



MSBA

BARBULLETIN

Volume XXXVI, Number 6 • June 15, 2019

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Williams to Become MSBA President

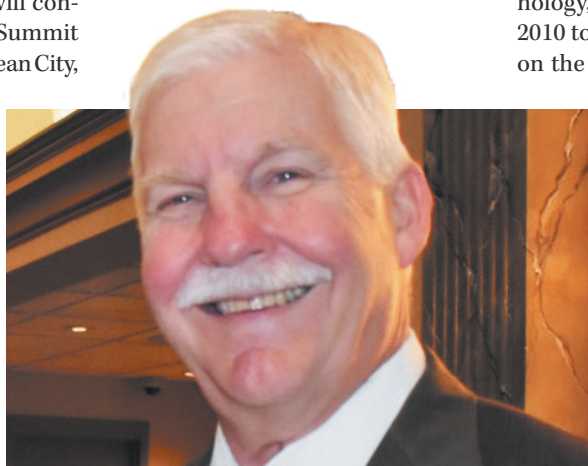
Dana O. Williams will be installed as the 126th President of the Maryland State Bar Association (MSBA) on Saturday, June 15, 2019, during the general business meeting of the membership that will conclude the MSBA Legal Summit & Annual Meeting in Ocean City, Maryland.

The trial attorney and partner in the Towson law firm of Heisler, Williams & Lazzaro, LLC tops a slate that includes the Honorable Mark F. Scurti, an Associate Judge of the District Court of Baltimore City and current MSBA Treasurer, as President-Elect nominee; Maryland State Delegate and Whiteford | Taylor | Preston LLP Partner Erik L. Barron as Secretary nominee; and Kramon & Graham PA Principal and current Maryland Bar Foundation President M. Natalie McSherry as Treasurer nominee.

As MSBA President, Williams plans to continue expanding the Association's outreach and presence across the state and, most importantly, help busy Maryland lawyers manage their practices while also balancing family, community service, and other activities.

"The MSBA is uniquely situated to help our members accomplish these things through readily accessible and cost-effective continuing general educational programs, niche and specialty programs, practice management training and education, marketing assistance, and providing platforms for the almost instantaneous exchange

of ideas and experience" through vehicles such as MSBA's existing Section email discussion lists and the forthcoming MSBA Connect, says Williams. What's more, "the MSBA can be fun," he adds,



DANA O. WILLIAMS 2019-2020 MSBA President

especially through "great events that combine an opportunity to learn and meet people from all over the state."

An alumnus of Towson State College (1972), Williams received his J.D. from the University of Tulsa (OK) College of Law in 1976. Following an eight-year stint as a Baltimore County Assistant State's Attorney, he joined the firm of Mann & Clarke, where he spent nearly two years working as an Associate. Williams then joined Bregel, Kerr & Heisler, where he worked as an Associate before becoming a name partner in Heisler, Williams & Lazzaro LLC in early 1988. Since then, Williams has built a distinguished career primarily focused on family law, criminal law, estate litigation, and general litigation.

Williams's other MSBA service includes the Board of Governors and numerous committees,

including the Executive Committee (2014-2019), the Long Range Planning Committee (2010-2012), the Judicial Nominations Committee (2010-2017), and the Subcommittee on Judicial Technology, which he chaired from 2010 to 2013. He has also served on the MSBA Family & Juvenile

Law Section Council. His other past and present professional affiliations include, among others, the American Bar Association; the Baltimore County Bar Association (BCBA), of which he served as President in 2008-2009; the Baltimore County Bar Foundation; the Maryland Criminal Defense Attorneys' Association; and the National Criminal Defense Attorneys' Association.

Williams has also been honored with such professional recognition as the BCBA's Judith P. Ritchey Award for Outstanding Service (2007). Since 2007, Martindale Hubble has rated Williams AV Preeminent.

MSBA's elective officers consist of the President, President-Elect, Secretary, Treasurer, one or more District Governors elected from each of the state's 12 districts, and three Young Lawyer Governors. The Board of Governors (BOG) consists of all of the Association's elective officers, as well as the Immediate Past President, three Section representatives, the State Delegate to the House of Delegates of the American Bar Association, and the Chair of the MSBA Young Lawyers Section.

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Association between its membership meetings and performs such other duties as specified in the MSBA Bylaws. For more information on the MSBA's Leadership, visit MSBA.org. ●

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BARBULLETIN

Volume XXXVI, Number 6

June 15, 2019

Published monthly by the

MARYLAND STATE BAR ASSOCIATION

520 West Fayette Street

Baltimore, Maryland 21201

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TDD 539-3186

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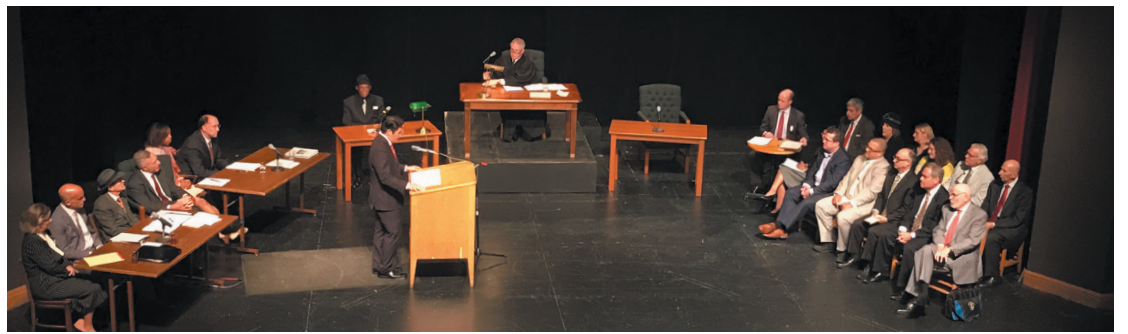
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Al Capone Sees His Day in Court



MSB A President Judge Keith R. Truffer presided over the fictitious “Trial of Al Capone” for the notorious gangster’s alleged role in the 1929 St. Valentine’s Day Massacre on Saturday, May 18, 2019, at the In-scape Theatre on the Greenspring Campus of Stevenson University.

The all-star cast included, among many others, Maryland Attorney General Brian E. Frosh as George “Bugs” Moran”, T.J. Smith, Press Secretary to Baltimore County Executive Johnny Olszewski, as Eliot Ness, Federal Public Defender for the District of Maryland James Wyda, U.S. Attorney for the District of Maryland Robert K. Hur, and Ronald M. Shapiro in the role of Alphonse Capone.

All proceeds from the production, penned by Paul Mark Sandler, went to benefit the Maryland Access to Justice Commission in support of its mission of uniting leaders to drive systemic reforms and innovations to make the civil justice system more accessible, user-friendly, and fair for all Marylanders. ●

 Find these photos and more at www.flickr.com/marylandbar.



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Members should address their written ethics inquiries to Patricia Weaver, 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/ethics. Please consult the Rules and MSBA Ethics Opinion Website before calling.

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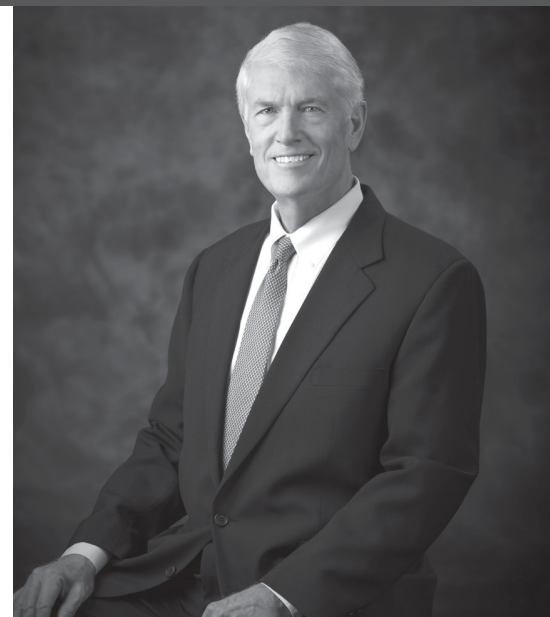


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Hon. Nelson W. Rupp, Jr. (Ret.)

Retired Judge, Circuit Court for Montgomery County

The Honorable Nelson W. Rupp, Jr. recently retired after twenty-five years of dedicated judicial service, most recently as an Associate Judge of the Circuit Court for Montgomery County. Before his service on the bench, Judge Rupp enjoyed a successful law practice and was the leader of a civil litigation team representing individuals and businesses in a wide array of practice areas including professional liability, products liability, commercial litigation and personal injury. He has also served as an Assistant State's Attorney for Prince George's County, a Deputy State's Attorney for St. Mary's County, and a Senior Assistant State's Attorney for Montgomery County. Judge Rupp is a two-time recipient of the Outstanding Jurist Award from the Montgomery County Bar Association. He now brings this exceptional record of leadership and accomplishment to The McCammon Group to serve the mediation, arbitration, and special master needs of lawyers and litigants in Maryland, DC, and beyond.



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Dateline

JUNE

12-15 MSBA Legal Summit & Annual Meeting. Join us beginning at 12pm on Wednesday, June 12, 2019 for pre-conference workshops, KeyNote speakers, including former United States Deputy Attorney General Rod Rosenstein, Attorneys General Brian Frosh & Karl Racine, and CNN Chief Legal Analyst Jeffrey Toobin. Earn up to 15+ CLE credits with the surrounding MCLE states, and find programs for your sector of the profession, your practice area, and your career stage. For more details and to register, please check out the program available at www.msba.org/AnnualMeeting.

13 Join us at the **Maryland Bar Foundation Annual Meeting** to hear about the activities of the Foundation, and the grants awarded during the year. We also induct new Fellows and present the H. Vernon Eney Endowment Award and the Edward F. Shea Jr. Professionalism Award. For more information or to register please visit: www.msba.org/MBFAnnualMeeting.

18 The **MSBA CLE Department** presents: *Are you Lawyering or Laboring? 7 steps to reduce interruptions & chores and run a highly productive law firm.* This live webinar by Maddy Martin begins at 1pm. For more information or to register please visit: www.msba.org/Lawyering-Laboring.

19 Join the **MSBA** for the newest presentation of *2019 Using & Drafting Trusts in Estate Planning*, on Wednesday, June 19, 2019 at Loyola Graduate Center in Columbia, MD! The program will focus on specific trusts, what they are used for, how they fit into an estate plan, and the specific conditions governing each. The authors, experienced estate planning practitioners, will present on chapters of the book that will include all of the relevant updated case law, IRS rulings, statutes, and regulations. For more information or to register please visit: www.msba.org/UsingDraftingTrusts.

From the Boardroom



The Board of Governors held its annual retreat on Friday, May 10, 2019 at the Sheraton Columbia Town Center.

The daylong retreat included existing Board of Governors from the 2018-19 fiscal year, as well as nominees for the 2019-20 fiscal year. The retreat kicked off with a review of the 2018-19 fiscal year. A sampling of videos that were created from the various networking events, conferences, CLEs, and other events held the MSBA and its sections were played. In addition, MSBA President, Hon. Keith Truffer, provided his perspective of the past year, and highlighted the many accomplishments of the MSBA in fiscal year 2018-19, including the expansion of the Lawyer Assistance Program, the rollout of the new Bar Journal.

Judge Truffer also touched on the work of several committees including the Strategic Vision Committee, chaired by Ben Rosenberg. At such time a motion was made to approve the recommendations of the Strategic Vision Committee, which were presented in the April 2019 meeting. The motion carried with

unanimous support of the Board. It was noted that the Strategic Vision Committee will continue its work in 2019-20, with the goal of creating an implementation plan for the Strategic Priorities & Objectives adopted by the Board. More information on the Strategic Vision committee and the priorities and objectives adopted by the board will be available in Fall 2019.

After discussion and approval of the standard membership reports, the Board went into Executive Session for a discussion and vote on the 2019-20 Budget recommended by the Budget & Finance Committee. The proposed budget was adopted by the Board.

In the afternoon, MSBA staff provided several updates to the Board, including a preview on the latest Bar Journal, and a look at the MSBA Connect technology, which is a replacement for the current Email Discussion List software. The Board also discussed and voted on ABA Dele-

gates for the 2019-21 term. After all candidates were discussed, a paper ballot was circulated. As a result of the election, imminent President-Elect, Hon. Mark Scurti and Chris Jennsion were named as ABA Delegates for the 2019-21 term. The YLS seat, which is selected by the MSBA Young Lawyers Section, will be filled by Michael Hudak.

The retreat concluded with several break-out sessions to review emerging issues in the MSBA and the legal profession in Maryland. The sessions including brainstorming ideas for the September Bar Journal, which will feature Solo & Small Firm Practitioners, reviewing recent changes at the ABA, and support for MSBA Sections.

The next Board meeting will begin at 11:00am on Wednesday, June 12, 2019 at the Clarion Fountainebleau Hotel in Ocean City, Maryland. ●



More information about the Board of Governors, including agendas and approved minutes can be found at www.msba.org/BOG.

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ICE Arrests in Maryland Courts

BY REENA K. SHAH, ESQ.

In response to increased reports of Immigration and Customs Enforcement (ICE) arresting individuals in state and federal courthouses across Maryland in late 2017, the Access to Justice Commission (A2JC), which had been already convening immigration legal services and defender providers since the start of 2017, formed a sub-committee to study the issue and understand its scale and scope. The shared concern was that ICE arrests in courts may be:

- impeding the ability of all Marylanders to access equal justice under law;
- undermining the ability of the courts to administer justice fairly and efficiently; and
- impacting public trust in the justice system and the rule of law.

After researching what other states were doing in response to the issue, A2JC developed and

disseminated a survey to legal and social services providers, private attorneys, community, faith-based and health organizations and other entities that may serve immigrant communities. The survey ran for three weeks and closed on October 12, 2018. A2JC also consulted stakeholders and conducted legal research to determine a Maryland-specific approach to addressing this important issue.

This article will primarily focus on explaining the issue, sharing the survey data and some of the stories that were reported, and providing a brief glimpse into what is happening nationally in response to the issue.

Survey Results

The results of the survey confirmed that A2JC's concerns regarding ICE court arrests were well-founded.

CONTINUED ON PAGE 17

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PBRC PARTNER PROFILE:



Matthew Vocci, Esq.
MSBA member
Member, Santoni, Vocci & Ortega, LLC
PBRC Volunteer

With which of PBRC's projects do you volunteer, and what do you do?

I volunteer with the Courtroom Advocacy Project, at the Baltimore City Rent Court. We meet with tenants who have questions, and we review their paperwork. Many times there are deficiencies on the face of the documents - either something wasn't filled out or something is questionable.

You see people that are extremely worried. This is a stop on the way to losing their homes. It's in the courthouse, and it seems very foreign to most people.

Many times, we hear tenants say, "I haven't had heat," or "I haven't had hot water," or "I've had rodents, or roaches, and I've asked the landlord multiple times to fix it, and it has not been fixed."

There's a defense to payment of rent if you don't have heat over the winter. You should have heat over the winter! We can open up a rent escrow action, so tenants can pay their money to the court until the landlord fixes the defect.

We also guide people to resources. There is assistance for people behind on their rent, and we can provide a level of comfort just by being on their side, and explaining the process.

What led you to get involved in the project?

The need is tremendous! There are hundreds of these cases. It's very difficult for tenants to navigate the system, without having the landlord's agent lead the show, and frankly get them to agree to things they shouldn't agree to.

If you watch the rent court, you'll be surprised by what you hear. The issues that are out there should spur you to action.

Can this work be done by someone without a lot of previous experience?

Absolutely. One of the nice things is that there are experienced PBRC staff there in court. So even on someone's first day, I think they can absolutely be effective. A lot of the work is reviewing documents and trying to help clients figure out the best course of action. After that, when it's appropriate, you stand with them and tell the judge what's going on in the case, and the defenses.

I've seen lawyers come in with different backgrounds, and with different levels of experience. And they've all been able to help folks on day one.

Do you have a favorite client story?

One of the last times I went, a woman was very concerned that she was going to be evicted. The process is not like that - you're not going to be immediately evicted, so I think that was a weight off her shoulders. Just for my being there and helping her, she was extremely glad. As a lawyer, you don't always get that - when someone looks at you and says, "Thank you SO much - I want to give you a hug!" Those can be few and far between in private practice - it feels good.

Bottom line - why do you volunteer?

I think it's a justice issue. So many people don't get fair representation - they don't get the opportunity to tell the judge what is going on, and you give them that chance.



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July 1st Changes To Rules On Body Attachments For Debt Collection Likely To Cause Confusion And Disparate Results

BY GEORGE WEISS ESQ.

In the 200th Report of the Rules Committee, adopted (with amendments), by Order of the Court of Appeals on May 16, 2019, the Court made significant changes to the debt collection processes in our trial courts (effective July 1st 2019) which, I predict, will have confusing and uncertain results: The changes relate to Rules 2-633 and 3-633, and they govern *oral examination* in aid of the discovery by a judgment creditor of post-judgment assets of the Debtor. A cross reference was also created to the body attachment rule (1-361) noting the changes.

“However, the most important change for creditors to know is that now no body attachments will be issued for failure to attend an oral examination without either personal service or, theoretically, certified mail return receipt restricted delivery.”

As attorneys and debt collectors working this area know, (whether they collect for a friend, a personal debt, a small business, or a large business creditor), the collection process often involves a request for oral exam, which, if not responded to, results in a show cause order (warning of contempt), which, in turn, if not responded to, results in a body attachment to arrest (attach) and bring a debtor to the commissioner to be advised of his duty to inform the creditor of his assets (if any). These “attachments” are civil arrests, and have no long term effects, but are in effect (“catch and release”) mechanisms meant to induce compliance after repeated requests and orders.

Some of these body-attachment changes are straightforward: For example, the changes

will now require that the show cause order itself warn the debtor of the possible body-attachment. (In the past, these orders simply warned of possible contempt of court). However, the most important change for creditors to know is that now no body attachments will be issued for failure to attend an oral examination without either personal service or, theoretically, certified mail return receipt restricted delivery. (Of course, once the process gets to this point, mail service is likely not even worth attempting as the debtor is not participating and would not go to the post office to pick up such mail).

Service by leaving the process with a person of suitable age and discretion at the residence of the debtor will now no longer be authorized as it was in the past. The rules will also allow alternate

service only in cases of “willful evasion.”

I predict the changes will result in significant confusion for a number of reasons:

First, curiously, the rule changes (from a “plain text” perspective) will apply only to oral examinations: However, many debt collectors, instead of oral exams, rely on interrogatories in aid of execution, which, if not responded to, (after a motion and order to compel), put the situation in the same “show cause” posture as a unattended oral examination. It is unclear why the committee and the Court changed the rules for one and not the other. Furthermore, although the Court did in fact change the rules for one and not the other, it remains to be seen, how courts, *in actual practice* will

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2019 Brings Potential Changes to Hemp Production in Maryland

BY PAUL GOERINGER, EXTENSION LEGAL SPECIALIST, UNIVERSITY OF MARYLAND

The 2018 Farm Bill makes significant changes to the classification of hemp and allows states to begin to develop regulations for the legal production of hemp.

The 2018 Farm Bill removes hemp from the definition of marijuana under the Controlled Substances Act and allows for states and tribal governments to begin developing hemp production plans. Hemp produced under these plans will potentially be eligible for the federal crop insurance program. The Maryland General Assembly during the previous session passed legislation allowing the Maryland Department of Agriculture (MDA) to develop a hemp production plan for the state. MDA will be able to create this hemp production plan once USDA releases the guidelines for the state programs.

Although hemp is no longer a Schedule 1 drug, this does not mean it is legal to grow. To be legal, Section 10113 requires that a state, tribe, or federal government develop a hemp production plan. A hemp production plan is the way producers will be monitored and will regulate the production of hemp. Section 10113 lays out two routes for a producer to begin producing hemp legally.

The first route is for a state or tribal government to take charge of regulating hemp production within their boundaries. To take charge, a state department of agriculture will submit to USDA for approval of a hemp production plan. A producer will need to comply first with the state's hemp production plan before legally growing hemp. To date, USDA has not released the final regulations for hemp production plans.

The second route is if the

duction is permitted, then the USDA hemp production plan will need to meet the same minimum criteria required for states and tribal governments.

The Farm Bill does lay out what potential violations would be. A producer can negligently violate a state's, tribal government, or USDA hemp production plan by failing to provide a proper legal description of the land that hemp will be grown on. A producer could also violate by failing to obtain the required license or other authorization required under the plan before producing hemp. Another example would be producing hemp with a THC level greater than 0.3 percent per dry weight.

With the first negligent violation, a producer can correct the violation by complying with a corrective action plan developed by the state, tribal government or,



To be legal, Section 10113 requires that a state, tribe, or federal government develop a hemp production plan. A hemp production plan is the way producers will be monitored and will regulate the production of hemp.

will make changes to the state's hemp laws. The bill was recently signed by Governor Hogan and was effective on June 1, 2019. Maryland's criminal law currently excludes industrial hemp from the definition of marijuana. On June 1, 2019, this definition will be

HB 1123 makes minimal changes to the existing hemp research program that MDA manages. The most significant changes in HB 1123 will be with the creation of a Hemp Production Program. The new program will allow growers who meet the qualifications in the state's hemp production plan to grow hemp without participating in the research program.

HB 1123 will become effective on June 1, 2019, but this does not mean that growers can start growing hemp immediately unless they are already participating in the research program. MDA still needs to develop a hemp production plan for USDA approval. At this time, USDA has not published the regulations to implement the requirements for a hemp production plan but this is expected to happen later this year. Maryland growers still need to wait for more leeway in growing hemp till sometime in 2020. ●

“Although hemp is no longer a Schedule 1 drug, this does not mean it is legal to grow.”

state or tribal government does not have an approved production plan, then USDA will develop a plan for them. USDA's ability to create a state or tribal plan will depend on the existing state or tribal laws. For example, if state law still classifies hemp as a controlled substance, then USDA will not be able to develop a production plan. If hemp pro-

USDA. Three negligent violations in five years will result in the producer being barred from producing hemp for five years. The Farm Bill does not allow anyone with a felony drug conviction within the past 10 years to grow hemp under a hemp production plan. During the 2019 legislative session, the Maryland General Assembly passed HB 1123 which

revised to include “all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis.” (HB 1123). This revision will make clear that products derived from industrial hemp are excluded from the definition of marijuana.



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The Crossroads of Trademark Licensing and Bankruptcy Law

BY DAVID TAYLOR

Trademarks and service marks (collectively “marks” for brevity purposes) are synonymous with brand names, although a mark can be a word, name, symbol, sound, color, scent, shape or the like used to identify a particular source of a product or service. One of the rights conferred by a mark is the right to license others to use the mark. But what happens when the licensor enters bankruptcy? Is the licensor required to continue licensing the mark? Or can the licensor unilaterally terminate the license, even over the licensee’s objections?

Given the ubiquitous presence of marks in the marketplace (over 600,000 trademark applications for registration were filed in the U.S. Patent & Trademark Office in FY2018 alone), the issue of mark termination in bankruptcy is not uncommon. Further, the issue can arise with modern franchising, which often depends on trademark licenses. Indeed, the treatment of mark licenses in bankruptcy has been characterized by the International Trademark Association (INTA) as “the most significant unresolved legal issue in trademark licensing.”

The U.S. Supreme Court took up the issue of whether a trademark licensor declaring bankruptcy (or its trustee) can revoke a license under the Bankruptcy Code in *Mission*

Prod. Holdings, Inc. v. Tempnology, LLC, --- U.S. ---, No. 17-1657, 2019 WL 2166392 (May 20, 2019). According to the petition for writ of certiorari, Tempnology, LLC developed chemical-free cooling fabrics, and used those fabrics to produce specialized clothing and accessories, which Tempnology marketed using multiple marks, including “Coolcore.” In November 2012, Tempnology entered into a Co-Marketing and Distribution Agreement with Mission Product Holdings, Inc. (“Mission”) whereby Mission was granted a worldwide, non-exclusive (except for exclusivity in the United States), perpetual license to use the marks in association with Tempnology’s products. While the parties were engaged in arbitration with one another over termination of the Agreement,

Tempnology filed a voluntary petition for Chapter 11 bankruptcy.

Section 365(a) of the Bankruptcy Code gives a debtor such as Tempnology the option, subject to court approval, to assume or reject any executory contract. The bankruptcy court granted Tempnology’s motion under Section 365(a) of the Bankruptcy Code to “reject” the Agreement, repudiating any further performance of Tempnology’s duties. Tempnology argued, and the bankruptcy court agreed, that its rejection of the Agreement also terminated the rights it had granted Mission to use the marks. On appeal, the Bankruptcy Appellate Panel (BAP) for the First Circuit reversed. On further appeal, a divided First Circuit disagreed with the BAP and reinstated the bankruptcy court’s

decision terminating Mission’s license.

In an 8-1 decision written by Justice Kagan to which Justice Gorsuch dissented on the ground of mootness, the Supreme Court sided with Mission and reversed the First Circuit. The Court held that Tempnology’s rejection of the Agreement had the same effect as a contract breach outside of bankruptcy: it gave Mission a claim (as an unsecured creditor) for damages while leaving intact Mission’s right to use the marks under the Agreement. In the Court’s words, “[r]ejection of a contract – any contract – in bankruptcy operates not as a rescission but as a breach.... [T]he breach does not revoke the license or stop the licensee from doing what it allows.”

The Court rejected Tempnol-

ogy’s argument that its ability to reorganize under the bankruptcy laws would be impeded if it was required to monitor Mission’s quality control, which it argued was necessary to protect its marks against possible abandonment due to naked licensing. The Court found that the Bankruptcy Code, while providing a debtor like Tempnology with “a powerful tool,” does not grant the debtor an exemption from all the burdens that generally applicable law (whether involving contracts or trademarks) imposes on property owners.

Although not directly addressed by Justice Kagan’s decision, trademark licensing agreements often have terms that address the remedies available to the parties should one enter bankruptcy. Such terms sometimes provide for the very relief that Tempnology was looking for here, e.g., they allow the licensor to terminate the agreement and revoke a trademark license if it enters bankruptcy. Justice Sotomayor’s concurring opinion, while acknowledging that the Court did not grant certiorari on this particular issue, suggested that (in her view) such clauses are enforceable, finding that “[s]pecial terms in a licensing contract or state law could bear on that question [of whether the licensee’s right would survive a breach under applicable non-bankruptcy law] in individual cases.” Accordingly, the *Mission* decision should not deter practitioners from continuing to include carefully worded bankruptcy-related terms in their licensing contracts. ●

David Taylor is a partner with the law firm of Berenato & White, LLC in its Bethesda office. The firm concentrates its practice in the area of intellectual property.

“Bankruptcy Code does not grant the debtor an exemption from all the burdens that generally applicable law imposes on property owners.”



2019 Legislation Reduces Cost Barriers of Estate Administration for Low-Income Families

BY SUSAN FRANCIS, DEPUTY DIRECTOR, MARYLAND VOLUNTEER LAWYERS SERVICE (MVLS)

The Maryland General Assembly passed a bill this year that will require Registers to waive the probate fee in specific situations.

The bill amended a law that went into place last year that clarified that Registers had to power to waive a fee but did not require it. This year's action, HB1305/SB261, was a one-word change in the law, amending "may" to "shall" in "A register of wills shall waive any fees under this section for the administration of an estate" when one of two reasons are identified.

First, the property subject to opening the estate is: 1) going to be transferred to an heir who currently resides in the property, or 2) encumbered by a lien and subject to tax sale.

Second, the estate does not have the funds to pay the fees because of poverty, which is defined as 1) either the decedent's family's household income is less than 50 percent of Maryland median income or 2) the personal representative is being assisted through a Maryland Legal Services Corporation funded legal service program, like Maryland Volunteer Lawyers Service (MVLS).

Both criteria are required to meet the guidelines for waiving the fees. The bill awaits Governor Hogan's signature and will go into effect on October 1, 2019. The legislation is available at www.mgaleg.maryland.gov/2019RS/bills/hb/hb1305T.pdf.

MVLS welcomes this legislative change

Probate fees can be cost-prohibitive for many of our clients. Our typical client has been living in the multi-generational house for many years. It gets "passed down" to them when their parent or grandparent passes away. There's rarely a will, and no steps have been taken to avoid probate. Families often seek help from MVLS when they are at risk of tax sale or in some other way are at risk of losing their home. In order to help them maintain their housing, we seek to make sure they are receiving the Homeowner's Property Tax Credit, which can

“

For low-income homeowners, the cost of publication, bonds, probate fee, lien certification, recordation fee and being current on their property tax and water bill is simply out of reach.

be critical to keep someone out of tax sale, local water credits and access to all home repair programs. However, without their name being on the deed to their property, they are shut out of all of these programs, even though they have lived in their homes for years, paid their taxes and upkeep their properties.

For low-income homeowners, the cost of publication, bonds, probate fee, lien certification, recordation fee and being current on their property tax and water bill is simply out of reach. While this legislation won't eliminate all of these bar-

riers, it will remove a major one. Importantly, it will also create consistency across all of the Registers throughout the state.

MVLS plans to work with the Registers throughout the State with the hope of utilizing a standard form similar to the one used by legal services programs in other state judicial filings to waive filing and appearance fees. Over the past several years, MVLS has greatly expanded its estate planning work, launching an Advance Planning Project last year which involves substantial community engagement, particularly in Baltimore City to overcome the myth that low-income individuals don't need to do estate planning. This project highlights why low-income individuals need to plan to avoid probate through life estate deeds and proactively setting up payable and transfer on death accounts. These efforts ensure the assets they have accumulated can successfully pass to their next generation and help avoid the risk of financial exploitation. In April, MVLS launched its most recent efforts in this area, the Homeowner: My Home, My Deed, My Legacy campaign, which involves a public awareness campaign and homeowner clinics to change the conversation about how poorer communities can preserve their assets. More information is available at www.myhomemydeed.org.

If you are an attorney looking to help the less fortunate navigate estate planning and deed recordation issues, we can use your help at upcoming Homeowner clinics. Please contact me at sfrancis@mvlslaw.org to get involved. ●

MSBA Advocacy in Annapolis Key Bills in 2019

BY RICHARD MONTGOMERY, MSBA DIRECTOR OF LEGISLATIVE AND GOVERNMENTAL RELATIONS

The MSBA Committee on Laws and the MSBA Office of Legislative and Governmental Relations were very active during 2019 Session of the Maryland General Assembly. The Laws Committee, per its mandate, reviewed bills introduced in the Maryland General Assembly and made bill position recommendations to the Board of Governors as it does every year.

Of the hundreds of bills reviewed by the MSBA, there were several important bills that the MSBA focused on during the session, which primarily impacted the Judiciary. In particular, the MSBA supported **SB205 – Judgeships – Circuit Court and District Court (Passed)** that added a circuit court judgeship for Washington County and District Court judgeships in various jurisdictions. Senate Bill 205 passed both chambers of the legislature, and, as of the date of this writing awaits the Governor's signature.

Another bill that the MSBA took action upon was **SB 246 – Circuit Court Judges – Elections (Failed)**, a Constitutional Amendment, which would have eliminated judicial elections for circuit court judges, replacing contested elections with retention elections, similar to those faced by Maryland appellate judges. While SB 246 did not pass this year, partly because it was a Constitutional Amendment, which the legislature generally does not consider in non-election years, the measure will reappear in both chambers in 2020.

Finally, MSBA opposed **SB 1049 – Civil Actions – Office of Asbestos Case Mediation and Resolution (Failed)** which would have mandated that all current and future asbestos cases in Baltimore City Circuit Court be sent to mediation, which would be administered by a newly created executive agency. The Laws Committee recommendation to oppose the bill, which was approved by the Board of Governors, was based on a separation of powers issues and the measure having a retroactive application that would affect asbestos-related injury claims already filed with the court. The bill failed in the waning days of the 2019 session. ●



Continuing Legal Education Opportunities

Continuing Legal Education Department: Raising the Bar for Education

BY ANDREA TERRY, ESQ.

June is a busy month for the CLE department as we present for the first time a webinar by nationally renowned speaker Maddie Martin entitled “Are You Lawyering or Laboring?”. This webinar will help solo and small practitioners to audit their practices and put processes in place that will help you keep your practice and staff and processes effectively organized to keep your

clients satisfied and your work/life balance in a good place. Also in June we have the ever popular “Using and Drafting Trusts” for estate and trust practitioners who will definitely need this seminar and its accompanying publication to stay current in your practice. If you cannot attend the live program, many are being webcast concurrent with the live program and you can find

these programs available online, on-demand approximately 6-10 days after the live program. All video replays and online programming carry CLE credit just like the live programs. See below for details.



Additional information and online registration available at msba.inreachce.com

UPCOMING LIVE CLE PROGRAMS

Registration is open for:

- **Hot Topics in Elder Law** | June 5, 2019 | Columbia, MD
- **Are You Lawyering or Laboring? 7 steps to reduce interruptions & chores and run a highly productive law firm** | June 18, 2019 | Live Webinar
- **2019 Using and Drafting Trusts in Estate Planning** - June 19, 2019 | Columbia, MD
- **Family Practice Update** | August 22, 2019 | Columbia, MD
- **40 Hour Basic Mediation Training** | September 23-27, 2019 | Baltimore, MD

Registration Opening Soon!

- **Handling Drinking and Driving Cases in Maryland** | August 28, 2019 | Columbia, MD
- **Workers' Compensation Evening Series** | Oct. 2, 10, 16, 23, 30, Nov. 6, 2019 | Columbia, MD
- **Advanced Real Property Institute** | November 7, 2019 | Columbia, MD
- **Advanced Tax Institute** | November 11-14, 2019 | Martin's West Baltimore, MD

VIDEO REPLAYS

- **Civil Pre-Trial Practice** - May 28, 2019, Baltimore and May 30, 2019, Rockville, MD
- **Advanced Business Law Institute** - June 4, 2019, Baltimore and June 6, 2019, Rockville, MD
- **2019 Hot Tips in Workers' Compensation** - July 9, 2019, Baltimore and July 11, 2019, Rockville, MD
- **IMMIGRATION 911: Putting Out The Fire** - July 16, 2019, Baltimore and July 18, 2019, Rockville, MD
- **2019 Advanced Estate Planning Institute** - July 30, 2019, Baltimore and August 1, 2019, Rockville, MD
- **2019 Hot Topics in Elder Law** - August 6, 2019, Baltimore and August 8, 2019, Rockville, MD
- **Using & Drafting Trusts in Estate Planning** - August 27, 2019, Baltimore and August 29, 2019, Rockville, MD

NEW ONLINE, ON-DEMAND

- **Mindfulness as a Foundation for Ethical Lawyering** - presented live January 16, 2019
- **Mental Health and the Law** - presented live January 24, 2019
- **Family Law University** - presented live February 7, 2019
- **Recent Developments in Estate Administration** - presented live March 12, 2019
- **Appellate Practice in Maryland** - presented live March 13, 2019
- **Land Use Institute** - presented live March 20, 2019
- **New VA Wartime Pension Benefit Laws: It Finally Happened!** - presented live March 27, 2019
- **Successful Management & Collection of Fees** - presented live April 9, 2019
- **Civil Pre-Trial Practice** - presented live April 24, 2019

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NEW & RECENT PUBLICATION UPDATES

(All titles available in print and electronically)

Now Available

Civil Pre-Trial Practice, 2019 Revised Edition (with downloadable forms)—The essential reference to civil practice beginning with the initial contact with a potential client up to trial. The author provides the “nuts and bolts” for handling a lawsuit, including legal research, service of process, discovery, settlement negotiations, pre-trial motions and trial preparation.

Pre-Sale Discounted Purchase Now Available:

Using & Drafting Trusts in Estate Planning, 2019 Revised Edition—The 2019 Edition significantly revises Using & Drafting Trusts in Estate Planning. Much of this book focuses on specific trusts, what they are used for, how they fit into an estate plan, and the specific conditions governing each. The authors, experienced estate planning practitioners, have updated the book to include all of the relevant updated case law, IRS rulings, statutes, and regulations.

Civil Practice & Procedure in the District Court of Maryland, 2019 Edition—This new, updated book, published with the input and review of the District Court itself, provides the “nuts and bolts” for handling all aspects of a civil case in District Court. It is a handy, easy-to-follow guide for relatively new, experienced and all who practice in the District Court.

Criminal Practice & Procedure in the District Court of Maryland, 2019 Edition—This new, updated book, published with the help and review of the District Court itself, provides the “nuts and bolts” for handling all aspects of a criminal case in District Court. It is a handy, easy-to-follow guide for relatively new, experienced and all who practice in the District Court.

Maryland Divorce & Separation Law, Tenth Edition—Last updated in 2009, this new, updated reference book is a comprehensive legal resource and practical guide that sets forth the legal principles and procedures for handling family law actions, including divorce, separation, child custody, child support, adoption and paternity matters, from the initial contact with a potential client through appeal. Updated by expert practitioners, it provides tips and forms and is an easy-to-follow guide on Family Law.

Practice Manual for the Maryland Lawyer, Fifth Edition—This first update since the 2012 Fourth Edition brings the Practice Manual up to the minute! The best how-to-guide and fundamental reference on the essentials of Maryland law practice, the Practice Manual is the ultimate practical, nuts and bolts resource. Since 1981 it has served as both a cornerstone for new lawyers who are building real-world know-how and a touchstone for seasoned practitioners who trust its reliable, concise authority. Its two volumes include sixteen chapters covering key practice areas of law,

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MSBA Lawyer Assistance Program Wellness TipSheet

Reconnecting on a Family Vacation

BY LISA CAPLAN

With such busy lives and everyone going in one hundred different directions at a time, it can be hard to feel connected with your family. Summer vacations can be a great time to reconnect.



Tips for reconnecting:

1 Share in the fun. A great way to get everyone excited about a vacation is to have each family member pick an activity. Come up with a list of activities and have each person choose which one they would like to do.

2 Disconnect. You will survive without your phone, laptop, and other devices. If you plan to be on your phone a lot, you might as well stay home. Decide with your family when you will disconnect. Set specific times to use your devices.

3 Take a complete break from social media. This goes along with disconnecting. If you are constantly taking another selfie, posting, checking social media, etc., you are missing out on what is going on and not paying attention to your family. Set aside time for this so you can enjoy what is going on at the moment.

4 Plan some time outdoors. Being outdoors can be very calming and often can help us let our guard down and open up easier.

5 Let go. Life is short and we often get caught up in things that seem important at the time but really aren't. If you are distracted by work, etc. make sure it is really important. Ask yourself if this will seem as important a month from now. If the answer is no, then let someone else handle it, let it go and spend time with your family.

6 Spend individual time with each person. Pick an activity that you both like. Don't judge, criticize or give advice. Just have fun.

7 Eat dinner together. Eating dinner together allows you to discuss the day and plan the next day.

8 Get out of your box and try something new. Sit down with your family and come up with a list of activities you have never tried and pick one to try. Trying something new gives you a lot to discuss with your family and can help you bond. Even if some of you may never do it again.

9 Plan down time where each person can have some time to themselves. Vacations are meant to be relaxing and everyone decompresses differently. You might like to schedule everything, but your child or partner might not. If you schedule too many activities, meals, etc. it won't allow you to decompress.

10 Just have fun!

For assistance, please contact the Lawyer Assistance Program for **free, confidential counseling**. We have a network of counselors throughout Maryland. Jim Quinn, Director, (443) 703-3041, jim@msba.org; Lisa Caplan, LCSW-C, Associate Director, (443) 703-3042, lisa@msba.org; 24/7 Toll Free line 1(888) 388-5459. ●

Lisa Caplan, LCSW-C has over 20 years experience in her field, and extensive experience working with lawyers and judges in the areas of mental health, substance abuse and trauma.

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Amber Jackson



Susan Francis

Miles & Stockbridge associate **Amber Jackson** has been honored by the Alliance of Black Women Attorneys of Maryland, Inc. with its Rising Star Award. Jackson is a labor and employment lawyer and serves on the Character Committee of the Maryland State Board of Law Examiners.

Bettina T. Guevara has been elevated to Senior Vice President and Associate Counsel at **B. F. Saul Company & Affiliates**, where she represents the company in transactions involving the acquisition, disposition, financing, construction and development of various types of real estate.

Susan Francis, deputy director of **Maryland Volunteer Lawyers Service (MVLS)**, was recognized with the Judge Robert Bell Award from the University of Baltimore Law Alumni Association (UBLAA). Francis received the award during UBLAA's 3rd annual awards banquet on May 16 at the Columbus Center in Baltimore. Selected by fellow UB Law alumni, Francis was recognized for her exceptional commitment to advancing and expanding civil legal services in Maryland.

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ICE

CONTINUED FROM PAGE 5

ICE Arrests

One-hundred-six individuals from 60 organizations that represent every jurisdiction of the state weighed in. Incidents of ICE court arrests were reported across the state, with 10 jurisdictions reporting the most activity (see map below). Survey respondents reported a total of 72 witnessed arrests between January 2017 and October 2018. This may be an undercount as organizations that routinely work with detainees and track how individuals end up in detention provided a count in the range of 110-154 arrests for the time period. ICE court arrests were reported to have happened in courtrooms, courthouse halls, and courthouse parking lots - always in public view and usually by ICE agents in plain clothes. Court security personnel and judges were informed and aware of ICE's presence in courts. Sheriff's offices were also informed. Sometimes, they were aware of the individuals who would be targeted for arrest.

Collateral Consequences of ICE Arrests

The survey also demonstrated the ICE court arrests caused substantial collateral impact to Marylanders and the justice system as a whole. Fear of going to court and interacting with the justice system was pervasive, highlighted by the finding that people were more fearful of going to court than interacting with law enforcement.

The survey found that the ICE court arrests caused many Marylanders to forego their shot at justice, choosing not to pursue or defend potentially meritorious cases. About 50 percent of the respondents reported that they encountered at least one individual who refused to file an action or defend a case because of ICE court arrests. Marylanders chose not to apply for public benefits, pursue housing actions, and file wage theft claims. However, in the largest area where individuals were reticent to pursue claims was domestic violence, respondents reported 472 instances where individuals did not file or were afraid to file a domestic violence or sexual assault case. Additionally, respondents reported 411 instances where individuals did not file or were afraid to file a family law case, and 338 instances in which they did not file or were afraid to file an immigration case.

The survey further showed how ICE court arrests impacted the administration of justice.



ICE court arrests caused many Marylanders to forego their shot at justice, choosing not to pursue or defend potentially meritorious cases.

People were afraid to serve as witnesses in cases, opposing attorneys were using the threat of an ICE arrest to sway case outcomes, and bench warrants were issued for individuals in ICE custody. A quarter of the respondents reported encountering at least one person who refused to serve or was afraid to serve as a witness in a case. This cohort reported approximately 110 cases where witnesses refused to testify because of the fear of an ICE court arrest. Thirty-eight percent of respondents encountered at least one individual who had been threatened by or was afraid of an opposing party or attorney calling ICE on them. Twenty-six percent of respondents reported encountering at least one client being arrested by ICE immediately upon release from State custody, causing the client to miss his upcoming criminal hearing and have an outstanding bench warrant.

Maryland

In March 2017, Maryland Attorney General Brian Frosh, sent a letter to Secretary of Department of Homeland Security, John Kelly, and others, making an urgent request to "designate Maryland courts" as locations "where no enforcement activities related

to the identification or seizure of undocumented immigrants for purposes of deportation will be conducted." The Attorney General voiced his concern for "the safety of Marylanders who turn to the courts for protection against domestic violence and other crimes," foreseeing that the new policies would "discourage the most vulnerable immigrants from seeking judicial protection."

The A2JC survey confirms that the concerns voiced in this letter have come to fruition. ICE arrests in courts are having a chilling effect and are freezing out many Marylanders from their opportunity to access justice. They are impeding the administration of justice and negatively affecting the public's perception of courts as a destination for justice. Our courts are one of the core foundations of our democracy. A2JC will continue to shed light on this issue to ensure that our courts are accessible to all Marylanders. ●

For more information and Maryland-specific stories of ICE Arrests in Maryland Courts, look for the article in the 2019 second quarter issue of the Maryland Bar Journal.

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Rule Changes

CONTINUED FROM PAGE 9

view how the changes apply to the interrogatory route, since there is no rational reason to treat that situation differently.

Second, it's very unclear how judges, faced with both an absent debtor and a stale written affidavit, will apply the "willful evasion" standard. Alternate service for original process (Rules 2-121(c) and 3-121(c)) don't require "willful evasion" but rather require only a "good faith effort" to serve by normal means. How will this "willfulness" be adjudicated *in absentia* on the basis of an "affidavit"?

Third, of course, if creditors are unable to get this heightened service (and thus a body attachment) might they simply instead now begin to ask for straight contempt (which has more long term consequences) than a body attachment (which has none other than advice to show up to court by a commissioner)?

Bizarrely, the rules do not require this heightened service for the contempt remedy: indeed even for criminal contempt.

Ideally, the rules will be hopefully be amended again in the future to address these issues as they begin to cause frustrations in courtrooms. Among other things, I personally think it would be efficient to allow "posting and mailing" service as a matter of course if a good faith effort to personally serve has been attempted (as is currently done for original process). (The Court has previously approved this kind of alternate service for original process in *Pickett v. Sears*, 775 A.2d 1218 (Md. 2001))

Until then, the realities are certain to play out in a confusing and disparate manner depending on the District or Circuit Court judge addressing these issues on a case by case basis. ●

CLE Programs

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UPCOMING LIVE WEBCASTS

- **Child Counsel Training/Best Interest Attorney Training** - May 31, 2019 | 8:30 a.m. - 4:00 p.m.
- **Hot Topics in Elder Law** - June 5, 2019 | 8:30 a.m. - 1:00 p.m.
- **2019 Using and Drafting Trusts** - June 19, 2019 | 8:30 a.m. - 4:30 p.m.
- **Family Practice Update** - August 22, 2019 | 8:30 a.m. - 1:00 p.m.
- **Handling Drinking and Driving Cases in Maryland** - August 28, 2019 | 9:00 a.m. - 4:00 p.m.

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