the part of the victim. In order to succeed on a defense based on its theory of assumption of risk, appellant would bear a somewhat heavier burden of proof: that the child actually knew of the potential danger of overhead electric wires. In addition, the defendant must show that the child actually knew of the presence of this particular wire when he voluntarily subjected himself to a risk of contact with the wire by climbing the tree.

The existence of an assumed risk is also ordinarily a jury question. This defense will not lie in a particular case, for example, where there is the lack of knowledge by the victim of the specific risk of electric shock involved. Based on the facts of the case, the defendant may not even be entitled to an assumption of risk instruction to the jury.

Conclusion – Preparation is the Key

Preparation and research is vital to a successful outcome for the attorney handling this unique area of the law. As one learned practitioner once noted, there are areas of the law where experts know the body of science for their field better than an attorney does, but the lawyer has one advantage – preparation.

By studying the principles that apply to an electrocution case – and by knowing the facts better than others including experts, and then developing the theory of the case, an attorney can be an effective advocate for a client.

Christopher L. Beard is an Annapolis attorney. He has a concentration in negligence and wrongful death and litigation, and electrical accidents and electrocution in particular.

CONTROL...Page 13

7. Listen to your body. I tell my clients that your body will talk to you, and if it needs to slow down and you don't listen, it will slow down for you. This may come in the form of an illness or injury. If you feel tired, resting will help you accomplish more, where pushing on won't allow you to do your best.

8. Stay in the moment. Focusing

on the past and everything that has happened can cause depression, and focusing and worrying about the future can cause anxiety. The only thing you really have is right now. So that you don't miss out on what is going on now, pay attention to it.

9. BREATHE. As long as you are alive, you can breathe. Try this: take a deep breath through your nose,

filling yourself up from your feet to your head, hold, and release very slowly through your nose or mouth.

10. Call your Lawyer Assistance Program. Each person is unique and we can help you come up with a way to help you let go of the need to control.

Please contact the Lawyer Assistance Program for free, con-

fidential assistance. Jim Quinn, Lawyer Assistance Director, (443) 703-3041, jquinn@msba.org; Lisa Caplan, LCSW-C, Lawyer Assistance Counselor, (443) 7033042, lcaplan@msba.org. Toll free (800) 492-1964.

Lisa Caplan is a Licensed Certified Social Worker at the clinical level

(LCSW-C), has over 20 years' experience in her field, and extensive experience providing wellness workshops and working with lawyers and judges in the areas of mental health, substance abuse and trauma. Find more of her articles at www.msba.org/committees/lawyerassist/articles.aspx.

FITNESS...Page 14

Step 3: Alarm rings, you wake up and have to get up to turn the alarm off your phone. You see your clothes placed right in front of you and think, "Do I really want to put these away and be mad at myself, or go get my workout in and feel great afterwards?"

Your choice! Endorphins, gratitude, and lasting energy are at your fingertips.

2. Discover Your "Why"

What is your reason for embracing a healthier lifestyle? To gain confidence? Release stress? Training for an event? Improving quality of life? Aesthetic reasons? Lifestyle choice?

Discover your "why" to help

keep you striving to conquer your goals, even when times get tough, or energy levels are low. Whatever your "why" is, write it down.

Once you discover your "why", write your response down on a piece of paper, and post it somewhere you can see everyday.

The best advice I can give you—post your "why" in your trigger spots. Where do you find yourself struggling most? Is it your bathroom mirror? Closest where you once fit into those pair of jeans or dress? In the car? At the office? Wherever it is (and it can be more than one place) post it up!

3. Sign-Up For a Race, or Get Ready For An Event

Your chance has come. It's time

to sign-up for something you've been wanting to do like a 5K race, or get in shape for a wedding, cruise, special event you have coming up! Even better? Sign up for a race with a friend (or co-worker), and hold each other accountable during training. Take action today. Phone a friend, sign up for your race, write it on the calendar, and take the necessary action to get you to your overall goal.

4. Did Someone Say New Gear?

Walk into an athletic store: Dick's, Lululemon, Athleta or Nike and you will see the best dressed mannequins rocking the latest fitness fashion. Confidence starts from the inside out; however, when you're excited about wearing a new piece of clothing or set of shoes, instantly a

beam of confidence will shine from within. Amp up your life with a new piece of fitness clothing to help get you to your overall fitness goal(s).

5. If You Really Want It, You Will Just Do It

Nobody has time for excuses, yet everyone makes them! Irony right? Making excuses eats away at your brain, and can take longer to decide then actually taking action. If you want it, you will do it. No questions asked. Art Williams states, "Winners just do it. But what do they do? They do whatever it takes to get the job done. They do it – and do it – and do it – until the job gets done. And then they talk about how great it is to be somebody they're proud of. They talk about how great it is

to finally have achieved something unique – how glad they are that they didn't quit like everybody else – how wonderful it is to finally make a difference with their life."

These 5 tricks help fitness enthusiasts stay motivated. Use these tricks to be a winner in your life. Discover your "why", phone a friend, sign up for your race, book that special event, buy new gear, and plan ahead to get you to your starting point. The time is now. We are in this together.

Are you ready to take the necessary action to increase your overall health, happiness, energy, and confidence?

Grant from Abell Foundation helps Maryland Legal Aid expand *Lawyer in the Library* Program in Baltimore City



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IN THE LIBRARY**

A COMMUNITY LAWYERING PROJECT



**MARYLAND
LEGAL AID**

*Advancing
Human Rights and
Justice for All*



ENOCH PRATT FREE LIBRARY

Maryland Legal Aid received a \$90,000 grant from the Abell Foundation to expand its Lawyer in the Library program in Baltimore City.

Initiated in 2015 in response to the civil unrest in Baltimore City, the Lawyer in the Library program places Maryland Legal Aid attorneys, paralegals, pro bono attorneys, law students, and other volunteers in public libraries to provide free civil legal assistance and criminal record expungements to low-income Marylanders. The first Lawyer in the Library program began at the Pennsylvania Avenue branch of the Enoch Pratt Free Library, near the epicenter of the 2015 unrest. While the program has grown dramatically over the past two years, Maryland Legal Aid still sends a team of advocates every

week to the Pennsylvania Avenue library to serve the civil legal needs of the community.

In addition to this initial location, Maryland Legal Aid hosts Lawyer in the Library clinics in the Pratt Library's Orleans Street and Waverly branches. In total, the program has assisted more than 2,000 Baltimore City residents since 2015. The Abell Foundation grant will enable Maryland Legal Aid to hire additional staff to run the program at four other Pratt Library branches, thus allowing the program to serve many more Baltimore residents in more neighborhoods.

Due to the popularity of its Lawyer in the Library program, Maryland Legal Aid has been able to broaden the initiative to other public library systems throughout

the state. The program allows staff and volunteers to offer more in-depth and targeted assistance to address many inter-related issues that clients face, including removing barriers to obtaining affordable housing, employment, subsistence income, and child custody.

"We are grateful to the Abell Foundation for their support of Maryland Legal Aid and the Lawyer in the Library program," said Wilhelm H. Joseph, Jr., Maryland Legal Aid's Executive Director. "This grant enables us to expand our reach to assist our most vulnerable neighbors in different areas of Baltimore City and to further solidify our partnership with the Enoch Pratt Free Library."

For more information, visit www.mdlib.org.

The Maryland Judiciary has named **Robert “Bob” Bruchalski** as Chief Information Officer and Assistant Administrator for Judicial Information Systems.



Susan Francis

Susan Francis, Deputy Director of Maryland Volunteer Lawyers Service (MVLS) has been appointed to the Baltimore City Council’s Commission on Aging and Retirement Education (CARE).

H. Mark Stichel has joined As-trachan Gunst Thomas, P.C. as a shareholder.



Mary E. Kuntz

Mary E. Kuntz has been elected Partner in the Washington, D.C. law firm of Kalijarvi, Chuzi, Newman & Fitch, P.C. (KCNF).

Andrew E. Shipley has joined WilmerHale has joined the firm.

Michael McAdoo has joined Blankingship & Keith, P.C.’s Wills, Trust and Estates, and Commercial Real Estate and Leasing practices as senior counsel.

Leah Del Percio has joined DLA Piper’s Trusts and Estates practice as an associate in the Baltimore office.

Edward N. Hershon has announced the opening of Hershon Legal, LLC, located at 420-I Chinquapin Round Road, Annapolis, MD 21401. Mr. Hershon will concentrate his practice in construction law, veterans/social security benefits and family law. Contact him at (443) 926-1702 or ed@hershonlegal.com, or learn more at www.HershonLegal.com.



Send your latest news and updates to Lisa Muscara for inclusion in Et Alia: lisa@msba.org.



extends its sympathy to the family and friends of the following members who have passed away:

- | | |
|--------------------------------|---------------------------------|
| Robert L Gruber | Dana M Levitz |
| Ellen Phyliss Rosenberg | A Gus Mastracci |
| Sidney Schlachman | William Ober |
| Stuart J Snyder | Gary Howard Shapiro |
| Fenton L Martin | Philip L Asplen |
| Naji P Maloof | Roger Charles Wolf |
| C Elyse Vinitsky | Philip J Bray |
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TECH...Page 15

time in your day and monitor your time overall, to ensure you are using your time the best way possible. This includes categorizing the sites you visit throughout the day (i.e., learning vs. social media). There is also a focus timer that will block your most distracting websites for a period of time you decide. After all, the better you organize your work day, hopefully the less work you take with you when you're not at the office.

While on Vacation

Occasionally, professionals work through vacation, remaining glued to devices while trying to refresh. There is no high-tech tool to help you learn to let go of work responsibilities when you should, to make the most of time off; however, there are a few recommendations that may help make it easier for you to balance professional demands, if you must have any while on vacation.

- Advice from David Mowry on www.AboveTheLaw.com: regardless of your practice environment, schedule the vacation time that you have been given. Really. If you need more convincing, try this article, also on Above The Law, *How to Take*

Vacation Without Being Sent Packing.

- Before you leave, share the load. Talk to coworkers about what duties can be shared and alert them of anything that may need attention while you are out. Don't leave anything up in the air that will tempt you to leave behind the very important task of clearing your mind and gaining new perspectives so you can return refreshed.
- Limit notification pushes on your phone. Set your phone to only accept email pushes every four hours, and not at all during vacation-critical time.
- If possible, consider leaving the laptop at home. Without it, you will be less inclined to default to work mode during idle time.
- If you must do some work while on vacation, schedule very specific time to accomplish tasks each day that won't conflict with your vacation plans, such as the morning before others wake up, or a brief time before dinner, and so forth. But when time is up - walk away. Don't forget to turn out-of-office notifications back on if necessary.

Reprinted from June, 2013

CONVICTIONS...Page 11

CONCLUSION

Whether seeking to use a prior conviction to challenge the credibility of a witness or defendant or whether seeking to bar the use of a prior conviction, is it critical to be prepared to address the various factors relevant to the issue of the admissibility of the prior conviction including the specific factual framework of the issues and defenses in the case which are likely to influence the trial court's balancing test, particularly with respect to the weighing of probative value vs. prejudice impact

as the trial court makes its determination as to the admissibility and use of a prior conviction.

Robert C. Bonsib, Esq. is a Partner 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. This article is an updated version of an article originally published in the Prince George's County Bar Newsletter in September, 2014.

DATELINE...Page 3

28 Join MSBA's Law Office Management Assistance from 2:00 p.m. - 3:00 p.m. for their webinar *Practice Dojo: Preventing Cybersecurity Breaches (and Recovering After One)*. Join Heinan Landa, an information technology expert, as she explains cybersecurity risks in plain English, ways to prevent breaches, and what to do to recover after a data breach. Register online at <https://attendee.gotowebinar.com/register/5934028357473572866>.

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Case in Maryland

- *Current Trends and Creditor Rights in Consumer Debt Collection*
- *2017 Criminal Law Update*
- *Recent Developments in Estate Administration*

VIDEO REPLAYS

- **APRIL 10, 2018.** *Forensic DNA Training and Analysis - Current and Future Issues.* Baltimore, MD.
- **APRIL 17, 2018.** *Hot Tips in Family Law: What NOT to Do!* Baltimore, MD.
- **APRIL 19, 2018.** *Hot Tips in Family Law: What NOT to Do!* Rockville, MD.
- **JUNE 12, 2018.** *Employment Law Institute.* Baltimore, MD.
- **JUNE 14, 2018.** *Employment Law Institute.* Rockville, MD.

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- Chapter 3: Administration of Estates—Generally
- Chapter 4: Appraisal of Asset/Filing of Inventory
- Chapter 5: Inheritance Tax on Non-probate Assets
- Chapter 6: Administration Expenses and Claims
- Chapter 7: Representative's Commissions and Counsel Fees
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